Passage of the

Post-16 Education (Scotland) Bill 2012

SPPB 191
Passage of the

Post-16 Education (Scotland) Bill 2012

SP Bill 18 (Session 4), subsequently 2013 asp 12

SPPB 191

EDINBURGH: APS GROUP SCOTLAND
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Education and Culture Committee’s Stage 1 Report did not include the oral and written evidence received by the Committee. This material was originally published on the web only, and is now included in full in this volume.

Similarly, the reports of the Finance Committee and the Subordinate Legislation Committee to the Education and Culture Committee at Stage 1 were originally published on the web only and are now included in this volume, along with relevant extracts of the committee minutes and Official Reports.

The Scottish Government made a written response to the report of the Subordinate Legislation Committee at Stage 1, in addition to the Government’s general response to the Stage 1 Report by the Education and Culture Committee. At its meeting on 16 April 2013, the Subordinate Legislation Committee considered and noted the response without debate. No extracts from the minutes or the Official Report of that
meeting are, therefore, included in this volume. Relevant papers for that meeting, including the Scottish Government's response, are, however, included.

Before beginning consideration of amendments at Stage 2, the Education and Culture Committee took evidence on the draft Scottish code of good Higher Education Governance at its meeting on 7 May 2013. Written evidence received by the Committee, and the relevant extracts from the minutes and Official Report, are included in this volume.

The Delegated Powers and Law Reform Committee (formerly the Subordinate Legislation Committee) considered the delegated powers in the Bill after Stage 2, and agreed its report without debate. No extracts from the minutes or the Official Report of the relevant meeting of the Committee are, therefore, included in this volume.
Post-16 Education (Scotland) Bill
[AS INTRODUCED]

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Schedule—Modification of enactments
An Act of the Scottish Parliament to make provision about the support for, and the governance of, further and higher education institutions, including provision for the regionalisation of colleges; to make provision for reviews of how further and higher education is provided; to make provision for sharing information about young people’s involvement in education and training; and for connected purposes.

Introductory

1 Interpretation
In this Act—
“the 1992 Act” means the Further and Higher Education (Scotland) Act 1992,
“the 2005 Act” means the Further and Higher Education (Scotland) Act 2005.

Terms and conditions of higher education funding

2 Higher education institutions: good governance
After section 9 of the 2005 Act insert—

“9A Higher education institutions: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.”.

3 Widening access to higher education
After section 9A of the 2005 Act, inserted by section 2, insert—

“9B Widening access to fundable higher education
(1) The Scottish Ministers may, under section 9(2), impose terms and conditions for the purposes of enabling, encouraging or increasing participation in fundable higher education by persons belonging to any socio-economic group which they reasonably consider to be under-represented in such education.
(2) The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement of such description as the Scottish Ministers may specify.

(3) A “widening access agreement” is an agreement under which a higher education institution is to take actions specified by the Council for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).

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

4 Fee cap: students liable for higher education fees

After section 9B of the 2005 Act, inserted by section 3, insert—

“9C Fee cap: students liable for higher education fees

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1)—

(a) where the payment is made to a fundable post-16 education body which provides fundable higher education, impose on that body a condition that it complies with the requirement set out in subsection (2);

(b) where the payment is made to a regional strategic body, impose on that body a condition that it must, when making a payment under section 12B(1) to any of its colleges which provides fundable higher education, impose on the college a condition that it complies with the requirement set out in subsection (2).

(2) The requirement is that the post-16 education body to whom the payment is made is to secure that the fees paid to it—

(a) by persons in respect of whom it is authorised or required to charge higher fees by virtue of regulations made under section 1 of the Education (Fees and Awards) Act 1983 (c.40) (or by such class of such persons as the Scottish Ministers may by order specify);

(b) in connection with their attending such courses of education as the Scottish Ministers may by order specify, do not exceed such amount as the Scottish Ministers may by order specify.

(3) The Scottish Ministers, when making an order under this section, must seek to ensure—

(a) that, subject to any exceptions which they consider appropriate, it applies only in relation to fees payable by persons who have a connection with the United Kingdom; and
(b) that the amount of fees payable by a person attending any course of education provided by a post-16 education body in any particular academic year does not exceed the maximum amount of fees which that person would by virtue of any enactment be liable to pay if attending any higher education course provided elsewhere in the United Kingdom during that year.

(4) The Scottish Ministers may not specify courses under subsection (2)(b) in such a way as to discriminate between different 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.

(5) References in this section to the United Kingdom include references to the Channel Islands and the Isle of Man.”.

College reorganisation

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 local authority for the area in which the college is situated;

(c) the Council; and

(d) 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: functions

23A Regional colleges: 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 colleges: 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) Skills Development Scotland Co. Limited;
(i) the Scottish Qualifications Authority; and
(j) 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 local authority for the area in which the regional college is situated;
(b) 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;
(c) any other regional college or regional strategic body whom it considers it appropriate to collaborate with;
(d) Skills Development Scotland Co. Limited;
(e) the Scottish Qualifications Authority; and
(f) 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 or any such person or type of person.

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

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

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

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

(e) other members appointed by the board.

(3) An appointment made in pursuance of sub-paragraph (2)(e) 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.

(5) Sub-paragraph (3) does not apply where the person appointed is the principal of the college.

3A(1) The board of a college which is not a regional college is to consist of no fewer than 7 nor more than 10 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) a person appointed by being elected by the staff of the college from among their own number;
(c) a person appointed by being nominated by the students’ association of the college from among the students of the college;

(d) no fewer than 4 nor more than 6 members appointed by the regional strategic body; and

(e) if appointed under sub-paragraph (3), the principal of the college.

(3) The principal of the college is not eligible for appointment under sub-paragraph (2)(a) or (d) but the board may appoint the principal as a member of the board.

3B(1) An election to appoint members in pursuance of paragraph 3(2)(b) or (c) or 3A(2)(b) is to be conducted in accordance with rules made by the board.

(2) Before making, varying or replacing election rules, the board must consult such persons as appear to the board to be representative of the category of persons entitled to participate in the election.

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) 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 (e) or, as the case may be, 3A(2)(a) or (d) 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 exercise any of their other functions properly; or 

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

(b) a relevant funding body 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) For the purposes of subsection (1)(b), the “relevant funding body” is—

(a) in relation to a regional college, the Council; and 

(b) in relation to any other college, the regional strategic body to which it is assigned. 

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

(a) remove any or all of the members of the board; and 

(b) where a removed member was appointed under paragraph 3(2)(a) or (e) or 3A(2)(a) or (d) of Schedule 2, appoint another person in place of the removed member. 

(4) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (3)(a) to the board and the member. 

(5) An appointment made under subsection (3)(b) has effect as if made under the provision of Schedule 2 under which the removed member was appointed.”.

Regional strategic bodies

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;

(d) 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 of the 2005 Act insert—

“SCHEDULE 2A
(introduced by section 7B(1))

REGIONAL STRATEGIC BODIES

PART 1

REGIONAL BOARDS

Regional Board for Aberdeen and Aberdeenshire Colleges
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  Assignation 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 regional strategic body to which it is to be assigned has proposed, or has approved, the assignation.
(3) For the purposes of considering whether or not to propose or approve any assignation under subsection (2), a regional strategic body 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) Before making an order under this section, the Scottish Ministers must consult—
   (a) every college to which the order relates;
   (b) the Council;
   (c) any local authority for an area in which any of the colleges to which the order relates is situated; and
   (d) any other person appearing to the Scottish Ministers as likely to be affected by the order.

(6) 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 (c.40), 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

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

“Regional strategic bodies: functions

23C 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.

23D 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.
23E Performance monitoring

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

(2) This may, in particular, include—

(a) 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.

23F 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.

23G 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.

23H 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.
23I 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 Scotland,
(b) issues affecting the economy of Scotland; and
(c) social and cultural issues in Scotland.

(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) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which, following consultation with the Council, 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.

(6) For the purposes of subsection (1)(b) and (c), “issues” means issues which, following consultation with the Council, 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.

23J 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) Skills Development Scotland Co. Limited;
(j) the Scottish Qualifications Authority; and
(k) 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 local authorities for the areas in which its colleges are situated;
(c) 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;
(d) any other regional college or regional strategic body whom it considers it appropriate to collaborate with;
(e) Skills Development Scotland Co. Limited;
(f) the Scottish Qualifications Authority; and
(g) 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 or 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.
23K  **Assigned colleges: information and directions**

(1) A regional strategic body’s college’s 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—

(i) any trade union recognised by any such college which represents college staff whom the regional strategic body considers likely to be affected by the proposed directions; or

(ii) where no such trade union is recognised, any trade union which appears to the regional strategic body to be representative of such college staff; and

(c) where it appears to the regional strategic body that any students of any of its colleges are likely to be affected by the proposed directions, the students’ association for such colleges.

(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 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.

23L  **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) A regional strategic body may, for any purpose referred to in subsection (2)(b) or (c), make arrangements for the transfer of any of its staff, property, rights, liabilities or obligations—

(a) to any of its colleges;

(b) to any regional college; or

(c) to any other regional strategic body.

(4) Any requirement or arrangement under this section may make such further provision in relation to the transfer as the regional strategic body considers appropriate.

(5) Before making any requirement or arrangement under this section, the regional strategic body must consult—

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

(b) the representatives of—

(i) any trade union recognised by any such college which represents college staff whom the regional strategic body considers likely to be affected by the proposed transfer; or

(ii) where no such trade union is recognised, any trade union which appears to the regional strategic body to be representative of such college staff;

(c) where it appears to the regional strategic body that any students of any of its colleges are likely to be affected by the proposed transfer, the students’ association for such colleges; and

(d) any other regional strategic body to which the proposed transfer relates.

(6) All property and rights transferred by virtue of subsection (1) or (3) are to be applied for the purpose of the advancement of education.

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

(8) A requirement or arrangement made under this section is binding on a college falling within subsection (9) only if the college consents to the making of the requirement or arrangement.

(9) A college falls within this subsection if—

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

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

(2) After section 25 of the 2005 Act insert—

“25A Directions where financial mismanagement by assigned college

(1) The Scottish Ministers may, if it appears to them that the financial affairs of any of a regional strategic body’s colleges have been or are being mismanaged—

(a) give to the regional strategic body such directions about the provision of financial support for the activities carried on by the college as they consider are necessary or expedient by reason of the mismanagement;
give the Council such directions about the provision of financial support to the regional strategic body as they consider are necessary or expedient by reason of the mismanagement.

(2) A direction made under subsection (1)(b) may, in particular, require the Council to provide such financial support to the regional strategic body concerned as may be specified in the direction (subject to such terms and conditions as may be so specified).

(3) Before giving directions under this section, the Scottish Ministers must consult—

(a) the Council;
(b) the regional strategic body concerned; and
(c) the college concerned.

(4) A regional strategic body or, as the case may be, the Council must comply with directions given under this section.”.

Regional boards

11 Regional boards: constitution

(1) After section 23L of the 2005 Act, inserted by section 10(1), insert—

“Regional boards: constitution etc.

23M Regional boards: constitution

Schedule 2B makes provision about the constitution of a regional board, about the general powers of such a board and about certain administrative and other matters with respect to such a board.”.

(2) After schedule 2A of the 2005 Act, inserted by section 8(2), insert—

“SCHEDULE 2B
(introduced by section 23M)

REGIONAL BOARDS

Regional boards

1 (1) References in this schedule to “the board” are references to a regional board specified in Part 1 of schedule 2A.

(2) The board is to be known by the name by which it is described in that Part.

Status

2 (1) The board is a body corporate.

(2) The board—

(a) is not a servant or agent of the Crown;

(b) has no status, immunity or privilege of the Crown,

and its property is not to be regarded as property of, or held on behalf of, the Crown.
Membership

3 (1) The board is to consist of no fewer than 12 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) a person appointed by being elected by the teaching staff of the board’s colleges from among their own number;

(c) a person appointed by being elected by the non-teaching staff of the board’s colleges from among their own number;

(d) two persons appointed in accordance with paragraph 4; and

(e) other members appointed by the board.

(3) A person is not eligible for appointment as the chairing member 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; or

(d) a member of the European Parliament.

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

(a) the chairing member; and

(b) the Scottish Ministers.

(5) In appointing members under sub-paragraph (2)(e) and in extending the period of appointment of any member so appointed, the board 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).

(6) Different guidance may be issued for different purposes.

Student members

4 (1) The students’ associations of the board’s colleges are each entitled to nominate students for appointment in pursuance of paragraph 3(2)(d).

(2) Where only two students are so nominated, those students are to be so appointed.

(3) Members are otherwise to be so appointed by being elected by the students of all the board’s colleges from among the students so nominated.

(4) Sub-paragraphs (1) to (3) do not apply where only two colleges are assigned to the board and, in such a case, the students’ association of each college is to appoint one member from among the students of their respective colleges.
Election of staff and student members

5 (1) An election to appoint members in pursuance of paragraph 3(2)(b) or (c) or 4(3) is to be conducted in accordance with rules made by the board.

(2) Before making, varying or replacing election rules, the board must consult—

(a) its colleges; and

(b) such persons as appear to the board to be representative of the category of persons entitled to participate in the election.

Disqualification from membership

6 (1) A person is not eligible for appointment as a member of the board if the person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;

(b) is an undischarged bankrupt; or

(c) has been removed from office under section 24 of the 1992 Act or section 23N of this Act.

(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;

(e) who has been adjudged bankrupt (and has not been discharged); or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

Terms and conditions

7 (1) Subject to the other provisions of this Act—

(a) the chairing member holds and vacates office on such terms and conditions as the Scottish Ministers may determine; and

(b) other members hold and vacate office on such terms and conditions as the board may in each case determine.

(2) Subject to sub-paragraphs (3) to (8), paragraph 9 and section 23N—
(a) the chairing member is to hold office for such period (not exceeding 4 years) as the Scottish Ministers may determine;

(b) a member appointed by being elected in pursuance of paragraph 3(2)(b) or (c) is to hold office for 4 years;

(c) a member appointed in pursuance of paragraph 3(2)(d) is to hold office until 31 August following appointment; and

(d) a member appointed under paragraph 3(2)(e) is to hold office for such period (not exceeding 4 years) as the board may determine.

(3) The Scottish Ministers may extend the period of appointment of the chairing member for a single further period not exceeding 4 years.

(4) The board may extend the period of appointment of a member it appoints for a single further period not exceeding 4 years (but such an extension has effect only if approved by the chairing member and the Scottish Ministers).

(5) The chairing member is to vacate office if the chairing member becomes a member of any of the institutions mentioned in paragraph 3(3).

(6) A member appointed under paragraph 3(2)(b) or (c) is to vacate office if the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of one of the board’s colleges before the member’s period of appointment ends.

(7) A member appointed in pursuance of paragraph 3(2)(d) is to vacate office if the member ceases to be a student of one of the board’s colleges before the member’s period of appointment ends.

(8) On ceasing to be a member, a person is eligible for reappointment (provided that the person is not ineligible by virtue of any other provision).

Remuneration and allowances

(1) The board is to pay to its chairing member such remuneration as the Scottish Ministers may in each case determine.

(2) The board is to pay to its members such allowances as the Scottish Ministers may in each case determine.

Resignation and removal of members

(1) The chairing member may by giving notice in writing to the Scottish Ministers resign office as a member.

(2) Any other member may by giving notice in writing to the board resign office as a member.

(3) The Scottish Ministers must, by giving notice in writing to the chairing member, remove the chairing member from office if—

(a) the chairing member—

(i) is sentenced as mentioned in paragraph 6(1)(a); or

(ii) has become a person to whom paragraph 6(1)(b) applies; or

(b) they are satisfied that the chairing member—
(i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
(ii) is otherwise unable or unfit to discharge the functions of the chairing member.

(4) The board must, by giving notice in writing to the member, remove any other member from office if—

(a) the member—
   (i) is sentenced as mentioned in paragraph 6(1)(a); or
   (ii) has become a person to whom paragraph 6(1)(b) applies; or
(b) it is satisfied that the member—
   (i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
   (ii) is otherwise unable or unfit to discharge the functions of a member.

Staff

10 (1) The board may (subject to any directions given under sub-paragraph (4)) appoint a chief officer and such other employees as it considers appropriate on such terms and conditions as the board may determine.

(2) The board may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed by the board.

(3) Arrangements under sub-paragraph (2) may include—
   (a) the making of contributions or payments towards provision for pensions, allowances or gratuities; and
   (b) the establishment and administration of pension schemes.

(4) The board must comply with any directions given by the Council as regards—
   (a) the appointment of employees;
   (b) terms and conditions determined under sub-paragraph (1); or
   (c) payments or arrangements made under sub-paragraph (2).

Proceedings of the board

11 (1) The board may regulate its own procedure (including any quorum).

(2) The validity of any proceedings of the board is not affected—
   (a) by a vacancy in membership (or in a category of membership); or
   (b) by any defect in the appointment of a member.

Committees

12 (1) The board may establish committees.
(2) The board is to determine—
   (a) the composition of any committees;
   (b) the terms and conditions of membership of any committee; and
   (c) the procedure (including any quorum) of any committee.

(3) A committee may include persons who are not members of the board (but such persons are not to be entitled to participate in making decisions).

(4) The board is to pay to the members of its committees (whether or not they are also members of the board) such allowances as the Scottish Ministers may determine.

Participation at meetings

Unless the chairing member determines otherwise, a person who is the principal of one of the board’s colleges but who is not a board member is entitled to participate in any deliberations (but not in making decisions) at meetings of the board.

General powers

(1) The board may (subject to paragraphs (2) to (9)) do anything that is necessary or expedient for the purpose of or in connection with the exercise of its functions, including in particular—
   (a) acquiring and disposing of land and other property;
   (b) entering into contracts;
   (c) investing sums not immediately required for the purpose of the discharge of its functions;
   (d) accepting gifts of money, land or other property.

(2) The board may not borrow money.

(3) The board is not to—
   (a) give any guarantee or indemnity over or in respect of any property; or
   (b) create any trust or security over or in respect of any property, without the written consent of the Scottish Ministers.

(4) The board is not to dispose of any property to which this sub-paragraph applies without the written consent of the Scottish Ministers.

(5) Consent, for the purposes of sub-paragraphs (3) or (4), may be given—
   (a) in respect of any case or class of case; and
   (b) subject to such conditions as the Scottish Ministers may determine.

(6) Consent, for the purposes of sub-paragraph (4), is not required for a disposal of land which is or forms part of property to which that sub-paragraph applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.
(7) But the board is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which sub-paragraph (4) applies.

(8) Where property to which sub-paragraph (4) applies is disposed of, the board is (after deduction of such expenses as appear to the Scottish Ministers to have been reasonably incurred in the disposal) to pay to the Scottish Ministers such portion of the proceeds or value of the consideration for the disposal as the Scottish Ministers may, after consultation with the board, determine.

(9) Sub-paragraph (4) applies to—

(a) any property which has been acquired, improved or maintained wholly or partly, or directly or indirectly, out of funds provided by the Council under section 12; and

(b) any proceeds of, or any consideration for, the disposal of any such property.

Goods and services

The board may, for the purposes of providing support for the provision of fundable further education or fundable higher education, provide (and make charges in respect of the provision of) goods or services—

(a) to any of its colleges;

(b) to any other post-16 education body;

(c) to any other regional strategic body; or

(d) to any other person.

Delegation of functions

(1) The board may authorise—

(a) the chairing member;

(b) any of its committees; or

(c) any of its employees,

to exercise such of its functions to such extent as it may determine.

(2) Sub-paragraph (1) does not affect the responsibility of the board for the exercise of its functions.

Accounts

The board must—

(a) keep proper accounts and accounting records;

(b) prepare a statement of accounts in respect of each yearly period ending on 31 March; and

(c) send the statement of accounts to the Scottish Ministers, in accordance with such directions as the Scottish Ministers may give.
(2) The Scottish Ministers must send the statement of accounts to the Auditor General for Scotland for auditing.

Modification

18 (1) The Scottish Ministers may by order modify this schedule (other than paragraph 2) by varying, adding to or removing any provision relating to a regional board’s constitution, functions or administrative arrangements.

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

(a) any board to which the order relates; and

(b) such other persons as they consider appropriate.”.

12 Regional boards: mismanagement

After section 23M of the 2005 Act, inserted by section 11(1), insert—

“23N Mismanagement of regional boards

(1) This section applies where it appears to the Scottish Ministers that a regional board—

(a) has committed or is committing—

(i) a serious breach of any term or condition of a grant made to it under section 12(1)(c); or

(ii) repeated breaches of such terms or conditions;

(b) has failed or is failing—

(i) properly to discharge its responsibility for administering the funds made available to it under that section in respect of its colleges; or

(ii) to exercise any of its other functions properly; or

(c) has mismanaged, or is mismanaging, its financial or other affairs.

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

(a) remove any or all of the members of the regional board; and

(b) where a removed member was appointed under paragraph 3(2)(a) or (e) of schedule 2B, appoint another person in place of the removed member.

(3) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (2)(a) to the board and the member.

(4) An appointment made under subsection (2)(b) has effect as if made under the provision of paragraph 3 of schedule 2B under which the removed member was appointed.”.
13 Establishment and abolition of regional boards: supplemental

After section 23N of the 2005 Act, inserted by section 12, insert—

"23O Establishment and abolition of regional boards: supplemental

(1) The Scottish Ministers may make such arrangements as they consider appropriate in anticipation of the establishment of a regional board by virtue of an order under section 7B or the coming into force of section 8 of the Post-16 Education (Scotland) Act 2013.

(2) They may, in particular, appoint on terms and conditions determined by them persons who are, from the day on which the board is established, to hold office as if appointed under paragraph 3(2)(a) or, as the case may be, (e) of schedule 2B.

(3) An order under section 7B(2)(a) which abolishes a regional board may, in particular, make provision—

(a) for the transfer of the regional board’s staff, property, rights, liabilities or obligations to such other person as may be specified in the order;

(b) for the Scottish Ministers to pay any expenses incurred in connection with the abolition;

(c) imposing such duties or conferring such additional powers in relation to the abolition as the Scottish Ministers consider appropriate;

(d) for the exercise of any of the regional board’s functions by any member of the board specified in the order;

(e) appointing a person to administer the abolition (and giving that person such powers and duties as appear to the Scottish Ministers to be necessary or expedient for such purposes as are specified in the order).

(4) Such an order—

(a) must ensure that any transferred property and rights which, before the transfer, were to be applied for the purpose of the advancement of education are to continue to be applied for that purpose after the transfer,

(b) may contain provision for the transfer of staff, property, rights, liabilities or obligations only if the person to whom the transfer is being made (apart from the Scottish Ministers) has consented to the transfer.

(5) This section does not prejudice the generality of powers conferred by section 34(2) or by section 17 of the Post-16 Education (Scotland) Act 2013.”.

Review of further and higher education

14 Review of further and higher education

After section 14 of the 2005 Act inset—

"14A Review of fundable further and higher education

(1) The Council may, with the consent of the Scottish Ministers, review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner.
(2) A review may relate to fundable further education or fundable higher education generally or to any particular aspect of such education and may, in particular, include a review of—

(a) the number of post-16 education bodies who provide fundable further education or fundable higher education or any particular aspect of such education;

(b) the number of regional strategic bodies who provide funding for fundable further education or fundable higher education or any particular aspect of such education;

(c) the types of programmes of learning or courses of education provided by post-16 education bodies;

(d) the efficiency or effectiveness of the arrangements for the funding or provision of fundable further education or fundable higher education or any particular aspect of it;

(e) whether the coherent provision of fundable further education or fundable higher education can be improved by increasing collaboration between any persons involved in funding or providing it;

(f) the funding or provision of fundable further education or fundable higher education, or any particular aspect of it, in particular areas; or

(g) any aspect of the legislation or administrative framework which governs the funding or provision of fundable further education or fundable higher education.

(3) When seeking the consent of the Scottish Ministers to conduct a review, the Council must provide a case for review which—

(a) describes the scope of the proposed review; and

(b) explains why it is satisfied that any pre-conditions to conducting a review which the Scottish Ministers may determine are met in relation to the proposed review.

(4) The bodies to which this subsection applies must provide the Council with such information, and make available for inspection such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.

(5) Subsection (4) applies to—

(a) post-16 education bodies; and

(b) regional strategic bodies.

(6) 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.
(7) The Council, when conducting and reporting on a review, must have regard to the importance of ensuring that public funds provided for fundable further education and fundable higher education are used as economically, efficiently and effectively as possible.”.

Information about young people’s involvement in education and training

15 Duty to provide information to Skills Development Scotland

(1) The Scottish Ministers may, by order, require a person to provide information the person holds about a young person to Skills Development Scotland Co. Limited for the purposes of enabling or assisting it—

(a) to monitor that young person’s involvement in education or training,
(b) to provide advice or support as regards that young person’s education or training,
(c) to exercise any of its other functions in relation to that young person.

(2) Such an order may specify—

(a) the persons who are to be required to provide information,
(b) the information, or type of information, which must be provided, and
(c) the form and manner in which it is to be provided.

(3) Skills Development Scotland Co. Limited and any person who is required to provide information by virtue of this section must have regard to any guidance issued by the Scottish Ministers about the provision or use of such information.

(4) In this section, “young person” means a person aged over 15 and under 25.

(5) The Scottish Ministers may, by order, modify this section by replacing the references to Skills Development Scotland Co. Limited with references to such other person as they consider appropriate.

(6) The power to make an order under subsection (5) includes power to replace references to any other person which are included in this section by virtue of such an order.

(7) An order under this section may make—

(a) different provision for different purposes, and
(b) such supplementary, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

(8) An order under this section is subject to the negative procedure (other than an order under subsection (5) which is made in consequence of a change of name by the person concerned).

General

16 Modification of enactments

The schedule to this Act (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.
17 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for the purposes of giving full effect to any provision made by, or by virtue of, this Act.

(2) An order under this section may make different provision for different purposes.

(3) An order under this section—

(a) if it adds to, replaces or omits any part of the text of this or any other Act, is subject to the affirmative procedure,

(b) is otherwise subject to the negative procedure.

18 Commencement

(1) This section and sections 17 and 19 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

19 Short title

The short title of this Act is the Post-16 Education (Scotland) Act 2013.
SCHEDULE
(introduced by section 16)
MODIFICATION OF ENACTMENTS

Education (Scotland) Act 1980 (c.44)

1 (1) The Education (Scotland) Act 1980 is amended as follows.

(2) In section 73ZA—
   (a) in subsection (3), for “fundable” substitute “post-16 education”,
   (b) in subsection (4), for “fundable” substitute “post-16 education”.

(3) In section 73A—
   (a) in subsection (10), for “fundable” substitute “post-16 education”,
   (b) in subsection (11), for “fundable” substitute “post-16 education”.

Further and Higher Education (Scotland) Act 1992 (c.37)

2 (1) The 1992 Act is amended as follows.

(2) In section 12—
   (a) in subsection (2)(d), after “Act” insert “or of the Further and Higher Education
       (Scotland) Act 2005”,
   (b) after subsection (4) insert—
       “(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.”.

(3) In section 36(1)—
   (a) omit the word “and” appearing after the definition of “interest in land”;
   (b) after the definition of “land” insert—
       ““regional college” means a college of further education designated as a
        regional college by order made under section 7A of the Further and
        Higher Education (Scotland) Act 2005; and
        “regional strategic body” has the same meaning as in that Act of 2005.”.

(4) In Schedule 2—
   (a) omit paragraphs 2 and 4,
   (b) in paragraph 5—
       (i) in sub-paragraph (1), for “6 to 10” substitute “5A and 5B”,
       (ii) for sub-paragraph (2) substitute—
           “(2) Subject to sub-paragraphs (2A) to (2I) below—
               (a) a member appointed by being elected in pursuance of paragraph 3(2)(b)
                   or (c) or 3A(2)(b) is to hold office for 4 years;
               (b) a member appointed in pursuance of paragraph 3(2)(d) or 3A(2)(c) is to
                   hold office until 31 August following appointment; and
(c) each other member of the board (including the chairing member) is to hold office for such period (not exceeding 4 years) as is specified in the member’s terms of appointment.

(2A) The Scottish Ministers may extend the period of appointment of the chairing member of a regional college for a single further period not exceeding 4 years.

(2B) Except where sub-paragraph (2D) applies, the board of a regional college may extend the period of appointment of a member appointed under paragraph 3(2)(c) for a single further period not exceeding 4 years (but such an extension has effect only if approved by the chairing member and the Scottish Ministers).

(2C) Except where sub-paragraph (2D) applies, a regional strategic body may extend the period of appointment of a member it appoints under paragraph 3A(2)(a) or (d) for a single further period not exceeding 4 years.

(2D) Where the principal of the college is appointed as a member of the board, the member’s period of appointment may be extended or re-extended at any time during which the member remains the principal (but a period of extension or re-extension may not exceed 4 years).

(2E) The chairing member of a regional college is to vacate office if the member becomes a person of the type described in paragraph 3(4) of Schedule 2.

(2F) A member appointed under paragraph 3(2)(b) or (c) is to vacate office if the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of the college before the member’s period of appointment ends.

(2G) A member appointed under paragraph 3A(2)(b) is to vacate office if the member ceases to be a member of the staff of the college before the member’s period of appointment ends.

(2H) A member appointed in pursuance of paragraph 3(2)(d) or 3A(2)(c) is to vacate office if the member ceases to be a student of the college before the member’s period of appointment ends.

(2I) Where a member of the board is the principal of the college at the time of appointment, the member is to vacate office if the member ceases to be the principal of the college before the member’s period of appointment ends.

(iii) omit sub-paragraphs (3) and (4),

(iv) in sub-paragraph (5), omit “, other than the principal of the college,”,

(c) after paragraph 5 insert—

“5A (1) A person is not eligible for appointment as a member of the board if the person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;

(b) is an undischarged bankrupt; or

(c) has been removed from office under section 24 of this Act or section 23N of the Further and Higher Education (Scotland) Act 2005."
(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;

(e) who has been adjudged bankrupt (and has not been discharged); or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

5B (1) The relevant person must remove a member of the board from office (by giving notice in writing to the member) if—

(a) the member—

(i) is sentenced as mentioned in paragraph 5A(1)(a); or

(ii) has become a person to whom paragraph 5A(1)(b) applies; or

(b) the relevant person is satisfied that the member—

(i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or

(ii) is otherwise unable or unfit to discharge the member’s functions.

(2) In sub-paragraph (1), “relevant person”—

(a) in the case of the chairing member of the board of a regional college, means the Scottish Ministers,

(b) in the case of any other member of the board of a regional college, means the board of management of that college,

(c) in the case of a member of the board of a college which is not a regional college, means—

(i) the regional strategic body for that college; or

(ii) in the case of a principal appointed under paragraph 3A(3), the board of management of that college.”.

(d) omit paragraphs 6 to 10,

(e) in paragraph 11(1), for “12” substitute “11A”,

(f) after paragraph 11 insert—

“11A If the principal of the college is not a member of the board, the principal is entitled to attend and speak at meetings of the board but is not entitled to vote at such a meeting.”,

(g) omit paragraph 12,
Post-16 Education (Scotland) Bill  
Schedule—Modification of enactments

(h) in paragraph 16, after “Act” insert “and paragraph 16A below”,
(i) after paragraph 16 insert—

“16A The principal of a college which is not a regional college is to be appointed by
the regional strategic body on such terms and conditions as the regional
strategic body thinks fit.”,

(j) in paragraph 17—

(i) after sub-paragraph (1) insert—

“(1A) The board of a college which is not a regional college, when making a
determination under sub-paragraph (1) which relates to a principal or former
principal of the college, must comply with any direction given by the regional
strategic body in that regard.”,

(ii) in sub-paragraph (2), after “16” insert “or 16A”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

3 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000, after the
entry for “Quality Meat Scotland” insert—

“A regional board (within the meaning of the Further and Higher Education
(Scotland) Act 2005).”

Scottish Public Services Ombudsman Act 2002 (asp 11)

4 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

(2) In section 3—

(a) in subsection (7)—

(i) omit the word “or” appearing after paragraph (b),

(ii) after paragraph (c) insert “, or

(d) add to it an entry relating to a regional strategic body (within the
meaning of that Act).”,

(b) in subsection (8), for “fundable” substitute “post-16 education”.

(3) In Part 3 of schedule 2, in paragraph 92(1), after “2005 (asp 6)” insert “ and any college
of further education which is assigned to such a fundable body by order made under
section 7C(1) of that Act”.

Freedom of Information (Scotland) Act 2002 (asp 13)

5 In paragraph 49 of schedule 1 to the Freedom of Information (Scotland) Act 2002, after
“Council” insert “or a regional strategic body (within the meaning of the Further and
Higher Education (Scotland) Act 2005)”.

Further and Higher Education (Scotland) Act 2005 (asp 6)

6 (1) The 2005 Act is amended as follows.

(2) In section 3—
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(a) in paragraph (a), for first “fundable” substitute “post-16 education”,
(b) in paragraph (b), for “fundable” substitute “post-16 education”.

(3) In section 4(1)—
(a) in paragraph (a), for third “fundable” substitute “post-16 education”,
(b) in paragraph (b), for “fundable” substitute “post-16 education”.

(4) In section 6—
(a) for subsection (1) substitute—
“(1) In this Act, “fundable body” means—
(a) any body specified in schedule 2; and
(b) any regional strategic body (see section 7B).”,
(b) in subsection (2)—
(i) after “fundable” insert “post-16 education”,
(ii) for “that schedule” substitute “schedule 2”.

(5) After section 7C, inserted by section 8(3), insert—
“7D Orders under sections 7A to 7C: supplemental

(1) This subsection applies to—
(a) any order under section 7A(1) which designates a regional college (or which revokes such a designation); and
(b) any order under section 7C(1) which assigns a college of further education to a regional strategic body (or which revokes such an assignation).

(2) An order to which subsection (1) applies may—
(a) make provision about the membership of the board of management of the college of further education concerned,
(b) make such additional provision as is considered appropriate in relation to the change of status of the college concerned.

(3) Such an order may, in particular, make provision—
(a) for the continuing in office, or the removal from office, of persons who are members of the board immediately before the day on which the designation or assignation has, or ceases to have, effect;
(b) for the appointment by the Scottish Ministers, on terms and conditions determined by them, of persons who are to be members of the board from that day;
(c) deeming persons who continue in office, or who are appointed in pursuance of sub-paragraph (b), to hold 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 may be specified in the order.

(4) Subsections (1) to (3) do not prejudice the generality of powers conferred by section 34(2).
(5) The Scottish Ministers must, in pursuance of sections 7A to 7C, seek to ensure—

(a) that every college of further education whose governing body is established in pursuance of Part 1 of the 1992 Act is either—

(i) designated as a regional college; or

(ii) assigned to a regional strategic body; and

(b) that at least two colleges of further education are assigned to each regional board.

(6) Where, despite subsection (5)(a), a college of further education whose governing body is so established is not so designated or assigned, the college is subject to any contrary provision made under section 33 or 34(2) of this Act or section 17 of the Post-16 Education (Scotland) Act 2013) to be treated for the purposes of this Act, the 1992 Act and any other enactment as having been designated as a regional college.

(7) Nothing in subsections (5) and (6) affects the power to make an order under section 7C(1) in relation to a college of further education whose governing body is not so established.”.

(6) In section 9—

(a) in subsection (3)—

(i) in paragraph (b), for the words from “the” to “both)” substitute “any of the conditions referred to in subsections (4) to (5A)”;

(ii) after paragraph (b) insert—

“(c) include any terms or conditions referred to in sections 9A to 9C.”;

(b) in subsection (4), for the words from second “is” to second “specify” substitute “—

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

(b) where it is a regional strategic body, is, when making a payment to any of its colleges under section 12B(1), to impose on the college a requirement to comply with any such matters.”;

(c) in subsection (5)(a), after “fundable” insert “post-16 education”,

(d) after subsection (5) insert—

“(5A) The condition is that—

(a) when making a payment to a regional strategic 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 section 12) to impose on the regional strategic body a condition that it must, when making a payment to any of its colleges under section 12B(1), impose on the college a condition making the requirement referred to in subsection (6)”.

(e) in subsection (6), for “fundable”, in both places, substitute “post-16 education”,

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(f) in subsection (8), after “fundable”, in both places, insert “post-16 education”,

(g) in subsection (9), after “fundable” insert “post-16 education”,

(h) in subsection (11)—
   (i) for “in so far as provided for in subsection (4)” substitute “where imposed
   (5) in pursuance of subsection (4) or section 9A or 9B”,
   (ii) after “Council” insert “or a regional strategic body”,

(i) in subsection (12)—
   (i) in paragraph (a), after “(7)” insert “and in section 9C”,
   (ii) after second “bodies” insert “and restructuring involving regional strategic
   bodies”,

(ii) in paragraph (b), omit sub-paragraph (ii),

(iii) after paragraph (b) insert—
   “(c) except where imposed in pursuance of section 9B, be framed by
   (10) reference to the criteria for the admission of students.”,

(j) in subsection (13)(c)—
   (i) in sub-paragraph (ii), for “fundable” substitute “post-16 education”,
   (ii) in sub-paragraph (iii), for “fundable bodies” substitute “post-16 education
   bodies, and such regional strategic bodies,”.

(7) In section 10—
   (a) in subsection (2)(a)—
      (i) for “the fundable” substitute “post-16 education”,
      (ii) after second “bodies” insert “and restructuring involving regional strategic
      bodies”,

   (b) in subsection (2)(c), for “the fundable bodies” substitute “post-16 education
   bodies and, where appropriate, between those bodies and regional strategic
   bodies”,

   (c) in subsection (6), for “fundable” substitute “post-16 education”.

(8) In section 11—
   (a) in subsection (1)—
      (i) omit the word “and” appearing after paragraph (a),
      (ii) after paragraph (a) insert—
      “(aa) providing support (whether financial or otherwise) to regional strategic
      bodies; and”,

   (b) in subsection (3)—
      (i) in paragraph (a), after third “fundable” insert “post-16 education”,
      (ii) in paragraph (b), after “fundable” insert “post-16 education”,
      (iii) in paragraph (c), after “fundable” insert “post-16 education”,
      (iv) in paragraph (d), after “fundable” insert “post-16 education”.

(9) In section 13—
(a) in subsection (1), for third “fundable” substitute “post-16 education”,
(b) in subsection (2), for “fundable” substitute “post-16 education”.

(10) After section 13 insert—

“13A Performance of regional strategic bodies
The Council is to secure that provision is made for—
(a) assessing; and
(b) enhancing,
the performance of regional strategic bodies.”,

(11) In section 14—

(a) in subsection (1), after “fundable” insert “post-16 education”,
(b) in subsection (2)(a)—
   (i) omit the word “or” appearing after sub-paragraph (i),
   (ii) in sub-paragraph (ii) for “body; and” substitute “post-16 education body; or”,
   (iii) after sub-paragraph (ii) insert—
      “(iii) any regional strategic body; and”.

(12) In section 18(2)(a), after “body” insert “or of any of a regional strategic body’s colleges”.

(13) In section 20—

(a) in subsection (3), for “fundable” substitute “post-16 education”,
(b) in subsection (4), for “fundable” substitute “post-16 education”.

(14) In section 22—

(a) in subsection (2)—
   (i) in paragraph (a) after “bodies” insert “or, as the case may be, colleges assigned to regional strategic bodies”,
   (ii) in paragraph (b), for “fundable” substitute “post-16 education”,
(b) in subsection (8), for the words from “promote” to “bodies” substitute “—
   (a) promote collaboration between post-16 education bodies; and
   (b) promote such collaboration between post-16 education bodies and regional strategic bodies as it considers appropriate.”.

(15) In section 24—

(a) in subsection (2), after “7” insert “, 14A”,
(b) in subsection (3), for “fundable body” substitute “post-16 education body or to a particular regional strategic body”.

(16) In section 25(1), for “fundable”, in both places, substitute “post-16 education”.

(17) In section 26—

(a) in subsection (1), for “fundable” substitute “post-16 education”,
(b) in subsection (2), for “fundable” substitute “post-16 education”,

(c) in subsection (3), for “fundable”, where it appears in paragraphs (a) and (b), substitute “post-16 education”.

(18) In section 28—

(a) in subsection (1), after “body” insert “or of any of a regional strategic body’s colleges”,

(b) in subsection (3), after “12” insert “or, as the case may be, by a regional strategic body under section 12B”.

(19) In section 31, for “fundable” substitute “post-16 education”.

(20) In section 34(4)—

(a) in paragraph (b), for “7(1) or (4)” substitute “7(4)”,

(b) omit the word “or” appearing after paragraph (b),

(c) after paragraph (b) insert—

“(ba) an order under section 7(1) (other than an order which is made only in consequence of a body changing its name or being closed);

(bb) an order under section 7C(1) for which a proposal or approval under section 7C(2) is required; or”.

(21) In section 35—

(a) in subsection (1)—

(i) after the definition of “the 1992 Act” insert—

““college of further education” means the governing body of a body—

(a) by which fundable further education or fundable higher education is provided; and

(b) which is not a higher education institution;”,

(ii) in the definition of “fundable body”, for “6(2)” substitute “6(1)”,

(iii) after the definition of “fundable higher education” insert—

““fundable post-16 education body” is to be construed in accordance with section 6(2);

“higher education institution” means an institution which is—

(a) a university; or

(b) a designated institution (within the meaning of section 44(2) of the 1992 Act);”,

(iv) after the definition of “the Parliament” insert—

““post-16 education body” means—

(a) any fundable post-16 education body; and

(b) any college of further education assigned to a regional strategic body by order made under section 7C(1);”.
“recognised”, in relation to a trade union, has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992;

“regional board” is to be construed in accordance with section 7B(1)(b);

“regional college” means a college of further education designated as a regional college by order made under section 7A(1);

“regional strategic body” is to be construed in accordance with section 7B(1)(a);”.

(b) in subsection (2), omit “fundable” in each of the seven places where it occurs,

(c) after subsection (2) insert—

“(3) In this Act, any reference to the locality of a college of further education is a reference to any locality in which the college provides fundable further education or fundable higher education (other than by way of distance or open learning).”.
Post-16 Education (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the support for, and the governance of, further and higher education institutions, including provision for the regionalisation of colleges; to make provision for reviews of how further and higher education is provided; to make provision for sharing information about young people’s involvement in education and training; and for connected purposes.

Introduced by: Michael Russell
On: 27 November 2012
Bill type: Government Bill
These documents relate to the Post-16 Education Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

POST-16 EDUCATION (SCOTLAND) BILL

——————————

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Post-16 Education (Scotland) Bill introduced in the Scottish Parliament on 27 November 2012:
   
   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 18–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

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

SUMMARY AND BACKGROUND

4. The Bill makes provision in relation to some aspects of the Scottish Government’s post-16 education reform programme. The Bill contains provisions covering six areas:

- **University governance**: to allow Ministers, when providing funding to the Scottish Further and Higher Education Funding Council (“SFC”), to impose conditions relating to the need for higher education institutions to adhere to good practice in governance. (Section 2)

- **Widening access**: to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups. (Section 3)

- **Tuition fees cap**: to allow Ministers:
  - to set an upper limit on the level of higher education tuition fees which post-16 education bodies can charge UK students and certain others who are not entitled to be charged tuition fees at the level set by the Scottish Government; and
  - when providing funding to the SFC, to impose conditions with a view to ensuring that post-16 education bodies adhere to such an upper limit. (Section 4)

- **College regionalisation**:
  - to provide for two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college or multi-college regions;
  - to establish new regional strategic bodies for colleges in multi-college regions to support a regional approach to the planning and funding of college provision; and
  - to introduce Ministerial powers to remove chairs and other members of incorporated colleges and regional boards for reasons of failure (in addition to mismanagement). (Sections 5 – 13)

- **Review of fundable further and higher education**: to allow the SFC to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner. (Section 14)
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

- **Data sharing:** to allow Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of, disengaging with, learning or training. *(Section 15)*


6. Throughout these Explanatory Notes various terms are used. The most important terms are as follows:

- “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992 [“the 1992 Act” has the same meaning in the Bill (see section 1 of the Bill)];
- “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005 [“the 2005 Act” has the same meaning in the Bill (see section 1 of the Bill)];
- “fundable post-16 education body” means a body specified in schedule 2 to the 2005 Act [this is what is provided for in section 6(2) of the 2005 Act as amended by paragraph 6(4)(b) of the schedule to the Bill; in practice ‘fundable post-16 education bodies’ are colleges or higher education institutions];
- “higher education institution” means a university or any designated institution (within the meaning of section 44(2) of the 1992 Act) [paragraph 6(21)(a)(iii) of the schedule to the Bill inserts a definition in these terms into section 35(interpretation) of the 2005 Act];
- “incorporated college” means a college of further education which has a board of management established under the 1992 Act;
- “post-16 education body” means any fundable post-16 education body, and any college which is assigned to a regional strategic body under section 7C(1) of the 2005 Act (inserted by section 8(3) of the Bill) [paragraph 6(21)(a)(iv) of the schedule to the Bill inserts a definition in these terms into section 35(interpretation) of the 2005 Act];
- “regional board” means a body specified in part 1 of schedule 2A to the 2005 Act [this reflects the definition of “regional board” inserted into section 35(interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill; new schedule 2A to the 2005 Act is inserted by section 8(2) of the Bill];
- “regional college” means an incorporated college which the Scottish Ministers designate as a regional college by an order made under section 7A(1) of the 2005 Act [section 7A(1) of the 2005 Act is inserted by section 5(1) of the Bill; see also the definition of “regional college” inserted into section 35 (interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill];
- “regional strategic body” means a body specified in schedule 2A to the 2005 Act [this reflects the definition of “regional strategic body” inserted into section 35 (interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill; new schedule 2A to the 2005 Act is inserted by section 8(2) of the Bill]); and
- “SFC” means the Scottish Further and Higher Education Funding Council established under section 1 of the 2005 Act.
INTRODUCTORY

Section 1: Interpretation


TERMS AND CONDITIONS OF HIGHER EDUCATION FUNDING

Section 2: Higher education institutions: good governance

8. Section 9(1) of the 2005 Act gives the Scottish Ministers powers to make grants to the SFC and under section 9(2) the Scottish Ministers are able to attach terms and conditions to such grants. Section 2 of the Bill amends the 2005 Act by introducing new section 9A. New section 9A provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must, when making a payment to a higher education institution under section 12(1) of the 2005 Act (SFC’s power to make grants, loans or other payments) impose on that institution a condition that it must comply with any principles of governance or management which the Scottish Ministers consider to constitute good practice in relation to higher education institutions.

9. Certain consequential amendments to section 9 of the 2005 Act in connection with new section 9A (and new sections 9B and 9C) are made by paragraph 6(6) of the schedule to the Bill.

Section 3: Widening access to higher education

10. Section 3 of the Bill amends the 2005 Act to insert new section 9B. Section 9B makes provision about the terms and conditions that the Scottish Ministers can impose when making grants to the SFC under section 9(1) of the 2005 Act (described more fully in paragraph 8 above). New section 9B(1) gives the Scottish Ministers powers to set terms and conditions that are aimed at enabling, encouraging or increasing participation in higher education by people from under-represented socio-economic groups (and subsection (4) describes what is meant by “under-represented”).

11. New section 9B(2) gives power to the Scottish Ministers to impose a condition on the SFC that the SFC (when making a payment to a higher education institution) is itself to make a requirement that the institution complies with a widening access agreement. And the Scottish Ministers are given power to specify the description of such widening access agreements. Section 9B(2) is framed as a particular example of the things that the Scottish Ministers can do in the context of their more general power to impose terms and conditions under section 9B(1).

12. New section 9B(3) then provides a definition of a “widening access agreement”.

13. The intention is that, in the context of exercising the power to impose terms and conditions under new section 9B so as to require the SFC to then require institutions to comply with widening access agreements, those agreements will provide the detail of the range of activities that institutions will have to undertake in order to improve participation in higher education.
14. Amendments made by paragraph 6(6)(i) of the schedule to the Bill will amend the current restriction in the 2005 Act (in section 9(12)(b)) which would otherwise prevent terms and conditions relating to criteria for admission. However, that restriction is removed only for the limited purposes of new section 9B on widening access.

Section 4: Fee cap: students liable for higher education fees

15. Section 4 of the Bill amends the 2005 Act to insert new section 9C. Section 9C makes provision about the terms and conditions that the Scottish Ministers can impose when making grants, loans or other payments to the SFC under section 9(1) of the 2005 Act (described more fully in paragraph 8 above).

16. New section 9C(1) of the 2005 Act provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must:

(a) when making a payment to a post-16 education body which provides fundable higher education, impose a condition that it must comply with the requirement provided for in section 9C(2);

(b) when making a payment to a regional strategic body, impose a condition that, when making a payment under new section 12B of the 2005 Act (inserted by section 9 of the Bill) (regional strategic bodies’ powers to make grants, loans or other payments) to any of its colleges which provide fundable higher education, that regional strategic body must impose a condition that such college must comply with the requirement provided for in section 9C(2).

17. The requirement provided for in new section 9C(2) of the 2005 Act is a requirement that the post-16 education body receiving the payment must ensure that fees charged by it to students in respect of whom the post-16 education body is authorised or required to charge higher fees in terms of section 1 of the Education (Fees and Awards) Act 1983 (or by any class of such students as may be provided for in an order made by the Scottish Ministers) and who are studying such courses of education as may be provided for in the order, must not exceed the amount set by the Scottish Ministers in the order.

18. New section 9C(3) of the 2005 Act provides that the Scottish Ministers must seek to ensure that, subject to any exceptions which they consider to be appropriate, the order applies only to students who have a connection with the United Kingdom. It also provides that Ministers must seek to ensure that the amount provided for in the order will not result in the students to whom the order applies being charged higher fees per academic year for studying at a post-16 education body than the highest amount of fees per academic year, as set by legislation elsewhere in the UK, that such student would be charged if they chose to pursue any course of higher education in a part of the United Kingdom other than Scotland.

19. New section 9C(4) of the 2005 Act provides that in making provision in the order for the courses of higher education to which it is to apply, Ministers must not do so in a way which discriminates between different postgraduate teacher training courses on the basis of subject matter.
20. New section 9C(5) of the 2005 Act provides that for the purposes of new section 9C references to the United Kingdom include the Channel Islands and the Isle of Man.

21. Certain consequential amendments to section 9 of the 2005 Act in connection with new section 9C are made by paragraph 6(6) of the schedule to the Bill.

COLLEGE REORGANISATION

Section 5: Regional colleges

22. Section 5 of the Bill inserts new sections 7A, 23A and 23B into the 2005 Act. The new section 7A of the 2005 Act enables the Scottish Ministers to designate any incorporated college as a regional college. Before making an order, the Bill requires the Scottish Ministers to consult specified persons.

23. New section 23A(1) of the 2005 Act places a duty on a regional college to exercise its functions with a view to securing high quality “fundable further education” and “fundable higher education” in its locality. These terms are defined in section 5 of the 2005 Act. The duty is framed to recognise that regional colleges are not the sole providers of such education in their localities. The SFC has a similar duty in section 3 of the 2005 Act.

24. Under new section 23A(2) of the 2005 Act, in complying with its duty a regional college must have regard to any fundable further and higher education provided by other post-16 education bodies in the locality of a regional college.

25. New section 23B(1) of the 2005 Act places a duty on a regional college to plan for how it proposes to provide fundable further education and fundable higher education and how it intends to exercise its other functions. When it makes such plans, a regional college must have regard to the importance of ensuring that its funds are used as economically, efficiently and effectively as possible. New section 23B(3) of the 2005 Act places a duty on a regional college to consult specified persons in relation to the exercise of its functions where they consider it appropriate to do so. The list in section 23B(3) can be amended by order made under new section 23B(6) of the 2005 Act. However, the Scottish Ministers cannot modify the entries for trade union representatives (section 23B(3)(a) of the 2005 Act) or students’ associations (section 23B(3)(b) of the 2005 Act).

26. New section 23B(5) of the 2005 Act places a duty on a regional college to seek to secure the collaboration of specified persons, so far as is consistent with the proper exercise of the college’s functions. Again, Scottish Ministers can amend the list by order made under new section 23B(6) of the 2005 Act.

Section 6: Colleges: boards of management

27. Section 6(1) of the Bill inserts a new paragraph 3 into Schedule 2 to the 1992 Act to replace the current paragraph 3 which made provision for the constitution and proceedings of boards of management of incorporated colleges (including the appointment of the principal to the board by right of their position).
28. The effect of the provisions in section 6(1) is to make changes to the size and composition of incorporated college boards, depending on whether they are regional colleges or not.

Regional college boards

29. New paragraph 3(1) of Schedule 2 to the 1992 Act determines that the board of a regional college will have a minimum of 12 members and a maximum of 18 members.

30. Under new paragraph 3(2)(a), the chair of a regional college board will be appointed by the Scottish Ministers. Under new paragraph 3(4) the chair cannot be a member of the Scottish Parliament, the House of Lords, the House of Commons, the European Parliament or the principal of the college. Other board members must also include:
   a) a person elected by the teaching staff of the college;
   b) a person elected by the non-teaching staff of the college; and
   c) two persons nominated by the college students’ association.

31. Other members will be appointed by the board. Under new paragraph 3(3) such other members can only be appointed with the approval of the college chair and Scottish Ministers. New paragraph 3(5) makes an exception: regional college boards may appoint the college principal without the approval of the regional college chair or Scottish Ministers. (Under new paragraph 11A - inserted by paragraph 2(4)(f) of the schedule to the Bill - if the principal is not a member of the board, he or she is still to be entitled to participate in board meetings but not to vote.)

Other college boards

32. New paragraph 3A(1) of Schedule 2 to the 1992 Act determines the size of incorporated college boards that are not regional colleges. Such colleges will have a minimum of 7 members and a maximum of 10 members.

33. Under new paragraph 3A(2)(a) of Schedule 2 to the 1992 Act, the chair of a college board will be appointed by the college’s regional strategic body (under new paragraph 3A(3), the college principal cannot be appointed as the chair). Other board members must also include:
   a) a person elected by the staff of the college; and
   b) a person nominated by the college students’ association.

34. Between four and six other members will be appointed to the college board by the regional strategic body.

35. In addition, the college board may appoint the principal as a member of the board. (Again, under new paragraph 11A, if the principal is not a member of the board, he or she is still to be entitled to participate in board meetings but not to vote.)
General provisions: all incorporated colleges

36. New paragraph 3B makes provision for the conduct of elections to appoint board members to represent college staff. Such elections must be conducted in accordance with rules made by the college board. Before making or changing rules, college boards must consult representatives of staff relevant to the category of persons entitled to participate in the election (in the case of regional colleges, there would be separate elections under new paragraph 3(2)(b) and (c) for teaching and non-teaching staff; for other colleges, elections would cover all staff under new paragraph 3A(2)(b)).

37. New paragraph 3C enables the Scottish Ministers to issue guidance to (a) regional colleges on appointments and extensions of appointments to their boards and (b) to regional strategic bodies on appointments and extensions of appointments to the boards of colleges assigned to them. Guidance on the making of such appointments or the extension of appointments may include guidance on the skills and experience that candidates should possess. The Scottish Ministers may issue different guidance for different purposes, including to different regional colleges/regional strategic bodies.

38. Further amendments to Schedule 2 to the 1992 Act are made by paragraph 2(4) of the schedule to the Bill and they affect the boards of all incorporated colleges. Given the importance of some of these changes, they are explained in the following paragraphs. Paragraph 2(4)(a) removes paragraph 2 (which determined the size of existing college boards) and paragraph 4 (which made provision for the transfer of board membership when incorporated colleges were transferred from local authorities in 1993) of Schedule 2 to the 1992 Act. Paragraph 4 is no longer required as those transfers have now occurred.

39. Paragraph 2(4)(b) of the schedule to the Bill makes some amendments in relation to the provisions for the length of appointments. Under the 1992 Act, appointments were generally for a fixed period of four years. Amended paragraph 5(2) of schedule 2 to the 1992 Act provides that, subject to sub paragraphs (2A) to (2I) (which make provision in relation to extension of appointments and circumstances in which persons appointed require to vacate office):

- a person elected to represent the staff will hold office for a fixed period of four years;
- student members hold office until 31 August following their appointment (this replicates what is currently provided for in paragraph 5(4) of Schedule 2 to the 1992 Act which is repealed by paragraph 2(4)(b)(iii) of the schedule to the Bill); and
- the chair and other members of the board will hold office for a period of up to four years (to be determined by the person making the appointment).

Provision made in sub paragraphs (2A) to (2I) of paragraph 5 of Schedule 2 to the 1992 Act includes provision that any appointment of a person who is the principal of a college as board member may be extended or re-extended, for periods of up to four years, without limit for so long as the person is principal (amended paragraph 5(2D) of Schedule 2 to the 1992 Act) and that where a member of the board is the principal of the college at the time of appointment to the board the person requires to vacate office as board member if the person ceases to be the principal of the college before his or her period of appointment as board member ends (amended paragraph 5(2I) of Schedule 2 to the 1992 Act).
40. Paragraph 5(5) of Schedule 2 to the 1992 Act is amended to enable principals appointed to a board to resign from the board. This is not currently possible as principals are members of the board by virtue of their position.

41. Paragraph 6 of Schedule 2 to the 1992 Act, which imposed minimum and maximum age requirements on board members, is removed by paragraph 2(4)(d) of the schedule to the Bill.

42. Paragraph 2(4)(d) of the schedule to the Bill also removes paragraph 7 of Schedule 2 to the 1992 Act. Paragraph 7 of Schedule 2 to the 1992 Act makes provision for circumstances in which a person will be ineligible for appointment as a board member. Instead paragraph 2(4)(c) of the schedule inserts a new paragraph 5A into Schedule 2 to the 1992 Act to make new provision on the eligibility of board members. The provisions are identical to the provisions which are being introduced in relation to regional boards as it was considered appropriate to align the eligibility requirements. A person is ineligible for appointment if he or she has (within the last five years) been sentenced to imprisonment of longer than three months, is an undischarged bankrupt or has been removed from office under section 24 of the 1992 Act or section 23N of the 2005 Act (inserted by section 12 of the Bill). Paragraph 2(4)(d) of the schedule to the Bill also removes paragraphs 8 and 9 of Schedule 2 to the 1992 Act which make provision for circumstances in which a person falls to be removed from office as board member. Instead paragraph 2(4)(c) of the schedule to the Bill inserts a new paragraph 5B into Schedule 2 to the 1992 Act to make new provision for removal of board members. A person must be removed from office if the person is sentenced to imprisonment for a period of not less than three months or has become an undischarged bankrupt (new paragraph 5B(1)(a) of Schedule 2 to the 1992 Act). A board member must also be removed from office if the person removing them is satisfied that they have been absent for more than six months or are otherwise unfit or unable to discharge their functions (new paragraph 5B(1)(b) of Schedule 2 to the 1992 Act).

43. Paragraph 2(4)(d) of the schedule to the Bill also removes paragraph 10 from Schedule 2 to the 1992 Act (filling of casual vacancies) as it is no longer required since most board appointments are no longer fixed term appointments. Paragraph 2(4)(g) of the schedule to the Bill removes paragraph 12 of Schedule 2 to the 1992 Act, which makes provision for the appointment of the chair of a college. Such provision is now included in amended paragraph 3 of that Schedule (for regional colleges) and new paragraph 3A of that Schedule (for other colleges). The Scottish Ministers would have powers to remove the chair of regional and other colleges under new section 24 of the 1992 Act (section 7 of the Bill substitutes a new section 24 of the 1992 Act).

44. Paragraph 2(4)(i) of the schedule to the Bill inserts new paragraph 16A into Schedule 2 to the 1992 Act which provides that the principals of colleges that are not regional are to be appointed by their regional governing body on such terms and conditions as the regional strategic body thinks fit. This provision does not affect the contracts of existing principals. However, when those contracts become due for renewal, the regional governing body - not the college - will be responsible for the terms and conditions of the principal. The change to paragraph 17 of Schedule 2 to the 1992 Act (which makes provision for the terms and conditions of college staff) made by paragraph 2(4)(j) of the schedule to the Bill is a consequence of the principal remaining an employee of the college board.
45. Section 6(2) of the Bill allows Scottish Ministers to make arrangements in relation to the boards of management of incorporated colleges in advance of the coming into force of the changes to the composition and structure of boards. Scottish Ministers can appoint persons as board members who will hold office as if appointed under the new paragraph 3(2)(a) or (c) or 3A(2)(a) or (d) of Schedule 2 to the 1992 Act. The Scottish Ministers also have the power to make arrangements for board members who are in office immediately prior to the coming into force of the re-structured boards either to remain in office or to be removed from office.

Section 7: Colleges: mismanagement

46. Existing section 24 of the 1992 Act enables the Scottish Ministers to remove by order members of incorporated college boards if they consider the boards have been or are being mismanaged. By substituting a new section 24, section 7 of the Bill extends the grounds on which Scottish Ministers may remove members.

47. The new section 24 of the 1992 Act enables the Scottish Ministers to remove any or all of the members of an incorporated college’s board in circumstances where it appears to the Scottish Ministers that such a board:

a) has committed or is committing a serious breach of any term or condition of grant made to it either by the SFC (in the case of regional colleges) or by its regional strategic body (in case of other colleges). Such a breach may be a one-off breach;

b) has committed or is committing repeated breaches of such terms or conditions;

c) has failed or is failing to provide or secure the provision of education of such standard as the Scottish Ministers consider to be appropriate;

d) has failed, or is failing to exercise any of its other functions properly; or

e) has managed or is mismanaging its financial or other affairs.

48. The Scottish Ministers may also remove members if they receive advice from either the SFC (in respect of regional colleges) or regional strategic bodies (in respect of other colleges) that a college fails to meet the criteria set out in section 7(2) of the 2005 to be either a fundable body (in respect of regional colleges) or a college assigned to a regional strategic body (in respect of other colleges).

49. Under new section 24(3), the Scottish Ministers may in such circumstance remove by order any or all board members and where those persons are not the staff or student members, appoint other persons in their place. New section 24(5) provides that such appointments are treated as if they were made under the usual provisions for such appointments. This means that relevant provisions regarding eligibility, length of service etc. apply to them.

REGIONAL STRATEGIC BODIES

Section 8: Regional strategic bodies

50. Section 8 of the Bill makes provision for regional strategic bodies.
51. A regional strategic body is either a regional board set up under this Bill or a body designated by order as such. Three regional boards are established under the Bill, and the University of the Highlands and Islands is specified as a regional strategic body.

52. Section 8(1) inserts a new section 7B into the 2005 Act. New section 7B(1) of the 2005 Act defines a regional strategic body (a body specified in new schedule 2A to the 2005 Act (inserted by section 8(2) of the Bill)) and regional board (a body specified in Part 1 of that schedule).

53. New section 7B(2) of the 2005 Act enables Scottish Ministers to modify new schedule 2A to the 2005 Act by order either to establish, abolish or re-name regional boards, or to add, remove or vary any entries in Part 2 of it. New section 7B(3) of the 2005 Act specifies the persons Scottish Ministers must first consult before making such an order.

54. Section 8(2) of the Bill inserts a new schedule 2A into the 2005 Act. New schedule 2A to the 2005 Act lists regional boards in Part 1 and other regional strategic bodies in Part 2. The University of the Highlands and Islands is the only body listed in Part 2 of that schedule. Three regional boards are established by the Bill:

- Regional Board for Aberdeen and Aberdeenshire Colleges
- Regional Board for Glasgow Colleges
- Regional Board for Lanarkshire Colleges.

55. Section 8(3) of the Bill inserts a new section 7C into the 2005 Act. New section 7C(1) enables the Scottish Ministers to assign colleges of further education to a regional strategic body by order. Paragraph 6(21) of the schedule to the Bill amends section 35 of the 2005 Act (interpretation). A definition of “college of further education” is inserted into section 35 of the 2005 Act. “College of further education” is defined as the governing body of a body (a) by which fundable further education or fundable higher education is provided and (b) which is not a higher education institution. Under new section 7C(4) an order under new section 7C(1) could remove the college from the list of fundable bodies in schedule 2 to the 2005 Act and make such other provision in relation to the college as the Scottish Ministers consider appropriate. New section 7C(5) specifies the persons the Scottish Ministers must first consult before making such an order.

56. New section 7C(2) of the 2005 Act requires a regional strategic body to propose or approve the assignation of a college to it, except where the college concerned is a fundable body, or where the college is assigned to another regional strategic body, immediately before the order. This means that colleges in multi-college regions that are currently fundable bodies (or have previously been assigned to a regional strategic body) can be assigned at the time regional strategic bodies are given their functions.

57. New section 7C(3) of the 2005 Act provides that when proposing or approving the assignation of a college, the regional strategic body should consider the matters set out in section 7(2) of the 2005 Act. These are the same matters the SFC must consider when considering whether to propose or approve the addition of a learning provider to the list of fundable bodies.
New section 7C(6) of the 2005 Act provides that any references to a regional strategic body’s colleges are references to colleges assigned to the body by order.

Section 9: Funding of and by regional strategic bodies

Section 9(1) of the Bill amends section 12 of the 2005 Act (Funding of fundable bodies). The amendments enable the SFC to fund fundable post-16 education bodies and regional strategic bodies. The SFC would be able to fund regional strategic bodies for any purpose. This is, however, constrained in practice by the powers of the regional strategic bodies themselves.

Section 9(2) of the Bill confers responsibility on regional strategic bodies to administer funds. The Bill achieves this by inserting new sections 12A and 12B into the 2005 Act.

New section 12A of the 2005 Act specifies the funds a regional strategic body is responsible for administering. This is similar to the existing provision made for the SFC in section 11 of the 2005 Act.

New section 12B of the 2005 Act confers powers on a regional strategic body to make grants, loans or other payments. This is similar to the existing provision made for the SFC in section 12 of the 2005 Act.

New section 12B(1) of the 2005 Act specifies the persons and activities in respect of which regional strategic bodies can support financially. These include the provision of fundable further and fundable higher education by colleges assigned to the regional strategic bodies.

Section 12B(2) and (3) of the 2005 Act enables a regional strategic body to impose terms and conditions when it makes a payment under new section 12B(1) of the 2005 Act.

Under section 12B(4) a condition imposed under new section 9(5A) of the 2005 Act must make provision that will apply if the colleges fails to comply with the requirement in section 9(6) of the 2005 Act. Paragraph 6(6) of the schedule to the Bill makes various amendments to section 9 of the 2005 Act including inserting new section 9(5A) and amending section 9(6). Section 12B(6) provides that terms and conditions may only be imposed in relation to funds provided to the college by the regional strategic body.

Section 12B(7) specifies the persons a regional strategic body must first consult before imposing terms and conditions (unless the body considers that it not expedient to do so).

Section 12B(8) specifies certain matters to which a regional strategic body must have regard in making payments.

Section 10: Regional strategic bodies: functions

Section 10 of the Bill confers functions on regional strategic bodies. The Bill achieves this by inserting new sections 23C to 23L into the 2005 Act (section 10(1) of the Bill). Some of the duties being conferred are similar to new duties being placed on regional colleges.
69. Under the present 2005 Act, the SFC has certain functions over the bodies which the SFC directly funds. In the main the SFC will not have functions over colleges in multi-college regions, as the SFC will no longer directly fund them (although there are a few exceptions, such as in relation to assessing and enhancing quality of education). One of the intentions behind section 10(1) of the Bill is to confer on regional strategic bodies similar functions over the colleges they will fund.

70. New section 23C of the 2005 Act places a duty on a regional strategic body to exercise its functions with a view to securing high quality “fundable further education” and “fundable higher education” in the localities of its colleges. These terms are defined in section 5 of the 2005 Act. The duty is framed to recognise that colleges are not the sole providers of such education in their localities. New section 23A(1) of the 2005 Act places a similar duty on regional colleges. The SFC has a similar duty in section 3 of the 2005 Act.

71. New section 23D of the 2005 Act places a duty on a regional strategic body to plan for how it proposes its colleges should provide fundable further education and fundable higher education and how it intends to exercise its functions. Colleges assigned to a regional strategic body must have regard to any such plans when exercising their functions. When it makes such plans, a regional strategic body must have regard to the importance of ensuring that its funds are used as economically, efficiently and effectively as possible.

72. New section 23E of the 2005 Act places a duty on a regional strategic body to monitor the performance of its colleges. New section 23E(2) sets out what this may include. New section 23E(2)(a) provides that monitoring performance may include assessing the quality of fundable further education and fundable higher education provided by the colleges. This new section is in addition to section 13 of the 2005 Act, which gives the SFC the function of securing that provision is made for assessing and enhancing the quality of further education and fundable higher education provided by post-16 education bodies. The SFC duty would therefore extend to such education provided by colleges assigned to a regional strategic body. In meeting this duty, the SFC currently secures the services of Education Scotland to review colleges. The SFC will retain this function in respect of quality to enable such services to be secured across all of Scotland’s funded colleges (whether funded directly by the SFC or by a regional strategic body). It is expected that the regional strategic body, in fulfilling the section 23E duty, would rely on reports of Education Scotland. The body would also have powers to require information from colleges under new section 23K(1) of the 2005 Act.

73. New section 23F of the 2005 Act requires a regional strategic body to promote the use by colleges assigned to it of the Scottish Credit and Qualification Framework (which has been adopted by the SFC). The SFC has a similar duty in section 14 of the 2005 Act.

74. New section 23G of the 2005 Act enables a regional strategic body to have efficiency studies conducted into the operations of any college assigned to it. The SFC has a similar power in section 15 of the 2005 Act.

75. New section 23H of the 2005 Act gives a regional strategic body a right in certain circumstances to attend and address meetings of the governing body of colleges assigned to it. The SFC has similar rights in section 16 of the 2005 Act.
76. New section 23I of the 2005 Act sets out certain matters a regional strategic body must have regard to when exercising its functions. The SFC has a similar duty in section 20 of the 2005 Act.

77. New section 23J(1) of the 2005 Act places a duty on a regional strategic body to consult specified persons in relation to the exercise of its functions where the body considers it appropriate to do so. The list can be amended by order made under new section 23J(4). However, new section 23J(5) provides that the Scottish Ministers cannot modify the entries for colleges (section 23J(1)(a)) trade union representatives (section 23J(1)(b)) or students’ associations (section 23J(1)(c)). New section 23B(3) of the 2005 Act places a similar duty on regional colleges. The SFC has a similar duty in section 22 of the 2005 Act.

78. New section 23J(3) places a duty on a regional strategic body to seek to secure the collaboration of specified persons, so far as is consistent with the proper exercise of the regional strategic body’s functions. New section 23B(5) places a similar duty on regional colleges. The SFC has a similar duty in section 22 of the 2005 Act. The list of persons in section 23J(3) can be amended by the Scottish Ministers by order made under new section 23J(4). However, in terms of section 23J(5) the Scottish Ministers cannot modify the entry for the regional strategic body’s colleges (section 23J(3)(a)). New section 23J(6) requires the regional strategic body to promote collaboration between its colleges, and between its colleges and other post-16 education bodies, in relation to the provision of fundable further and fundable higher education.

79. New section 23K(1) of the 2005 Act places a duty on colleges assigned to a regional strategic body to provide that body with such information as the strategic body may reasonably require. Fundable bodies (and others including colleges assigned to regional strategic bodies) are similarly required to provide the SFC with information by virtue of section 22(4) of the 2005 Act.

80. New section 23K(2) to (7) of the 2005 Act enables a regional strategic body to issue directions (of a general or specific nature) to incorporated colleges assigned to it, which the colleges must comply with. New section 23K(4) specifies the persons a regional strategic body must first consult before giving such directions.

81. New section 23L(1) of the 2005 Act enables a regional strategic body to require the transfer of property, rights, liabilities or obligations of an incorporated college assigned to it either to another of its colleges or to itself. New section 23L(2) outlines the purposes for which such a requirement may be made. It would enable, for example, staff etc to be transferred from one college in a region to another, to consolidate particular programmes of learning in particular colleges and staff etc to be transferred from colleges to the regional strategic body to enable that body to provide services to those colleges (e.g. finance and human resource management). New section 23L(5) specifies the persons a regional strategic body must first consult before making such a requirement.

82. New section 23L(3) enables a regional strategic body to transfer any of its staff etc to any college assigned to it or to a regional college or to another a regional strategic body in circumstances specified in section 23L(2)(b) or (c). Situations in which such a power could be used include the following. Where a regional strategic body was delivering shared services
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

(such as finance and human resource management) to its colleges and one of those colleges was to be designated a regional college, a regional strategic body may wish to transfer staff etc. to the college to enable the college to deliver such services for itself. New section 23L(5) specifies the persons a regional strategic body must first consult before making such an arrangement. A regional strategic body may wish to transfer staff etc to another regional strategic body or a regional college to enable services to be delivered across regions.

83. The provisions of the Bill in relation to the transfer of property by incorporated colleges assigned to a regional strategic body are intended to ensure that such colleges will not be excluded from meeting the charity test set out in section 7 of the Charities and Trustee Investment (Scotland) Act 2005 (“the Charities Act”). In terms of section 7(4)(a) a body is excluded from meeting the charity test where 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 that is not a charitable purpose). While it is not known whether a regional strategic body would seek to become a charitable body, new section 23L(6) ensures that the provisions to transfer property and rights do not adversely affect the ability of colleges to remain as or of regional strategic bodies to become charities, as the subsection requires that any property transferred is to be applied for the purpose of the advancement of education (which is a charitable purpose).

84. New section 23L(8) of the 2005 Act provides that any requirement under section 23L(1) by a regional strategic body to transfer property to a college or to the regional strategic board requires the consent of a non-incorporated college. The consent of an incorporated college is not required.

85. Section 10(2) of the Bill inserts new section 25A into the 2005 Act which enables the Scottish Ministers to issue directions to either the SFC or a regional strategic body where it appears to the Scottish Ministers that the financial affairs of a college assigned to a regional strategic body have been or are being mismanaged. The Scottish Ministers have a similar power of direction over the SFC in existing section 25 of the 2005 Act in respect of bodies funded by the SFC. (The existing section therefore gives the Scottish Ministers powers to issue directions to the SFC where it appears to the Scottish Ministers that the financial affairs of a regional strategic body have been or are being mismanaged).

86. Under new section 25A(1), the Scottish Ministers may direct a regional strategic body to provide financial support to the college concerned. It also enables the Scottish Ministers to direct the SFC to provide financial support to the relevant regional strategic body. In the latter case, section 25A(2) would enable, among other things, the Scottish Ministers to require that any financial support given by the SFC to a regional strategic body was given on the basis that such support would be transmitted by the regional strategic body to the college concerned. Section 25A(3) specifies the persons the Scottish Ministers must first consult before making a direction.

REGIONAL BOARDS

Section 11: Regional boards: constitution

87. Section 11(1) and (2) of the Bill makes provision for the constitution and general powers of regional boards. The Bill achieves this by inserting a new section 23M and new schedule 2B into the 2005 Act.
88. The new schedule 2B sets out details of the status, membership and procedures of the regional boards. For example, it defines their membership, the provisions for appointing the chief officer and other staff and provision for committees and accounts.

89. The general powers of the regional boards are set out in paragraph 14 of schedule 2B. The SFC has similar powers in section 23 of the 2005 Act.

90. Paragraph 18 of schedule 2B enables the Scottish Ministers to modify the schedule by order. Paragraph 18(2) specifies the persons the Scottish Ministers must first consult before making an order.

Section 12: Regional boards: mismanagement

91. Section 12 of the Bill makes provision for the removal of members of regional boards by inserting a new section 23N into the 2005 Act. New section 23N enables the Scottish Ministers to remove by order any or all of the members of a regional board in circumstances where it appears to the Scottish Ministers that such a board:
   a) has committed or is committing a serious breach of any term or condition of grant made to it either by the SFC. Such a breach may be a one-off breach;
   b) has committed or is committing repeated breaches of such terms or conditions;
   c) has failed, or is failing to properly discharge its responsibility to administer funds or exercise any of their other functions properly; or
   d) has managed or is mismanaging its financial or other affairs.

92. As regional boards are not required to meet the criteria to be a fundable post-16 education body (because they are not a learning provider), there is no similar provision in new section 23N along the lines of that in amended section 24(1)(b) of the 1992 Act, which enables the Scottish Ministers to remove board members of regional colleges if those colleges fail to meet such criteria.

93. Under new section 23N(2), the Scottish Ministers may in such circumstances remove by order any or all board members and where those persons are not the staff or student members, appoint other persons in their place. New section 23N(4) provides that such appointments are treated as if they were made under the usual provisions for such appointments. This means that relevant provisions regarding eligibility, length of service etc. apply to them.

Section 13: Establishment and abolition of regional boards: supplemental

94. Section 13 of the Bill inserts new section 23O into the 2005 Act. New section 23O(1) and (2) of the Bill allow Scottish Ministers to make arrangements in relation to the establishment of regional boards either in advance of the coming into force of the provisions in section 8 of the Bill, or in the future before an order is made under section 7B of the 2005 Act. Scottish Ministers may in particular appoint persons as regional board members who are to hold office as if appointed under the new paragraph 3(2)(a) or (c) of the new schedule 2B to the 2005 Act.
95. New section 23O(3) specifies the particular provisions that an order (made under section 7C of the 2005 Act) to abolish a regional board may contain. This includes the transfer of the regional board’s staff, property, right, liabilities or obligations.

96. New section 23O(4)(a) ensures any property and rights that were used before the transfer for the advancement of education continue to be used for this purpose. While it is not known whether a regional board would seek to become a charitable body, this provision ensures that the provisions to transfer property and rights do not adversely affect its ability to become a charity.

97. New section 23O(4)(b) ensures that a transfer to a person other than the Scottish Ministers can only occur if the person to whom the transfer is being made has consented to that transfer.

**REVIEW OF FURTHER AND HIGHER EDUCATION**

**Section 14: Review of further and higher education**

98. Section 14 of the Bill amends the 2005 Act to insert new section 14A.

99. New section 14A(1) of the 2005 Act empowers the SFC, subject to Scottish Ministers giving their consent, to review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner.

100. New section 14A(2) provides that such review may relate to fundable further education or fundable higher education generally or to any particular aspect of it. Section 14A(2) goes on to set out a number of particular examples of the matters which a review under section 14A(1) may look at.

101. New section 14A(3) provides that when the SFC is seeking the consent of the Scottish Ministers to conduct a review it must provide the Scottish Ministers with a case for review setting out the proposed scope of the review which the SFC wishes to carry out. Section 14A(3) also provides that the case for review must explain why the SFC considers that any pre-conditions to the conducting of a review which the Scottish Ministers are empowered to set are met.

102. New section 14A(4) and (5) provide that post-16 education bodies and regional strategic bodies are required to provide the SFC with such information as the SFC may reasonably require for the purposes of conducting a review. Such bodies are also required to make available to the SFC for inspection such accounts and other documents as the SFC may require for the purposes of conducting a review.

103. New section 14A(6) provides that once the SFC has completed a review it must submit a report to the Scottish Ministers setting out the conclusions it has reached, the reasons for those conclusions and any recommendations it has for action.
104. New section 14A(7) provides that in conducting a review the SFC must have regard to ensuring that public funds provided for fundable further education and fundable higher education are used as economically, efficiently and effectively as possible.

INFORMATION ABOUT YOUNG PEOPLE’S INVOLVEMENT IN EDUCATION AND TRAINING

Section 15: Duty to provide information to Skills Development Scotland

105. Section 15 of the Bill is about the provision of information to Skills Development Scotland (SDS). Section 15(1) gives power to the Scottish Ministers, by means of an order, to require a person to provide information held about a young person to SDS for certain purposes. Those purposes are set out in subsection (1) and relate to SDS’s functions. Subsection (4) defines “young person” for the purposes of this section, which captures 16 to 24 year olds.

106. Section 15(2) allows an order (under section 15(1)) to set out the detail of the persons who are to be required to give information (and the intention is that this will be used to specify other organisations that have responsibilities for providing learning and training to young people), the information to be given and the form and manner in which the information is to be given.

107. There is a requirement in section 15(3) for SDS, and any person required to give information, to have regard to any guidance that the Scottish Ministers may issue about giving or using that information.

108. Section 15(5) gives a further order making power to the Scottish Ministers. That is a power to modify the references to SDS within section 15. The expectation is that this power would be used where SDS had a change of name or where another organisation took on the functions that are currently carried out by SDS. Section 15(6) makes provision for the subsection (5) order making power to be used again (so that it is clear that this is not a one-off power).

109. Section 15(7) and (8) make supplementary provision about the order making powers in section 15.

110. Requirements imposed using the power in section 15(1) will not affect the operation of other legislative requirements relating to the sharing of data such as those contained within the Data Protection Act 1998. However, requirements imposed under this section might provide a legal basis for the sharing or using of data under that Act.

GENERAL

Section 16: Modification of enactments

111. Section 16 of the Bill introduces the schedule to the Bill which sets out minor consequential amendments to, and modifications of, other enactments as a result of the Bill. Some of the amendments, particularly in relation to the changes made by paragraph 2(4) of the
schedule in relation to the provisions on boards of management of incorporated colleges, are explained in more detail above.

**Paragraph 2(2)(b) of schedule – remuneration of chairs of regional colleges.**

112. A regional college board is to pay its chair such remuneration as the Scottish Ministers may determine. There is similar provision for the chairs of regional boards in new paragraph 8(1) of new schedule 2B to the 2005 Act.

**Paragraph 6(5) of schedule – orders under sections 7A to 7C: supplemental**

113. New section 7D(2) of the 2005 Act allows Scottish Ministers, when making orders under section 7A(1) or 7C(1) of the 2005 Act, to make provisions in relation to the boards of management of incorporated colleges or to make such additional provision as is considered necessary in relation to the change of status of the college. In such an order the Scottish Ministers can make provision about the continuation in office or removal from office of any existing board members once the college’s status changes, or about the appointment by the Scottish Ministers of persons as board members, or about deeming any persons who continue in office or who are appointed to hold office as if appointed under the new paragraph 3 or 3A of Schedule 2 to the 1992 Act.

114. In making orders to designate an incorporated college as regional or in assigning colleges to a regional strategic body these provisions require the Scottish Ministers to seek to ensure that every incorporated college is one or the other. Given that it is necessary for the proper functioning of a board that it is one or the other, provision is made for the possible failure of the Scottish Ministers to discharge this responsibility. In such circumstances an incorporated college is to be treated as being designated as a regional college. There is a proviso which enables the Scottish Ministers to make contrary provision. This is to enable the Scottish Ministers, if necessary, to keep some colleges under existing governance arrangements until such time as they are able to be designated as a regional college (or not), perhaps because merger is imminent.

**Paragraph 6(9) of schedule – amendment to section 13 of the 2005 Act**

115. The SFC duty in section 13 of the 2005 Act is amended to reflect other changes made by the Bill. The duty is now to secure provision for assessing and enhancing the quality of fundable further and higher education provided by fundable bodies and also colleges assigned to a regional strategic body.

**Section 17: Ancillary provisions**

116. Section 17 of the Bill gives the Scottish Ministers the power, by order, to make supplemental, incidental, consequential, transitional, transitory or saving provisions for the purpose of giving full effect to the Bill.

**Section 18: Commencement**

117. Section 18 of the Bill deals with commencement of its provisions. Sections 17 to 19 come into force on the day after Royal Assent. The coming into force of section 17 of the Bill will allow the Scottish Ministers, by order, to make supplemental, incidental, consequential,
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

transitional, transitory or saving provisions for the purpose of giving full effect to the Bill. Other provisions of the Act will be brought into force by order by the Scottish Ministers at different times.

Section 19: Short title

118. Section 19 of the Bill provides that the short title of the Act is the Post-16 Education (Scotland) Act 2013.

FINANCIAL MEMORANDUM

INTRODUCTION

119. This document relates to the Post-16 Education (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 27 November 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. The Memorandum summarises the resource implications of the measures proposed in the Bill.

120. The estimates contained in the memorandum are compiled from financial planning information provided by the Scottish Government Education and Lifelong Learning portfolio’s two main Non-Departmental Public Bodies: Skills Development Scotland (SDS); and the Scottish Funding Council (SFC). The figures and projections provided within this memorandum are the best current estimates available for the costs and savings we expect as a direct result of the provisions of this Bill.

121. This Financial Memorandum does not address the financial aspects of the wider post-16 education reform programme of which this Bill forms a part. This matter is discussed in the accompanying Policy Memorandum for the Bill.

BACKGROUND

Purpose of Bill provisions

122. The Bill provides the requisite legal base for some aspects of post-16 education reform. There are six areas where primary legislation is required to deliver the Scottish Government’s policy aims, and the Bill therefore includes provisions in the following areas:

- **University governance**: to allow Ministers, when providing funding to the SFC, to impose conditions relating to the need for higher education institutions to adhere to good practice in governance.
- **Widening access**: to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups.
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

- **Tuition fees cap:** to allow Ministers:
  - to set an upper limit on the level of higher education tuition fees which post-16 education bodies can charge UK students and certain others who are not entitled to be charged tuition fees at the level set by the Scottish Government; and
  - when providing funding to the SFC, to impose conditions with a view to ensuring that post-16 education bodies adhere to such an upper limit.

- **College regionalisation:**
  - to provide for two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college or multi-college regions;
  - to establish new regional strategic bodies for colleges in multi-college regions to support a regional approach to the planning and funding of college provision; and
  - to introduce Ministerial powers to remove chairs and other members of incorporated colleges and regional boards for reasons of failure (in addition to mismanagement).

- **Review of fundable further and higher education:** to allow the SFC to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner.

- **Data sharing:** to allow Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of disengaging with, learning or training.

### COSTS

**Summary**

123. It is expected that some of the provisions associated with the Bill will result in a realignment of existing activities and will, therefore, have no net impact on overall costs. Where additional costs for new activity, positions and duties do arise, these are detailed below. These are expected to be met from existing budgets after allowing for efficiency savings arising from the wider reform programme.
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

### SUMMARY OF ESTIMATED COSTS

<table>
<thead>
<tr>
<th></th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>University governance</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Widening access</td>
<td>Marginal</td>
<td>Marginal</td>
<td>Marginal</td>
</tr>
<tr>
<td>Tuition fees cap</td>
<td>None¹</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>College regionalisation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total of up to £360k. Total comprises:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional chairs</td>
<td>Appointment of chairs of nine regional colleges and three regional boards – up to £90k in total.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional boards</td>
<td>Costs per board</td>
<td>Appointment of board members – up to £90k</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cost of three boards</td>
<td>£270k</td>
<td></td>
</tr>
<tr>
<td>Regional boards</td>
<td>Costs per board</td>
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<tr>
<td></td>
<td></td>
<td>Non-staff £110k</td>
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<td>Chair £20k</td>
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<td>One-off start-up £12k</td>
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<td></td>
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<td>Total = £572k</td>
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<tr>
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<td>Costs of 3 boards</td>
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<tr>
<td>Regional colleges</td>
<td>Costs per chair</td>
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<td>Costs of 9 chairs</td>
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<td>Review of fundable FE and HE</td>
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</tr>
<tr>
<td>Data sharing</td>
<td>Marginal³</td>
<td>Marginal</td>
<td>Marginal</td>
</tr>
</tbody>
</table>
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

124. The remainder of this section details the cost and savings implications of each of the six policy areas in turn.

University governance

125. As described above, this provision would relate to conditions set by Scottish Ministers in providing funding to the SFC to require good practice in governance across universities and other higher education institutions (HEIs). Good practice would, in future, relate to the Scottish Code of Conduct recommended in Professor von Prondzynski’s independent HE Governance Review. Until this is developed, the benchmark would be a current UK-wide guide on governance, already agreed by all Scottish HEIs.

Costs to Scottish Government

126. No additional costs are expected: SFC would monitor this condition as part of its normal duties.

Costs to local authorities

127. None identified.

Costs to others

128. Good practice in governance is already expected to be a core part of the activities of universities and other HEIs. The measures contained within the Bill effectively codify the activity required and the net financial impact is expected to be nil.

Widening access

129. The Bill seeks to allow Scottish Ministers to impose conditions relating to access to universities and other higher education institutions for under-represented socio-economic groups when providing funding to the SFC. If such conditions were imposed, the SFC could require universities to comply with widening access agreements which would sit within the wider outcome agreements currently being developed by the SFC in partnership with the university sector on a non-statutory basis. Outcome agreements would formalise a university’s commitment to accept more students from non-traditional backgrounds. These might cover, for example, people living in areas representing the most deprived 20% (MD20) or 40% (MD40).

130. The agreements are expected to apply for up to three years but will be reviewed annually. They would include targets specific to each institution taking into account its historical performance in widening participation.

Costs to Scottish Government

131. There would be no new or additional budget required for widening access activity as a result of the Bill.

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4 http://www.scotland.gov.uk/Publications/2012/02/3646
Costs to local authorities

132. No costs from the Bill have been identified.

Costs to others

133. The Bill would place a duty on universities and other higher education institutions to agree with the SFC what actions they will take to widen access. As each university’s circumstances would be different, it is not possible at this point to specify the likely re-prioritisation of activities associated with this change and the associated costs, but they are expected to be marginal.

Tuition fees cap

134. The Bill seeks to give Scottish Ministers the power to set an upper limit on the level of annual tuition fees which fundable bodies can charge full time UK students pursuing courses of higher education at a fundable body who are not entitled to be charged tuition fees at the level set by the Scottish Government; and to allow Scottish Ministers to impose a condition, when providing funding to it, that the SFC make it a condition of any funding paid by it to fundable bodies that such bodies adhere to such upper limit in setting tuition fee levels.

Costs to Scottish Government

135. The amount of teaching grant paid by the SFC to universities and other higher education institutions would not change as a result of these proposals.

Costs to local authorities

136. No costs from the Bill have been identified.

Costs to others

137. Tuition fee loans for students from the rest of the United Kingdom are funded by the UK Government (Department for Business, Innovation and Skills), the Welsh Government and the Northern Irish Executive. The introduction of the cap on the level of fees charged to such students would ensure that those bodies do not incur annual costs in excess of those which would be incurred if the student studied in a part of the UK other than Scotland.

College regionalisation

138. The Bill would support reform of further education colleges in Scotland and, in particular, make provision for thirteen college regions. Through this regional approach and the associated mechanism of regional outcome agreements, the Scottish Government, with the SFC, would be able to ensure college provision is more sharply aligned with employer and learner needs at the national, regional and local levels. Regionalisation is central in reshaping the college sector so it is better able to contribute to the Scottish Government’s ambitions for jobs and growth.

139. The financial implications of this part of the Bill centre on the creation of new regional boards that would be required in multi-college regions other than in the Highlands and Islands.
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

There are expected to be no more than three such regions. The continued focus of college boards on the merits of a single college regional structure means their number is likely to reduce further.

140. Such boards would enter into an outcome agreement with the SFC so that funding was provided to the board on the basis of that agreement. Each board would, in turn, ensure strategic planning of college provision across their region, and allocate funding to colleges within the region accordingly. In addition, the boards could deliver shared services to colleges. Each board would determine the best value approach to securing shared services for its region.

141. The regional boards would not be registered for VAT and would therefore be unable to claim recoverable VAT on non-business activities. The cost estimates provided in this memorandum include, where appropriate, VAT.

Costs to Scottish Government

142. The costs associated with the establishment of up to three regional boards would relate principally to a small number of staff to ensure that the board can administer effectively the funding it receives from the SFC. The boards will be held to account by the SFC for the delivery of agreed outcomes. Boards would in turn be able to hold colleges to account for the funding they received from the boards and for agreed outcomes.

143. Ultimately, it would be a matter for boards to determine how best to discharge their functions, meeting any efficiency and other requirements placed on them by the Bill and by the SFC. As fundable bodies, boards would be required to meet the terms and conditions of any grant paid to them by the SFC. The SFC also has specific powers to secure the promotion or carrying out of studies designed to improve the economy, efficiency and effectiveness in the management or operations of a fundable body. Regional boards might conclude that utilising the existing infrastructure of colleges would be the most effective and cost-efficient means of discharging their functions. If they were to do so, the estimates of costs would be significantly lower than described below.

144. Estimates of costs have been developed with the support of a college assistant principal HR professional seconded to the Scottish Government and assume:

a) the chief officer of a regional board would operate at a strategic level, comparable to principal level. The post holder would be responsible for regional planning, holding colleges to account for their agreed contribution to regional delivery and with overall accountability for the delivery of the region’s outcome agreement. Costs are expected to vary by region and are at the lower end of current college principal salaries. If the post holder had significant strategic financial and curriculum expertise, the posts outlined in b) and c) below may not be required at such a high level (if at all).

b) a finance role would not need to be at a strategic level if accountability for financial strategy rested with the chief officer, but the board would need an accountant and accounting systems. This post might not be required if this was within the expertise of the chief officer.

c) since a key regional board activity would be strategic curriculum planning, the estimate assumes the appointment of a strategic curriculum lead. This post might not be required if this is within the expertise of the chief officer
d) the integration or shared arrangement of ICT systems is likely to be an important regional board activity, so a senior ICT post has been assumed.

e) administrative support would be required, including servicing of the board. (This is not envisaged to be a full-time role.)

f) the estimate does not include any shared services that the board might deliver to colleges. Such services are likely to involve the transfer of staff, equipment and budget from colleges to the board.

145. Full year annual costs for 2014-15 and 2015-16 for each of the three regional boards are therefore estimated to be up to:

- Staffing: £430k including employer costs; and
- Other costs: £110k including VAT.

146. These estimates would be lower if existing college infrastructure was used as described above, although they assume the use of the college ICT network. In addition, further additional set-up costs of £12k for each board in financial year 2014-15 would be expected. This would include the setting up of an office as well as of financial and other processes.

147. The Bill also provides that Scottish Ministers would appoint the chairs of regional colleges and of regional boards. It is estimated that the associated costs to the Scottish Government of this in 2013-14 would be up to £90k in total. This would include staff costs, advertising and any travel and subsistence costs of external members of appointment panels. On a similar basis, the costs associated with the appointment of members to each of the regional boards could be up to £90k per board in 2013-14.

148. The Bill makes provision to require regional boards to pay their chairs as Scottish Ministers may in each case determine. This will be in line with the Scottish Government Public Sector Pay Policy for Senior Appointments. Based on a time commitment of an illustrative one day per week, it would be reasonable to assume annual pay of between £10k and £20k per annum.

149. The plans would see the number of college bodies funded by the SFC fall to fifteen, comprising the regional bodies in the thirteen regions, Newbattle Abbey College and Sabhal Mòr Ostaig, with the latter two colleges continuing to receive funding directly from the SFC.

Costs to local authorities

150. No costs from the Bill have been identified.

Costs to regional colleges

151. Regional colleges would have specific new duties that would sit alongside colleges’ existing duty under section 12(1) of the Further and Higher Education (Scotland) Act 1992 of “managing and conducting their college”. These additional duties would be:
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

- a duty to exercise its functions for the purpose of securing the coherent provision of high quality further education and higher education within the region in which it provides education; and
- a general duty, in the exercise of its functions, to consult (where it considers it appropriate to do so) and to seek to secure collaboration of certain persons (where consistent with the regional college’s functions).

152. While new to colleges in a statutory sense, these duties cover matters already expected of them. The 2007 skills strategy – Skills for Scotland: A lifelong skills strategy, for example, outlined the Scottish Government’s expectations that learning providers “consider themselves as part of one system”. It is on this basis that we estimate no additional costs to arise from these duties. Regional strategic bodies would have similar duties, the estimated costs of which are subsumed within the costs of the regional boards outlined earlier.

153. As with regional boards, the Bill makes provision to require regional colleges to pay their chairs such remuneration as Scottish Ministers may in each case determine. This will be in line with the Scottish Government Public Sector Pay Policy for Senior Appointments. Based on an illustrative time commitment of one day per week, it would be reasonable to assume annual pay of between £10k and £20k per annum.

**Costs to other colleges**

154. Colleges assigned to regional strategic bodies would be under new duties to act in accordance with any directions issued to them (this would apply only to incorporated colleges); to have regard, where appropriate, to any plans developed by their regional strategic body; and to provide information required by their regional strategic body. Any additional costs cannot be accurately estimated as they depend on the nature of those directions, plans and requirements.

**Costs to University of the Highlands and Islands**

155. The Bill designates the University of the Highlands and Islands (UHI) as the regional strategic body in the Highlands and Islands. As such, UHI would have a funding role and certain duties and powers in relation to colleges assigned to it. Any net increase in costs would be marginal.

**Costs to Education Scotland**

156. The Bill would bring regional strategic bodies within the scope of the SFC duty to assess and enhance the quality of education. For college education, this duty is discharged through Education Scotland reviews. A likely result of the Bill is that Education Scotland would, as part of its review of colleges in a region, also review regional boards. Taking the reform package as a whole, the level of Education Scotland services is likely to remain at current levels. In future, this would include the review of regional colleges, regional boards and colleges assigned to regional strategic bodies.

**Costs to others**

157. The Bill would extend the remit of the Standards Commission for Scotland, the Scottish Public Services Ombudsman and the Scottish Information Commissioner to include statutory
These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

regional boards. This has the potential to increase their work slightly. Any net increase in costs would be marginal. Moreover, wider college reforms would see the overall number of college bodies decrease.

Review of fundable further and higher education

158. The introduction of legislation here is intended to ensure the SFC is able to review proactively the structure and provision of fundable further and higher education, and to report the outcome of any review to Scottish Ministers. Such a review would take as a central principle the need to secure best value for the public purse. It would draw together available evidence and identify recommendations for improving the delivery of post-16 education in Scotland.

Costs to Scottish Government

159. The review would be triggered only when the SFC identify a need for it, and with subsequent agreement from Scottish Ministers. Based on previous similar activity by the SFC, the Scottish Government estimate the cost of a review on aspects of further and higher education would be approximately £150k, although the eventual cost would be determined by the scope of the review. SFC would nonetheless meet any such costs from its existing budgets and staffing structure.

160. The Scottish Government has not defined a specific period of time within which the SFC should conduct a review. The SFC should continually consider whether a case existed for a review. However, any review would be conducted at a point that allowed the efficacy of the existing structure within the sectors to be considered. If a review was necessary, Scottish Ministers do not envisage it taking place more than once in any Parliamentary session.

161. There are significant margins of uncertainty around this cost, not least because a review would not be required most years and so the consequential costs in those years would be nil. While most reviews would be expected to cover an aspect of further and higher education, the Bill would also support a more comprehensive review. In those unexpected circumstances, the maximum cost of a full review of further and higher education is estimated to be £300k.

Costs to local authorities

162. None identified.

Costs to others

163. None identified.

Data sharing

164. The Bill would strengthen the Scottish Government’s policy aim to provide for a robust identification, tracking and monitoring system for young people between the ages of 16 and 24 moving through the learning system by giving Scottish Ministers the power to make secondary legislation to require relevant bodies to share data with Skills Development Scotland (SDS) on all such young people. This would in turn allow the Scottish Government and its partners to plan, support and monitor the transitions a young person makes through post-16 learning; would
enable partners to be aware when someone disengages from learning or training; and would allow them to collaborate in deploying the necessary interventions to re-engage that learner in education, training or employment.

Costs of the policy

165. The costs involved in improving data tracking and monitoring to meet these policy aims are being subsumed within regular staff resource, technological improvement and work already undertaken by data sharing partners. The focus of these improvements falls mainly on software solutions and will help set longer-term IT integration between partners. This expenditure took place in 2011-12, or is expected to take place in 2012-13 and is therefore included in this financial memorandum for information only. However, these costs are not as a direct consequence of the Bill.

166. There is a set of one-off costs to establish the technical solutions needed for effective data sharing. These costs are estimated to be £52k over financial years 2011-12 and 2012-13. Each is subject to negotiation among partners on how they will be apportioned. But given their minimal scale we do not envisage a significant problem achieving a resolution.

167. Data sharing would also require staff resource across all partner organisations. This investment would improve the utilisation of existing resources and continue to improve their deployment through a more coherent system supported by technical development. Any resource implications from this work would, therefore, be subsumed within planned resources, with a minimal impact on existing staff resource.

168. We have been unable to model the cost savings from more efficient service delivery in advance of data sharing taking place since there is no robust information with which to work. However, the planned evaluation of data sharing includes a commitment to analyse these service delivery efficiencies as practice develops.

Costs to Scottish Government

169. SDS would incur a proportion of the total capital IT costs of approximately £10k. This is expected to be within existing budgetary provisions.

Costs to local authorities

170. Local authorities are estimated to incur a share of total capital IT costs of £18k in 2012-13. This is expected to be within existing budgetary provisions.

Costs to others

171. Colleges are estimated to share capital IT costs of £24k in 2012-13. This is expected to be within existing budgetary provisions.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

172. On 27 November 2012, the Cabinet Secretary for Education and Lifelong Learning (Michael Russell MSP) made the following statement:

“In my view, the provisions of the Post-16 Education (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

173. On 27 November 2012, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Post-16 Education (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
POST-16 EDUCATION (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Post-16 Education (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 27 November 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 18-EN.

POLICY OVERVIEW

“Reforms of the scale on which we are embarked must have a clear, overriding purpose. To that end, we are clear that meeting the needs of the learner is at the heart of all our proposals. Scotland’s ability to flourish as a nation is dependent on its people and I am committed to ensuring that we help maximise each individual’s potential. To achieve these aims, I am working towards bringing legislation forward in the second half of next year which will underpin and facilitate our plans.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education, Scottish Government, September 2011

2. The Post-16 Education (Scotland) Bill is intended to provide a technical and administrative underpinning for some aspects of post-16 education reform. This wider programme of reform will ensure the system better supports jobs and growth; improves life chances, especially for young people; and is sustainable for the long-term. A reformed post-16 learning system will contribute to the Scottish Government’s purpose targets on improving economic participation and productivity, and, ultimately, increasing economic growth. And it will support a number of national outcomes, especially:

- we realise our full economic potential with more and better employment opportunities for our people;
- we are better educated, more skilled and more successful, renowned for our research and innovation; and
- our young people are successful learners, confident individuals, effective contributors and responsible citizens.

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1 http://www.scotland.gov.uk/Publications/2011/09/15103949/0
BACKGROUND: POST-16 EDUCATION REFORM

3. Over the next three years, the reform of post-16 education and training is expected to make a significant contribution to Scotland’s economic recovery. Such education and training represents around £7 billion of public investment in the three years between 2012-13 and 2014-15 in support of the Government Economic Strategy. It will fundamentally change the provision of skills and other forms of post-16 education by aligning learning to labour market demand.

4. The aim is to make post-16 education more responsive to the needs of learners and employers. By ensuring more positive outcomes for learners, the Scottish Government will improve their life chances and enhance the employability of those young people distant from the labour market, helping move them closer to a job. Higher education students will see further improved financial support arrangements and employers will reap the benefits of post-16 education reform through provision that is better aligned to labour market demand, incentivised by outcomes-based funding.

5. The reforms represent an unprecedented level of change to the system and, in particular, to our colleges where the sector will be based largely around 13 new regions, with associated mergers in most of these regions. But such changes are essential if the Scottish Government is to optimise the performance of the system and its constituent sectors in what will remain an acutely challenging financial climate.

6. The Financial Memorandum summarises the resource implications of the measures set out in the Bill. Beyond the impact of the Bill itself, there will be savings arising from the wider reform programme. The main elements of these relate to college mergers and federations, and higher education student support.

7. All college mergers have the potential to yield substantial, recurrent savings once they have taken place. Savings are projected to be greater in larger, urban colleges than elsewhere, as economies of scale ought to be easier to realise. Estimates of savings are based on recent experience, most notably, the merger which created the City of Glasgow College, and also merger proposal documents and college-level financial estimates. Estimates are net of any costs incurred in preparing for, and implementing, such mergers and federations.

8. Based on the Scottish Government’s current understanding of college mergers and federations which are either planned or in progress, the Scottish Further and Higher Education Funding Council (SFC) expects to see efficiencies in the region of £50 million per annum by 2015-16. The Scottish Government is working with the SFC and individual colleges to lend support to the process of college restructuring and to ensure it remains on track.

9. Changes to higher education student support, allowing for a minimum student income of £7,250 for the poorest students and increasing the non-income assessed loan for all students, were announced by the Scottish Government in August 2012. These changes responded to the request by NUS Scotland to increase cash in students’ pockets. As a result, the funds available

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2 http://www.scotland.gov.uk/Publications/2011/09/13091128/0
to students increased by £143 million in academic year 2013-14, while saving £30 million per annum in delegated expenditure from academic year 2013-14 onwards.

10. Promoting and monitoring these programme savings and efficiencies is a central element of the reform programme generally.

BACKGROUND: EXISTING LEGISLATION

11. The Further and Higher Education (Scotland) Act 2005 primarily sought to merge the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council to create a single body to fund universities and colleges in Scotland - the Scottish Further and Higher Education Funding Council (SFC). The ambitions of the legislation were to better match learning opportunities to what was needed to strengthen Scotland’s economy and society. A central part of this vision was a coherent and relevant system of high quality further and higher education responsive to the needs of learners and the economy, recognising that further and higher education were different from one another but closely linked.

12. While the Scottish Government continues to share many of these ambitions, it is clear that the measures set out in the 2005 legislation have not fully delivered the desired outcomes, particularly in relation to the college sector. New and bigger challenges have emerged since 2005, such as unprecedented reductions in public expenditure and increased levels of unemployment, particularly youth unemployment. Responding to this requires a new approach. Reform of post-16 education, supported by new legislation in a small number of areas, is intended to help address this.

CONSULTATION

13. The Scottish Government’s pre-legislative paper published in September 2011, Putting Learners at the Centre\(^3\), provided the context for the Bill. It attracted 324 responses from a range of different stakeholders and individuals, reflecting the breadth of post-16 education reform. (All of the individual responses and an analysis of these are available on the Scottish Government website\(^4\).) Many of the ideas set out in the consultation have since been reflected in this Bill as well as the wider reform programme. For example, work on improving learner journeys will address many comments made by respondees about the need to create clearer pathways through post-16 learning.

14. An additional consultation on college regionalisation, College Regionalisation: Proposals for Implementing Putting Learners at the Centre\(^5\), was issued jointly by the Scottish Government and the SFC in November 2011. Responses indicated overwhelming support for a move to a regional model for the college sector. These and other responses have contributed to the development of the college regionalisation proposals set out in this Bill.

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\(^4\) [www.scotland.gov.uk/Publications/2012/02/2216](http://www.scotland.gov.uk/Publications/2012/02/2216), [www.scotland.gov.uk/Publications/2012/02/4185](http://www.scotland.gov.uk/Publications/2012/02/4185)

15. In addition, reviews of university and college governance by Professors Ferdinand von Prondzynski\(^6\) and Russel Griggs\(^7\), respectively, have been published, providing a further basis for our legislative plans on college and university governance. The provisions on college regionalisation and university governance in this Bill were informed by these responses.

16. Discussion with equality groups on the possible impact of the Bill on particular groups has formed part of the equality impact assessment carried out in connection with the Bill and taken on board in its development.

**CONTENT OF POST-16 EDUCATION BILL**

17. While much reform is being progressed on a non-legislative basis, there are some specific elements that require new legislation in order to be implemented effectively. The Post-16 Education (Scotland) Bill introduces provisions covering six areas:

- **University governance:** to allow Ministers, when providing funding to the SFC, to impose conditions relating to the need for higher education institutions to adhere to good practice in governance.

- **Widening access:** to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups.

- **Tuition fees cap:** to allow Ministers:
  - to set an upper limit on the level of higher education tuition fees which post-16 education bodies can charge UK students and certain others who are not entitled to be charged tuition fees at the level set by the Scottish Government; and
  - when providing funding to the SFC, to impose conditions with a view to ensuring that post-16 education bodies adhere to such an upper limit.

- **College regionalisation:**
  - to provide for two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college or multi-college regions;
  - to establish new regional strategic bodies for colleges in multi-college regions to support a regional approach to the planning and funding of college provision; and
  - to introduce Ministerial powers to remove chairs and other members of incorporated colleges and regional boards for reasons of failure (in addition to mismanagement).

- **Review of fundable further and higher education:** to allow the SFC to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner.

- **Data sharing:** to allow Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland on all young people

\(^6\) [http://www.scotland.gov.uk/Publications/2012/02/3646](http://www.scotland.gov.uk/Publications/2012/02/3646)

between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of, disengaging with, learning or training.

POLICY OBJECTIVES

18. The policy objectives of the six areas to be included in the Post-16 Education (Scotland) Bill are set out below and cross-referenced to the relevant sections in the Bill.

University governance (Section 2)

“We have commissioned independent reviews of college and university governance from Professors Russel Griggs and Ferdinand von Prondzynski respectively….. In the light of those reports, we shall consider what further action is necessary, including what action we might take in the event of under-performance, recognising the differences between our colleges and universities.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

19. The Scottish Government’s approach to improving college governance is being pursued largely through the Bill’s proposals for college regionalisation described later below. However, the Bill also introduces a specific legislative provision on good governance in universities and other higher education institutions.

20. Professor Ferdinand von Prondzynski’s review of Higher Education Governance in Scotland8 recommended that “the Scottish Funding Council should commission the drafting of a Code of Good Governance for higher education institutions”. The Cabinet Secretary for Education and Lifelong Learning welcomed the review and indicated that it provided a basis on which to move forward, working with the sector, to reform higher education governance. He asked the committee of the Scottish chairs of higher education institutions to lead a group to develop a new Scottish code of good higher education governance.

21. This Scottish Code of Conduct is expected to be completed and endorsed by the Scottish Ministers in the first half of 2013. In the absence of a Scottish Code, the benchmark for good practice would be the existing Guide for Members of Higher Education Governing Bodies in the UK currently agreed, on a UK-wide basis through the Committee of University Chairs (CUC).

22. The Bill provides explicit powers for Scottish Ministers to require the SFC to ensure that universities and other higher education institutions adhere to good practice around governance as a condition of funding. In doing so, Ministers expect that the SFC will have regard to ensuring that such governance conditions are applied appropriately for different types of institution.

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8 http://www.scotland.gov.uk/Publications/2012/02/3646
Widening access (Section 3)

“This is a responsibility that is shared between parents, schools, Skills Development Scotland, colleges and universities. There are good examples of this working already, primarily with post-92 institutions who have traditionally recruited rather than selected and who have established good links with local schools and colleges. Central to this is our determined focus on raising standards but also equipping young people with the critical skills they need to be successful in every sphere. This will require universities to broaden their approach to selection.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

23. The SFC already provides funding to higher education institutions through regional coherence funding and specific access programmes that incentivise them to recruit and retain greater numbers of students from disadvantaged backgrounds. Historically, it has proved more difficult to increase these numbers in the more selective institutions. Recent increased pressure on student places has aggravated this.

24. The SFC has collected and published data for a number of years under the banner of ‘Learning for All: Measure of Success’. This data shows that, for example, that only 11% of students attending university in 2010-11 came from the 20% most deprived areas. Improving participation among the most disadvantaged is not about displacing more able students, rather it is about recognising that the potential to succeed can be determined both by an assessment of attainment and the context in which that attainment was achieved. Research shows that those from poorer backgrounds who enter university with lower attainment scores than their more affluent peers can, with the right support, perform just as well and even demonstrate better progression to subsequent study years.

25. The 2011 Manifesto set out the need to “set achievable but ambitious goals for access to higher education for the poorest students”. The broad policy objective for including this in the Bill is to improve participation in higher education institutions for currently under-represented socio-economic groups. The Bill seeks to allow Ministers to impose conditions relating to access to higher education for students from widening access backgrounds when providing funding to the SFC.

26. Much of the widening access activity will now be included in individual universities’ outcome agreements, allowing a more focused approach which incentivises this activity with clearly defined targets. These agreements will be tailored to each individual institution and will involve a combination of playing to their historical strengths as well as encouraging them to break new ground. This could include outreach work in schools promoting aspiration, summer schools, articulation agreements with ‘feeder’ colleges, retention work to address drop-outs, and targeted academic support for those who come from a background with a lesser academic tradition.
Tuition fees cap (Section 4)

“At a time of unprecedented financial constraint, our top priority is to ensure the sustainability of post-16 learning and - more specifically - to protect the competitive position of the higher education sector in the face of changes to funding arrangements in England and our commitment not to introduce tuition fees for Scottish-domiciled students in our universities.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

27. Following a decision by the UK Government to increase substantially higher education tuition fees from 2012-13 for students at universities in England, it became necessary for the Scottish Government to consider how this would affect applications to pursue courses of higher education at publicly funded institution in Scotland from students ordinarily domiciled in England.

28. To address concerns about the cross-border flow of students from other parts of the UK and ensure places for Scotland-domiciled students could be protected, changes to secondary legislation were introduced in 2011. These enabled publicly funded institutions in Scotland to set their own higher fees for full-time under-graduate students from the rest of the United Kingdom from academic year 2012-13 rather than such institutions being obliged to charge such students tuition fees at the level set by the Scottish Ministers.

29. But Ministers did not have the power to set an upper limit on the level of higher tuition fees that publicly funded institutions in Scotland could charge full-time under-graduate students from the rest of the UK. In theory, institutions could set their own level of fees as they currently do for international students. In practice, a voluntary agreement has been put in place for academic year 2012-13 which prevents publicly funded institutions in Scotland from charging students from the rest of the UK more per annum than the highest level of tuition fees which institutions in other parts of the UK currently charge such students.

30. The Bill gives Scottish Ministers the power to set such upper limit and, when providing funding to the SFC, to impose conditions with a view to ensuring that institutions adhere to that upper limit when setting their fee levels. Institutions would not be able to charge students from the rest of the UK fees at a higher level than the highest annual amount which they would pay elsewhere in the UK. Linking the tuition fees cap to the maximum fee level in the rest of the UK would ensure that those students eligible for student support from other funding bodies in the UK could access the full amount of tuition fee support required for their course. It is hoped that this would reduce the likelihood of students deciding not to come to Scotland on financial grounds.

31. Institutions would remain free to charge non-EU international students fees on a basis which each institution considers to be appropriate, having regard to the full cost of providing the course.
College regionalisation (Sections 5 to 13)

“By reinvigorating college governance, I want to reinvigorate colleges. This is fundamental to our plans better to meet the needs of learners and employers in a region through a coherent and sustainable curricula offer, with a sharper focus on outcomes; funding based on regional needs; and strong accountability for regional performance.”


32. Putting Learners at the Centre signalled the Scottish Government’s intention to introduce a new regional structure for the college sector. The report on the responses to this consultation, published in February 2012, outlined that, “key considerations mentioned included the need for student representation on boards, transparent recruitment processes for Principals and board members; the need to ensure employer representation and creating rigorous accountability processes without a burdensome level of required administration” With the exception of the need for transparent recruitment processes for Principals where guidance has already been published, all of these issues have been addressed in the Bill.

33. Professor Griggs’ report on college governance was based on the premise that every region, other than the Highlands and Islands, would have a single college. Where possible, that is what the Scottish Government wants to see. However, Ministers believe firmly that it is a matter for colleges to restructure on a voluntary basis in the best interests of learners.

34. The consultation paper College Regionalisation: Proposals for Implementing Putting Learners at the Centre\(^9\) outlined the advantages of a regional approach as one that would:

- create college groupings of scale, able to plan regionally and deliver locally across Scotland;
- help every community of a reasonable size - and every young person - access appropriate college education;
- enhance the capability to plan and deliver part-time learning, particularly for adults in employment;
- provide a stronger basis to develop further provision for employers;
- create opportunities for colleges in many regions to work more cost-efficiently, for example, through the sharing of services, mergers or collaboration, freeing resource to redirect towards learners;
- strengthen the role and contribution of colleges as important partners within regional networks of agencies and services to the benefit of learners, communities, employers and the wider development of regions; and
- provide a framework for joint working between the school, college and university sectors to ensure more coherent provision and improved articulation between college and university.

35. The Cabinet Secretary has since confirmed 13 college regions. At the time of writing, nine of these regions would be expected to have a single regional college, while the remaining four would be expected to have a regional strategic body working with the colleges in that region. While the current state of structural change in the sector suggests that fewer regional strategic bodies would be necessary in the medium term, there remains a need to support different arrangements in single and multi-college regions.

36. In single-college regions, the college would have additional responsibilities for regional matters. In other regions with more than one college, a new regional strategic body would receive and distribute funding for the region and plan college provision strategically across the region. The regional strategic body would also be responsible for certain appointments to the colleges in the region. In the Highlands and Islands region, the higher education institution, the University of the Highlands and Islands (UHI), would be the regional strategic body. In practice, this function would be delegated to a further education committee of the UHI court. The overall position in relation to each of the 13 regions is summarised below.

<table>
<thead>
<tr>
<th>Single college regions: regional colleges</th>
<th>Multi-college regions: regional strategic bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Existing</em></td>
<td>• UHI</td>
</tr>
<tr>
<td>- Borders</td>
<td><em>Regional boards</em></td>
</tr>
<tr>
<td>- Dumfries &amp; Galloway</td>
<td>• Aberdeen and Aberdeenshire</td>
</tr>
<tr>
<td>- Edinburgh</td>
<td>• Glasgow</td>
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<tr>
<td>- Forth Valley</td>
<td>• Lanarkshire</td>
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<td>- West Lothian</td>
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<tr>
<td><em>Anticipated</em></td>
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<tr>
<td>- Ayrshire</td>
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<tr>
<td>- Fife</td>
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<td>- Tayside</td>
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<td>- West</td>
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37. This approach would allow colleges to be funded on a regional basis consistent with the Scottish Government’s ambitions for a more strategic approach. As part of its conditions of grant to the body concerned, the SFC would agree an outcome agreement with each regional college or regional strategic body, with the college or board subsequently accountable to the SFC for the delivery of its outcome agreement. In multi-college regions, regional strategic bodies would agree with each college its contribution to the outcome agreements, and would expect colleges to engage in joint strategic planning. Educational provision would be delivered at the local level, part of a coherent regional offer.

38. Improved public accountability and transparency in the college sector are key objectives of post-16 reform. Both the new board arrangements set out in the Bill and the related appointments would lead to clarity of roles and responsibilities and refreshed talent on boards, helping to realise the full benefits of post-16 education reform.

39. After a transitional period, the effect of the Bill would be that colleges in multi-college regions would cease to be eligible for funding directly from the SFC and would instead be

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10 Anticipated to become a single college as a result of future mergers.
funded by the relevant regional strategic body. The Bill introduces the term ‘post-16 education body’ to refer to learning providers funded either by the SFC or by a regional strategic body.

**Review of fundable further and higher education (Section 14)**

“We therefore want colleges, universities and the SFC to continue to consider the case and opportunity for further structural change and movement of provision in order to meet Scotland’s changing needs.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

40. *Putting Learners at the Centre* confirmed the Scottish Government’s intention to ensure the SFC continues to secure coherent provision to reduce unnecessary duplication and inefficiency across further and higher education. The introduction of legislation here is intended to ensure the SFC is able to review proactively the structure and provision of fundable further and higher education, including the number of regional strategic bodies, and to report the outcome of any review to Ministers. The need for a review would be based on an assessment and analysis by SFC of a range of criteria which would be agreed with Scottish Ministers. Such a review would take as a central principle the need to secure best value for the public purse. It would draw together available evidence and identify recommendations for improving the delivery of post-16 education in Scotland.

**Data sharing (Section 15)**

“This approach, when fully implemented, will ensure local authorities and their partners systematically identify young people who have disengaged from learning or who are most likely to do so; tailor learning and wider provision to meet individual needs; and, provide focused and ongoing support, including careers advice, to ensure they make progress.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

41. Opportunities for All is the Scottish Government’s commitment to an offer of a place in learning or training for every 16 to 19 year old who is not currently in employment, education or training. It builds on, and adds impetus to, existing activity driven through 16+ Learning Choices and wider youth employment activity.

42. It is important that all young people who disengage, or who may be at risk of disengaging, from learning or training can be identified so that appropriate support can be provided back into learning, training or employment. This is required to plan and deliver services across the post-16 learning system, including those which support delivery of Opportunities for All. It requires a robust identification, tracking and monitoring system to allow the Scottish Government and its partners to plan and support the transitions that young people make through the post-16 learning environment. Data collection and sharing across the 16 to 24 age group will also support comprehensive evaluation of the impact of provision and support across the post-16 learning system.

43. How this data sharing will work in practice can be separated into two facets. Firstly the data practice and secondly how this practice will support policy delivery (it is intended to set this out in greater detail within secondary legislation).
This document relates to the Post-16 Education Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

44. For data sharing to take place records must first be created for all young people. This is normally for each child when they are first enrolled for mainstream education. These records form the base data set which tells us how many young people there are in mainstream education in Scotland (The Pupil Census). Data which is relevant to the young person’s learning is added to their records as they progress through mainstream education. This data will include type of school, school leaving date and may include whether a young person has an additional support need. When the young person reaches the senior phase of Curriculum for Excellence an agreed selection of fields within their record is shared with Skills Development Scotland (SDS). This enables a post-16 record to be created that can track a young person’s learning and training with a number of different providers on leaving school. SDS maintain this record, updating it appropriately with data received through face to face meetings with the young person and data shared with SDS by partners.

45. When a provider of learning or training enrolls a young person they will share a record with SDS of that young person’s enrolment along with other agreed fields. When SDS receives this record it is able to update the record that it holds to reflect the young person’s current learning or training status. This allows SDS front line careers staff to know that they need not contact this young person to ask if they require help to find learning or training. Likewise when a young person leaves a training or learning provider, the provider notifies SDS to that effect.

46. The founding record for a young person in Scotland comes from their enrolment in government funded mainstream education and not their health record. This means that someone who comes into Scotland after compulsory schooling age of 16 and does not apply for a mainstream school place before the age of 18 will not have a record created in this manner. If the young person engages with SDS they will have a record created. If the young person enrolls directly with a provider of learning or training their data will be shared with SDS and an existing record would be updated.

47. SDS will maintain a young person’s record whilst they are receiving data and/or are in direct contact with the young person. After this time, the young person’s record will be archived and retained in line with agreed standard data practice timescales. This approach has been taken as SDS provides all age services and an individual may wish to contact SDS again later in life. This process will enable SDS to provide more tailored support based upon knowledge of the individuals prior participation in learning and training.

48. Elements of this data-sharing approach are already in place, with SDS acting as a data hub, and many bodies having concluded data sharing agreements with SDS covering young people’s transitions through the learning system. However, if we are to ensure that every young person receives the support to which they are entitled when they need it most, all relevant partners need to share data. Our expectation is therefore that all of those responsible for providing learning and training to 16 to 24 year olds must participate in data sharing with SDS. The proposed legislative measures are framed to this end.

49. Through the data hub, those involved in planning and delivering learning and training to 16 to 24 year olds, including those required to share data, can monitor their performance and ensure that the best services are provided for young people.
ALTERNATIVE APPROACHES

50. The wider policy context within which this Bill sits covers a substantial programme of reform across post-16 education. This reform programme will provide for a system better attuned to learner and employer needs and sustainable for the long-term. Much of this is moving forward without the need for legislative support.

51. However, voluntary approaches – for example in relation to widening access and data-sharing – have not been wholly and uniformly successful to date. And there are other areas of policy – such as the tuition fees cap and university governance – where legislation would help achieve consistency across the sector(s). Finally, setting out a clear power for the SFC to review further and higher education would help bring clarity around the SFC’s ability to review the structure and provision of fundable bodies and colleges assigned to regional strategic bodies while taking account of the need to secure best value.

52. On college regionalisation, the Scottish Government gave detailed consideration to whether the policy objectives could be met through non-legislative means, including:
   - colleges establishing their own collaborative regional structures;
   - the SFC requiring, through an outcome agreement, a commitment from colleges to collaborate and agree how regional funding should be allocated between them; and
   - the SFC setting up regional committees with delegated funding powers.

53. However, the Scottish Government concluded these arrangements failed the test of improving public accountability, since the SFC would be unable to hold a single body to account in all regions for the delivery of an outcome agreement. The new arrangements for governance in the college sector, specifically the creation of regional strategic bodies, are essential to achieving the central aim of improving public accountability and require legislation in order to be effective.

54. In summary, the alternative option of not introducing legislation is considered by the Scottish Government to increase substantially the risk that the post-16 reform outcomes of a system better attuned to learner and employer needs and sustainable for the long-term will be jeopardised.

EFFECTS ON EQUAL OPPORTUNITIES

55. An equality impact assessment (EQIA) was undertaken in connection with the Bill to consider the potential impacts of the Bill across the protected characteristics. The results of the assessment will be published on the Scottish Government’s post-16 reform website in due course.11

56. The assessment concluded that two areas in the Bill - the review of fundable further and higher education and university governance - were unlikely to impact on individuals. The remaining policy areas with the potential to impact on individuals were:

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11 http://www.scotland.gov.uk/Topics/Education/post16reform
This document relates to the Post-16 Education Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

- **Widening access:** The Bill’s provisions in this area would have a positive impact on those who would normally have been rejected by an HEI in Scotland but who would find it easier to be accepted as a result of the widening access agreements. It is not clear whether there would be a negative effect on any individuals, although there could be some displacement of students if mitigating actions are not put in place.

- **Tuition fees cap:** This would benefit students coming to Scotland from the rest of the UK. The policy would not benefit, but would not change the situation for, students coming from non-EU countries to study in Scotland.

- **College regionalisation:** The provisions of the Bill which remove the upper age limit for college board members would have a positive impact on those that were not previously eligible to participate on a college board due to their age being above that upper age limit. The provisions of the Bill which give the Scottish Ministers the power to issue guidance would give Ministers the opportunity to reinforce the importance of appointing a range of people who reflect Scottish society and this should help advance equality of opportunity for those from groups of the population that were previously under-represented on college boards. The group of people that could see a negative effect would be existing board members who share a protected characteristic, where people with that characteristic are currently over-represented on college boards.

- **Data sharing:** Those people affected most positively would be young people (between 16 and 24) identified as being most at risk of disengaging from learning or training, enabling support to be provided. This would also benefit young people who may not be defined to be at risk or vulnerable, but who require support to maintain or re-engage with learning. No negative impact on individuals is expected, although it is recognised that the provisions of the Bill on data sharing only relate to young people.

57. This work has also identified some associated equality impacts that would not be attributable directly to the Bill provisions, but would result from the impact of the wider post-16 education reform programme. These issues will be considered as part of the implementation of the programme.

**EFFECTS ON HUMAN RIGHTS**

58. The Scottish Government has considered if the Bill’s provisions on widening access and the tuition fees cap raise any issues in relation to the European Convention on Human Rights, particularly in relation to Article 2 of Protocol 1 to the European Convention on Human Rights (right to education, which includes a right of access to educational establishments) when read with Article 14 of the Convention (prohibition of discrimination in the enjoyment of rights and freedoms set forth in the Convention). The Scottish Government is satisfied that these policies on widening access and the tuition fees cap pursue legitimate aims. To the extent that any terms and conditions which Scottish Ministers are minded to impose under section 9B or capping tuition fees for students coming to Scotland from the rest of the UK will give rise to a difference in treatment in the enjoyment of the Article 2, Protocol 1 right to education on any of the grounds enumerated in Article 14 of the Convention, the Scottish Ministers will require to be satisfied that they are a proportionate means of achieving the legitimate aims.

59. The Scottish Government has considered if the Bill’s provisions on data sharing raise any issues in relation to the European Convention on Human Rights, particularly in relation to the
Article 8 right to respect for private and family life. To the extent that the policy will engage this right, the Scottish Government is satisfied that it pursues a legitimate aim which is necessary in a democratic society and that the means chosen to achieve the aim are proportionate.

60. The Scottish Government has also considered if privacy implications would arise as a result of the Bill, specifically in relation to data-sharing, and to that end has completed a privacy impact checklist. This has helped confirm that the new duty would create no new technology or identity handling procedures. However, it would place a responsibility on partners to use a multi-organisational approach to sharing data.

61. SDS, who own the 16+ Learning Choices Data Hub shared with all partners, has conducted a full Privacy Impact Assessment. In that context, all partners are participating in legal and governance frameworks to ensure that all data sharing is appropriate and legally compliant. There are no exemptions to legislative privacy protections. The Scottish Government has concluded that there is no requirement to undertake a full scale privacy impact assessment for the Bill.

EFFECTS ON ISLAND COMMUNITIES

62. The overall effect of this policy will be to move decision-making slightly closer to island communities. Four island colleges currently receive funding directly from the SFC - Shetland College, Orkney College, Sabhal Mòr Ostaig and Lews Castle College. Shetland College, Orkney College and Lews Castle College would be expected to be funded by UHI rather than the SFC, bringing a greater focus to the regional needs of the Highlands and Islands. For the purposes of further education provision, Sabhal Mòr Ostaig would continue to receive funds directly from the SFC. Nonetheless, the Scottish Government understands that Sabhal Mòr Ostaig would be fully engaged in college strategic planning in the Highlands and Islands through its partnership with UHI.

EFFECTS ON LOCAL GOVERNMENT

63. The Bill’s provisions on data-sharing would have a minor impact on local government, requiring the collection and sharing of data on young people to support progression through education, training and employment. However, all local authorities are already committed to this approach. The impact of the Bill will, therefore, be to improve existing good practice in this area.

EFFECTS ON SUSTAINABLE DEVELOPMENT

64. The need to develop a Strategic Environmental Assessment (SEA) on the Bill was considered in the context of the Environmental Assessment (Scotland) Act 2005 and published guidance on Strategic Environment Assessments (SEAs). The Scottish Government considered any potential environmental impacts against defined criteria in a SEA pre-screening report, which will be published separately via the SEA Gateway database.

12 This is available on request from SDS.
65. The SEA pre-screening report confirmed that, as the Bill provides a technical and administrative underpinning for wider post-16 education reform and is not expected, on its own, to have any significant environmental impact, it is exempt under the Environmental Assessment (Scotland) Act 2005. However, the Bill would require the new regional strategic bodies to have regard to sustainable development which should help to ensure a small but positive contribution to sustainable development in the medium to longer term.
This document relates to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

POST-16 EDUCATION (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Post-16 Education (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill is intended to provide a technical and administrative underpinning to aspects of the wider post-16 education reform programme. It contains provisions in six areas of policy: good practice in university governance; widening access to universities; a mechanism to limit the level of higher education tuition fees for students from the rest of the UK; college regionalisation, including new regional strategic bodies; a power for the Scottish Funding Council (SFC) to review further and higher education; and data sharing to help identify young people at risk of disengaging from learning or training.

4. Further information on the Bill is contained in the Explanatory Notes, Financial Memorandum and Policy Memorandum published separately as SP Bill 18.

Rationale for subordinate legislation

5. The Bill contains a number of provisions which delegate powers to Scottish Ministers. The Scottish Government has considered whether each provision is best managed on the face of the Bill or through subordinate legislation. In consideration of this, and in determining the appropriate level of scrutiny, the Scottish Government has had regard to:

- the need to achieve the appropriate balance between the importance of the issue and the need to ensure sufficient flexibility to respond to changing circumstances without having to resort to primary legislation;
This document relates to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

- the need to make proper use of Parliamentary time;
- the likely frequency of amendment; and
- the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by Parliament.

6. The delegated powers relating to the Bill are listed below. These detail what the power does, why the power was taken and the reason for the Parliamentary procedure used.

In this memorandum

- “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992,
- “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005;
- “the SFC” means the Scottish Further and Higher Education Funding Council.

Delegated powers

Section 4 – Fee cap: students liable for higher education fees

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

7. Section 4 of the Bill inserts new section 9C into the 2005 Act. For the purposes of any condition imposed by the Scottish Ministers on the SFC in pursuance of new section 9C(1), new section 9C(2) would allow the Scottish Ministers, by order, to set an upper limit (or ‘cap’) on the amount of fees payable to a post-16 education body by a person in respect of whom such body is authorised or required to charge higher fees by virtue of Regulations made under section 1 of the Education (Fees) Act 1983 (“the 1983 Act”) or to such class of such persons as the Scottish Ministers may in the order specify.

8. Scottish Ministers are also empowered to specify in the order the courses of higher education to which the cap set by the order will apply. Section 9C(3) constrains the section 9C(2) order making power by providing that in exercising it the Scottish Ministers must seek to ensure that, subject to any exceptions which they consider to be appropriate, the order applies only to students who have a connection with the United Kingdom. It also provides that Scottish Ministers must seek to ensure that the cap provided for in the order will not result in the students to whom the order applies being charged fees per academic year at a post-16 education body which are higher than a maximum amount. That maximum amount is the amount of fees (set by legislation elsewhere in the UK) which a student would be charged to undertake a higher education course at an institution in a part of the United Kingdom other than Scotland.
Reason for taking power

9. By way of relevant background, section 9 of the 2005 Act makes provision for how the SFC is funded. Section 9(1) provides that the Scottish Ministers may make grants to the SFC and section 9(2) allows that those grants may be subject to terms and conditions. So far as relevant for present purposes, among the terms and conditions which the Scottish Ministers may impose are certain conditions which, once passed on to institutions, require those institutions to charge certain classes of students, and in connection with them attending certain courses of higher education, fees at a level equal to that specified by the Scottish Ministers. Scottish Ministers powers to specify these ‘set’ fee levels, and the classes of student and courses to which they apply, are all powers exercisable by order. The relevant provisions are contained in section 9(3) and (5) to (7) of the 2005 Act. By virtue of section 9(9) of the 2005 Act these ‘set fees’ only apply to students prescribed by Regulations made under section 1 of the 1983 Act. Section 1 of the 1983 Act allows the Scottish Ministers to make Regulations requiring or authorising the charging of higher fees in the case of students not having a relevant connection with the United Kingdom or any part of it (and any other excepted categories of student) than in the case of students having such a connection.

10. Reflecting Scottish Ministers’ policy, in relation to students commencing courses of education in the 2012/13 or later academic years the tuition fee arrangements which have their basis in section 9 of the 2005 Act are such that only those students with a connection with Scotland - and not those with a connection with another part of the United Kingdom - are entitled to be charged ‘set fees’. Institutions are free to charge students with a connection with another part of the United Kingdom higher fees. This is a change in policy from previous academic years (when all students with a UK connection were entitled to be charged set fees). The change in policy was prompted by changes to tuition fee arrangements in other parts of the United Kingdom, particularly England, which saw a significant increase in the upper limit on the level of fees which institutions there could charge such students and was intended to address concerns about the cross-border flow of students from other parts of the United Kingdom and to protect places at institutions in Scotland for students normally resident here. But Scottish Ministers wish institutions to be obliged to limit the level of higher fees which they charge students having a connection with another part of the UK. Specifically, Scottish Ministers do not wish institutions to be able to charge such students fees at a higher level than the highest amount of fees per academic year, as set by legislation elsewhere in the UK, that such students would be charged if they chose to pursue any course of higher education in a part of the United Kingdom other than Scotland. New section 9C of the 2005 Act seeks to meet this policy aim by giving Scottish Ministers a power (see section 9C(1)) to impose a condition on the SFC which, once passed on to institutions, will oblige them to charge fees at a level which does not exceed a particular upper limit (or ‘cap’). As detailed above, the section 9C(2) order making power allows Scottish Ministers to set the amount of the cap and to specify the class of students and types of courses of higher education to which it is to apply.

Choice of procedure

11. The Order is subject to the negative procedure. This is considered appropriate, particularly in light of the constraint on the power provided for in section 9C(3), particularly that in exercising the power the Scottish Ministers must seek to ensure that the amount provided for in the order will not result in the students to whom the order applies being charged fees per academic year at a post-16 education body which are higher than a maximum amount. That
maximum amount is the amount of fees (set by legislation elsewhere in the UK) which a student
would be charged to undertake a higher education course at an institution in a part of the United
Kingdom other than Scotland. In these circumstances it is considered that the negative procedure
would provide sufficient opportunity for scrutiny.

Section 5(1) – Regional colleges

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

12. Section 5(1) of the Bill inserts a new section 7A into the 2005 Act. Section 7A(1) gives
Scottish Ministers a power, by order, to designate any college of further education with a board
of management under Part 1 of the 1992 Act (known as an “incorporated college”) as a regional
college. New section 7D(2) of the 2005 Act (as inserted by paragraph 6(5) of the schedule to
the Bill) provides that orders made under section 7A may make provision concerning the college
board’s membership and such other provision as is considered appropriate. Under new section
7D(5), Scottish Ministers must seek to ensure that an incorporated college is either designated as
a regional college or assigned to a regional strategic body, and that at least two colleges are
assigned to a regional board.

Reason for taking power

13. One of the key aims of the Bill is to enable the existence of two types of incorporated
colleges with different duties, composition and appointment provisions, depending on whether
they are in single-college or multi-college regions. Scottish Ministers intend to designate
incorporated colleges in single-college regions as regional colleges. The power to designate
gives Scottish Ministers flexibility to be able to do so and also in future to respond to changes if
there is future restructuring.

Choice of procedure

14. The power is subject to negative procedure. If Parliament has already approved the principle
of having colleges designated as regional colleges, it is considered appropriate that an order to
designate a regional college is subject to negative procedure. It should be noted that an order to
create, merge or close an incorporated college under section 3(1) of the 1992 Act is currently
subject to a negative procedure. Scottish Ministers consider the power to designate a college as a
regional college is analogous and have therefore adopted a consistent approach in relation to
changing the status of an incorporated college.

Section 5(2) – Regional colleges

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure
Provision

15. Section 5(2) of the Bill inserts a new section 23B into the 2005 Act. Section 23B(3) places a duty on a regional college to consult specified persons where the college considers it appropriate to do so in the exercise of its functions. In addition, section 23B(5) places a duty on a regional college to seek to secure the collaboration of certain specified persons with the regional college where consistent with the proper exercise of its functions. Section 23B(6) gives Scottish Ministers the power, by order, to amend the lists of specified persons that a regional college must consult (in section 23B(3)) or seek to collaborate with (in section 23B(5)). The power in section 23B(6) is constrained by section 23B(7) which provides that Scottish Ministers cannot modify the entries for trade union representatives (section 23B(3)(a)) or students’ associations (section 23B(3)(b)).

Reason for taking power

16. The power to amend the list by order gives Scottish Ministers flexibility to specify additional persons or to change the list to reflect changed circumstances, or to reflect changes in the nature or status of the specified persons.

Choice of procedure

17. The power is subject to negative procedure. This is considered appropriate, particularly given the constraint that Scottish Ministers cannot modify the entries in relation to trade union representatives and students’ associations since these types of bodies are likely to be most affected by a regional college complying with its duties under section 23B. It should be noted that the provision is similar to a requirement on the SFC to consult specified persons under section 22 of the 2005 Act. It is likely that Scottish Ministers would make changes to the lists under section 22 and 23B at the same time and therefore it is considered appropriate to have consistent approach in relation to the order-making power. (A similar approach is also taken in similar provisions in the new section 23J).

Section 7 – Colleges: mismanagement

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

18. Section 24 of the 1992 Act, as substituted by section 7 of the Bill, gives Scottish Ministers a power, by order, to remove any or all of the members of an incorporated college’s board in specified circumstances and to appoint new members in their place.

Reason for taking power

19. Existing section 24 of the 1992 Act enables Ministers to remove board members for reasons of mismanagement. The Further Education Review of Governance recommended that board members should be removed if boards fail to deliver agreed outcomes in order to improve the public accountability of colleges. The substituted section 24 specifies additional circumstances where Ministers can remove board members of an incorporated college. Scottish Ministers...
consider that this extended power of removal is necessary in order to ensure that colleges are accountable for agreed outcomes and to safeguard educational opportunities provided at the colleges.

Choice of procedure

20. The power is subject to negative procedure. Existing section 24 of the 1992 Act already provides that the power to remove board members is exercisable by order subject to negative procedure.

Section 8(1) – Regional governing bodies

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<tr>
<th>Power conferred on:</th>
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<tr>
<td>Power exercised by:</td>
<td>Order made by Scottish Statutory Instrument</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure</td>
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</tbody>
</table>

Provision

21. Section 8(1) of the Bill inserts a new section 7B into the 2005 Act. Section 7B(1) establishes, as regional strategic bodies, certain bodies specified in the new schedule 2A to the 2005 Act. Section 7B(2) gives Scottish Ministers a power, by order, to modify part 1 of schedule 2A so as to establish, abolish or rename a regional board (a category of regional strategic body) and to modify part 2 of schedule 2A by adding, removing or varying any entry in part 2 of schedule 2A. Once listed in schedule 2A bodies can be funded by the SFC by virtue of section 12(1)(c) of the 2005 Act, as amended by section 9(1) of the Bill.

Reason for taking power

22. A key aim of the Bill is to enable the SFC to fund regional strategic bodies and for functions to be conferred on these new bodies. Flexibility is required to enable the list of relevant bodies to be amended to take account of future restructuring, such as the merger of colleges to form colleges which are then designated as regional colleges, which could then involve the abolition of a regional board. New regional boards might require to be created or other regional strategic bodies designated as a result of future decisions about the number and coverage of college regions.

Choice of procedure

23. The power is subject to affirmative procedure. It is considered that more detailed parliamentary scrutiny is required where Scottish Ministers wish to set up new regional strategic bodies which would be funded by the SFC. It should be noted that currently under section 7(1) of the 2005 Act an order to add, remove or vary the list of fundable bodies in schedule 2 to the 2005 Act is subject to affirmative procedure. Since similar principles apply given that new bodies are to be created to receive public funding, Scottish Ministers consider it appropriate to be consistent with current approach under section 7(1) of the 2005 Act.
Section 8(3) – Regional governing bodies

**Power conferred on:** The Scottish Ministers  
**Power exercised by:** Order made by Scottish Statutory Instrument  
**Parliamentary procedure:** Affirmative or Negative procedure, depending on the circumstances

**Provision**

24. Section 8(3) inserts new section 7C into the 2005 Act. Section 7C(1) gives Scottish Ministers the power, by order, to assign colleges of further education to a regional strategic body. Assignment of colleges to a regional strategic body will give that body certain functions in respect of those colleges, including the power to fund them. New section 7D(2) of the 2005 Act (as inserted by paragraph 6(5) of the schedule to the Bill) provides that orders made under new section 7C(1) may make provision concerning the college boards’ membership and such other provision as is considered appropriate. Under new section 7D(5), Scottish Ministers must seek to ensure that an incorporated college is either designated as a regional college or assigned to a regional strategic body, and that at least two colleges are assigned to a regional board.

**Reason for taking power**

25. A key aim of the Bill is to allow Scottish Ministers to make the necessary provisions to ensure that in each college region there is a single regional body that will be held to account for the delivery of college education in that region. In regions where there is more than one college of further education (a multi-college region) that necessitates identifying which colleges are to be assigned to which regional strategic body. Flexibility is required to enable further colleges to be assigned to a regional strategic body or for colleges to be assigned to different regional strategic bodies, which might occur as a result of future decisions about the number and coverage of college regions.

**Choice of procedure**

26. Exercise of this power could involve adding new bodies to the list of bodies which are entitled to receive public funding, in this case through a regional strategic body. Where this occurs, Scottish Ministers consider it appropriate that this would be subject to the affirmative procedure. This would be consistent with the approach taken in section 7(1) of the 2005 Act where a body is added to the list of fundable bodies and in section 7B(2) where regional strategic bodies become eligible for funding from the SFC. However, where the exercise of this power results in the assignation of a body which is already funded by either the SFC or by a regional strategic body, then assignation would not involve any decision on whether it should be publicly funded. Accordingly, Scottish Ministers consider it appropriate that such assignations should be subject to the negative procedure as they require less Parliamentary scrutiny since they in effect relate to a change in the status of a body which is already in receipt of funding.

**Section 10(1) – Regional governing bodies: functions**

**Power conferred on:** The Scottish Ministers  
**Power exercised by:** Order made by Scottish Statutory Instrument  
**Parliamentary procedure:** Negative procedure
Provision

27. Section 10(1) of the Bill inserts a new section 23J into the 2005 Act. Section 23J(1) places a duty on a regional strategic body to consult specified persons where the regional strategic body considers it appropriate to do so in the exercise of its functions. In addition, section 23J(3) places a duty on a regional strategic body to seek to secure the collaboration of certain specified persons with the regional strategic body where consistent with the proper exercise of its functions. Section 23J(4) gives Scottish Ministers the power, by order, to amend the lists of specified persons that a regional strategic body must consult (in section 23J(1)) or seek to collaborate with (in section 23J(3)). The power in section 23J(4) is constrained by section 23J(5) which provides that Scottish Ministers cannot modify the entries for the regional strategic body’s colleges (in section 23J(1)(a) or 23J(3)(a)), or for trade union representatives (section 23J(1)(b)) or students’ associations (section 23J(1)(c)).

Reason for taking power

28. The power to amend the list by order gives Scottish Ministers the flexibility to specify additional persons or to change the list to reflect changed circumstances, or to reflect changes in the nature or status of the specified persons.

Choice of procedure

29. The power is subject to negative procedure. This is considered appropriate, particularly given the constraint that Scottish Ministers cannot modify the entries in relation to a regional strategic body’s colleges, trade union representatives and students’ associations since these types of bodies are likely to be most affected by a regional strategic body complying with its duties under section 23J. It should be noted that the provision is similar to a requirement on the SFC to consult specified persons under section 22 of the 2005 Act. It is likely that Scottish Ministers would make changes to the lists under section 22 and 23J at the same time and therefore it is considered appropriate to have consistent approach in relation to the order-making power. (A similar approach is also taken in similar provisions in the new section 23B).

Section 11(2) – Regional boards

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<th>Power conferred on:</th>
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<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
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Provision

30. Paragraph 18(1) of the new schedule 2B to the 2005 Act, as inserted by section 11(2) of the Bill, gives Scottish Ministers a power, by order, to vary, add or remove any provision relating to a regional board’s constitution, functions or administrative arrangements.

Reason for taking power

31. Scottish Ministers consider it appropriate that they have flexibility to amend provisions regarding a regional board’s constitution, functions or administrative arrangements. The Bill would create boards of a novel nature, new to the post-16 education system. Scottish Ministers would consider it helpful to be able to respond to any new demands on these boards by enabling such provisions to be amended. It should be noted that section 3(5) and section 12(8) of the 1992
This document relates to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

Act currently give Scottish Ministers the power, by order, to amend comparable provisions for incorporated colleges in relation to the constitution and proceedings of incorporated college boards (section 3(5)) and powers of incorporated college boards (section 12(8)). Scottish Ministers consider that similar provision is necessary in relation to regional boards in order to allow consistency of approach in the provisions applying to incorporated colleges and regional boards.

Choice of procedure
32. The power is subject to negative procedure. Similar provision is made in section 3(5) and section 12(8) of the 1992 Act with respect to incorporated colleges. Scottish Ministers consider it appropriate to take an approach consistent with these provisions. It is considered that this would allow sufficient Parliamentary scrutiny of any amendments made to the new schedule 2B.

Section 12 – Regional boards: mismanagement

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision
33. New section 23N of the 2005 Act, as inserted by section 12 of the Bill, gives Scottish Ministers a power, by order, to remove any or all of the members of a regional board in specified circumstances and to appoint new members in their place.

Reason for taking power
34. Scottish Ministers consider it appropriate to have powers to be able to act if necessary to remove members if the boards are being mismanaged. Scottish Ministers consider that these powers are necessary to ensure that regional boards are accountable for agreed outcomes to safeguard educational opportunities provided by colleges funded by regional boards.

Choice of procedure
35. The power is subject to negative procedure. Section 24 of the 1992 Act provides similar powers to remove board members of incorporated colleges by order subject to negative procedure. Scottish Ministers consider it appropriate to take an approach consistent with these provisions.

Section 15(1) – Duty to provide information to Skills Development Scotland

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision
36. Section 15(1) gives Scottish Ministers the power, by order, to place a duty on any person to provide information which that person holds about a young person to Skills Development
Scotland for the purposes of enabling or assisting Skills Development Scotland to monitor that young person’s involvement in education or training, to provide advice or support regarding that young person’s involvement in education or training or to exercise any other functions in relation to that young person. By virtue of section 15(2) Scottish Ministers may specify persons who are to provide information, information to be provided and the form and manner in which it is to be provided.

Reason for taking power

37. Scottish Ministers will wish to impose this duty to provide information to Skills Development Scotland on persons who are providing education and training to young persons. It is essential that they have flexibility to make provision regarding the persons on whom the duty should be imposed at any time and to be able to make changes to the list of such persons as and when necessary by means of subordinate legislation. Further, it is considered that the details regarding the information to be provided and the form and manner in which it is to be provided would be largely technical and should therefore be determined in subordinate legislation.

Choice of procedure

38. The power is subject to negative procedure. If Parliament has already approved the principle that persons should be required to share information with Skills Development Scotland for the purposes specified in section 15(1), it is considered appropriate that an order to specify the persons to provide information or to specify the types of information to be provided is subject to negative procedure. It is not thought that it would be necessary for Parliament to affirm the persons on whom the duty is to be imposed, nor the type of information to be provided, nor the form and manner in which it is to be provided. These details ought not to be controversial.

Section 15(5) – Duty to provide information to Skills Development Scotland

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<td>Parliamentary procedure:</td>
<td>Negative procedure, or, where it relates to a change of name the order must be laid before the Parliament under section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010</td>
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Provision

39. Section 15(5) gives Scottish Ministers the power, by order, to modify section 15 to replace references to Skills Development Scotland with references to any other person if they consider it appropriate to do so.

Reason for taking power

40. As explained above, section 15(1) of the Bill enables Scottish Ministers to place a duty on any person to share information with Skills Development Scotland. It is conceivable that Scottish Ministers might reconsider the role of Skills Development Scotland in future and, as part of that, whether it remains the most appropriate organisation to be provided with information in relation to a young person’s education and training. In addition, it may be that in
future there is a change to the name of Skills Development Scotland and this power gives Scottish Ministers the flexibility to deal with such a change of name.

Choice of procedure

41. This power is subject to negative procedure. This is considered to be appropriate given that a change to the person to whom any information about a young person is to be provided would be largely technical. If the power is used to reflect a change to the name of Skills Development Scotland, the exercise of the power would be subject to no procedure and would require under section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 to be laid before the Parliament as soon as possible after it is made.

Section 17(1) – Ancillary provision

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative procedure (if it textually amends legislation) otherwise negative procedure

Provision

42. Section 17(1) would allow Scottish Ministers to make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with, or for giving full effect to, any provision made by, or by virtue of, this Bill

Reason for taking power

43. The provision would allow flexibility for Scottish Ministers to make any necessary or unforeseen, adjustments to the underpinning components of post-16 education reform and the practical changes that the Bill would effect. Any amendments required would be likely to be technical in nature. Provision may also be needed to ensure a smooth transition from the current law to that enacted by the Bill. The provision would therefore allow the most effective use of Parliamentary time as these matters can be addressed without resort to primary legislation but undertaken within proper and appropriate Parliamentary scrutiny.

Choice of procedure

44. As is consistent with previous practice, an order is subject to the affirmative procedure when any textual amendments to this Bill or other existing Acts are required. In all other situations, the negative procedure would apply.

Section 18 - Commencement

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: The order must be laid before the Parliament under section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010
This document relates to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

Provision

45. Section 18(1) provides that sections 17 to 19 come into force on the day after Royal Assent. Section 18(2) provides that all other sections should come into force as appointed by order by Scottish Ministers. Section 18(3) provides that such an order might include transitional, transitory or saving provision.

Reason for taking power

46. It is appropriate for the substantive provisions of the Bill to be commenced at such a time as the Scottish Ministers consider suitable. It is usual practice for such commencement provisions to be dealt with by subordinate legislation to allow Scottish Ministers to plan commencement appropriately with stakeholders. Sections 17 to 19 are being commenced by the Bill.

Choice of procedure

47. The power is subject to the requirement in section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 that the order should be laid as soon as possible after making, as is normal procedure for commencement orders.

Schedule 1 — paragraph 6(20)(c) — Modification of enactment

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<td>Parliamentary procedure:</td>
<td>Affirmative or Negative procedure, depending on circumstances</td>
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Provision

48. Section 7(1) of the 2005 Act gives Scottish Ministers a power by order to add, remove or vary the list of fundable bodies in schedule 2 to the 2005 Act. Paragraph 6(20)(c) of the schedule to the Bill amends section 34(4)(b) and inserts new section 34(4)(ba) which provides that an order under section 7(1) is subject to the affirmative procedure, other than where the order is made only in the consequence of a body changing its name or being closed.

Reason for taking power

49. The order-making power in section 7(1) of the 2005 Act, by virtue of section 34(4)((b) of the 2005 Act, is currently subject to the affirmative procedure in all circumstances.

50. Under section 3(4) of the 1992 Act, a governing body of college can change the name of the college with the consent of Scottish Ministers. Under section 49(1) a designated institution can (subject to certain restrictions) change its name with the consent of the Privy Council. However, if either were to happen without a corresponding change to the fundable bodies list, the SFC would be unable to continue to fund the body under its new name. It seems to Ministers to be disproportionate for an affirmative order to be required under section 7(1) in order to ensure that SFC funding can continue following a change of name.

51. Similarly, Scottish Ministers have powers to close a college under section 3(1) of the 1992 Act by order (subject to negative procedure as provided for in section 60(1)). Scottish Ministers
have powers under section 47 of the 1992 Act to close designated institutions by order (again subject to negative procedure, as provided for in section 60(1)). It seems to Scottish Ministers to be disproportionate for an affirmative order to be required under section 7(1) to remove a body from the fundable body list as a consequence of an order to close it, if the order to close it is subject only to the negative procedure.

52. While, the SFC is not required to consider certain matters in proposing or approving a change to the fundable body list because of a change of name or closure of a body (section 7(6) of the 2005 Act refers), Scottish Ministers are still required to make an affirmative order for what are in effect ‘tidying up’ changes to the fundable bodies list.

Choice of procedure

53. Once section 34(4) is amended, an order which changes the list of fundable bodies in schedule 2 to the 2005 Act will be subject to negative procedure where it reflects changes resulting from a fundable body changing its name or being closed. Scottish Ministers consider that the negative resolution is more appropriate as the Parliamentary scrutiny involved in affirmative procedure is not considered to be necessary in such circumstances. Any change to the list of fundable bodies where the modification is not due to a body changing its name or being closed, and where the SFC is consequently required to propose or approve the modification under section 7(2), continues to be subject to the affirmative procedure.
Education and Culture Committee

2nd Report, 2013 (Session 4)

Stage 1 Report on the Post-16 Education (Scotland) Bill

Published by the Scottish Parliament on 20 March 2013
Education and Culture Committee

2nd Report, 2013 (Session 4)

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Remit:

The remit of the Committee is to consider and report on further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning and matters relating to culture and the arts falling within the responsibility of the Cabinet Secretary for Culture and External Affairs.

Membership:

George Adam
Clare Adamson
Colin Beattie
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The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Post-16 Education (Scotland) Bill\(^1\) was introduced in the Scottish Parliament on 27 November 2012. It introduces provisions covering six areas, which are discussed in detail below.

The wider context of reform

2. According to the Policy Memorandum published alongside the Bill\(^2\), the legislation would provide “a technical and administrative underpinning”\(^3\) for some aspects of the Scottish Government’s wider programme of post-16 education reform. The Policy Memorandum sets out various benefits that the Scottish Government expects to result from this broader reform, for example, that the revised system will—

- better support jobs and growth;
- improve life chances, especially for young people;
- fundamentally change the provision of skills and other forms of post-16 education by aligning learning to labour market demand;
- contribute to the Scottish Government’s purpose targets on improving economic participation and productivity, and, ultimately, increasing economic growth.

\(^1\) Post-16 Education (Scotland) Bill, as introduced (SP Bill 18, Session 4 (2012)). Available at: [http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd.pdf).

\(^2\) Post-16 Education (Scotland) Bill. Policy Memorandum (SP Bill 18-PM, Session 4 (2012)). Available at: [http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-pm.pdf).

\(^3\) Policy Memorandum, paragraph 2.
3. Overall, the Policy Memorandum states that the aim of the reforms “is to make post-16 education more responsive to the needs of learners and employers”\(^\text{4}\).

4. While certain aspects of the wider reform agenda have been discussed in the course of evidence-taking, this report does not provide a full assessment of these developments. Rather, it focuses on the overall merit of the provisions contained in the Bill, with reference to the broader reforms where relevant.

The general principles of the Bill

5. At Stage 1 the Committee’s task is to report on the Bill’s general principles and this report discusses the general principles of each provision in some detail. The Committee makes clear from the outset its support for the Bill’s underlying aims and the general direction of policy. The Committee’s support, however, is qualified. As the remainder of this report demonstrates, the Committee has some concerns about aspects of the proposed legislation and requires further information before amendments to the Bill can be considered at Stage 2.

6. Various organisations expressed reservations about the pace of change. The Committee accepts the Scottish Government’s right to make reforms in this area and the need to establish a clear timetable for doing so. However, the Committee also notes the Policy Memorandum’s statement that the reforms “represent an unprecedented level of change to the system and, in particular, to our colleges”\(^\text{5}\). It is therefore critical that the Bill, which underpins many of these fundamental changes, is subject to a detailed level of scrutiny. The Committee hopes that this will allow all interested parties to understand how the proposed changes will work and how they will help to deliver better outcomes for learners.

7. The Committee has taken a considerable amount of evidence at Stage 1 from a wide range of bodies representing all the key interest groups. The input of these organisations has been essential and the Committee thanks all those who participated for ensuring that its Stage 1 scrutiny was conducted in a well-informed manner.

8. Before considering the specific provisions in more detail, the Committee considers that it would be helpful to set out a number of over-arching observations on its Stage 1 scrutiny and the Bill as a whole. These comments provide some context for the more detailed analysis that follows and aim to assist other members’ consideration of the Bill during the Stage 1 debate—

- There is broad and strong support for the general direction of policy, but also a considerable number of concerns and questions about the specific approach being adopted in some cases;

- Several organisations, particularly in the higher education sector, have disputed that legislation is actually needed in certain areas – for example, on governance and access – and have argued instead that existing, non-

\(^{4}\) Policy Memorandum, paragraph 4.

\(^{5}\) Policy Memorandum, paragraph 5.
statutory measures could achieve the same end. Universities are particularly concerned about the Bill’s potential threat to their ‘responsibility autonomy’, a concept that is discussed in more detail below;

- For each provision in question, the Committee therefore sought to understand why legislation would be preferable to relying on non-statutory measures. In doing so, the Bill can be seen as sending a clear message that on-going efforts to tackling issues such as access must improve.

- Various organisations considered that there is some imprecision in the Bill, or suggested differing interpretations of what the legislation would mean in practice. The report sets out some of these areas and invites the Scottish Government’s response in the expectation that this may help to reduce the number of amendments at Stage 2;

- It is the Committee’s role at Stage 1 to consider the Bill’s Policy Memorandum (PM). Relevant comments on the PM are provided throughout this report. Taken together, the Committee considers that these comments demonstrate that the PM should have provided more detailed and much clearer information on certain provisions;

- While the consultation section of the PM describes the consultation that was undertaken on college regionalisation and college and university governance, it does not mention tuition fees, widening access, data sharing or the review of fundable further and higher education. Notwithstanding the Scottish Government’s subsequent correspondence on this matter, the Committee considers that the consultation undertaken on these areas should have been described in the PM;

- It is also the Committee’s role at Stage 1 to consider the reports it received from the Finance Committee on the Bill’s Financial Memorandum, and from the Subordinate Legislation Committee on the Delegated Powers Memorandum. Specific comments on issues arising from the Finance Committee’s report are provided throughout this report. The Cabinet Secretary for Education and Lifelong Learning, Michael Russell, has promised to respond to the substantive issues raised in the Subordinate Legislation Committee’s report.

- Finally, the Committee and witnesses consider that the success of many measures in the Bill will only become clearer in the longer term. The Committee intends to monitor these issues over the remainder of this parliamentary session.

9. The rest of this report considers the six main provisions of the Bill in the order that they appear.
HIGHER EDUCATION GOVERNANCE (SECTION 2)

Background

10. According to the Policy Memorandum, the purpose of this provision is “to allow Ministers, when providing funding to the SFC [Scottish Funding Council], to impose conditions relating to the need for higher education institutions to adhere to good practice in governance”\(^6\). Specifically, the Bill states that institutions are to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice.

Why is legislation on governance needed?

11. The Policy Memorandum does not explain what the problems with university governance are that have led the Scottish Government to consider legislating in this area.

12. Professor Ferdinand Von Prondzynski, the principal of Robert Gordon University, recently chaired a review of university governance for the Scottish Government\(^7\). In providing oral evidence to the Committee last year on his report, he noted that—

“I do not believe that there has been a systemic governance problem in Scottish higher education, nor do I believe that those who have been involved in the governance and management of universities have overwhelmingly been anything other than excellent … but there are signs of issues that must be examined so that we do not have a significant problem to repair in future, which is always much more difficult.”\(^8\)

13. University chairs who provided oral evidence to the Committee on the Bill, stated that “it is generally accepted that there is no particular problem with governance in Scotland to be solved”\(^9\).

14. The evidence presented to the Committee, however, suggests that this ‘general acceptance’ does not exist. The NUS and the University and College Union (UCU) Scotland provided examples of what they considered to be problems with university governance, which can be summarised as follows—

- UCU Scotland expressed concern that university courts – the governing bodies – were “rubber-stamping bodies that were not effectively scrutinising decisions that were being made in universities”\(^10\);
The NUS added that “the lack of transparency in a lot of what is being exercised is a huge problem.” “Far too often … autonomy has not been exercised as responsibly as it should have been. For example, more than £4 million is spent each year on university principals’ salaries. That spend is out of control in comparison with the rest of the public sector.”\footnote{Scottish Parliament Education and Culture Committee, \textit{Official Report}, 19 February 2013, Col 1979.}

The NUS went on to highlight a lack of progress in terms of widening access and the diversity of people on university governing bodies.

15. Both trade unions reiterated their support for the von Prondzynski report and cautioned against unpicking its recommendations.

\textit{Legislating on governance}

16. At the same time as the Committee was scrutinising the Bill at Stage 1, a draft code of governance was being devised for higher education institutions (HEIs). This is discussed in more detail below. While the Bill does not actually specify the particular principles of governance that are to be adopted by HEIs, Scottish Government officials confirmed that this code would effectively become the “principles of governance” that are referred to in the Bill.

17. There was unanimity in evidence that HEIs\footnote{The terms ‘HEIs’ and ‘universities’ technically have different meanings but they are used interchangeably in this report for ease of reference.} should adhere to an appropriate code of governance; indeed, there is already a UK-wide code in existence that is followed by all Scottish HEIs\footnote{Committee of University Chairmen. (2004) Guide for Members of Higher Education Governing Bodies in the UK: Governance Code of Practice and General Principles. Available at: \url{http://www2.bcu.ac.uk/docs/cuc/pubs/CUC-Summary-Guide-HEFCEFInal.pdf} [Accessed 19 March 2013].}. However, those witnesses from the higher education sector who provided evidence to the Committee, representing principals and chairs, voiced strong concerns about this provision.

\textit{A threat to responsible autonomy?}

18. The higher education sector’s main criticism is that section 2 of the Bill gives Scottish Ministers the power to impose any principles of governance or management which appear to them to constitute good practice i.e. there is no obligation to consult or to establish agreement with HEIs. Notwithstanding the current Scottish Government’s commitment to working with the sector to develop a code of governance, there is a worry that this potentially gives governments future control over universities’ management or governance.

19. Universities made clear to the Committee their concerns that such a situation could potentially jeopardise their “responsible autonomy”\footnote{Universities Scotland defined this as follows: “universities and other HEIs are responsible for delivering public benefit in return for public investment, but are best able to succeed in this and in their wider missions when they are operating within a framework of clear institutional autonomy.”}. The principal of the University of Strathclyde noted that “the Shanghai tables of universities that perform best on the international stage show that those with greater autonomy
perform better. Principals also stated that observers saw the way in which Scottish universities discharge their responsible autonomy “to be one of the key reasons why Scotland’s university system is so disproportionately successful”.

20. Universities fully accepted the principle that they should be held accountable for the proper execution of their responsibilities and expenditure, and pointed out that the university sector is already highly scrutinised. Rather than legislating on governance, principals considered that existing mechanisms – such as conditions of grant and outcome agreements with the SFC – already allowed for effective accountability.

21. This view was not shared by the SFC—

“The funding council has a direct interest in there being well-governed institutions because we are distributing £1.6 billion of public money and we need to be sure that it is being used effectively and efficiently. The statutory underpinning makes clearer the obligation of institutions to be well governed and well managed, which contributes to greater accountability for use of that resource. It will ensure that in all the institutions there is real compliance with the obligations that come with public funding.”

22. Before considering the Cabinet Secretary’s position it is helpful to provide further background on the von Prondzynski report and the proposed new code of governance.

The von Prondzynski report

23. Professor von Prondzynski’s review was published in January 2012 and considered various areas of governance, for example, the role and composition of governing bodies and academic boards; and the role and appointment of university principals.

24. Recommendation 2.30 called on the Scottish Parliament to “enact a statute for Scotland’s higher education sector setting out the key principles of governance and management …” Recommendation 7.4 stated that the Scottish Funding Council should commission the drafting of a Code of Good Governance for higher education institutions.

25. After the report was published, the Cabinet Secretary told the Parliament that he “accepted virtually all Professor von Prondzynski’s recommendations”.

The steering group

26. Work on the new code of good governance is being carried out by a steering group set up by university chairs. A group of university chairs who provided oral

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15 Scottish Parliament Education and Culture Committee, Official Report, 22 January 2013, Col 1839
16 Scottish Parliament Education and Culture Committee, Official Report, 22 January 2013, Col 1838
evidence to the Committee explained that “we checked with the funding council …and it was content with our approach … we met the cabinet secretary and discussed the membership of the steering group.”

27. The steering group’s remit is to develop a new Scottish code of good higher education governance and it is to operate in an open, transparent and consultative manner.

28. A paper used by the steering group as the basis for its discussions notes that—

“Some of the proposed solutions [in the von Prondzynski Report] have proved controversial … this paper addresses those aspects of the Report which have generated concern amongst different “stakeholder” groups.”

29. The discussion paper sets out several questions on twelve areas of the von Prondzynski report, which may give the impression that a fairly significant proportion of the report is being reconsidered by the steering group.

30. The content of the code is not known as it is not expected to be published until April, after the Stage 1 debate on the Bill. However, university chairs stated that the report “will go much further than the areas that he [von Prondzynski] covered.”

31. The Committee discussed with the Cabinet Secretary the issue of principals’ salaries, which was addressed in the von Prondzynski report. The Cabinet Secretary noted professor von Prondzynski’s view that there should not be continuing increases in salaries and that the bonus culture should be abolished. Mr Russell went on to say he was sure that some of these issues would be in the code currently being drafted.

32. The von Prondzynski report also recommended that each university governing body should be required to ensure that at least 40 per cent of its membership be female. The Cabinet Secretary said—

“I think that there is now considerable room for improvement on the matter. I will consider whether an amendment should be lodged at stage 2 to take that a step further. I know that the suggestion is that there should be a proportion or percentage of women, and I will actively consider that.”

33. The Committee would welcome clarification from the Cabinet Secretary on whether this issue is likely to be addressed in the code or in the Bill itself.

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Consultation and representation

34. The Committee has reservations – some of them shared by the Cabinet Secretary – about the means by which the chairs and the steering group undertook their work. In particular, the Committee was concerned to hear that no staff or students were represented on the steering group. UCU Scotland questioned how open and representative the review process had been, claiming that it had to make a “significant fuss” before it could get any details about the steering group.

35. In oral evidence the university chairs confirmed that they had considered staff, trade union and student representation on the steering group “but the difficulty was with finding one or two representatives who would cover the complete range”. While they highlighted the difficulty of finding someone who could represent these groups, the chairs also said that “no one on the steering group is a representative. They are there as individuals.”

36. The chairs stressed that they were not running the steering group, which has three chairs on it, stating that it is “independent from us”; that the chairs “merely set it up”; and that “the steering group is not there to impose its views on what the code looks like at the end; it is there to make the thing happen. We believe that the real purpose is to consult fully in every institution.” The Committee notes these statements but also highlights that the steering group’s remit is to “develop a new Scottish code of good higher education governance”, which suggests its role is more active than these quotations may suggest.

37. The Committee also notes with surprise the chairs’ comments that “when we produced the terms of reference [for the steering group], we had no idea that a bill covering governance would be running in parallel with the steering group.” If this is the case, it raises questions about the effectiveness of communication between the chairs and the Scottish Government.

A voluntary code?

38. There was some confusion in evidence as to whether the new code will be voluntary or not. The SFC initially stated “as things stand, it will be a voluntary code that the autonomous institutions will sign up to”, then added—

“... we require good governance in the funding council as a condition of our grant, through our financial memorandum. There is an existing code in place

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and, when there is a new code, we would, to all intents and purposes, require that all institutions are signed up to it. It is not voluntary; in other words, it is not a case of “I don’t think I’ll sign up to this code. I’ll go and do something else.” Once the code is in place, we will expect all institutions that we fund to abide by the terms of the code. If they do not, we will require them to explain why."\[31\]

39. It is worth noting at this point, in light of the SFC’s comments above about compliance, that sanctions may be applied to higher education institutions if they fail to comply with the principles of good governance that are established. Scottish Government officials said “such matters would be part of an holistic assessment of the institution’s performance by the Scottish funding council\[32\] and later clarified that, in some circumstances, this could lead to an institution having its money reduced.

40. The Cabinet Secretary said the code would not be voluntary.

**Further scrutiny of the code**

41. Ideally, the new code of governance would have been available in advance of the Bill, which would have allowed for scrutiny of its contents by the Committee. The Committee would welcome a detailed explanation of the process by which the code will be signed off.

42. Given the fundamental importance of this provision, the Committee intends to take further evidence on the published code before considering any amendments at Stage 2.

43. In response to members’ questions about having to scrutinise this provision when the draft code was not available, the Cabinet Secretary said—

“The bill does not refer to the code. There is an existing code. The provision emphasises the need for good governance, which can involve the existing code or be improved by the better code. That code will come to and be discussed with the Committee, which will take evidence on it. Given that, I do not see the problem, to be frank.”\[33\]

44. Irrespective of the content of the final code, the key issue is whether there is merit in the Scottish Government legislating on governance, particularly where the provision in question does not refer to HEIs themselves having any input. This issue may not be resolved even if the code currently being drafted by the steering group is agreed; the question of how any future code of governance would be agreed would still remain. Despite its misgivings, Universities Scotland has clearly signalled its willingness to compromise on this issue, and has proposed various amendments to the Bill to seek its desired changes. The Committee invites the

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Management in HEIs

45. There is another important issue on which the Committee would welcome further information from the Scottish Government before Stage 2. The Bill states that HE institutions are to comply with any relevant principles of good governance and management. Principals were concerned about this wording, pointing out that “management is about delivery of a pre-approved strategy” and that “management is really inside the machinery of the institution”. In short, they felt that management is not an issue over which political control should be exercised.

46. In oral evidence, Scottish Government officials said that the Scottish Government’s interest is “absolutely in governance” ... “however, that flips into some strategic management issues, such as when the secretary of a chair of court has management responsibilities”. Officials confirmed that they had discussed the precise wording of this provision with sector representatives and would consider suggestions made at Stage 2. The Committee asks the Scottish Government to clarify how the legislation and new code will avoid straying into inappropriate areas of university management.

Conclusion

47. The Committee has set out in some detail the evidence taken on this provision and has indicated that it will take further evidence before considering amendments at Stage 2. There is unanimous agreement that HEIs should continue to adhere to an appropriate code of governance and the Committee has invited the Cabinet Secretary to explain how universities’ concerns about this being on a statutory basis can be addressed.

WIDENING ACCESS (SECTION 3)

48. According to the Policy Memorandum, the purpose of this provision is “to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups”. Through this provision, the Scottish Ministers may impose a condition that higher education institutions are to comply with a widening access agreement.

49. Section 3(3) of the Bill states that a widening access agreement is “an agreement under which a higher education institution is to take actions for the purposes of enabling, encouraging or increasing participation in fundable higher education ... by persons belonging to socio-economic groups which are under-represented in fundable higher education”.

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36 Policy Memorandum, paragraph 17.
37 Post-16 Education (Scotland) Bill, Section 3 (3).
50. In general, witnesses strongly supported the principle of this provision. However, there was some disagreement as to whether there is sufficient evidence to allow the Committee to come to a decision on this provision, and whether legislation is required to achieve the Scottish Government’s aims.

What is meant by widening access?

51. “Widening access” is the term used to refer to activity involved in increasing the number of higher education entrants from disadvantaged or under-represented groups.38

52. The Policy Memorandum contains examples of existing efforts to widen access, including schools promoting aspiration, summer schools, articulation agreements with partner colleges and targeted academic support for those who come from a background with a lesser academic tradition. However, the Policy Memorandum provides very little information on the current and historic levels of university attendance by under-represented groups. Neither does it indicate which initiatives have had more or less success in increasing representation from these groups. Such information would have provided the Committee with a greater understanding of the progress that, in the Scottish Government’s view, requires to be made.

53. In discussing widening access, the policy memorandum does not make reference to “contextualised admissions”. Contextualised admissions is a process that involves selecting students based not only on the qualifications they achieved, but also on factors such as their experience and socio-economic background.39 According to Universities Scotland, all higher education institutions in Scotland are already using contextualised admissions or are planning to when processing applications for places for 2013/14.40

54. On this subject, the Cabinet Secretary, when giving evidence to the Committee, noted that “decisions on whom to admit to university are a matter for the universities”—

“However, widening the context by ensuring, for example, that the concept of rich attainment, which exists in other parts of education, is understood will be something very positive.”41

55. UCU Scotland, in its written evidence, raised concerns that the increased focus on contextualised admissions brings with it particular risks and said that

“there may be a need for a statutory duty to protect institutions and in particular admissions staff from libellous claims.”\textsuperscript{42} The Committee would welcome clarification from the Cabinet Secretary as to how this risk will be mitigated to protect institutions and staff from legal action in the operation of a contextualised admissions system.

\textbf{Who benefits from widening access?}

56. The Bill refers to widening access by ‘under-represented socio-economic groups’, while the Policy Memorandum highlights that 11 per cent of students attending university in 2010/11 came from the 20 per cent most deprived areas. According to Scottish Government officials, “in the widening access agreements that have been developed voluntarily between the institutions and the funding council, the focus has been on the lowest 20 per cent and the lowest 40 per cent in the index of multiple deprivation.”\textsuperscript{43, 44}

57. In oral evidence, the principal of the University of Edinburgh said that the SIMD 20 “is an imperfect measure because it is a postcode measure”. He went on to highlight other measures available, including whether residual family income is low; whether anyone from the family has attended university; and whether the student is at a low-achieving—in terms of university success—school.\textsuperscript{45}

58. The Scottish Children’s Services Coalition welcomed the widening access provisions in the Bill but recommended that socio-economic groups be defined and that they should “specifically include children and young people with complex needs, including learning difficulties.”\textsuperscript{46}

59. A number of the written submissions similarly highlighted the need to extend the focus of widening access activity, specifically to take account of the support needs of young people leaving care, those with complex needs and disabled young people. The Centre for Excellence for Looked After Children in Scotland stated—

“We strongly endorse the stated commitment to widening access to further and higher education for young people who may experience disadvantage. Young people in care, and care-leavers, are an under-represented group. Opportunities to continue education with practical, emotional and financial support which is well planned and easily accessible are paramount.”\textsuperscript{47}

60. In light of the comments above, the Committee invites the Cabinet Secretary to state whether—

\textsuperscript{42} University College Union Scotland. Written submission, paragraph 9.
\textsuperscript{44} This is commonly referred to as SIMD 20 or 40, from the Scottish Index of Multiple Deprivation.
\textsuperscript{46} Scottish Children’s Services Coalition. Written submission, Paragraph 6.
\textsuperscript{47} Centre for Excellence for Looked After Children in Scotland. Written submission, paragraph 8.
• there is a need to establish a shared understanding across universities of exactly who would be considered to be part of an under-represented socio-economic group;

• there is merit in widening access to include groups who are under-represented other than as a result of their socio-economic status.

Has progress on access been satisfactory?

61. In oral evidence to the Committee, university principals and Universities Scotland provided evidence to demonstrate that progress had been made on access. For example, Universities Scotland noted—

“Over the past six years, there has been a 17 per cent increase in university students coming from the most deprived areas. Similarly, there has been a 26 per cent increase over that period in the number of people articulating from college to university and an improvement of nearly 38 per cent in those articulating with advanced standing. Progress is being made across the board.”

62. Principals strongly rejected a suggestion from the Committee that they had ‘failed miserably’ to effect an appropriate improvement. The principal of the University of Stirling pointed out—

“All of Scotland’s universities are making enormous efforts to ensure not only that we admit students but that they have a successful experience and exit university with a qualification.”

63. Principals also mentioned some of the inherent challenges in attracting disadvantaged students to university, pointing out, for example, that—

“That are not easy wins. We need to recognise that, particularly in Glasgow, we are talking about schools in which 4 per cent of leavers enter higher education—that is a very low rate. All our work is about trying to work with partners in education and further education to increase the figure by increasing aspirations and the bridging activities that allow us to get people with higher aspirations into higher education, whatever that higher education might be.”

64. Other witnesses, particularly trade union and student representatives, were of the view that the rate of improvement had been far too slow. The EIS suggested that universities’ efforts to improve access may not always have been made at their own volition—

“There is a question about how far universities would have moved if they had thought that legislation would never be a possibility ... Unfortunately,

however, if universities were left to themselves, the means of delivering wider access would not be applied consistently.\textsuperscript{51}

65. Scottish Government officials noted that there had only been “something like a 1 per cent improvement over the past nine years”\textsuperscript{52}, while NUS claimed that “a year ago, it would have taken 40 years [to get fairer access] if things had carried on at the current rate”\textsuperscript{53}.

66. Access is another area on which principals, and other university representatives, considered legislation to be unnecessary, suggesting it may compromise universities' responsible autonomy. The principal of the University of Stirling stated that—

“Admissions is a particularly complex area and it is exactly the sort of thing that we see the institutions having responsible autonomy and control over, rather than having something done to us.”\textsuperscript{54}

67. Principals pointed out that existing procedures, for example, SFC conditions of grant and outcome agreements, already provided a sufficient means through which accountability could be exercised and that legislation was an unnecessary step.

68. The SFC disagreed, succinctly setting out the benefits of legislating in this area—

“We can negotiate better results in widening access through our outcome agreement negotiations if there is an appropriate section in the bill than we can if there is not.”\textsuperscript{55}

How will access be improved?

69. The Policy Memorandum does not explain how the Bill would actually improve access, for example, whether the legislation is likely to result in universities undertaking measures that they had not previously been able to undertake. Neither does the Policy Memorandum state the rate of improvement being sought by the Scottish Government.

70. In oral evidence the Cabinet Secretary went into this area in some depth, making clear his expectation that universities should make significant and lasting improvements—

“The aim is at least to meet the percentage population share—perhaps 20 per cent—that would come from the lower socioeconomic communities.

Actually, I would go further than that because … I have campaigned for this for a long time and I believe that such a change is long overdue. Therefore, I do not think that there should be any limit to that. I think that we should be inspiring young people and older people to aim as high as they can.” 56

71. When pressed on what this aspiration would actually mean in practical terms for universities, the Cabinet Secretary said the Bill—

“makes it clear that the agreements [on access] will be with individual institutions, which will have different targets and methods. That it how it should be. There would something wrong if we were trying to do this in a one-size-fits-all way.” 57

72. Mr Russell said he did not expect there to be an overall target set—

“I am saying that there is a target that we should all have in our minds, but … there will be individual agreements with each university.” 58

73. In discussing with Scottish Government officials the consequences of failure to meet any agreed targets, the Committee noted that fining a university would result in the institution having less money to support widening access measures.

74. Scottish Government officials downplayed the risk of financial penalties, confirming that they would not expect to see “significant failures against the widening access agreements”—

“although ministers will specify the existence of such agreements and the general form that they should take, each widening access agreement will be developed between the institution and the funding council. The institution should clearly express its intent on both the targets that it intends to reach and the actions and behaviours that it will demonstrate in achieving them, so there should be clarity on how the widening access targets will be reached as well as what the targets are.” 59

75. Officials then specified the exact process by which agreements would be signed off by institutions—

“There will be a team at the individual institution who have responsibility for the outcome and widening access agreements and who will draft the agreement. The writing of the agreement is undertaken by the institutions and signed off by the university court.” 60

76. The Committee shares the Cabinet Secretary’s aspiration to widen access. However, given that officials have indicated that financial sanctions are unlikely, it would welcome further detail on what the consequences would be for any university that failed to fulfil a widening access agreement that it agreed with the SFC.

77. Further, given the Cabinet Secretary’s statements on widening access targets, which go beyond the content of the Policy Memorandum, the Committee would welcome his response to the risk that some universities could adopt relatively weak widening access targets. While the Committee is strongly of the view that no university should adopt weak targets, the Scottish Government has acknowledged universities’ on-going right to maintain autonomy in determining admissions.

**Funding and displacement**

78. The Policy Memorandum states that “improving participation amongst the most disadvantaged is not about displacing more able students”\(^{61}\) and the Financial Memorandum\(^{62}\) states that “There would be no new or additional budget required [for the Scottish Government] for widening access activity as a result of the Bill”\(^{63}\).

79. Entry to university is commonly based on competition for limited places, with this traditionally decided on the basis of candidates’ examination results. Universities retain autonomy in deciding what the entrance criteria are for any particular course. If the Bill is to increase access to university by members of particular socio-economic groups – which necessitates their being able to access publicly-funded university places – the Committee questioned whether that could risk displacing other students with the requisite grades. Members also sought to understand how on-going measures to widen access are to be funded given the statement in the Financial Memorandum.

80. The principal of the University of Edinburgh spelled out potential risks of seeking to improve access without appropriate funding—

“The fact is that universities have a limited number of places and that working hard on one constituency will change the balance. The mediating factor is that this coming year the Scottish Government is providing an additional 1,700 places, which will be focused on widening participation and will therefore not result in displacement. Inevitably, however, something will happen if you have a limited resource and change the mix.”\(^{64}\)

81. In oral evidence, Scottish Government officials said—

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\(^{61}\) Policy Memorandum, paragraph 24.
\(^{62}\) Post-16 Education (Scotland) Bill. Explanatory Notes (and other accompanying documents) (SP Bill 18–EN, Session 4 (2012)). Available at: [http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-en.pdf)
\(^{63}\) Financial Memorandum, paragraph 131.
“We are absolutely clear that the approach is not about displacing students of higher ability. Instead, we are trying to create a level playing field to ensure that students’ ability can be fully recognised. We are not seeking simply to adjust individual institutions’ entrance qualifications; this is a much more complex and sophisticated full-system approach.”  

82. While there are no funds for widening access directly arising from the Bill, the Cabinet Secretary stressed that funding of around £10 million had been made available for the 1,700 additional university places noted above. This will result in 1,000 extra places for articulation and 700 for widening access.

83. The Committee acknowledged that there are sufficient places provided through the current spending review to ensure that the risk of displacement does not arise over this period. However, given the Cabinet Secretary’s longer term vision of continually expanding access, the Committee sought to understand how the risk of displacement would be avoided in the future.

84. In response the Cabinet Secretary said that “the provision will continue to be funded in a way that meets our policy objectives, and I accept the point that we should want to continue with at least the same number of places and that we should, presumably, want to increase them”. He would not, however, be drawn on the precise figures involved as there will be a further spending review later this year. The Committee welcomes the Cabinet Secretary’s recent commitment to financial support for widening access and articulation.

85. The SFC has confirmed that the focus of widening access activity is on Scottish-domiciled students attending Scottish universities. UCU Scotland noted in its written submission a specific concern about this limitation as this does not offer opportunities for under-represented groups from other parts of the UK to take up initiatives aimed at encouraging participation in a university in Scotland.

Retention

86. Those who provided evidence in this area were clear that access is only one step in the process and that it is crucial that those entering higher education stay and complete their studies.

87. This is a view that is shared by the SFC and the Scottish Government. Officials pointed out that, at current figures, £20 million of the £28-£29 million that the SFC spends annually on widening access, goes directly to retention activities. The Committee welcomes this investment and seeks confirmation that this priority will continue as a core part of widening access activity in future years. The Committee also seeks further information on how widening access funding is allocated to individual institutions, including any guidance directing institutions toward access or retention focused activity.

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88. The Students’ Association of the University of the West of Scotland claimed that the university’s record on access is good, but retention levels are poor. However, it refuted that widening access should mean high drop-out rates—

“Glasgow Caledonian University is a good example of an institution that widens access but has a good record on retention. If all universities are to widen access, everyone acknowledges that the right level of support must be provided, to ensure that students are retained.”

89. According to the NUS, frequent reporting – for example, annual reviews of widening access progress – is crucial to underpin access activity. The Committee agrees and notes that its recent report on the 2013-14 draft budget called for the SFC to provide an annual update on the extent to which it has delivered the priorities set out in ministerial guidance. The Committee requests that these updates be extended to cover the progress that is being made on access and retention.

Outcome agreements

90. This section has discussed the widening access agreements that would be introduced by the Bill. There is an existing process whereby each higher education institution agrees an outcome agreement (which is non-statutory) with the SFC. As noted above, these have included institutions’ efforts to widen access. Scottish Government officials confirmed that, in future, widening access agreements would be published alongside outcome agreements.

91. The Committee, in reflecting on the outcome agreements that were published for 2012-13, notes the concerns raised during Stage 1 about the lack of student and trade union participation in this process. For example, the representatives of university students’ associations said that “the process for developing outcome agreements did not adequately involve students and has led to outcome agreements with little to no student input”. UCU Scotland added that there was little consultation with trade unions on the development of the 2012-13 outcome agreements “because outcome agreements have been rushed in”.

92. The Committee would welcome reassurances from the Cabinet Secretary that future planning of outcome agreements and widening access agreements will involve comprehensive consultation with both students and trade unions.

Conclusion

93. Members welcome the commitment to widening access that is being pursued through the outcome agreements introduced in 2012-13. The Committee is supportive of the principle of widening access, while seeking further clarification on the specific points noted above.

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68 Scottish Parliament Education and Culture Committee, Official Report, 22 January 2013, Col 1869-1870
TUITION FEES CAP (SECTION 4)

Background

94. According to the Policy Memorandum, the purpose of this provision is to allow Ministers—

- “to set an upper limit on the level of higher education tuition fees which post-16 education bodies can charge UK students and certain others who are not entitled to be charged tuition fees at the level set by the Scottish Government; and

- when providing funding to the SFC, to impose conditions with a view to ensuring that post-16 education bodies adhere to such an upper limit.”

95. Paragraphs 27-31 of the Policy Memorandum explain the wider background to this provision clearly and succinctly. Paragraph 30 explains the practical consequences of the Scottish Government’s approach—

“[Scottish] Institutions would not be able to charge students from the rest of the UK fees at a higher level than the highest annual amount which they would pay elsewhere in the UK. Linking the tuition fees cap to the maximum fee level in the rest of the UK would ensure that those students eligible for student support from other funding bodies in the UK could access the full amount of tuition fee support required for their course. It is hoped that this would reduce the likelihood of students deciding not to come to Scotland on financial grounds.”

The cost of a Scottish degree for RUK students

96. The main issue that arose at Stage 1 is that Scottish degree courses are generally longer than in England, meaning that rest-of-UK (RUK) students studying in Scotland may have to pay more overall for their degree.

97. In evidence, the NUS restated its opposition to tuition fees and said, in relation to RUK students, that—

“… due to the four year degree structure of Scotland, we now have potentially the most expensive higher education system of all the UK countries; up to £36,000 as opposed to £27,000 elsewhere for a standard honours degree.”

98. UCU Scotland pointed out that prior to 2012 there was an agreed fee level for RUK students coming to study in Scotland, which went into a central pot and was then redistributed to all universities in Scotland. However, RUK students are not now included in the number of students that Scottish universities can recruit. UCU Scotland considered that—

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70 Policy Memorandum, paragraph 17.
71 Policy Memorandum, paragraph 30.
72 NUS Scotland. Written submission, paragraph 8
“this is why we see universities such as the University of St Andrews and the University of Edinburgh, which are obviously keen to attract students from the rest of the UK, getting as many as they wish at £36,000 a head [i.e. a four year degree for which fees cost £9,000 a year].”

99. Universities Scotland disputed some of the evidence provided by the trade unions about the costs for RUK students in Scotland—

“By our calculations, the average Scottish fee is about £6,900, which is spectacularly below the average English fee ... It is already being shown that means-tested bursaries here are well ahead of those that are being provided in the rest of the UK. The idea that there is some sort of profiteering going on here is bizarre.”

100. Universities Scotland also stated, in relation to the NUS’ evidence about the length of a Scottish degree, that about 30 per cent of degrees in England take four years or more.

*Alternative approaches*

101. UCU Scotland proposed an alternative approach to capping fees, calling for a flat fee that would be the same for every RUK student wherever they studied in Scotland.

102. The NUS expressed concern about the nature of the higher education market that has been created in Scotland and called for control—

“... We have seen the creation of a market, and a market needs regulation; that means lowering the fee cap and having more rules for and conditions on the amount of bursaries that are provided.”

103. Its written submission argued that Scotland did not offer the protections that were available in England, including the statutory role provided for the Office for Fair Access.

*The Scottish Government’s position*

104. The Committee asked Scottish Government officials whether, in setting an upper limit on tuition fees, Scottish Ministers intended to take into account matters such as (a) any wider support packages established by an HEI for the students in question and (b) the longer duration of some Scottish degree courses.

105. Officials stated that—

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76 According to its website “The Office for Fair Access (OFFA) is an independent public body that helps safeguard and promote fair access to higher education.”
77 NUS Scotland. Written submission, paragraph 9.
• it will be for the individual universities to set their own tuition fees for students from the RUK at a level which the universities consider will enable them to continue to attract RUK students;

• individual universities will utilise a proportion of the tuition fees received to provide bursary and support packages to help those RUK students most in need of financial assistance.  

106. In oral evidence, the Cabinet Secretary added—

“quite often students from south of the border can go directly into second year in a Scottish degree, if they have a particular range of qualifications already. In addition, some universities discount and charge for only three years.”

107. The Cabinet Secretary did not share the NUS’s view on the possible merit of a Scottish equivalent to the Office for Fair Access—

“We should remember that the Office for Fair Access south of the border really exists as a financially redistributive mechanism for a system that I think is wrong. It essentially exists to try to undo some of the unjustness of the policy that is being operated south of the border.

In Scotland, the universities have been and are being sensitive to the issue. Their bursary provision for students from the rest of the UK has increased substantially and I see no reason to interfere in that, because the universities are very conscious of the issue. They have also publicly criticised the situation south of the border.”

Conclusion

108. This section of the Bill effectively puts an existing voluntary agreement on a legislative basis. The Committee supports the general principles of the Scottish Government’s approach to the fees cap and will continue to monitor the impact of tuition fees on Scottish higher education throughout this session.

COLLEGE REGIONALISATION (SECTIONS 5-13)

Background

109. According to the Policy Memorandum, the purpose of this provision is to—

• “provide for two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college or multi-college regions;

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76 Scottish Government. Supplementary written submission following oral evidence 15 January 2013, paragraph 2.
77 Scottish Parliament Education and Culture Committee, Official Report, 26 February 2013, Col 2070-2071
• establish new regional strategic bodies for colleges in multi-college regions to support a regional approach to the planning and funding of college provision; and

• introduce Ministerial powers to remove chairs and other members of incorporated colleges and regional boards for reasons of failure (in addition to mismanagement). «81

110. Primary legislation is not required to deliver the programme of college mergers that is underway across Scotland.

111. College reorganisation is clearly the most substantial part of the Bill and an area on which the Committee took an enormous amount of evidence. This report does not seek to cover in depth all of the issues raised. Rather, this section aims to inform the debate by—

• summarising the main changes being proposed by the Bill;

• summarising witnesses’ views on these changes;

• setting out a number of areas where further clarification is needed from the Scottish Government. The Committee hopes that the Scottish Government’s response to these points will set the scene for the detailed consideration of the Bill at Stage 2 and perhaps reduce the number of amendments that may otherwise have been lodged.

Structural changes proposed
112. If the Bill is enacted, the following structures would be in place—

• A regional strategic body would be established for the University of the Highlands and Islands (UHI);

• Regional strategic bodies (known as ‘regional boards’) would also be established for both the Glasgow and Lanarkshire regions;

• Individual colleges within these regions would be known as ‘assigned colleges’;

• Other colleges would be the single college in a particular region and would be known as ‘regional colleges’.

113. When the Bill was published, it was envisaged that there would also be a regional board for Aberdeen and Aberdeenshire. However, colleges in that area now intend to merge. The Scottish Government has stated that it wishes to see single colleges in all areas – while stressing that mergers are a voluntary matter for colleges – and the Bill provides for that eventuality. «82

81 Policy Memorandum, paragraph 17.
82 Post-16 Education (Scotland) Bill, section 13.
114. The Scottish Government has published a helpful document that sets out the proposed new college structures and the proposed changes to boards.\(^{83}\)

**The case for change in college governance**

115. Earlier in this report the Committee criticised the Policy Memorandum for failing to set out the case for the proposed reforms of university governance. The same criticism can be levelled about college governance in that there is very little information provided about why changes require to be made.

116. A review of college governance was undertaken by professor Russel Griggs before the Bill was introduced\(^{84}\), in which some of the problems with existing college governance were discussed. A brief recap of some of these issues in the PM would have provided the necessary context.

117. In oral evidence, trade unions set out what they considered to be some of the failings of the current governance arrangements—

- The EIS said that “the perception was that boards were self-appointing … they were structurally susceptible to the perception ofcronyism in that board members were self-perpetuating and had very close relationships with principals. It was also felt that colleges were not run in an open and transparent way and, because they were not accountable directly to any other body—or, at least, it was very difficult to hold them to account—there was a range of governance standards and, one might say, effectiveness in Scotland’s colleges.”\(^{85}\)

- The NUS emphasised that “student associations in colleges have not had the involvement in decision making that they should have had. The bill provides an opportunity to increase oversight and accountability, with student associations and representatives overseeing the decisions that are being made by college boards.”\(^{86}\)

118. As part of its consideration of college governance, the Committee also discussed the issue of reserves. Professor Griggs’ report said that some colleges had built up significant reserves while others had not, and noted that—

“In many cases this has been unrelated to the standard of management at the College but more to do with the employment and geographical environment within which the college operates.”\(^{87}\)


119. In providing oral evidence on the Bill, the principal of Edinburgh College said—

“I find the term “reserves” interesting. I know that Colleges Scotland is trying to unpick some of this issue to give us a clearer picture of what is liquid, cash or real working capital versus what are reserves in a broader sense. My honest answer is that the situation feels tight to me. I would rather have 90 to 100 days’ worth of cash or working capital than 50 to 60.”

120. The Cabinet Secretary acknowledged concerns that “sometimes colleges have established reserves out of public funding” and said he wanted to ensure “that that money is ploughed back into the system.”

121. The Committee notes that the Griggs report’s recommendations on college reserves are still under consideration by the Cabinet Secretary. The Committee considers that it would be useful if the Cabinet Secretary could provide a response to these recommendations before Stage 2.

The key issues

122. Overall, the evidence provided to the Committee indicates support from the further education sector for the broad aims of the Bill and the wider reform process. For example, Colleges Scotland’s written evidence noted that “colleges have been supportive of the move to regionalisation.” The STUC welcomed the Bill’s aim of improving transparency in further education governance, while the chair of Edinburgh College considered that the process offers—

“… the ability to bring together the quantum of the facilities available in colleges that were previously competing with each other and to ensure not only that communities get the provision that they need close to the point of delivery but, more important, that we have an opportunity to provide centres of excellence and good training for employers and the community across the region as a whole.”

123. However, several witnesses put forward considerable criticisms of the Bill and the wider process at Stage 1. These broad criticisms are set out below. The report then considers some of the more specific themes that were discussed in evidence.

Broad criticisms

124. The Committee held a dedicated evidence session with four college principals in which they expressed some of their concerns with the Bill. In general, the principals discussed a possible erosion of accountability and autonomy, particularly for assigned colleges. In common with the arguments made by...
university principals, they also questioned whether all of the proposed changes required to be in the Bill, and stated that the Bill could be improved to provide greater clarity. On a broader issue, they noted that the advantages of regionalisation could be undermined by the complexity of different sources of funding.

125. In oral evidence, Unison was one of the strongest critics of the Bill and the wider reforms. Although it noted that “there will be some benefits in a regional approach”, Unison argued that “the whole thrust of regionalisation is not really about taking a regional approach. Rather, it is about delivering budget cuts”. Unison went on to argue that colleges are being “forced” into mergers “because they are afraid that if they do not, they will be cut out after the regional boards start to distribute the funding”.

126. The EIS, meanwhile, was concerned that “the complexity of the proposed structure will confound all but employees and public policy experts”.

The Cabinet Secretary’s response
127. In questioning the Cabinet Secretary, the Committee set out a list of criticisms or concerns, some of which are repeated in this section, that had been expressed by previous witnesses. The Cabinet Secretary replied—

“I would want to—but I am not going to—go through the same evidence and point out all the positive things that were said. I think that many positive things were said.”

128. The Cabinet Secretary stressed his willingness to consider amendments. He also reiterated that he was clear about the structure and how it should operate—

“It is quite a simple structure, to tell you the truth. It is a structure that has a regional component wherever you are in Scotland.”

129. The Cabinet Secretary was enthusiastic about the benefits of regionalisation, stating that it “offers great opportunities, which are not just regional”. He added “regionalisation enhances the ability of colleges to deliver locally and ensures that there is broader provision in the area”.

130. The Committee questioned why the Scottish Government has adopted a substantially different approach to reforming further education in comparison to higher education. The Cabinet Secretary said that universities did not have to adopt the regional model as—

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93 Educational Institute of Scotland. Written submission, paragraph 53.
“they are entirely different organisations, operating in different ways. There are only 19 HE institutions. At the end of this process, we will have 13 regional structures.”

Specific themes
131. The remainder of this section discusses some of the specific themes that arose in evidence. This discussion encapsulates some of the broader concerns highlighted above.

132. These specific themes are as follows—

- The relationship between regional boards and their assigned colleges;
- Colleges' charitable status;
- Changes to boards;
- Protecting local provision;
- University of the Highlands and Islands (UHI).

Regional boards and assigned colleges

133. Regional strategic bodies will receive and distribute funding for the region and plan college provision strategically across the region. They will also be responsible for certain appointments to their assigned colleges.

134. This section focusses on the regional strategic bodies proposed for Glasgow and Lanarkshire, which will be known as regional boards. A separate section considers the situation in UHI.

135. As regional boards will effectively be a new layer of governance the Committee asked how this would affect the existing funding mechanisms for colleges. Scottish Government officials said that there would be no change—

“the hierarchy of funding will be as it is at the moment. The Scottish Government will apportion funding to the Scottish funding council and give policy direction in relation to that. The funding council will then distribute that funding to the regional strategic body.”

136. The Committee pursued this question as it was not clear how the SFC or regional boards would know what the financial requirements of assigned colleges would be. Officials confirmed that there will be no bidding process either between assigned colleges and their regional board, or between the regional board and the SFC. However, in establishing its plan for the region, the regional strategic body will be obliged to take account of how funding has to be apportioned across the colleges in that region.

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137. When pressed on the criteria that will be used to accord funding to the colleges within the regional set-up, officials stated that “the establishment of such criteria would be a policy and operational matter as the bill came into force.” The Committee questioned how this would affect accountability if the regional board is to be accountable for deciding how to spend public money on the different colleges in its region. Officials confirmed again that lines of accountability would not change.

138. The Committee also discussed with the Scottish Funding Council (SFC) the relationships between regional boards and their assigned colleges. Its chief executive said that he was having continuing discussions with the Scottish Government about “ensuring in the legislation that the resource moves from the funding council to the regional strategic body to be distributed to the assigned colleges”.

139. He illustrated the point by saying that—

“If something were to go wrong in one of the assigned colleges for which I was accountable financially, there ought to be clarity around the funding council’s capacity to resolve the difficulties or the issues in that particular assigned college.”

140. In response to a question about regional strategic bodies potentially controlling rather than enabling assigned colleges, the Cabinet Secretary stated that—

“The bill is clear about the functions of the regional strategic bodies. I expect them to exercise those functions within the law and to underpin that by working together with good will. I do not anticipate that that problem will arise.”

141. The Committee notes the Cabinet Secretary’s position. However, in light of the SFC’s comments about possible difficulties between regional strategic bodies and assigned colleges, the Committee requests a more detailed explanation from the Scottish Government of how relationships between these two layers will work in practice.

142. On a related point, the Committee would also welcome an explanation of how the proposed new further education strategic forum will work in conjunction with the new college structure. Professor Griggs recommended the establishment of such a forum, “which would drive the sector forward and

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constantly review and evolve the sector in terms of fitness for purpose in a changing educational and economic world”.  

143. There are two issues that arose from the Finance Committee’s report on the Financial Memorandum that, for convenience, can be set out in this section. In line with one of the Finance Committee’s recommendations, the Committee asks the Scottish Government to provide further detail on the extent of the consultation which it held on the costs arising from the college regionalisation provisions in the Bill.

144. The Committee also notes that the estimated costs for the three regional boards for 2015-16, of £1.68 million, will fall by a third since there will not now be a regional board for Aberdeen and Aberdeenshire.

Colleges’ charitable status

145. All further education colleges – specifically their boards of management – have charitable status. The Committee sought clarification from the Office of the Scottish Charity Regulator (OSCR) as to whether the Bill could affect this status. OSCR confirmed it would not but highlighted a particular issue around assigned colleges.

146. In essence, there is an overall duty on the members of a college board, including assigned college boards, to act in the interests of the college. OSCR noted that the Bill gives regional boards “significant powers” over assigned colleges, notably the power to give them binding directions, and stated that—

“it is possible to conceive of a situation (though it may not be particularly likely) where a regional board gives a direction to a college which, though it perhaps may be in the interests of education in the region as a whole, the charity trustees do not feel to be in the specific interest of the college. Charity trustees in such a case might feel themselves to be in a complex and conflicted position.”

147. OSCR went on to note that section 23K of the Bill imposes a duty on regional boards to consult various parties, including the colleges themselves, before issuing such a direction and that “this may help to avoid the situation indicated above”.

148. In a letter to Colleges Scotland, Scottish Government officials acknowledged the scenario but made clear that—

“ … whether college board members feel conflicted or not does not affect their legal position. Complying with such a direction would be a legal

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104 Office of the Charity Regulator. Supplementary written submission - Position on charitable status of FE institutions, paragraph 21.
requirement. Following such a direction would therefore not compromise their role as charity trustees."\(^{105}\)

149. The Committee notes the explanation provided by officials. However, as the Bill will substantially change college governance structures, it invites the Cabinet Secretary’s view on whether the Bill could be amended to provide further assurance to assigned college boards on this matter.

Changes to boards

150. The Bill proposes various changes to the composition of, and the means by which members and chairs are appointed to, the different college boards. For example—

- the chairs of assigned colleges are to be appointed by the relevant regional strategic body, while chairs of regional colleges and regional boards are to be appointed by Scottish Ministers;

- regional college boards and assigned college boards are to be able to appoint the principal to the board (a change from the current position where the principal is automatically a board member). Principals of assigned colleges are able to attend meetings of regional boards;

- half of board members had previously to be appointed on the basis of their experience/ capacity in industrial, commercial or employment matters. This no longer applies.

151. Scottish Government officials stated that “the proposed new arrangements for boards’ constitutions and appointments will improve public accountability by clarifying what is expected of college boards and their members.”\(^{106}\)

Removing board members

152. Officials said that improved public accountability is also expected to result from the powers in the Bill that would extend the grounds for removal of board members by Scottish Ministers. These powers are set out in section 7 and relate to perceived mismanagement by boards, for example, in failing to provide an appropriate standard of education or in terms of financial mismanagement.

153. In discussing this issue, the Cabinet Secretary rejected the view that the Bill is centralising and intends to give ministers more powers. He considered that—

“Each of those [the circumstances in which powers over mismanagement would apply] seems to me to be an utterly reasonable circumstance under which the provisions could apply. What is more, such action would require an


order that would have to be subject to parliamentary scrutiny and could be subject to judicial review.”

**Principals**

154. There was an extended debate at Stage 1 on whether a principal should automatically become a member of the relevant college board.

155. Colleges Scotland considered that the Bill is a bit confused on this issue “the Bill … says, “Oh well, we’re not really sure. We’re going to leave this up to the regional college boards and the assigned colleges.”” In its view, the majority of colleges will have principals as members of their governing bodies, which would result in national inconsistencies.

156. The EIS was firmly of the view that principals should not be members of their boards, whether a regional board or a regional college board, claiming that—

“There is a belief that principals have had and have exercised excessive power in some cases and that a clearer division between governors and managers would therefore be a good thing.”

157. Current principals took a differing view. For example, the principal of Edinburgh College challenged the EIS’s position, saying that “there is nothing to demonstrate that the role of a principal as part of a board as it is currently set out in statute is bad, wrong or does not work”.

**Board chairs**

158. The existing chair of Edinburgh College welcomed the fact that the chairs of regional boards will be appointed through the public appointments process, in a comparable manner to, for example, the chair of an NHS local board. However, the principal of Edinburgh College used this example to again make a contrast between the approaches being taken to college and university governance. She said—

“It strikes me that good progress is being made in the higher education sector with respect to the use of codes of practice as opposed to measures being stipulated in legislation. That is a direction of travel that regional colleges would support.”

**Representation on college boards**

159. A number of other issues around college boards were raised by witnesses. For example, NUS Scotland welcomed provisions in the Bill to achieve the greater involvement of students in institutions’ decision-making; UNISON called for trade

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union representation on college boards; Colleges Scotland claimed that the appointments process for members of regional boards “is not defined very sharply”\(^{112}\), and the principal of Cardonald College said of employee representation “it is a weakness not to provide for broad teaching and support staff representation”\(^{113}\).

160. As noted, the previous requirement for half of boards’ membership to be reserved for those with industrial, commercial or employment experience has been removed.

161. There were, again, mixed views on this provision. An existing college chair said private sector involvement was extremely important as “it is private sector companies in which the people who come through the colleges look for employment”\(^{114}\). Others agreed with the importance of there being good employer representation on a board, but did not agree that there should be a statutory place for such a representative.

162. **The Committee invites the Scottish Government to explain why this requirement has been changed**, given the Policy Memorandum’s statement that the wider reform will “align learning to labour market demand”\(^{115}\) and that the aim is to “make post-16 education more responsive to the needs of learners and employers”\(^{116}\). More generally, given witnesses’ comments on boards, the Committee would welcome an explanation of the underlying principles behind the Scottish Government’s decisions on board appointment and composition.

**Preserving local delivery**

163. One of the main anticipated outcomes of the Bill and the broader reform is that college education will be planned and delivered on a regional basis.

164. This principle was supported in evidence but there were worries about the possible impact on local provision. The NUS, for example, said—

“more needs to be done to protect local access to college courses—often, having that course on the doorstep is fundamental in giving people access to education, whether for the first or second time.”\(^{117}\)

165. The Committee discussed with witnesses the possible move of the Edinburgh College joinery and construction campus from Dalkeith in Midlothian to Granton in north Edinburgh. While the Committee cannot comment on the merits of this specific case it does exemplify some of the generic issues that were raised at


\(^{115}\) Policy Memorandum, paragraph 3.

\(^{116}\) Policy Memorandum, paragraph 4.

Stage 1. For example, there is an ongoing debate about how to avoid unnecessary duplication in course provision without removing duplication of courses where that is beneficial and accessible to the learner.

166. In relation to the example above, the chair of Edinburgh College said—

“We would have a geographic spread for certain things; others would be sited in a place that allows us to build up a centre of excellence and of expertise.”

167. The SFC made the general point that the existing college structure had been criticised as it had led to colleges concentrating too much on their local market.

168. The Committee questioned whether college reform could, in the longer term, result in homogenisation in regions, with the voice of local campuses becoming diminished. The chair of Edinburgh College acknowledged this potential pitfall but thought that it could be overcome—

“How you use the greater power for strategic work that is given through regionalisation is very much down to the policies and attitudes that you bring to it, but the bill does provide greater power. I agree … that how it is used will be up to the bodies themselves, but I trust that they will be held to account …”

Regional boards
169. There was a specific discussion about local provision in areas where regional boards are to be established. Members questioned how factors such as students’ travel costs would be taken into account if, for example, a course were moved from one location to another.

170. Scottish Government officials explained that regional strategic bodies must conclude a regional outcome agreement with the SFC. Officials acknowledged that an outcome agreement “may include some sort of rationalisation where that is in the interest of the learners” but stressed that there would have to be consultation with regional partners, including assigned colleges.

171. The chair of Edinburgh College considered that “regional chairs … will be critical in ensuring that the regional bodies can balance achieving a strategic view for the region overall, engaging with key stakeholders and so on, with retaining the flexibility of local organisations and bodies”.

172. There is a broader point, about the establishment and running of regional strategic bodies, that the Committee wishes to highlight in this section. The SFC noted the Scottish Government’s view that “it does not want huge new layers of
bureaucracy that would consume resources that would otherwise go into front-line education services.\textsuperscript{122} According to the SFC—

\begin{quote}
“the trick will be to establish a relatively uncostly administration at regional level that has the capacity to think regionally and distribute provision across regional colleges in a way that works for students and businesses in the area. It is not an easy ask, but it is the next task.”\textsuperscript{123}
\end{quote}

173. \textbf{The Committee agrees with the SFC that there is a need to explain how the regional boards will meet students’ and businesses’ needs without becoming overly bureaucratic or consuming resources that would better be spent on education. The Committee invites the Scottish Government to set out how it expects this balance to be struck.}

\textbf{University of Highlands and Islands (UHI)}

174. UHI is unique in delivering both further and higher education throughout the highland and islands region. Established as a university in 2011, UHI already operates regionally and has its constitution and governance arrangements established through company law.

175. The Bill only makes limited provisions that directly affect UHI, notably relating to the establishment, funding and functioning of regional strategic bodies.

176. In his report on the future structure and function of UHI\textsuperscript{124}, Dr Foxley recommended that the UHI should be the regional strategic body for the region and that a new further education (FE) regional board should be set up with delegated powers to plan and allocate funding for further education in the region. This FE regional board would be a formal committee of the university court.

177. The Bill establishes UHI as the regional strategic body, with the university court formally performing the role of governing and funding incorporated colleges in the region. Within this structure, the FE regional board becomes a subcommittee of the University Court. The Scottish Government, in a recent note on unincorporated colleges\textsuperscript{125}, states—

\begin{quote}
“The Bill designates UHI as a regional strategic body, as it is the legal entity. This Bill is unable to designate a committee of UHI… It is a matter for the UHI
\end{quote}

\begin{footnotesize}\begin{itemize}
\item[\textsuperscript{125}] Unincorporated colleges are those that do not have a board of management. Incorporated colleges were established through the Further and Higher Education (Scotland) Act 1992. Four colleges are unincorporated: Shetland, Orkney, Newbattle Abbey and Sabhal Mòr Ostaig. All are in the UHI region.
\end{itemize}\end{footnotesize}
Court in accordance with its constitutional arrangements to determine matters delegated to any of its committees.”

178. While most colleges in the region are supportive of UHI becoming the regional strategic body, the understanding was that the delegation of powers to the FE regional board would form a central plank of the changes proposed. The provision to give funding and decision-making powers to the university court has raised concerns with some colleges. For example, Orkney College notes “disappointment” at the lack of provision in the Bill to allow for delegation of powers from UHI to the FE regional body.

179. As assigned colleges are only represented on the FE regional board and not the regional strategic body (university court), concerns have been raised that — if a range of powers over strategic planning and funding are not delegated to the FE regional board — there is a risk that regional decision-making could be in conflict with or detrimental to local needs.

180. The Committee seeks clarification from the Cabinet Secretary as to whether there are any plans to set out in statute – or non-statutory guidance – instructions on the delegation of powers from the university court to the FE regional board.

181. A number of provisions in the Bill do not apply to unincorporated colleges. While the Scottish Government has provided information on how unincorporated colleges will fit into plans for college regionalisation, the Committee would welcome clarity as to whether all unincorporated colleges are to become assigned colleges and how these colleges would be accountable to the university court.

182. Finally, concerns have been raised about the estimated costs of establishing the regional strategic body and FE regional board within UHI. The Financial Memorandum suggested that the costs would be marginal. However, when giving evidence to the Finance Committee, Scottish Government officials amended this position—

“There probably will be set-up costs for UHI. The financial memorandum is not quite accurate on that point. I am conscious that UHI has made a submission in which it identifies start-up costs. We are talking to it—constructively, I might add—about those costs”

183. The Committee seeks clarification from the Scottish Government on set up costs for UHI and whether there will funding available to allow it to meet these costs.
Conclusion

184. A considerable amount of often very detailed information on college reform was presented to the Committee during Stage 1. The Committee has summarised the most important issues and has invited the Cabinet Secretary to reply to its specific questions in advance of Stage 2. The Committee considers that this response will greatly help to inform the more detailed scrutiny of the Bill that will take place at that stage.

REVIEW OF FUNDABLE FURTHER AND HIGHER EDUCATION (SECTION 14)

Background

185. According to the Policy Memorandum, the purpose of this provision “is to allow the SFC to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner”129.

186. Under the Further and Higher Education (Scotland) Act 2005130, the SFC already has the power to carry out studies “designed to improve economy, efficiency and effectiveness in the management or operations of any fundable body”131.

187. Before considering the merit of this provision it is helpful to provide some context. Prior to the Bill being introduced, the Scottish Government issued a pre-consultation paper entitled “Putting Learners at the Centre – Delivering our Ambitions for Post-16 Education”132. The paper noted work by the SFC showing—

“…there is too much duplication and unnecessary competition within colleges and regional universities. Very often different colleges and universities are competing for the same students and similar programmes are being run by institutions within a few miles of each other.”

“At present, decisions on the structure of the system and what is delivered lie solely with colleges and universities. Whilst this has benefits, we have a concern that the current structure of the sectors both in terms of the proportion of overall Government resources that individual colleges and universities are allocated – and the number of colleges and universities is not encouraging the sectors to make the rapid changes we think are needed.”133

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129 Policy Memorandum, paragraph 17.
130 Further and Higher Education (Scotland) Bill (as passed (SP Bill 26B, Session 2 (2005)) Available at: http://www.scottish.parliament.uk/S2_Bills/Further%20and%20Higher%20Education%20%28Scotland%29%20Bill/b26s2-aspassed.pdf
131 Further and Higher Education (Scotland) Bill, Section 15 (1)
133 Putting Learners at the Centre – Delivering our Ambitions for Post-16 Education. Paragraph 127 and 128.
The need for and merit of the provision

188. In oral evidence to the Committee, Scottish Government officials explained that the provisions would give the SFC “a clearer mandate to discuss with institutions evidence of, for example, unnecessary duplication that is to the detriment of learners and wider public investment”.

189. All the student representatives who gave oral evidence to the Committee identified that the power being given to the SFC could be used both positively and negatively. For example, the Students’ Association of the University of the West of Scotland said—

“We would support it [the power] if it could stop a situation such as the one at Strathclyde a few years ago, when courses were removed. We would be less likely to support it if the Abertay issue arose again, when certain institutions were being forced to merge, without the consent of the two institutions.”

Another threat to universities’ autonomy?

190. The broad power being given to the SFC includes the power to review the number of post-16 education bodies and the learning and courses they provide.

191. In oral evidence, university principals did not directly criticise this provision but unanimously stressed the importance of the current demand-led model whereby “students choose the universities they would like to go to and, in response, we put on courses or end those that are no longer required”. They contrasted this approach with—

“a supply-led model, in which there would be a framework for making decisions on what courses would be offered and in which regions and students would simply choose not to turn up, it would be hugely disadvantageous to the sector.”

192. Universities Scotland went further, claiming that—

“the provisions as drafted are inconsistent with responsible autonomy, and that provisions which have been conceived in regard to the college sector are being applied inappropriately to the university sector. This section should be removed or very substantially amended in relation to HEIs”.

193. In particular, Universities Scotland considered that—

- it is not the Scottish Funding Council’s responsibility to decide on the number of fundable higher education institutions. These are autonomous institutions, and as long as they meet the criteria and conditions of grant for funding by the Council they should be eligible for receipt of funding.

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137 Universities Scotland. Written submission, paragraph 18.
Also, if it was known that the future of an HEI as a fundable body was under review, that institution would face particular competitive difficulties in attracting and retaining staff, and in securing research funding and building relationships with industry, and in competing in international student recruitment markets.

- it is the responsibility of institutions themselves to decide what ‘types of programmes of learning or courses of education’ to provide ... While the Council has a legitimate role in discussing with institutions whether provision appears coherent, this role can be discharged without the necessity for this legislative measure.\textsuperscript{138}

194. Scottish Government officials provided evidence on the limits of this power, which suggests that Universities Scotland’s fears may be misplaced—

“The new power will not change our sustained relationships with institutions on matters of autonomy or academic freedom and it will not give ministers new powers to dictate what universities or colleges teach, or to force institutions to merge.”\textsuperscript{139}

195. The Cabinet Secretary was also very clear in his opinion that the potential risks envisaged by universities would not materialise, stating “I do not believe that there will be any impact on course provision”\textsuperscript{140}. He offered to examine any concerns that universities may have about the provision.

196. The SFC also sought to reassure universities (and colleges) that the Bill would not radically alter its existing powers in this area—

“we already review provision, because we are required to secure coherent provision. That means that we consider whether the right provision is in the right place, at a national level. There is nothing in the bill that says that we would be doing anything other than that. It seems to me to be an entirely reasonable thing to do, particularly given that public resources are always limited, to ensure that the provision across our university and college system is the best that it can be for the resource that is put in.”\textsuperscript{141}

197. The Cabinet Secretary suggested that the power may allow for a more strategic view of course provision to be taken—

“If we carried out reviews within a wider context from time to time ... we would probably get a more rational view of what should be provided, and I hope that that might avoid the type of passionate debate that took place around Slavonic languages, for instance, or people marching in the streets—

\textsuperscript{138} Universities Scotland. Written submission, paragraph 19-20
\textsuperscript{139} Scottish Parliament Education and Culture Committee, Official Report, 15 January 2013, Col 1745.
\textsuperscript{140} Scottish Parliament Education and Culture Committee, Official Report, 26 February 2013, Col 2081.
\textsuperscript{141} Scottish Parliament Education and Culture Committee, Official Report, 26 February 2013, Col 2052-2053.
as happened—because something was not being provided in one place and they felt that it should be.”

198. The Committee notes the reassurances provided by the Scottish Government and the SFC. However, Universities Scotland’s criticisms were expressed in relatively strong terms and the Committee invites the Cabinet Secretary to consider whether the Bill itself requires to be amended to provide further reassurance, particularly on course provision and the number of HEIs. In making this request, the Committee notes the SFC’s statement that it “already reviews provision”, which suggests that the aim of the Bill may not be as radical as Universities Scotland fears.

Other issues
199. The Cabinet Secretary suggested that there would be a role for the Parliament in scrutinising the recommendations of any review carried out by the SFC, a position that is not clear from the Bill. The Committee would welcome clarification of whether the Bill requires to be amended to reflect this role.

200. There is a further, specific matter where the Committee would welcome clarification: section 10 of the Bill states that regional boards must monitor the performance of their colleges including “assessing the quality of fundable further education and fundable higher education provided by its colleges”143. A regional board may also “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.”144 The Committee seeks an explanation of how these specific powers for regional boards are intended to work in practice alongside the SFC’s broader review power.

Conclusion
201. As with other provisions, the Scottish Government and the SFC are attempting to strike a balance between colleges’ and universities’ accountability and their autonomy. The Cabinet Secretary and the SFC are satisfied that they have done so, and the Cabinet Secretary has also made clear that he is willing to discuss with universities any specific concerns they may have. The Committee has requested further information from the Scottish Government on Universities Scotland’s concerns, which it hopes will help to assuage these concerns.

DATA SHARING (SECTION 15)

Background
202. According to the Policy Memorandum the purpose of this provision is “to allow Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland (SDS) on all young people between the ages of 16 and 24 moving through the learning system to identify

143 Post-16 Education (Scotland) Bill, Section 10, 23E (2) (a).
144 Post-16 Education (Scotland) Bill, Section 10, 23G (1).
those who have disengaged with, or may be at risk of, disengaging with, learning or training\textsuperscript{145}.

203. The wider programme that is being changed was not described particularly clearly in evidence provided by SDS, which meant that the Committee struggled to understand the breadth and intended operation of this provision. It does consider that the changes being sought by the Bill are technical and relatively small. Other witnesses demonstrated some misunderstanding about the provision – for example, whether it would apply to universities, or that it was concerned with applications for college courses – which indicates that they also find this part of the Bill difficult to fully comprehend.

204. This section seeks to disentangle the actual provisions from the wider policy context, thereby providing clarity on the Bill’s intentions. The Committee hopes that this will assist other members given the underlying policy deals with a critical area not previously subject to detailed parliamentary scrutiny.

\textit{Learning and training for young people}

205. The Policy Memorandum (PM) notes the importance of identifying all young people “who disengage, or who may be at risk of disengaging”\textsuperscript{146} from learning or training so that they can be provided with appropriate support back into learning, training or employment. As part of this activity, relevant partners must collect and share data on the young people in question.

206. As a first step, records have to be created which is usually done when a child is first enrolled for mainstream education. Parts of these records are shared with SDS when the young person reaches the senior phase of Curriculum for Excellence. This enables SDS to maintain and update records on young people’s learning and training when they leave school.

207. When a learning or training provider enrols a young person they share a record of that enrolment with SDS. This allows SDS to update the relevant record to reflect the young person’s current learning or training status and alerts SDS that this person does not need to be offered help to find learning or training. When a young person leaves a training or learning provider, the provider notifies SDS.

208. The PM makes clear that elements of this data-sharing approach are already in place – with SDS acting as a “data hub” – but stresses that all of those responsible for providing learning and training to 16 to 24 year olds must share data with SDS. The Bill seeks to ensure sharing. Neither SDS’ written evidence, or the PM specify where the current problem with data sharing lies.

209. In summary, the Bill is not about creating a completely new database. Rather, it is aiming to ensure that all relevant partners (i.e. local authorities, colleges, the Department for Work and Pensions and the Student Awards Agency for Scotland) contribute to the existing data hub that is maintained by SDS.

\textsuperscript{145} Policy Memorandum, paragraph 17.
\textsuperscript{146} Policy Memorandum, paragraph 42.
210. The Cabinet Secretary made clear that he sees this as a “modest enabling provision”—

“The proposed measure is not some all-singing, all-dancing massive new initiative. My concern … is that the quality of the data that should allow us to understand what is happening in the sector has been patchy, and we need to improve that.”  

_Rationale for this provision_

211. SDS provided the Committee with three pieces of written evidence and also gave oral evidence. In summary, SDS expects that the change from data sharing being voluntary to being on a statutory basis will make the shared information more accurate and more robust. SDS expects that data gaps and duplication will be removed, making it easier for staff to identify individuals who have dropped out of “positive activity” and to provide more effective support to them. The overall impact, according to SDS, is that more young people will be supported into positive destinations.

212. In oral evidence, the Committee pointed out that it seemed relatively straightforward to identify someone who had already disengaged from learning or training, but probed SDS as to exactly how a data hub could help it to identify young people “at risk of disengaging”.

213. SDS explained that the system identifies those at risk “because we have lots of information on them”—

“We get that information from all the partners, which means that we can identify young people who might have a lot of barriers that might have prevented them from continuously engaging in education. They might have had interrupted learning in school, so we would know that they might do that in college as well … If a young person comes on to our list having dropped out of college, it does not mean that we cannot quickly get them back in if we can put the right support in place. Previously it might have been months before we knew that a young person had dropped out. Now we know it on a monthly basis.”

214. The Cabinet Secretary confirmed, in response to committee questioning, that he envisaged an increased role for SDS in intervening when it sees a problem—

“A careful reading of data by somebody who is experienced in reading data would probably lead to some conclusions. We need to establish that role somewhere, and such people exist in Skills Development Scotland. Indeed … they have that role … and I would expect them to fulfil it in the terms that I have outlined.”

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215. The Committee is disappointed at the approach SDS appears to be adopting to this development, in particular its seeming reliance on historical information to inform decision making in this area. Given the Cabinet Secretary’s comments, the Committee would welcome a detailed explanation from SDS before stage 2 of how it intends to pro-actively support young people who may be at risk of disengaging with learning or training.

216. SDS representatives also confirmed that they were not seeking to take over the support that colleges, for example, may already be providing to their students—

“… we are looking to support the individual. If that provides extra support for the colleges, that is fine, but what we are looking to do is to keep young people in positive opportunities and to ensure that those opportunities are the right ones for them.”

Witnesses’ concerns

217. There were, comparatively speaking, relatively few comments made in evidence about this provision. A number of submissions expressed support but some concerns were raised, for example that—

- the data being held by SDS may lead to possible contraventions of data protection law;
- the secondary legislation being proposed touches on ‘the learning system’ and the need to identify those who have disengaged or may disengage with learning or training. Angus Council Community Planning Partnership considered that there is a need to define what constitutes ‘learning’ and therefore the scope of any duty;
- the arrangements proposed would not improve matters for young people who enter a negative destination and choose not to engage with SDS.

218. On the first point, SDS confirmed that it was not aware of any concerns about this legislation being inconsistent with any other legislation. The Committee would welcome SDS’ or the Scottish Government’s response to the other points.

219. There were also doubts expressed about the likely costs of the data sharing provision. For example, Colleges Scotland warned that—

“The risk … is that we will end up with a system that will probably be more complicated and expensive than we had envisaged … Some people expect that it will all be very straightforward and easy. The history of IT systems in the public sector suggests that these things are seldom as easy as they seem.”

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220. According to the Financial Memorandum, the costs are likely to be minimal: £52,000 over two years\(^{152}\), to be met by various partners involved. SDS confirmed its view that the figures are accurate.

221. The Committee asked for information on the full costs to date of developing the data hub. SDS stated that it would provide further detail in due course. **The Committee expects to receive this information in advance of the Stage 1 debate.**

The wider context

222. The policy memorandum and SDS’ written evidence describe the Bill’s intentions and the wider policy context but do not explain a number of basic and important points, such as the number of people who will be on the data hub, or what is meant by young people who may be “at risk of disengaging” from learning or training. Unfortunately, despite the focus of the Bill and the wider reform process on supporting students, these documents say very little about what SDS and partners would do if they identified such a person. More information on points such as these would have greatly assisted the Committee’s understanding of the provision.

223. The Committee sought answers to these questions from SDS after its evidence-taking session. A summary of the response received\(^{153}\) is provided below—

- SDS has 5 staff (approximately 3 full time equivalent) who monitor and support the data hub, drawing on additional IT/IS support as required. In addition, the Committee understands that around 600 other SDS staff (464 careers advisers and 140 key workers) contribute to supporting the young people identified as requiring support;
- If the Bill were passed, SDS would expect its partner organisations to provide data on a fortnightly basis;
- There is no data sharing between SDS and private training providers but SDS holds information on individuals undertaking training within programmes that it funds (such as Modern Apprenticeships);
- SDS defined an individual who “is at risk of disengaging with learning or training” as “an individual between the ages of 16-24 who is either in school, college or training and may drop out of their current destination and fall into the “not in education, employment or training” category”;
- In terms of actually identifying and, crucially, supporting such people SDS stated that “Staff will be able to draw on the critical dataset including the flagging indicators to inform professional judgement on the best way forward and most appropriate service provision for the individual.”;

\(^{152}\) Financial Memorandum, paragraph 166.

\(^{153}\) Skills Development Scotland. Supplementary written submission following oral evidence 19 February 2013.
SDS’ support to young people is both proactive and reactive. Regular discussions take place to decide which of the partners in the hub is best placed to provide support.

224. The Committee tried to understand the possible scale of the challenge facing SDS, in terms of the number of people who will be on the data hub – in oral evidence, SDS representatives confirmed that the database was a record of every pupil in Scotland.

225. 60,000 records are to be added to the database annually, which equates to the number of young people who leave school each year. Of these 60,000, approximately 7,000 are likely to be classified as ‘active’ i.e. people seeking an opportunity. SDS also made reference to 600,000 young people being on the database “over a 10 year period”154 although the significance of this time period is not clear, particularly in the context of the 16-24 target age range.

226. The Committee wrote to SDS seeking clarity on the number of young people on the database, noting that there are around 625,000 people aged between 16 and 24 in Scotland. In its response SDS said it was “working on analysing and validating information related to the totality of records held”155. The Committee looks forward to receiving this information as soon as possible.

227. The Committee would also welcome confirmation from SDS that it captures fully data relating to part time college and university students. This was a specific issue raised in the Open University’s written evidence.

Conclusion

228. Members fully welcome, particularly in the current economic climate, anything that could improve the prospects of young people who may be disengaging with learning or training. The Committee therefore supports this provision and looks forward to an on-going discussion with SDS about how the changes brought about by the Bill are improving that situation.

Overall conclusion on the Bill

229. The Committee notes that the general principles of the Bill are to: improve governance in higher education; widen access to higher education institutions; improve governance in, and to restructure, further education institutions; set a tuition fees cap; enable the SFC to carry out reviews of fundable further and higher education; and, require relevant bodies to share data with SDS. The Committee supports these broad aims. While the majority of the Committee support the general principles of the Bill a minority of members have concerns about whether the general principles of the Bill would be achieved by this legislation. The Committee has some concern – expressed in the relevant sections of the report – about the specific means by which the Bill would achieve some of these principles. The Committee has asked the Cabinet Secretary for various

155 Skills Development Scotland. Supplementary written submission following oral evidence 19 February 2013, paragraph 25.
pieces of information that will provide reassurance on the approach being taken by the Bill.
ANNEXE A: EXTRACT FROM MINUTES OF THE EDUCATION AND CULTURE COMMITTEE

32nd Meeting, Tuesday 04 December 2012
Post-16 Education (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1. A draft call for written evidence was agreed to.

33rd Meeting, Tuesday 11 December 2012
Post-16 Education (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1.

1st Meeting, Tuesday 15 January 2013
Post-16 Education (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Michael Cross, Deputy Director, Colleges and Adult Learning Division, Col Baird, Policy Executive, College Governance, Gavin Gray, Team Leader, Ailsa Heine, Senior Principal Legal Officer, Directorate for Legal Services, Danielle Hennessy, College Regionalisation, Governance Team Leader, and Tracey Slaven, Deputy Director, Higher Education and Learner Support, Scottish Government.

2nd Meeting, Tuesday 22 January 2013
Post-16 Education (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Professor Gerry McCormac, Principal and Vice-Chancellor, Stirling University;
Professor Sir Jim McDonald, Principal, University of Strathclyde;
Sir Timothy O’Shea, Principal and Vice-Chancellor, University of Edinburgh;
Professor Seona Reid, Director, Glasgow School of Art;
Christina Andrews, Vice President Education & Engagement, University of Stirling Students' Union;
Freddie Fforde, Association President, University of St Andrews Students’ Association;
Malcolm Moir, President, University of Strathclyde Students’ Association;
Garry Quigley, President, University of the West of Scotland Students’ Association.

4th Meeting, Tuesday 05 February 2013
Post-16 Education (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Mandy Exley, Principal, Edinburgh College;
Paul Sherrington, Principal, Banff and Buchan College;
Carol Turnbull, Principal, Dumfries and Galloway College;
Susan Walsh, Principal and Chief Executive, Cardonald College;
Chris Greenshields, Chair, UNISON Scotland’s Further Education Committee;
David Bass, Senior Policy and Information Officer, Lead Scotland.

5th Meeting, Tuesday 19 February 2013
Post-16 Education (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
6th Meeting, Tuesday 26 February 2013

Post-16 Education (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Mark Batho, Chief Executive, Scottish Funding Council;
Michael Russell, Cabinet Secretary for Education and Lifelong Learning, Michael Cross, Deputy Director, Colleges and Adult Learning Division, Tracey Slaven, Deputy Director, Higher Education and Learner Support, Gavin Gray, Team Leader, Bill Team, and Ailsa Heine, Senior Principal Legal Officer, Directorate for Legal Services, Scottish Government.

8th Meeting, Tuesday 12 March 2013

Post-16 Education (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at its next meeting.

9th Meeting, Tuesday 19 March 2013

Post-16 Education (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 report. Various changes were agreed to, and the report was agreed for publication.
ANNEXE B: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

1st Meeting, Tuesday 15 January 2013

Written Evidence
Scottish Government (1.47MB pdf)

Oral Evidence (573KB pdf)
Scottish Government

Supplementary Evidence
Scottish Government Bill Team response following oral evidence 15 January 2013 (232KB pdf)

2nd Meeting, Tuesday 22 January 2013

Written Evidence
University of Stirling (79KB pdf)
University of Stirling Students' Union (123KB pdf)
University of Strathclyde (84KB pdf)
University of Strathclyde Students' Association (124KB pdf)

Oral Evidence (650KB pdf)
Glasgow School of Art;
Stirling University;
University of Edinburgh;
University of Stirling Students' Union;
University of St Andrews Students' Association;
University of Strathclyde;
University of Strathclyde Students’ Association;
University of the West of Scotland Students’ Association.

Supplementary Evidence
Scottish Government Bill Team response following oral evidence 22 January 2013 (64KB pdf)
Letter from Sir Timothy O'Shea regarding Scottish Index of Multiple Deprivation 2012 31 January 2013 (130KB pdf)

4th Meeting, Tuesday 5 February 2013

Written Evidence
Edinburgh College (75KB pdf)
Lead Scotland (77KB pdf)
UNISON (98KB pdf)

Oral Evidence (499KB pdf)
Banff and Buchan College;
Cardonald College;
Dumfries and Galloway College;
Edinburgh College;
Lead Scotland;
UNISON Scotland’s Further Education Committee.
Supplementary Evidence

**Edinburgh College (144KB pdf)**

**5th Meeting, Tuesday 19 February 2013**

Written Evidence

Colleges Scotland (153KB pdf)
Committee of Scottish Chairs (132KB pdf)
Educational Institute of Scotland (145KB pdf)
National Union of Students Scotland (273KB pdf)
Skills Development Scotland (84KB pdf)
Universities Scotland (313KB pdf)
University College Union Scotland (80KB pdf)

**Oral Evidence (548KB pdf)**

Colleges Scotland;
Educational Institute of Scotland;
Edinburgh College board and Edinburgh Regional Lead;
Glasgow Caledonian University;
NUS Scotland;
Skills Development Scotland;
University and College Union Scotland;
University of Edinburgh;
University of Stirling;
Universities Scotland.

Supplementary Evidence

Skills Development Scotland (87KB pdf)
Skills Development Scotland response following oral evidence 19 February 2013 (188KB pdf)
Chairs of University Courts response following oral evidence 19 February 2013 (137KB pdf)
Colleges Scotland (260KB pdf)
Scottish Government letter to John Henderson, Colleges Scotland 6 March 2013 (41KB pdf)

**6th Meeting, Tuesday 26 February 2013**

**Oral Evidence (522KB pdf)**

Scottish Funding Council;
Scottish Government.
OVERVIEW OF COLLEGE REGIONALISATION PLANS

Purpose
1. This document provides a broad overview of our college regionalisation plans. It reflects what we intend the position will be once our plans have been taken forward and, in particular, proceeds on the assumption that the Bill\(^1\), which is currently subject to consideration by the Scottish Parliament, will be enacted (in the form it was introduced) and that the Scottish Ministers exercise key powers which the Bill seeks to confer on them.

Introduction
2. Our college regionalisation plans are based on two types of college region – single and multi-college regions\(^2\). Single college regions will have one regional college, receiving funding directly from the SFC. Some of the identified college regions already have one college, others will become single-college after planned college mergers take place.

3. In multi-college regions, there would be a regional strategic body. This would either be a regional board or another existing body specified as a regional strategic body. Our plans are proceeding on the basis that there would be four multi-college regions. In three of these there would be a regional board. In the fourth, the Highlands and Islands college region, the University of the Highlands and Islands\(^3\) would be the regional strategic body. These regional strategic bodies would fund colleges ‘assigned’ to them (assigned colleges). They would also have other functions with respect to their assigned colleges.

[Annex A - A general overview of college regionalisation plans]

Accountability
4. In single-college regions, the SFC would enter into an outcome agreement with the regional college as part of its conditions of grant. The regional college would then be accountable to the SFC for the delivery of the outcome agreement.

5. In multi-college regions, the SFC would enter into a regional outcome agreement with the regional strategic body as part of the SFC’s conditions of grant to it. The regional strategic body would then be accountable to the SFC for the delivery of the regional outcome agreement. The regional strategic body would, in turn, fund its assigned colleges, entering into an outcome agreement with each of its assigned colleges, as a condition of grant to them. This would cover, among other things, the contribution the

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\(^1\) The Bill is the Post-16 Education (Scotland) Bill as introduced into the Scottish Parliament on 27 November 2012. A glossary of key terms, including some which are used in this document, is at the end of the document.

\(^2\) Newbattle Abbey College and Sabhal Mòr Ostaig (for further education) would continue to be funded by the SFC. They are not affected by the reform plans.

\(^3\) At present, colleges in the Highlands and Islands deliver higher education as academic partners on behalf of UHI, which receives funding from the SFC for delivery of higher education. It is intended that UHI would continue to be funded by SFC as a higher education institution for this purpose. Going forward, UHI would also, as regional strategic body, receive funding from SFC for further education in the region.
assigned college would make to the delivery of the regional outcome agreement. The
assigned college would then be accountable to the regional strategic body for the
delivery of its outcome agreement.

6. In addition to lines of accountability through funding, members of the board of
management of an incorporated college and members of regional boards, including
chairs, would be personally accountable to the person/body who appoints them. In most
instances, the person/body making the appointment would also be responsible for
determining the terms and conditions of the appointment\(^4\). They would therefore have a
role in determining whether those terms and conditions continue to be met. They would
also have a role in determining whether an appointment should be extended.

[Annex B - College regionalisation: proposed structures for public funding and
appointments]

**Composition and functions of college sector boards**
7. Incorporated colleges would have different duties and other functions depending on
whether they were regional colleges or assigned colleges. Board provisions for
incorporated colleges (board size, board composition and appointments) would also differ
depending on whether they were regional colleges or assigned colleges.

8. Regional strategic bodies would have many similar functions to the SFC because they
would perform a similar role – to fund colleges. The effect of this is that when, as would
be the case, the SFC loses functions over colleges they currently fund, the regional
strategic boards would in many respects be stepping into the SFC’s shoes.

9. Regional strategic bodies would also have a regional planning role. Assigned colleges
would have corresponding duties to support the regional planning function of regional
strategic bodies (e.g. to have regard to regional planning). Regional colleges would
perform a similar planning role for their college region. That is why the Bill proposes that
they are given similar duties to those of the regional strategic bodies particularly relevant
to this role.

10. In addition, regional strategic bodies would have a role in making certain
appointments to the board of their assigned colleges (where such colleges are
incorporated colleges).

11. Also, the Bill makes specific provision for regional boards to have certain ‘general
powers’ (e.g. to acquire and dispose of land and other property, enter into contracts etc),
to have the power to provide goods or services to their assigned colleges and to delegate
certain of their functions. The extent to which other regional strategic bodies would have
similar powers will differ depending on the type of body and the terms of its constitution.

[Annex C – Summary comparison of college sector boards and Annex D – Key
proposed functions of college sector boards]

Scottish Government
January 2013

\(^4\) The exceptions are the appointment of staff and student members. There would be no terms and conditions
associated with these appointments.
ANNEX B

COLLEGE REGIONALISATION: PROPOSED STRUCTURES FOR PUBLIC FUNDING AND APPOINTMENTS

Single college regions
Scottish Ministers*
SFC
Regional colleges (FE and HE)

Multi-college regions (excluding Highlands and Islands)
Scottish Ministers*
SFC
Regional boards (a type of regional strategic body)** (FE and HE)
Assigned colleges (FE and HE)

Highlands and Islands
Scottish Ministers
SFC***
University of Highlands and Islands (as regional strategic body)** – FE
Assigned colleges (FE)

University of Highlands and Islands (as a fundable post-16 education body) - HE

Lines
Orange = appointment/accountability
Black = funding/accountability
Notes
Scottish Ministers would also have powers to:

- **remove board members** of regional colleges, regional boards and any assigned college which is an incorporated college in certain circumstances [see sections 7 and 12 of the Bill – section 7 of the Bill would substitute a new section 24 of the 1992 Act and section 12 of the Bill would insert a new section 25N into the 2005 Act]
- **issue guidance** on appointments to the boards of regional colleges, boards of assigned colleges which are incorporated colleges and regional boards [for regional colleges and assigned colleges which are incorporated colleges see section 6 of the Bill which would insert new paragraphs 3 to 3C into Schedule 2 to the 1992 Act – see, in particular, new paragraph 3C; for regional boards see paragraph 3(5) and (6) of new schedule 2B to the 2005 Act which would be inserted by section 11(2) of the Bill]
- **give directions** to the SFC and regional strategic bodies if an assigned college is being mismanaged financially [see section 10(2) of the Bill which would insert a new section 25A into the 2005 Act]

References
* Scottish Ministers would appoint only the **chair** of the board of regional colleges and of regional boards.

** Regional strategic bodies would appoint the **chair and other members (with the exception of staff and student members)** of boards of assigned colleges which are incorporated colleges.

*** SFC would exercise its powers under the 2005 Act to fund UHI in two different capacities.
## SUMMARY COMPARISON OF COLLEGE SECTOR BOARDS

<table>
<thead>
<tr>
<th></th>
<th>Existing incorporated college board</th>
<th>Proposed in Bill</th>
<th>Other types of regional strategic body</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Key Duties</strong></td>
<td>Managing and conducting their college – section 12(1) of the 1992 Act</td>
<td>Managing and conducting their college – <strong>existing</strong> section 12(1) of the 1992 Act</td>
<td>Coherent, high quality provision</td>
</tr>
<tr>
<td></td>
<td>Coherent, high quality provision</td>
<td>Have regard to plans of regional strategic body⁵</td>
<td>Consultation</td>
</tr>
<tr>
<td></td>
<td>Consultation</td>
<td>Provide regional strategic body with such information as it may reasonably require⁶</td>
<td>Collaboration</td>
</tr>
<tr>
<td></td>
<td>Collaboration</td>
<td>Have regard to particular matters (e.g. skills needs, support needs of students)</td>
<td>Planning, including economy, efficiency and effectiveness</td>
</tr>
<tr>
<td></td>
<td>Planning, including economy, efficiency and effectiveness</td>
<td>Comply with directions issued to it by regional</td>
<td>Have regard to particular matters (e.g. skills needs, support needs of students)</td>
</tr>
<tr>
<td></td>
<td>Promote credit and</td>
<td></td>
<td>Promotion of credit and</td>
</tr>
</tbody>
</table>

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⁵ This table is generally not relevant to assigned colleges which are not incorporated colleges. However, some of the duties do apply to assigned colleges which are not incorporated colleges. These are indicated.

⁶ This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges.

⁷ This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges.
<table>
<thead>
<tr>
<th><strong>Powers</strong></th>
<th><strong>strategic body</strong></th>
<th><strong>qualification framework</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>As outlined in section 12(2) of 1992 Act.</td>
<td>Comply with any requirement made by regional board concerning the transfer of staff and property etc.</td>
<td>Similar to SFC Administration of funds</td>
</tr>
<tr>
<td>As outlined in section 12(2) of 1992 Act. Not amended by Bill.</td>
<td></td>
<td>Funding of colleges</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Efficiency studies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Right to address meetings of college governing body</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Information</td>
</tr>
<tr>
<td></td>
<td></td>
<td>General powers</td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appointments to assigned colleges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Similar to SFC Administration of funds</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Funding of colleges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Efficiency studies</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Right to address meetings of college governing body</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Information</td>
<td></td>
</tr>
</tbody>
</table>

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5 On regional strategic bodies’ powers in relation to transfer of staff and property etc. see proposed new section 23L of the 2005 Act which would be inserted by section 10(1) of the Bill. This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges (albeit with some differences). Regional boards would have powers to make requirements of assigned colleges which are incorporated colleges without their consent.

6 The Bill makes provision for regional boards to have certain general powers – see paragraph 14 of new schedule 2B to the 2005 Act which would be inserted by section 11(2) of the Bill.
<table>
<thead>
<tr>
<th>Board size</th>
<th>10-16</th>
<th>12-18</th>
<th>7-10</th>
<th>12-18</th>
<th>No provision in Bill&lt;sup&gt;10&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chair</td>
<td>Appointed by board from among their number.</td>
<td>Appointed by Scottish Ministers.</td>
<td>Appointed by regional strategic body</td>
<td>Appointed by Scottish Ministers</td>
<td>Remunerated</td>
</tr>
<tr>
<td></td>
<td>Not remunerated</td>
<td>Remunerated</td>
<td>Not remunerated</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Not student, college employee, principal or member or employee of local authority</td>
<td>Not principal, MSP, MP, MEP or member of House of Lords</td>
<td>Not principal</td>
<td>Not MSP, MP, MEP or member of House of Lords</td>
<td></td>
</tr>
<tr>
<td>Staff members</td>
<td>One teaching staff</td>
<td>One teaching staff</td>
<td>One staff member</td>
<td>One teaching staff</td>
<td></td>
</tr>
</tbody>
</table>

<sup>10</sup> Size, composition etc. of the governing body of any other body specified as a regional strategic body will vary depending on the type of body and the terms of its constitution.
<table>
<thead>
<tr>
<th>Student members</th>
<th>Other members</th>
<th>Principal</th>
</tr>
</thead>
<tbody>
<tr>
<td>One student member</td>
<td>One member appointed by local enterprise company</td>
<td>Principal appointed (and terms and conditions set) by college board.</td>
</tr>
<tr>
<td>Two student members</td>
<td>Appointed by regional college board with approval of chair and of Scottish Ministers</td>
<td>Principal appointed (and terms and conditions set) by college board.</td>
</tr>
<tr>
<td>One student member</td>
<td>Appointed by regional strategic body</td>
<td>Principal employed by regional strategic body</td>
</tr>
<tr>
<td>Two student members</td>
<td>Appointed by regional board with approval of chair and of Scottish Ministers</td>
<td>Principal employed by</td>
</tr>
</tbody>
</table>

At least half of board members (not being staff or full-time students) to have experience are shown capacity in “industrial, commercial or employment matters or the practice of any profession”.

Ministerial guidance on how relevant appointments are made and skills and experience of board members.

Ministerial guidance on how relevant appointments are made and skills and experience of board members.

Ministerial guidance on how relevant appointments are made and skills and experience of board members.
<table>
<thead>
<tr>
<th>Periods of office of board members</th>
<th>by college board</th>
<th>college board</th>
<th>college board</th>
<th>college board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal is a member of college board by right of their position</td>
<td>College board</td>
<td>College board able to appoint principal to board</td>
<td>College board able to appoint principal to board</td>
<td>Principals of assigned colleges able to attend meetings of regional board</td>
</tr>
<tr>
<td>Appointments are generally for a fixed period of 4 years</td>
<td>[See paragraph 5 of Schedule 2 to the 1992 Act]</td>
<td>[See paragraph 5 of Schedule 2 to the 1992 Act as it would be amended by the Bill]</td>
<td>[See paragraph 5 of Schedule 2 to the 1992 Act as it would be amended by the Bill]</td>
<td>[See paragraph 7 of Schedule 2B to the 2005 Act which would be inserted into the 2005 Act by the Bill]</td>
</tr>
<tr>
<td>Student member – hold office until 31 August following appointment</td>
<td>Appointments are generally for up to 4 years. They can be extended up to another 4 years</td>
<td>Student members – hold office until 31 August following appointment</td>
<td>Appointments are generally for up to 4 years. They can be extended up to another 4 years</td>
<td>Appointments are generally for up to 4 years. They can be extended up to another 4 years</td>
</tr>
<tr>
<td>Staff members – fixed length of 4 years</td>
<td>Staff members – fixed length of 4 years</td>
<td>Staff member – fixed length of 4 years</td>
<td>Staff member – fixed length of 4 years</td>
<td>Staff members – fixed length of 4 years</td>
</tr>
<tr>
<td>If someone leaves office before their period expires, their replacement can only be appointed for the</td>
<td>After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person</td>
<td>After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person</td>
<td>After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person</td>
<td>After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person</td>
</tr>
<tr>
<td>Principal - In office while principal</td>
<td>may serve on a board</td>
<td>may serve on a board</td>
<td>may serve on a board</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>---------------------</td>
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<td>---------------------</td>
<td></td>
</tr>
<tr>
<td>remainder of that four year term. After appointment, someone is eligible for re-appointment. However, a person cannot serve on a college board for more than 12 years.</td>
<td>Where principal appointed board member this would be for up to 4 years; can be extended or re-extended for periods of up to 4 years, ceases at any time when not principal</td>
<td>Where principal appointed board member this would be for up to 4 years; can be extended or re-extended for periods of up to 4 years, ceases at any time when not principal</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Age limits of board members | Chair and board members cannot be under 16 or over 70 when appointed. | None | None | None |

| Removal of board members | With the exception of the principal, board members can be removed by Scottish Ministers on grounds of failure or mismanagement – section 24 of 1992 Act. | Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 24 of the 1992 Act (section 7 of the Bill would substitute a new section 24 of the 1992 Act) | Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 24 of the 1992 Act (section 7 of the Bill would substitute a new section 24 of the 1992 Act) | Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 23N of the 2005 Act (section 12 of the Bill would insert a new section 23N into the 2005 Act) |

| Principal cannot be removed from board | Principal can be removed from board | Principal can be removed from board | |

[164]
### Key Proposed Functions of College Sector Boards Conferred by the Bill

References to section numbers in the table below are references to sections of the 2005 Act – some of which would be amended by the Bill – which set out broadly equivalent functions of the SFC.

<table>
<thead>
<tr>
<th>Regional college</th>
<th>Regional strategic body</th>
<th>Assigned college</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Planning</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Funding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Accountability</td>
<td></td>
</tr>
<tr>
<td></td>
<td>General powers(^{11}) (s.23)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Duty to provide information required by regional strategic body in connection with exercise of functions</td>
</tr>
<tr>
<td></td>
<td>Duty to plan, having regard to economic, efficient and effective use of funds</td>
<td>Duty to have regard to regional strategic body's plan</td>
</tr>
<tr>
<td></td>
<td>Duty to exercise functions with a view to securing coherent, high quality provision (s.3)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Duties to consult and collaborate (s.22)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Duty to monitor performance(^{12})</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Administration of funds (s.11)</td>
<td>Appoint assigned college board chair and non-staff/student members(^{13})</td>
</tr>
<tr>
<td></td>
<td>Funding of assigned colleges (s.12)</td>
<td>Appoint principal(^{14})</td>
</tr>
<tr>
<td></td>
<td>Credit and qualifications framework promotion (s.14)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Efficiency studies (s.15)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Right to address meetings of</td>
<td></td>
</tr>
</tbody>
</table>

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\(^{11}\) Regional board only.

\(^{12}\) The duty to monitor performance contains some elements of the SFC’s duty with respect to quality (section 13 of the 2005 Act).

\(^{13}\) Incorporated colleges only.

\(^{14}\) Incorporated colleges only.
| Direction | Requirement in relation to transfer of staff etc. | governing body of assigned college (s.16) | Duty to have regard to particular matters (s.20) | Duty to comply with direction<sup>16</sup> | Duty to comply with requirement in relation to transfer of staff etc.<sup>16</sup> |

<sup>16</sup> Incorporated college only

<sup>16</sup> On regional strategic bodies’ powers in relation to transfer of staff and property etc see proposed new section 23L of the 2005 Act which would be inserted by section 10(1) of the Bill. Regional boards would have powers to make requirements of assigned colleges which are incorporated colleges without their consent.
ANNEX E

GLOSSARY OF TERMS

In this document references to –

- “the 1992 Act” are references to the Further and Higher Education (Scotland) Act 1992;
- “the 2005 Act” are references to the Further and Higher Education (Scotland) Act 2005;
- “the Bill” are references to the Post-16 Education (Scotland) Bill as introduced into the Scottish Parliament on 27 November 2012;¹⁷
- “the SFC” are references to the Scottish Further and Higher Education Funding Council established under section 1 of the 2005 Act;
- an “incorporated college” is a reference to a college of further education which has a board of management established under the 1992 Act;
- an “assigned college” is a reference to a college of further education assigned to a regional strategic body by order made under section 7C(1) of the 2005 Act (section 8(3) of the Bill would insert section 7C into the 2005 Act).

¹⁷ http://www.scottish.parliament.uk/parliamentarybusiness/Bills/56717.aspx
In addition, the Bill would introduce a number of new terms to describe particular bodies or types of body in the 'post-16 education system' (or would amend such existing terms). The table below sets out such terms. Where these terms are used in this document they have the meaning given in the table below.

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
<th>Relevant Provisions of Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>College of further education</td>
<td>The governing body of a body—(a) by which fundable further education or fundable higher education is provided; and (b) which is not a higher education institution</td>
<td>Section 36(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(i) of the schedule to the Bill.</td>
</tr>
</tbody>
</table>
| Fundable body                             | • Any body specified in schedule 2 to the 2005 Act (i.e. a learning provider that is eligible for funding by SFC)  
  • Any regional strategic body            | Section 36(1) of the 2005 Act (definition of “fundable body”), as it would be amended by paragraph 6(21)(a)(ii) of the schedule to the Bill; and section 6(1) of the 2005 Act, as it would be amended by paragraph 6(4)(a) of the schedule to the Bill. |
| Fundable post-16 education body           | A body specified in schedule 2 to the 2005 Act (i.e. a learning provider that is eligible for funding by SFC) | Section 36(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iii) of the schedule to the Bill; and section 6(2) of the 2005 Act, as it would be amended by paragraph 6(4)(b) of the schedule to the Bill. |
| Higher education institution              | An institution which is—(a) a university; or (b) a designated institution (within the meaning of section 44(2) of the 1992 Act) | Section 35(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iii) of the schedule to the Bill. |
| Post-16 education body                    | • Any fundable post-16 education body (i.e. a learning provider that is eligible for funding by SFC)  
  • Any college of further education assigned to a regional strategic board by order made under section 7C(1) of the 2005 Act (i.e. college that is eligible for funding by a regional strategic body) | Section 36(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iv) of the schedule to the Bill. |
<table>
<thead>
<tr>
<th>Regional board</th>
<th>A body specified in part 1 of schedule 2A to the 2005 Act</th>
<th>Section 35(1) of the 2005 Act, as it would be amended by paragraph 6(21)(a)(iv) of the Bill; and section 7B(1)(b) of the 2005 Act, which would be inserted by section 8(1) of the Bill.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional college</td>
<td>A college of further education designated as a regional college by order made under section 7A(1) of the 2005 Act</td>
<td>Section 36(1) of the 1992 Act, as it would be amended by paragraph 2(3)(b) of the schedule to the Bill; and section 35(1) of the 2005 Act as it would be amended by paragraph 6(21)(a)(iv) of the Bill.</td>
</tr>
<tr>
<td>Regional strategic body</td>
<td>A body specified in schedule 2A to the 2005 Act</td>
<td>Section 35(1) of the 2005 Act, as it would be amended by paragraph 6(21)(a)(iv) of the Bill; and section 7B(1)(a) of the 2005 Act which would be inserted by section 8(1) of the Bill.</td>
</tr>
</tbody>
</table>

**Relationships between different terms set out above**

<table>
<thead>
<tr>
<th>Fundable bodies</th>
<th>Assigned colleges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fundable bodies</td>
<td></td>
</tr>
<tr>
<td>Regional strategic bodies</td>
<td>Regional colleges</td>
</tr>
<tr>
<td>Regional boards</td>
<td>Higher education institutions¹⁸</td>
</tr>
<tr>
<td>‘Other’ regional strategic bodies (e.g. UHI)</td>
<td></td>
</tr>
</tbody>
</table>

¹⁸ including UHI delivering HE & research.
In June 2011 the Cabinet Secretary asked the Principal of Robert Gordon University, Professor Von Prondzynski to Chair an independent Review Panel, which while observing the benefits of an autonomous sector, would look to ensure an appropriate level of democratic accountability and transparency, in the sector, given the significant level of public funds being invested.

The framework for the Review was developed by the Scottish Government and agreed by the Cabinet Secretary. The remit of the panel was to consider whether current institutional governance arrangements in the HE sector in Scotland delivered an appropriate level of democratic accountability given the level of public funding the institutions received; and to identify and examine proposals for change which observed the benefits of an autonomous sector.

The panel membership comprised:
- President of the NUS
- A University Rector
- A University Chair
- A Trade Union Rep

The commissioned Review began in September 2011 with the call for evidence. The panel took evidence from a wide range of interests and experience from across the sector in Scotland, as well as from academics, staff and student representatives from across Europe and the USA.

The panel reported their findings to Ministers in January 2012. The report contained a number of recommendations including:

- a single act setting out the key principles of governance and management, simplifying the current complex legal structures.
- removing the role of the Privy Council in university governance.
- more transparency around senior management pay.
- Creation of an Advisory Forum to inform ministerial direction to the sector.
- draft new Scottish Code of Good Governance for HEIs.

A link to the report can be found below:

Following on from the publication of the recommendations the Cabinet Secretary for Education and Lifelong Learning announced to Parliament on 28 June that he broadly accepted all of the recommendations in the report and that he intended that the recommendations should be taken forward in three distinct ways.

These were by:
- engaging key sector stakeholders as implementing partners,
- engaging the sector itself in implementing recommendations by agreement, and
- employing legislation where necessary.
To date, in terms of implementation of recommendations by key sector stakeholders, we have had discussions with the Scottish Funding Council with regard to their taking forward the Higher Education Advisory Forum. The terms of reference for the forum, including priorities and membership, are currently being developed but haven’t yet been finalised. It is hoped that this forum will be operational in the early part of 2013.

With regard to the new Scottish Code of Good Governance, the Chairs Group has been asked by the Cabinet Secretary to take forward this recommendation. A steering group has been established to develop the new code and they have engaged two consultants to support their work.

In terms of engaging the sector in implementing recommendations by agreement and adapting them as necessary to reflect existing good practice, this work will be undertaken in the course of 2013. The purpose will be to better align the sector and the aim is to secure implementation of as many of the recommendations as we can by agreement.

With regard to implementation by legislation, any outstanding recommendations may, if necessary, be implemented by legislation. It is hoped that Bill will be introduced within the lifetime of this Parliament. The scope of the Bill will be determined by range of recommendations that are implemented by key sector stakeholders and by the sector itself.
Post-16 Education (Scotland) Bill: Stage 1

10:04

The Convener: Agenda item 2 is our first oral evidence on the Post-16 Education (Scotland) Bill, which was introduced last November. I welcome Michael Cross, Col Baird, Gavin Gray, Ailsa Heine, Danielle Hennessy and Tracey Slaven, who are all officials with the Scottish Government. Our purpose is to get a factual update on what the bill will mean in practice. The committee will, of course, separately take evidence from the Cabinet Secretary for Education and Lifelong Learning at a later meeting. I invite the officials to make a brief opening statement.

Michael Cross (Scottish Government): Thank you very much indeed for inviting us today to discuss the bill. I make it clear that my responsibilities include the college regionalisation project, and I also have general oversight of the bill.

I know that members are familiar with the bill’s content, and I want to explore its detail in discussion, so I will not take up much time with this statement. However, I thought that it would be helpful, to inform discussion, to set out in no more than five minutes the context in which the bill sits and to give a brief overview of its six key areas.

The first key area is college regionalisation, which clearly forms the most substantial part of the bill. It is, self-evidently, a central element of our wider college reform programme, which is well under way. The bill is not needed to deliver college mergers or the significant efficiency savings that the Scottish Further and Higher Education Funding Council expects institutions to realise, but it will establish a new approach to college governance in supporting the new regional structures and reflecting the different approaches that colleges are taking in the regions.

The bill will also deliver ministers’ ambition for greater diversity in college and regional boards, which will help them to achieve their aims and build links across their communities. The proposed new arrangements for boards’ constitutions and appointments will improve public accountability by clarifying what is expected of college boards and their members. It will do so in the context of the existing arrangements for clear accountability for funding and the new regional outcome agreements.

For example, the new provisions for removal of college board members set out clearly the matters for which board members will be held responsible. In doing so, the provisions respond directly to the
views that were expressed in Professor Russel Griggs's independent "Report of the Review of Further Education Governance in Scotland", which was published last January. Professor Griggs noted in the report that one reason why the current governance model is not working as it might is the lack of clarity available to boards.

The second area is higher education governance. The bill will be a significant step in implementing Professor von Prondzynski's recommendations—specifically, by supporting the adoption of the new code of governance, which the HE sector is developing. The provision is based on striking the right balance between recognising the responsible autonomy of the independent institutions in the HE sector and the need to ensure that there is in place appropriate assurance that is consistent with substantial public investment.

The third area is the new provision on widening access to higher education, for which there is broad consensus on the need for further progress. The bill supports an approach that has been adopted in recent years and which is based on developing individual access agreements with institutions, and it provides that ministers—when, in turn, they provide funds to the Scottish funding council—can require the SFC to consider institutions' delivery against widening access agreements that they have concluded.

Fourthly, the bill will introduce a new power to ensure that the SFC can proactively review the structure and provision of fundable further and higher education. The SFC already has a duty to exercise its functions for the purpose of securing coherent provision, but the bill provides a more explicit mechanism to conduct a review of the overall delivery landscape. That will give the SFC a clearer remit to use the evidence that it has available to it to ensure that the structures that we fund operate as effectively as possible.

The new power will not change our sustained relationships with institutions on matters of autonomy or academic freedom and it will not give ministers new powers to dictate what universities or colleges teach, or to force institutions to merge. However, provided that it secures ministers' consent, it would give the Scottish funding council a clearer mandate to discuss with institutions evidence of, for example, unnecessary duplication that is to the detriment of learners and wider public investment.

The penultimate area is the provisions on tuition fees, in respect of which the committee is well versed in the arguments that apply and aware that a voluntary agreement is already in place. The bill simply aims to give ministers powers to set an upper limit by order and, when providing funding to the Scottish Funding Council, to impose conditions that ensure that institutions adhere to that upper limit.

The final area is data sharing. The bill provides for ministerial powers to develop secondary legislation that will specify the bodies that will be required to share data with Skills Development Scotland and set out the information that needs to be shared. The background is that, for some years, Skills Development Scotland has operated a database that allows staff to target their activity at young people at risk. The bill’s provisions would allow more consistency in information sharing, which will better enable SDS staff to identify those who are in need of help, and allow it to offer the right intervention to help those young people to re-engage in learning.

I hope that that is a helpful overview that sets the context for our discussion of the bill’s provisions. We are, of course, happy to take any questions. I have with me the colleagues who are working on the detail of each of the policy areas that I have described, and our legal advisor. The appropriate experts will pick up members’ questions, so I will make it clear who does what because that might help the committee. Tracey Slaven leads on higher education; Danielle Hennessy and Col Baird are the policy experts on college governance; Gavin Gray is the bill team leader, with responsibility for general matters relating to the bill; and, of course, Ailsa Heine is our legal officer. We are now in your hands, convener.

**The Convener:** Thank you very much. That was an extremely helpful opening statement. I will take the bill section by section—although not necessarily in the order that they are in in the bill. We will begin with university governance. I ask members to indicate when they wish to come in, but we will keep questions to one section at a time before we move on.

**Liz Smith (Mid Scotland and Fife) (Con):** What are the definitions of governance and management in relation to the university sector?

**Tracey Slaven (Scottish Government):** The focus when we were working on that area of the bill was on governance and strategic management. We have no interest in telling universities how to organise their academic management or how they run the university body. The phraseology in the bill refers to governance and management. Discussion with the sector has indicated that the focus on strategic management may have some unintended consequences and that has gone slightly wider than we anticipated. We are therefore happy to talk with the sector about the detail of that as we get to stage 2.

**Liz Smith:** The policy memorandum says:
“Ministers expect that the SFC will have regard to ensuring that such governance conditions are applied appropriately for different types of institution.”

Is it your expectation that that will be to do with governance or might it, because of the wider possible definitions that you have described, also affect management?

**Tracey Slaven:** Our interest is absolutely in governance. However, that flips into some strategic management issues, such as when the secretary of a chair of court has management responsibilities. We want to define clearly their governance and management responsibilities in the code. We are interested in that strategic level of management, but have no further interest.

**Liz Smith:** I would like clarification. Universities have been putting together—as requested by the Cabinet Secretary for Education and Lifelong Learning—a code of governance, to which I hope they will all sign up. Is it your understanding that that code will be agreed with the university sector and that the existing United Kingdom code will no longer apply when the bill is passed?

**Tracey Slaven:** Yes. It is intended—as is clear in the policy memorandum—that the document in which we will seek to provide best practice in governance will be the Scottish code of good governance. That will be the specific reference point for Scottish institutions.

**Liz Smith:** Does the code, as it is being drawn up, refer to “management”?

**Tracey Slaven:** The code is at an early drafting stage. I do not expect it to be running into detail on management of organisations.

**Liz Smith:** You said that, if management was to be discussed, it would be at strategic level. Will you give us examples of how that might happen?

**Tracey Slaven:** The best example would be the secretary to the university court who is responsible to the court for its operation, but who also has management responsibility within the institution. Clarity about potential conflict between the university-secretary role and the managerial role would come at strategic level.

**Liz Smith:** Is that it?

**Tracey Slaven:** The provision is about strategic issues of that kind, and nothing more detailed than that.

**Liz Smith:** Do you mean that there is no more detail at present?

**Tracey Slaven:** No. I mean that our interest does not extend beyond strategic issues of that kind.
justification for why a different approach had been taken, that might justify taking no action in the immediate future, provided that there was a commitment to move forward.

**The Convener:** I can understand why, if there were sound justifications for a different approach, you would not take action. That is perfectly reasonable. However, if an institution said that it did not agree with the code and simply did not wish to comply with it but the rest of its operations were perfectly satisfactory, would sanctions be taken or not?

**Tracey Slaven:** In those circumstances, the funding council might well decide to impact on the future funding of that institution.

**The Convener:** When you say that the funding council could “impact on the future funding”, do you mean that its money could be reduced?

**Tracey Slaven:** Yes.

**The Convener:** Right. I just wanted to be clear about that.

Do other members have questions on university governance?

**Neil Findlay (Lothian) (Lab):** I have a question—just to make sure that I have got this right. We are referring to a management code that we cannot see, but are being asked to scrutinise it.

**Tracey Slaven:** That is correct. The draft code is under development. A process of strong and detailed consultation is under way with all higher education institutions throughout the country and their staff and students. As I said, the draft should be ready to go from Lord Smith to the chairs of court group at the end of March, so the initial documentation will be available as we go into stage 2. The timing of that development is the reason why the bill as currently drafted refers to generalities, although our intention is made clear in the policy memorandum.

**Neil Findlay:** This is a general question that is not for anyone in particular. Is it unusual that we are being asked to scrutinise proposed legislation that is, in effect, incomplete?

**The Convener:** Does any member of the panel have a view on that?

**Ailsa Heine (Scottish Government):** I would not say that the bill is “incomplete”. The provision gives ministers power to impose conditions in relation to governance or management, “which appear to ... constitute good practice”.

If, for some reason, the code does not appear to ministers to constitute good practice—for example, if it is not developed fully or if ministers decide that another standard can be used—it need not be used to set the conditions. Therefore, I would not say that the bill is “incomplete”, because it simply gives ministers the power to impose conditions and to set a standard that they consider to be appropriate. As Tracey Slaven said, the current intention is that the code of good governance will be used, but ministers’ intentions may change if that code does not come to fruition, or for some other reason.

**Neil Findlay:** I will ask the question in a different way. Would it be helpful if members had seen, or were to see, the code of good governance?

**Ailsa Heine:** As I said, at the moment, the policy intention is that the code will be used but, under the bill, it is not the only standard that ministers could use. So, from a policy point of view—

**The Convener:** I am sorry to interrupt, but I want to ask the question in a slightly different way. What is Parliament’s role in relation to the code?

**Ailsa Heine:** At the moment, Parliament has no role in terms of looking at the code.

**The Convener:** There is no role for Parliament; the matter is entirely for ministers to decide.

**Ailsa Heine:** Yes. Under the bill, it is for ministers to determine what they consider to be the standards of good practice.

**Liz Smith:** I am sorry to persist, but I want to clarify the relationship between the UK code, Lord Smith’s changes that you expect in March, and the Scottish code. I ask again: will the Scottish code stand on its own and is it about governance and management?

**Tracey Slaven:** The Scottish code will stand on its own. I anticipate that it will include elements that are in the current UK code and which our Scottish institutions have comprehensively agreed as being best practice. The code will also address further steps forward in governance best practice that were identified in the HE governance review. The focus of the code will be governance.

**Liz Smith:** What specific issues would you like guidance on in relation to the UK code before the Scottish code is finalised?

**Tracey Slaven:** I am not looking for guidance on any elements of the UK code; I simply expect the Scottish code to carry forward parts of the UK code that are not areas of debate in the Scottish HE governance review.

**Liz Smith:** So, why cannot we progress more quickly?

**Tracey Slaven:** The issue with the Scottish code relates to the development of the facets that
were identified in the governance review. In the absence of the code or in the event of any delay in that respect, ministers will be able to adopt the United Kingdom code as the standard of best practice until the new Scottish code is ready.

The Convener: I have a final question on university governance. The policy memorandum states that “governance conditions” should be “applied appropriately for different types of institution.” What do you mean by “applied appropriately”?

Tracey Slaven: The Scottish HE sector has 19 higher education institutions that vary hugely in scale, and the flexibility that you have highlighted will serve to reflect those differences in scale and the organisations’ missions. Best practice in governance with regard to membership of a court, for example, might differ slightly between, say, Glasgow School of Art and the University of Edinburgh, so the code will have to be flexible to deal with the scale and nature of bodies. We want to ensure that flexibility is built into the code instead of having a kind of “comply or explain” approach in many different areas.

The Convener: Thank you very much.

Clare Adamson has questions about section 3, on widening access to higher education.

Clare Adamson (Central Scotland) (SNP): Good morning. Some HEIs have indicated that they will use the Scottish index of multiple deprivation to determine criteria for widening access. What other information might be taken into account in identifying people who might be from disadvantaged backgrounds but who do not necessarily fall into that specific category?

Secondly, on funding, although the policy memorandum states that “Improving participation among the most disadvantaged is not about displacing more able students”, the financial memorandum says that “There would be no new or additional budget required for widening access activity as a result of the Bill.”

Given those statements, how will displacement be avoided?

Tracey Slaven: I will answer the questions on widening access.

The bill talks about widening access in relation to socioeconomic characteristics. In the widening access agreements that have been developed voluntarily between the institutions and the funding council, the focus has been on the lowest 20 per cent and the lowest 40 per cent in the index of multiple deprivation. However, the issue is not simply about the number of individuals in those categories, but about ensuring equality of access across the range of subject areas. In other words, if the participation rates by those groups were found to be lower in particular subject areas, that might well be identified in an individual institution’s widening access agreement.

There is also the potential for individual institutions to focus on particular geographies. A good example is the provision that is being developed by the University of Glasgow and the University of the West of Scotland on the Crichton site in Dumfries in order to recognise the combination of low socioeconomic and geographic participation rates. It is not simply a case of saying, “Well, because you fall into this or that category, you’ll get some kind of advantage.”

We are absolutely clear that the approach is not about displacing students of higher ability. Instead, we are trying to create a level playing field to ensure that students’ ability can be fully recognised. We are not seeking simply to adjust individual institutions’ entrance qualifications; this is a much more complex and sophisticated full-system approach.

We recognise that schools and parents have to be supported to help raise aspiration, motivation and qualifications, but it is also for the universities to look at more sophisticated ways of assessing ability, rather than just doing so through individual exam results. The top-up scheme at the University of Glasgow requires students to demonstrate capacity and ability before they are given an offer that would in any way deviate from the standard offer that the university would make.

10:30

George Adam (Paisley) (SNP): I have a question on the same subject. In Paisley, in my constituency, UWS has a large demographic of people from various backgrounds—the 19 institutions that you mentioned are not all the same. The media tends to go just for St Andrews and mentions it all the time as an example, but the UWS’s situation is that, because it has a broad spectrum, retention is the problem. The issue is not just of getting people into higher education but of retaining them because the challenges those people face remain throughout their time at university. Are we doing anything on that?

Tracey Slaven: The widening access agreement will cover that scope. It is not simply about a target for the number of individuals from a category; it is about making sure that we increasingly focus on the outcomes for those individuals. Therefore, the focus in the widening access agreement for the UWS may well—and probably should—relate to retention levels and
making sure that the individuals are best suited to the courses that they are on. In other areas, the issue will be about changing the number of individuals at the access level. In some other instances, it may be about focusing on articulation: making sure that the right arrangements are in place for students who choose a vocational route and need access in third year.

**George Adam:** When you answered one of Clare Adamson’s questions, you spoke about a more accessible way of assessment. One of the things that the public always complain about—again, this is media led—is the idea that people with fewer academic qualifications will get preference over others. How would a more accessible way of assessment work? Would it be part of the universities’ agreements?

**Tracey Slaven:** It absolutely will be part of the individual widening access agreements. Glasgow has its top-up scheme and the University of Edinburgh is moving to develop bursaries to encourage students from other areas and lower-income households to consider Edinburgh as an option. A number of institutions are establishing summer schools to take in students who perhaps have not had experience of higher education, in order to make institutions appear accessible and to support those students in demonstrating their capability and capacity. That work will be very much part of individual institution plans to address individual access issues, rather than there being a one-size-fits-all solution.

**Liz Smith:** I have a very simple question. Can you direct us to the parts of the bill that you feel can provide additional benefits on which the universities are not already undertaking work without legislation?

**Tracey Slaven:** The statutory basis for widening access agreements will take us a significant step further. The progress on widening access has been relatively slow—we have had something like a 1 per cent improvement over the past nine years. The discussion about widening access on a statutory basis has made substantial progress in the past 12 months as we have discussed it with the sector, and that underlines the need to provide a statutory basis for the widening access agreements—to get the step change that we are looking for.

**Neil Bibby (West Scotland) (Lab):** I want to follow up on Clare Adamson’s question. Without new moneys for universities for widening access activity, how will you increase the number of students from disadvantaged backgrounds and not displace any other students?

**Tracey Slaven:** Access to university has been and will continue to be competitive. We are trying to level the playing field so that it is based on equal access with regard to academic ability. That is slightly different from access based simply on higher and advanced higher results, as under the current circumstances. This is about putting competition on a more level playing field.

On there being no additional money for widening access, we are operating within the spending review settlement. However, we took the opportunity before Christmas to use the funding council’s flexibility within the budget settlement to identify agreements with individual institutions about increasing places that could be specifically allocated for widening access, and to support articulation of students into year 3.

**Neil Bibby:** I refer to George Adam’s point about retention. I take it that there will be no additional moneys to provide additional financial support to students from disadvantaged backgrounds.

**Tracey Slaven:** The changes to the student support package that were announced on 22 August last year are designed to help support students from disadvantaged backgrounds by meeting the £7,000 minimum income guarantee through a combination of student loans and bursaries. The package also provides support for middle-income families by providing an increase in the non-income-assessed student loan of up to £4,500 per student per annum. There is no requirement on a student to take that, but the flexibility exists if they need to draw on those resources.

**Neil Bibby:** But apart from that, there are no plans for additional finances to help students in the bill.

**Tracey Slaven:** Not in the bill—no. Those announcements were made last summer.

**Liam McArthur (Orkney Islands) (LD):** My question is on a similar theme. You rightly pointed out that different institutions are taking different approaches—which is sensible—but you also talked about levelling the playing field. For the financial reasons that you have articulated, it is difficult to see how there will not be a displacement effect.

The levelling of the playing field presumably means that there will be a more sophisticated interpretation of qualifications and wider capabilities and aptitudes, but it leads me—and, I think, many people—to assume that, given the competition for places, some people who are accessing courses on the basis of the way in which the system works at present will not be able to secure places under the provisions in the bill. Is that a fair assessment?

**Tracey Slaven:** As I said, access to university is competitive. What we are trying to do is to place
that competition on the fairest possible basis. Some potential students who hope to get access to university will not do so, but we are trying to put competition on the fairest possible basis and look properly at the ability to learn and contribute.

Liam McArthur: There is a trade-off, in a sense, between fairness and an element of displacement.

Tracey Slaven: Yes.

The Convener: I have a couple of questions. First, will you explain to the committee the relationship between the future widening access agreements, which will be statutory, and the outcome agreements, which are non-statutory? How will they work together?

Tracey Slaven: The issue is primarily about efficiency and good relationships between the funding council and the individual institutions. The outcome agreements will focus on a number of strategic issues that are likely to change and develop over time. The current focus is on knowledge exchange and some issues around coherence.

The widening access agreement will sit within that and will have a statutory basis. It will be a separate section of the outcome agreement, and it will operate in parallel with the development of the outcome agreement, simply because it would not be sensible for the funding council to have multiple conversations separately about the different issues.

The statutory footing for widening access reflects the importance of making progress on the issue and the longevity with which it will need to be addressed by the sector.

The Convener: In effect, widening access agreements will be a subset of outcome agreements.

Tracey Slaven: No—the widening access agreement will be a widening access agreement. The conversation will sit within the outcome agreement and they will be published together, but to describe widening access agreements as a subset suggests a prioritisation that is certainly not implied by the policy.

The Convener: Let me move on to the slightly different issue of consequences, which I asked about earlier. If a higher education institution does not comply with its widening access agreement or in some way fails to reach its target, what will be the consequences?

Under section 3 of the bill, new section 9B(2) of the Further and Higher Education (Scotland) Act 2005 will provide that:

“The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement of such description as the Scottish Ministers may specify.”

Therefore, if ministers impose a widening access agreement as a condition, the higher education institution must comply with it. Given that statutory underpinning, what will be the consequences of an institution failing to meet its widening access agreement targets?

Tracey Slaven: The consequences would be in terms of the institution’s future funding from the Scottish funding council. However, I would not expect to see significant failures against the widening access agreements because, although ministers will specify the existence of such agreements and the general form that they should take, each widening access agreement will be developed between the institution and the funding council. The institution should clearly express its intent on both the targets that it intends to reach and the actions and behaviours that it will demonstrate in achieving them, so there should be clarity on how the widening access targets will be reached as well as what the targets are.

Liam McArthur: I have a follow-up question. Is there not a risk that the system of penalties may make it more difficult for individual institutions to achieve the targets in their widening access agreement? We all assume that achieving those sorts of objectives is likely to take up more rather than less resource, so the risk is that we could end up in a downward spiral in which institutions are punished for not meeting their targets and therefore have fewer resources to meet their targets in future.

Tracey Slaven: We are operating on the basis that we would not want to see penalties imposed, and the process includes both a carrot and a stick, if you like.

As I described earlier, additional places are being provided within the current financial settlement and some of those are for widening access, so additional headroom is being created for individual institutions that have expressed difficulty about taking things forward. We are trying to be balanced in our approach, but we very much want to see progress. We think that the institutions are committed to widening access, and the statutory approach provides a strong basis for that going forward.

Liam McArthur: With the statutory basis having been put in place, it would be difficult to ignore examples of where the targets are not met, so we could be locked into a process whereby institutions that are struggling to make their targets end up in a downward spiral in which they have fewer resources to meet the requirements that are imposed on them.
The Convener: I have a final question on widening access. You mentioned that we are not designing a system that is intended to make institutions fail. The institutions will be directly involved—in fact, they will lead the process in setting their targets—and they can bid for the additional places that will be provided to help support them in doing that. The application of penalties will be a last resort where the process has not worked.

The Convener: Thank you. We move on to talk about college regionalisation within the bill. The first question is from Colin Beattie.

10:45

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am really looking for a bit of clarification. As I understand it, the regional strategic bodies will take charge of the funding from SFC for the colleges for which they are responsible. How is that going to work? Will the colleges make bids to the regional strategic body for funding? If so, does the regional strategic body receive support from the SFC? How will that work?

Danielle Hennessy (Scottish Government): At the outset, the hierarchy of funding will be as it is at the moment. The Scottish Government will apportion funding to the Scottish funding council and give policy direction in relation to that. The funding council will then distribute that funding to the regional strategic body.

A regional strategic body has a planning function, and the colleges that are assigned to the body must have regard to its plan. The distribution of funding will therefore come through the discharge of that planning function. It will not be a bidding process.

Colin Beattie: So the colleges will make their bid for funding through the regional strategic body, which gets funded and then disburses that money.

Danielle Hennessy: There is no bidding process. In establishing its plan for the region, the regional strategic body must take account of how the funding has to be apportioned across the colleges in that region.

Colin Beattie: Therefore, there will be a discussion between the regional strategic body and individual colleges: they will put their heads together and hopefully come up with what they need and what they will get, and then they will apply to the SFC. Is that right?

Danielle Hennessy: There is no bidding process between the regional strategic body and the Scottish funding council. The Scottish funding council will apportion funding to the regional strategic body based on its overall financial settlement and policy direction from the Scottish Government.

Colin Beattie: So the SFC funds the regional strategic body on the basis of what it perceives to be the need of the colleges and then the colleges, together with the regional strategic body, will decide how to cut that cake. Tell me if I am off on the wrong track here.

Michael Cross: The Scottish funding council, in line with its settlement for the college sector, makes funding available across the country. In the areas that have a regional strategic body, it will make its funding available to that body. The regional strategic body will have agreed a delivery plan that reflects the outcome agreement with its constituent colleges, if I can put it that way. Those colleges will take their funding from the regional strategic body.

Colin Beattie: I want to ask another question but, before I do, I seek more clarification. What is the difference between an incorporated and unincorporated college?

Col Baird (Scottish Government): An incorporated college has a board of management under the Further and Higher Education (Scotland) Act 1992, but a non-incorporated college does not.

Colin Beattie: My understanding is that the regional strategic bodies will have a role in making certain appointments to the boards. For which appointments to the boards will it be responsible?

Danielle Hennessy: Only regional boards will have those appointment powers. They will appoint the boards of the colleges that are assigned to them.
Col Baird: The regional strategic bodies will be able to make appointments to the boards of incorporated colleges. The appointments they make will effectively be the chair and all the ordinary members of the college board, such as the members who are not the staff member or the student member.

Colin Beattie: They cannot appoint the staff member or the student member.

Col Baird: That is correct.

Colin Beattie: But they will be able to appoint everyone else.

Col Baird: Yes.

Colin Beattie: Is a process for that being put in place?

Col Baird: The intention is that the ministers will issue guidance to the regional strategic body on the experience and background of the sort of people whom it should appoint and on the process for that appointment. Professor Griggs’s review recommended that public appointments be open and transparent, and the intention is that the guidance will outline that such a process should be adopted. In other words, it would be a competitive process, in general.

Colin Beattie: The appointment would be advertised; it would not just be arbitrary.

Col Baird: That is correct.

Liam McArthur: I want to follow up on a couple of those points; I also have a couple of separate questions.

In his opening remarks, Michael Cross referred to the role that the SFC would have in removing unnecessary duplication, which I presume it would exercise across a region. There is something that I am struggling to understand. If a regional strategic body takes a view on the provision in that region, I presume that it will have already gone through the process of determining what provision is necessary and what provision is less necessary. Therefore, the funding council will, I presume, have less of a role in such decisions than it has had up until now. Is that right?

Michael Cross: You are absolutely right. In my opening remarks, I think that I was trying to make clear how the funding council might take a role in relation to the proposed duty on a strategic review of provision, as opposed to the exercise of dispersing funding to regions as part of the annual allocation of funding.

Liam McArthur: That is helpful.

The Convener: Are you moving on to a different subject? A couple of members have questions on the previous topic.

Liam McArthur: That is fine.

The Convener: We will come back to you.

Liz Smith: I have a question for Ms Hennessy. There is no bidding process—I understand that. Could you be very specific about the criteria that will be used to accord funding to the colleges within the regional set-up?

Danielle Hennessy: Nothing is proposed in the bill to specify any such criteria. The establishment of such criteria would be a policy and operational matter as the bill came into force.

Liz Smith: How does that affect accountability when it comes to the regional board?

Danielle Hennessy: In what respect?

Liz Smith: If the regional board is accountable for the decision on how to spend public money on the different colleges in its region, can you tell us a bit about how that accountability will be measured?

Danielle Hennessy: The accountability hierarchy is as it is now, as I think that I said earlier. The funding flows from Government to the funding council and then to a regional college if it is a single-college region or, if it is a region with multiple colleges, to a regional strategic body and then on to the colleges to which it has been assigned. The accountability flows up and down in that way. Through the funding council, it flows back to Parliament.

Liz Smith: There is no legislative accountability of the individual colleges in a region. Is that correct?

Danielle Hennessy: The accountability operates within the hierarchy that I have described.

Liz Smith: So there is no public accountability of those colleges in the context of the bill.

Danielle Hennessy: I suggest that the public accountability comes through the boards’ accountability. As you may have noted, the bill proposes an extension of the grounds for removal of board members. In doing so, it makes clear what is expected of them as regards the proper running of colleges. The greater clarity on the expectations of the role board members provides improved public accountability.

Liz Smith: Will the members of the regional board include people who are accountable in terms of their own colleges?

Danielle Hennessy: I am not quite clear—
Liz Smith: Will some members of the regional board be assigned by individual colleges in the region?

Danielle Hennessy: There is no such specification of the board membership.

Liz Smith: So there is no public accountability in the bill in that regard.

Danielle Hennessy: Not in the terms that you suggest.

Michael Cross: The bill does not provide for—again, forgive me for using this term—constituent colleges to assign members of their boards or others to the regional board.

Neil Findlay: Would the staff and student appointments go through the public appointments system to be endorsed by the minister?

Col Baird: No, there would be no need for ministerial endorsement of those appointments. The student member in, say, a regional college would be entirely a matter for the student association and, like the provisions just now, the staff members will be elected by staff in the college—that will not change.

Neil Findlay: That is for election to the regional board.

Col Baird: It is the same for the regional board. There would be only a slight difference in student numbers if there were more colleges than places, but generally it will be students nominated by the student association or staff members elected by staff.

Neil Findlay: So there is no provision in the bill for us to stipulate that there will be elections for those posts.

Col Baird: There would be elections for staff members in the new set-up as there is in the current process.

Neil Findlay: Is that stipulated?

Col Baird: Yes.

Neil Findlay: That is fine.

Liam McArthur: I will follow on from that theme and perhaps go back to the one that I was going to raise previously.

On the powers of removal, Danielle Hennessy said that the bill provides more clarity on the terms under which removal can happen. To what extent is the bill extending ministerial powers to remove either chairs or members of the incorporated colleges or regional boards?

Danielle Hennessy: The bill proposes an extension of the grounds for removal of board members. It proposes extending existing mismanagement grounds to grounds that, if you like, pertain more to a failure in outcome. An example of that would be failure to deliver education of an appropriate standard.

Liam McArthur: Are you comfortable that failure is fairly tightly defined and that we will not end up with a failure to see eye to eye with the minister being a reason for either a chair or a board member being removed?

Danielle Hennessy: The criteria are absolutely specified in the bill and are additional to the existing mismanagement grounds.

Liam McArthur: I appreciate that a distinction is made for the Highlands and Islands. I welcome that approach and, indeed, the undertakings that the cabinet secretary has given in relation to non-incorporated colleges, a number of which are to be found in the Highlands and Islands.

I am aware, though, that there are concerns about having a regional strategic body in the Highlands and Islands, as it appears to create a level of duplication that might have a knock-on impact on the funding that finds its way down to the constituent colleges in the region. Can you explain the rationale for the make-up in the Highlands and Islands?

Col Baird: Unlike the other regions in which there will be more than one college, the Highlands and Islands will have the University of the Highlands and Islands—a higher education institution—as the regional strategic body. For comparison, Glasgow will have a new legal entity in the form of the Glasgow regional board.

The reason for the difference in the Highlands and Islands is that UHI already exists. Colleges in the region deliver higher education as an academic partner of UHI, and ministers felt that, given the institution’s existence, there is an opportunity to enable it to be a more truly tertiary institution by giving it—in effect, although there are some differences—the regional board functions that the Glasgow regional board will have.

Liam McArthur: Does a separate regional strategic body need to be established? Is it not simply possible to recognise, as you say, that UHI currently exists and therefore to deal with it as the strategic body and the filter through which the funding goes?

Col Baird: That is what the bill does: it designates UHI as a regional strategic body; it does not create in UHI a separate entity called a regional strategic body. It is a designation of UHI, which means that we can confer specific duties on UHI in its capacity as a regional strategic body.
11:00

**Liam McArthur:** So, from your perspective, UHI should not require any additional resource or to spend time on doing things that it currently does in a different way, in order to satisfy the provisions of the bill?

**Col Baird:** The UHI as an institution will certainly have additional duties because it will expect to distribute FE funding for the first time, but there is certainly no new infrastructure. The UHI as an institution will look at its own internal structure to accommodate the new duties.

**Liam McArthur:** That suggests that there may be a problem. At a time when resources are limited in both the FE and HE sectors, some of the resources will be held at the centre in order to meet the requirements of the bill, which will mean that there is less for the constituent colleges within the UHI region to spend on FE or HE provision.

**Col Baird:** That is a general point about the establishment of any regional body in a multicollage region.

**Liam McArthur:** With respect, whatever our positions on college regionalisation, we would all accept that there are savings to be made through that process. The glaring exception to that would appear to be the UHI, where there is a structure in place and the risk is that, far from creating savings that can be reinvested in course provision, whatever that may be, the resources that are available will be deployed more on performing the central function than is the case at the moment, whether at Orkney College, North Highland College or wherever.

**Michael Cross:** Yes, that risk exists. However, we would want to mitigate it as far as possible by working with the UHI to develop the leanest and least bureaucratic arrangement that we could manage for the new role that it assumes as a regional strategic body.

**Neil Bibby:** You mentioned reducing duplication of courses. Will regional boards be expected to rationalise courses? If so, how will the impact on local colleges be assessed? For example, currently they might be providing X number of courses at a local college and the regionalisation and rationalisation of colleges might mean that those courses will not be provided any more. Will there be an assessment of what is currently provided and what will be provided under a regional structure?

**Michael Cross:** The role of the regional strategic body is to conclude a regional outcome agreement with the Scottish funding council. We expect it to do that in wider consultation with regional partners including the constituent colleges. Part of its efforts in developing a regional outcome agreement may include some sort of rationalisation where that is in the interest of the learners. However, it is not an effort that the regional strategic team will make in isolation; they will undertake the planning exercise with a range of partners, many of whom will have their own contribution to make to the regional post-16 learning offer.

**Neil Bibby:** If a student in Clydebank, for example, currently studies a course at their local college, what assessment will be carried out of the transport and travel costs if that course is no longer provided in Clydebank but is provided in Greenock? What assessment will be carried out of the likelihood of that student travelling to Greenock? In removing duplication from a local college, what assessments will be made?

**Michael Cross:** We expect regional boards to take that sort of matter into account as they develop a regional outcome agreement and any rationalisation that is implied in that regional outcome agreement. This is about enhancing the effort for learners, and additional travel costs, for example, would naturally be a matter that we would expect the regional board to take into account.

**Clare Adamson:** My question follows on from Liam McArthur’s questions about UHI. Does this mean that there will be a different relationship between the UHI board and ministers than exists in other regional set-ups or will the ministers have the same powers of removal in respect of UHI as they will have in respect of regional bodies? Might we have staff and student representatives at a regional strategic level in some but not all areas because in other areas they will be on the college boards?

**Col Baird:** Ministers will certainly not have the same relationship with UHI as a regional strategic body as they would have with, say, Glasgow regional board. For example, they have no power of appointment or removal in respect of UHI.

As you have said, the bill also makes provision for regional boards to include staff and student representatives. However, it makes no mention of the constitutional make-up of any board with regard to UHI; that would be a matter for the articles of association of UHI, which, after all, is a company limited by guarantee.

**The Convener:** Does that not in effect make staff and student representation in the Highlands and Islands region less than in other areas?

**Col Baird:** Not necessarily. A working group report made recommendations on what a UHI FE committee might look like in order to discharge its role as a regional strategic body. The proposals are different from those in the bill, but they certainly covered staff and student membership.
Neil Findlay: Coming back to the powers of ministers and the like, I remind witnesses of the recent tiff between the cabinet secretary and the chair of Stow College, during which the cabinet secretary lamented the fact that he did not have the power to remove the chair. Will these changes give him such powers in the future?

Danielle Hennessy: The bill proposes that the grounds for removing board members be extended as I outlined previously. In addition to the existing grounds of mismanagement, grounds will include, for example, the failure to deliver education to an appropriate standard.

As the case that you have cited or indeed any such case relates to a board member's personal conduct as a figure in public life, not to an individual discharging his or her functions for the board's effective running, the matter is the responsibility of the Commission for Ethical Standards in Public Life. Nothing in the proposals alters the current position in that kind of case.

Neil Findlay: So at all levels the issue is the personal conduct of a board member, who would have to be referred to the Commission for Ethical Standards in Public Life or whatever it is called these days, which would decide on the sanction.

Danielle Hennessy: Exactly.

Neil Findlay: And could a person be referred to that organisation by anyone—the cabinet secretary, for example?

Danielle Hennessy: I think that that will be the case.

The Convener: I suggest that if you are not absolutely sure, you should provide us with clarification after the meeting to ensure that we are absolutely right on that point.

Neil Bibby: I want to ask about the different approaches to changes in higher and in further education. Earlier, witnesses talked about respecting the autonomy and independence of higher education institutions whereas, with further education, the Government is setting up regional strategic boards that will have a direct effect on colleges’ strategy, courses and funding. Why has it chosen to take different approaches to further and higher education?

Michael Cross: I suggest that the fundamental rationale is that different levels of public investment are involved. The Government has a deep stake in the outcomes that it expects from the further education sector, as it typically contributes something in the order of 75 per cent of colleges’ income. Through the regionalisation programme, we are trying to create a more coherent approach to securing outcomes throughout Scotland for that significant level of public investment.

The position is different for universities. Perhaps Tracey Slaven would like to say something about that.

Tracey Slaven: The position with the universities is somewhat different from that with colleges. As Michael Cross indicated, the Scottish Government provides colleges with a substantially greater proportion of funding than it does universities. The amount varies across the sector, but the majority of funding for the research-intensive institutions may come from non-Government sources.

Also, with our further education colleges, we are focusing on ensuring that there is a match between local and regional need and local and regional delivery. Although our universities provide local academic provision, they are much more heavily focused on provision at the national and, indeed, international level.

A difference in mission, as well as a difference in funding, drives the differences in approach.

Neil Bibby: There may be a case for regular reform in further and higher education. Why have you chosen to make the changes to further education through legislation but make the changes to higher education through agreement? Why can you not make the changes that you wish in further education through agreement like you are doing in higher education?

Michael Cross: It simply reflects the different changes to which we are giving effect in further education. In essence, we are changing the map of how further education is delivered in Scotland, and that requires a different approach to the one that we are taking with the universities. For example, we are introducing a series of changes to governance of the sort that Danielle Hennessy has described. The introduction of regional strategic boards is a case in point.

Danielle Hennessy: The substantial part of the regionalisation provisions in the bill pertains to the creation of regional strategic bodies, as they are new entities.

Liam McArthur: On who will be judged responsible for mismanagement, will a distinction be made between the chair of the board and individual board members? Do you envisage situations in which the whole board would be accountable for a failure and, therefore, need to be removed or will the assumption be that the chair will take ultimate responsibility for the board’s performance and, therefore, would go and save the heads of the rest of his or her colleagues on the board?

Col Baird: The provisions are built around the existing ones in the 1992 act. That act includes a
provision that enables ministers to remove a member, or any member, of a board.

If there was a failing, a judgment would be made about whether it could be attributed to a single member or, perhaps, a sub-group of members. For example, it may be that the failing could be attributed to the actions of a specific committee and that the members of that committee would be removed.

The flexibility to identify one, any or all of the board members is a feature of the existing statute.

The Convener: Mergers are clearly separate from what will happen under the bill. They are a different issue, although they are happening at roughly the same time. If you set up a regional strategic body that covers an area that currently has multiple colleges and those colleges merge at a future date, what will happen to that body?

Col Baird: If all three colleges in Glasgow, for example, were to merge into one, provisions in the bill would enable us to abolish the Glasgow regional board and transfer its assets to what would then be the Glasgow college.

11:15

The Convener: We will move on to the review of fundable further and higher education, which is dealt with in section 14.

Liam McArthur: Section 14 talks about the Scottish funding council ensuring that education is provided in “a coherent manner”. What is meant by “a coherent manner”? How is that arrived at?

Michael Cross: I suggest that it is arrived at by taking account of the matters that are set out in proposed new section 14A(2) of the Further and Higher Education (Scotland) Act 2005. Those are matters such as

“the number of post-16 education bodies ... the number of regional strategic bodies ... the types of programmes of learning”

and

“The efficiency or effectiveness of the arrangements for the funding”.

There is also the issue of whether coherent fundable further education or higher education can be improved by “increasing collaboration”.

Liam McArthur: Is there a risk that, in driving towards coherence, some of the issues that Neil Bibby raised earlier about the demand for provision in an area that duplicates provision elsewhere in the region could result in a number of college applicants not pursuing courses simply because of the distance to a college? Are there safeguards in the bill to deal with that?

Michael Cross: The issue of duplication is centre stage, but it is about unnecessary duplication when the provision in question can be delivered more effectively, in the interests of the learner for example, in one location rather than two.

Liam McArthur: The bill also talks about the Scottish ministers setting preconditions for the funding council in conducting a review. Can you shed any light on what the preconditions are likely to be?

Michael Cross: I think that they would draw on the matters that are outlined in proposed new section 14A(2). However, that would, I think, necessarily be addressed on a case-by-case basis. As the provision is framed, the funding council will make a proposal for a review to the Scottish ministers, who will then consider that. The review cannot happen without the consent of the Scottish ministers. At that point, the ministers will take stock of the funding council’s proposal and suggest an additional condition that will apply to its work.

The Convener: Given the time, I want to move on quickly to data sharing, which is in section 15.

Joan McAlpine (South Scotland) (SNP): The bill gives ministers the power to make secondary legislation to force relevant bodies to share information with Skills Development Scotland about 16 to 24-year-olds who are going through the system. What are the current gaps that make that measure necessary?

Gavin Gray (Scottish Government): A framework has been set. As you know, SDS already operates a system of data sharing and information gathering. A national reference group has been set up to support data sharing, on which local authorities, colleges and other providers are represented. The need is not to get specific organisations that are not providing data to do so; rather, it is to achieve consistency of the data that is provided, so that all organisations give the same information in the same way. It is felt that a legislative structure will help to ensure consistency in that and, ultimately, in how organisations deal with learners so that, regardless of where a learner is, they will be picked up by SDS in the same way.

Joan McAlpine: Does that mean that some colleges do not have the desirable information, or consistent information, on the young people they teach?

Gavin Gray: I am not sure that it would be undesirable but, because a clear framework is lacking, some of the information that has been given to SDS has been patchy and variable. Setting it out in legislation will ensure consistency.
Joan McAlpine: We hear a lot about compliance and compatibility issues. Do we know whether the different bodies have compatible IT systems in order to share information?

Gavin Gray: I do not know the answer to that. SDS’s operational leads would be more aware of what the IT issues are. As I say, there is a national reference group on data sharing, so the SDS and other Scottish Government officials meet all the providers regularly to ensure that agreements are in place. A number of individual agreements are in place between SDS and colleges and local authorities. A lot of work has been done and some of the costs that are highlighted in the financial memorandum are about making the final tweaks to that. The framework is largely there—the issue is about high-level consistency in what we are looking for.

Joan McAlpine: Will data sharing apply to private training providers or, indeed, learning providers outside Scotland should young people choose to learn outside Scotland?

Gavin Gray: It could apply to private providers—that would have to be specified in the secondary legislation. The legislation will set out which organisations are compelled to be involved in data sharing, so there is scope for private providers to be included. I am not clear on the position on institutions outside the UK.

Tracey Slaven: I can provide a little bit of assistance on that. Normally, the predominance of students studying outside Scotland is in the HE sector. The Student Awards Agency for Scotland will be involved in the process and will have the information about students who receive HE support outside Scotland, so they will be picked up.

Neil Findlay: Did I pick you up right that the purpose is not to increase the amount of information that SDS has but to improve the consistency of the information that it provides? Is that correct?

Gavin Gray: No. The purpose is for SDS to get more consistent information from other organisations. If organisations are not giving the right amount of information, they might have to increase the amount of information that they give. This is not about the information that SDS gives; rather, it is about the information that SDS receives from other institutions.

Neil Findlay: I assume that some organisations work with paper files and others with electronic files—who knows what they work with. How will that work? SDS gave the committee an example: if it gives a specific session to a school year, assembly or a class, that is marked in the young person’s record as an intervention by SDS, perhaps as nothing more than a tick in their school profile. Would it go back and tick each individual SDS record? How else would it work?

Gavin Gray: To be honest, I do not feel comfortable talking about SDS’s operational issues and how it would do that. It might be better to speak to SDS when it gives evidence to the committee, rather than my second-guessing how that might or might not operate.

The Convener: I thank the witnesses for attending; the session has been extremely helpful. There are clearly a number of areas on which we had further questions and other areas in the bill that we have not touched upon, so we will write to you to follow up some of the questions. I hope that we get a response reasonably quickly in order to cover some issues that we have not reached.

11:23
Meeting suspended.
Response to Follow-up Questions from the Education and Culture Committee on 15 January 2013

Tuition fees cap (Section 4 of the Bill)
In setting an upper limit on tuition fees, would Scottish Ministers intend to take into account matters such as (a) any wider support packages established by an HEI for the students in question and (b) the longer duration of some Scottish degree courses?

Proposed new section 9C(3)(b) of the 2005 Act provides that, in setting the same, the Scottish Ministers must seek to ensure that the upper limit is no higher than the maximum annual tuition fee level set by legislation for a course of higher education provided elsewhere in the UK. The upper limit will be the same for all universities irrespective of the individual support packages in place. This provides protection for students from the Rest of the United Kingdom (RUK), ensuring they have access to tuition fee loan support for the entirety of their tuition fee costs.

Within the boundary of the fees cap, it will be for the individual universities to set their own tuition fees for students from the RUK at a level which the universities consider will enable them to continue to attract RUK students. As we have seen under the current voluntary arrangement, the individual universities will utilise a proportion of the tuition fees received to provide bursary and support packages to help those RUK students most in need of financial assistance. The universities themselves will also make their own decisions about offering advanced entry into the 2nd year of degree programmes for those students with particular qualifications, as they have done since 2012-13.

Regional strategic bodies (section 10)
With reference to new section 23L, to be inserted by section 10, please clarify the possible circumstances in which one regional strategic body would transfer “such staff, property, rights, liabilities or obligations as it may specify for certain purposes” to another regional strategic body or to a regional college. Would there be any safeguards around what was transferred, other than the consultation requirements set out?

Under new section 23L(3) of the 2005 Act, a regional strategic body would be able to make an arrangement to transfer any of its staff, property, rights or obligations to any of its colleges, any regional college or another regional strategic body. New section 23L(3) constrains its use. Such a transfer would have to be for either of the following purposes:

a) For the purpose of transferring responsibility for providing any particular service

b) For any other purpose relating to the functions of the regional strategic body or any of its colleges.

Such an arrangement could only be made following consultation with persons specified in new section 23L(5).
General employment law would apply in relation to any transfer of staff. In appropriate circumstances that would include the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the TUPE Regulations). The TUPE Regulations protect employees' terms and conditions of employment when an undertaking is transferred.

The Explanatory Notes cite one example (paragraph 82) when such an arrangement might be made – “Where a regional strategic body was delivering shared services (such as finance and human resource management) to its colleges and one of those colleges was to be designated a regional college, a regional strategic body may wish to transfer staff etc. to the college to enable the college to deliver such services for itself”.

In such a scenario - where one of the colleges in an existing region was to be designated as a regional college of a new region (and the regional strategic body itself would remain in existence) - a transfer arrangement might also include the transfer of some staff etc. associated with the regional strategic body’s regional planning function, as the regional college would be responsible for its own regional planning.

Another possible circumstance is: a regional strategic body may seek to transfer staff, property etc. to a regional college or a regional strategic body in order to facilitate the delivery of shared services across regions. For example, if Glasgow regional board was delivering IT support to its colleges and it came to an agreement with the regional college in the West region that the college would deliver this service across both regions, the Bill would enable IT support staff in Glasgow to be transferred to the regional college.

Policy Memorandum
(a) The ‘consultation’ section of the PM (paragraphs 13–16) does not specifically mention all six provisions of the Bill so please confirm which areas were consulted on.

The pre-legislative consultation paper, Putting Learners at the Centre provided the context for all six topics covered in the Bill. The responses to this consultation shaped the development of our proposals and was supplemented by additional input as the process continued. For example, the independent reviews of FE and HE governance referred to in the policy memorandum informed our decisions on HE and FE Governance. The other provisions on college regionalisation have been further shaped by the joint SG/SFC consultation on regionalisation and ongoing discussions with sector representatives.

The proposals on data sharing were developed with stakeholders and delivery partners, within the existing frameworks which already facilitate these data sharing arrangements. In a similar vein, the widening access proposal drew on further input through the SFC’s ongoing discussions with the sector on these issues. The proposals for the review of further and higher education were also discussed in more detail with the SFC.
The issues surrounding tuition fees were consulted upon and debated fully as part of the process to lay the secondary legislation required in late 2011.

(b) Paragraph 58 of the PM states that the Scottish Government considered whether the provisions on widening access and the tuition fees cap raised any ECHR issues. Please clarify what the exact concerns were and the basis on which the Scottish Government is content that they have been overcome.

In view of the restrictions on both the legislative competence of the Scottish Parliament and the devolved competence of Scottish Ministers provided for in the Scotland Act 1998, the Scottish Government requires to satisfy itself that its policy proposals are compatible with the Convention rights. Paragraph 58 of the Policy Memorandum reflects the fact that the Scottish Government has done so in relation to the Bill’s provisions on the tuition fees cap and widening access.

Paragraph 58 of the policy Memorandum acknowledges the relevance of Article 2 of Protocol 1 to the European Convention on Human Rights (right to education, which includes a right to educational establishments) when read with Article 14 of the Convention (prohibition of discrimination in the enjoyment of rights and freedoms set forth in the Convention) in relation to the Bill provisions on widening access and the tuition fees cap.

The Scottish Government is satisfied that its policies on widening access and the tuition fees cap – which the Bill makes provision in relation to - pursue legitimate aims.

(c) How will the potential for negative impacts mentioned in the EQIA be mitigated?

Widening Access
It is recognised that entry to Higher Education is always competitive and some applicants do not secure a place. If the widening access agreements are successful in bringing more non-traditional entrants into HE and the funded places available at HEIs in Scotland did not increase, then there would be some displacement of prospective students. However, there are a number of factors involved in this including the success of the agreements themselves and what other off-setting measures could be put in place to make provision more flexible or add places to the system.

Scottish Government has made clear its intentions to increase the number of funded places available over the spending review period and within current financial plans and the first announcement to this effect, putting an additional 2,000 places into the system including over 1,700 contributing directly to widening access and articulation, was made by the Cabinet Secretary on 18 December. This will be monitored by the Scottish Government going forward.

Tuition Fees
This aspect of the Bill would not impact on those subject to regulated fees. Analysis suggested that of the group of students not subject to regulated fees - the cap would benefit students coming to Scotland from the rest of the UK. These students were more likely to share the protected characteristics of: English national origin, Welsh
national origin, Northern Irish national origin, Scottish national origin; are female; or have a recorded disability. This policy would not benefit, but would not change the current situation for, students coming from non-EU countries to study in Scotland. These students are more likely to be young students (under 18); older students (over 25 years); male students; students of a non-ethnic origin; and students of a non-UK nationality.

Review of Higher Education Governance
Professor Ferdinand von Prondzynski’s review of Higher Education Governance mentions a code of good governance in two separate recommendations – as part of the much broader recommendation 2.30 and in the separate recommendation 7.4. Please confirm which of these recommendations, if either, the Bill would give effect to. This will help the Committee to understand better the context for the ongoing discussions on the proposed Scottish Code of Good Governance.

Recommendation 7.4, the drafting of a code specific to Scotland, is being taken forward by the Chairs of Court group at the request of the Cabinet Secretary. We envisage that this code will ultimately form the benchmark for good governance and that, in setting a condition of grant under proposed new section 9A of the Further and Higher Education (Scotland) Act 2005 (which section 2 of the Bill seeks to insert), Ministers would refer to it as containing the “principles of good governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions”. But we have chosen not to reference it directly in the provision, primarily to allow flexibility in future should the sector choose a new standard for governance.

Recommendation 2.3 in Prof von Prondzynski’s report recommends a ‘single statute’ for Scotland’s higher education sector which, among other things, would set out the key principles of governance and management for the sector. Our intention is to work with the sector and the SFC to implement as much of the report as possible, without legislation, before we set out proposals for future legislation.

Other matters of clarification

Board appointments
Col Baird in his remarks to the Committee (Column 1764, Education and Culture Committee, 15 January 2013) mentioned a working group report on UHI. The report and the Cabinet Secretary for Education and Lifelong Learning’s reply is at http://www.scotland.gov.uk/Topics/Education/UniversitiesColleges/16640/UHIGovern anceWG

Further to Col Baird’s remarks at column 1759:

“Col Baird: The regional strategic bodies will be able to make appointments to the boards of incorporated colleges. The appointments they make will effectively be the chair and all the ordinary members of the college board, such as the members who are not the staff member or the student member.”
I would like to clarify a point in relation to appointments to the board of management of an incorporated college which is not a regional college. As well as the regional strategic body having the power to appoint the chair and ordinary members (see proposed new paragraph 3A(2)(a) and (d) of Schedule 2 to the 1992 Act) the board of management of the college would have the power to appoint the college principal to the board (see proposed new paragraph 3A(2)(e) and (3) of Schedule 2 to the 1992 Act). [Section 6(1) of the Bill seeks to insert new paragraphs 3, 3A, 3B and 3C into Schedule 2 to the 1992 Act].

Public Standards
Danielle Hennessy was asked (column 1765) whether anyone could refer a complaint concerning ethical standards. Anyone with cause to complain would be able to make a complaint to the Public Standards Commissioner for Scotland. Further information about the complaints process is at http://www.publicstandardscommissioner.org.uk/make-a-complaint/overview/

Power to Review
We would like to offer some clarification in relation to the remarks of Michael Cross in response to a question by Liam McArthur MSP (at Column 1768 of the Official Report, Education and Culture Committee, Tuesday 15 January 2013) on section 14 of the Bill:

“Liam McArthur: The bill also talks about the Scottish ministers setting preconditions for the funding council in conducting a review. Can you shed any light on what the preconditions are likely to be?

Michael Cross: I think that they would draw on the matters that are outlined in proposed new section 14A(2). However, that would, I think, necessarily be addressed on a case-by-case basis. As the provision is framed, the funding council will make a proposal for a review to the Scottish ministers, who will then consider that. The review cannot happen without the consent of the Scottish ministers. At that point, the ministers will take stock of the funding council’s proposal and suggest an additional condition that will apply to its work”.

Section 14 of the Bill seeks to insert a new section 14A into the Further and Higher Education (Scotland) Act 2005. Proposed new section 14A(1) of the 2005 Act would provide that the Scottish Further and Higher Education Funding Council (“SFC”) may, with the consent of the Scottish Ministers, review the extent to which fundable further education and fundable higher education is being provided by post-16 education bodies in a coherent manner.

Section 14A(3) would provide that when seeking the consent of the Scottish Ministers to conduct a review, the SFC must provide a case for review which both describes the scope of the proposed review and explains why the SFC is satisfied that any pre-conditions to conducting a review which the Scottish Ministers may determine are met in relation to the proposed review. And so the setting of preconditions by Ministers is an act which would necessarily precede the SFC presenting its case for review under proposed new section 14A(3) of the 2005 Act.
The University of Stirling shares the Scottish Government’s commitment to good governance of higher education institutions, wide access to university based on ability regardless of socio-economic background, and efficient provision which meets learners’ needs. However we do not share the view that legislation is required to enable these principles to be exercised effectively within institutions. Universities are already robustly accountable to the Scottish Ministers via the Scottish Funding Council - and through multiple lines of accountability to other funders and regulators such as the Quality Assurance Agency - for the appropriate and efficient use of public funds. The Scottish Ministers already have the power to influence the use and distribution of these funds and achieve the policy intentions of the Bill through their guidance to the Scottish Funding Council and the SFC’s conditions of grant. The introduction of Outcome Agreements between the SFC and Scottish HEIs has added another layer of accountability and has introduced further control over the use of public funds. We are concerned that legislation containing broad ranging and often unspecific provision relating to governance, management access and provision may give future administrations powers which are susceptible to different interpretations and application.

We have strong concerns about the scope of particular proposals within the Bill, specifically their potential to impact on the autonomy of universities to deliver their own missions. It has long been recognised – and supported by international evidence, as cited in the Universities Scotland response - that the autonomous status of UK HEIs, free from direct political control, is a fundamental component of our great success. At a time when other nations are removing political control to allow increased autonomy and greater entrepreneurism in the global HE market, it would seem to be a retrograde step to introduce a legislative framework which restricts the flexibility and autonomy of universities in Scotland to respond in an increasingly competitive and changing Higher Education environment.

Whilst our strong preference is not to introduce new legislation, we support the response from Universities Scotland on behalf of its members, which proposes a number of amendments to the Bill in order to better define the respective roles of Ministers, the Scottish Funding Council and individual institutions. We also strongly support the principle of responsible autonomy within universities which is a central component of the Universities Scotland response.

However, we wish to emphasise and elaborate on a number of points, as set out in the remainder of this response.
Section 2: Higher education institutions - good governance

We have always been fully supportive of benefits of robust corporate governance. As a matter of course, we ensure that our governance functions operate consistently with accepted best practice, as developed by experienced University Chairs and set out in the CUC Governance Code of Practice and General Principles (updated 2009). For example, we recently carried out a review of Court effectiveness, and a comprehensive review of our entire committee structure. Both reviews resulted in enhancements designed to improve the effectiveness, efficiency and transparency of our governance functions. We believe that universities are capable of effective self-reflection, and legislation should not be required.

Whilst we accept that universities should comply wherever appropriate with the forthcoming Scottish Code of HE Governance, we strongly believe that it should not be the role of Ministers to determine what constitutes effective HEI governance in an autonomous sector. A framework for governance prescribed by legislation would undermine and fail to respect the significant diversity between Scottish universities.

It is our strong view that the reference to ‘management’ in this provision is inappropriate and should be removed. There is a clear distinction between governance, which is concerned with accountability and scrutiny of management decision making, and management, which is concerned with overseeing agreed strategic direction and operational activity. It is for the governing bodies and chiefly the senior managers of universities to determine how the institution should be managed. Introducing Ministerial control over the management of institutions would further diminish universities’ responsible autonomy, and would create an additional burdensome and bureaucratic framework which would further hamper the effective and efficient operation of HEIs.

Section 3: Widening access to fundable higher education

The University of Stirling is committed to widening access. Our Principal – along with the Principals of all Scottish HEIs – publicly expressed this commitment in the recent publication ‘Delivering for Scotland: University Outcome Agreements 2012-13’ http://www.universities-scotland.ac.uk/uploads/OutcomeAgreementsSummary-final.pdf Our Outcome Agreement 2012-13 further demonstrates this commitment.

However, we are concerned about the scope of the provisions in this section of the Bill, particularly in relation to the role of Ministers in specifying the nature of a widening access agreement. Ministers already have the power to guide the SFC on the scope of widening access provisions through its annual guidance. There should be no need to introduce specific legislation on this matter.

As currently drafted, the Bill could be interpreted as giving Ministers the power to specify the content of a widening access agreement for a particular institution, which would be directly contrary to the principle of responsible autonomy. We do not agree that Ministers should be able to impose terms and conditions to achieve particular
outcomes in relation to widening access, because such requirements could contradict and jeopardise other legitimate strategic aims of universities.

Universities are already required to produce Outcome Agreements through a process of negotiation with the SFC as a condition of grant, and these already include provisions relating to widening access. There is therefore no need to introduce legislation to create a separate agreement focusing specifically on widening access. It is important to note that the Outcome Agreements are developed by negotiation between universities and the HEIs, and are intended to take account of the diverse nature of universities and their varying missions and strategic goals. Their content is therefore not – and must not – be prescribed by the SFC or Ministers.

**Section 4: Fee cap: students liable for higher education fees**

We are broadly content with the policy and content of this section of the Bill. However, it is worth noting that university governing bodies continually review their fees policies in light of external market influences, and would not be likely to support a fee structure which would have the effect of discouraging students from applying.

We note and endorse Universities Scotland's proposal to amend this section of the Bill to ensure that institutions would not be compelled to restrict their fees for Welsh-domiciled students to the maximum fee charged by Welsh universities for these students.

**Section 14: Review of further and higher education**

We are concerned that the provisions as drafted are not consistent with the principle of responsible autonomy. The SFC already has the ability to adjust the allocation of funded places in a way which is informed by discussions with institutions on the coherence of provision, and the allocation of funded places is communicated to institutions in the annual letter of grant. Further, Ministers already have the power to guide the SFC on issues relating to the coherence of provision through its annual letter of guidance. It is therefore not clear why additional legislation is required in this area.

This section of the Bill appears to assume that universities’ academic provision is or should be developed specifically in response to the needs of undergraduate Scottish and EU learners. It fails to take account of the fact that universities provide educational opportunities to a wide range of students from diverse markets, many of whom pay fees for that education and are not funded by the Scottish Government e.g. rest of UK, overseas and TPG students. The autonomy of universities to design their courses to meet the demands of their diverse learner markets must be protected. We do not agree that Ministers and the SFC should be able to have a role in determining this wider provision.

In particular:
14(2)(a): We do not believe it is the SFC’s responsibility to decide on the number of fundable higher education institutions. These are autonomous institutions, and as long
as they meet the criteria and conditions of grant for funding by the Council they should be eligible for receipt of funding.

14(2)(c): We consider that it is the responsibility of individual institutions to decide what 'types of programmes of learning or courses of education' to provide. It is the role of the Academic Council/Senate of each institution to determine the scope of academic provision.

14(6): In relation to HEIs, any report by the Council on a review of the provision of higher education should be to the governing bodies of the institutions concerned, not to the Scottish Ministers since Ministers are not responsible for academic provision by autonomous institutions.

Section 15: Duty to provide information to Skills Development Scotland

We note the provision in section 15 to allow Ministers to introduce secondary legislation that will impose a legal duty on relevant bodies to share data with Skills Development Scotland on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of, disengaging with, learning or training. We understand that this provision is not intended to apply to universities. We suggest that this aspect of the Bill is amended to clarify the bodies to which this provision will apply, and to explicitly state that the governing bodies of higher education institutions will be exempt.
I welcome the opportunity to provide evidence to the Education and Culture Committee on the Post-16 Education (Scotland) Bill. I feel that as a sector focused on student engagement and participation in the provision of Higher Education (HE), students’ views should be an integral part of decisions at all levels of HE policy. I am encouraged by the open consultation and active student involvement of the Scottish Government in this legislative process and hope that through this we can ensure that Scotland remains at the fore of delivering a world class HE provision.

As Vice President Education & Engagement at the University of Stirling Students’ Union I represent a large and diverse cohort of students from various backgrounds and have drawn on my knowledge and experiences in composing the evidence presented in this paper.

**Higher Education Institutions: Good Governance**

I welcome the recommendations of the Prondzynski review of HE Governance and believe that it is only right that as publicly funded enterprises Higher Education Institutions (HEI) abide by a code of good practice. Through the introduction of a code we would not only assure the quality of HE governance processes, but also bring the sector in line with other publicly funded bodies such as the Scottish Social Services Council.

The recommendations of the Prondzynski review provide increased levels of transparency to institutions and the sector as well as enshrining student involvement in the selection of institutional senior leaders by putting students at the centre of institutional strategy.

**Widening Access to Higher Education**

I support the creation of outcome agreements and welcome moves to make fairer access a condition of grant for HEIs. However, the process for developing outcome agreements did not adequately involve students and has led to outcome agreements with little to no student input. This has resulted in agreements which do not reflect the aspirations of all institutional stakeholders and have resulted in unambitious targets for forthcoming academic sessions. I feel that as part of the Scottish Funding Council’s (SFC) review of outcome agreements there could be a greater role for them in ensuring oversight, and that Universities are being sufficiently ambitious.

As much as HEIs must improve upon the recruitment of SMD20 and SMD40, they must also ensure that appropriate support is in place in order to retain these students and
allow them to excel. Although I support the idea of financial penalties against those HEIs who do not meet their targets, I do believe that they should only be used as a last resort. The introduction of financial incentives for those institutions who not only meet recruitment targets but also manage to retain students from SMD20/SMD40 backgrounds through to graduation or completion of an academic award may be more favourable.

Fee Cap: Students Liable for Higher Education Fees

I supported the creation of a fee cap for Rest of the UK (RUK) students and feel that although the issue for equity of costs to RUK students has resulted from the Westminster Governments decision to increase fees to £9,000 the Scottish Government should seek to mitigate any negative consequences to RUK students studying in Scotland. I would therefore support a fee cap equal to the average cost of a three year degree south of the border. This would reduce the marketization of the sector and allow students to choose an institution which is best suited to their skills and aspirations as opposed to their financial situation.

Further consideration should also be given on the costs of academic awards as there could be situations where the cost of a general degree in Scotland is more than the average cost of a general degree in England. If there is a worry that people are picking courses and institutions due to the cost then maybe we need to have a standard cost of a degree (for Rest of the UK students) across Scotland based on success. For instance, if a student leaves with a Bachelor they pay X, if they leave with a Bachelor with Honours then they pay Y, and so on as appropriate.

Review of Higher Education

It is appropriate that as with SFC’s review of good governance they should review the provision of HE more widely. At the core of any review we should ensure that education remains open and free to all, meets the needs of students (including future students) and is a protected part of our society. HE provision should ensure local access to a variety of HE courses and the review should not use duplication of provision as a tool to create specialist subject institutions or force institutions to close courses. The links between research and teaching should also be strengthened within the sector, to ensure that HEIs do not focus solely on high intensive research departments. Universities are not about research but sharing knowledge.
Education and Culture Committee

Post-16 Education (Scotland) Bill

University of Strathclyde

Thank you for the invitation to submit written evidence in advance of my appearance before the Education and Culture Committee.

The University of Strathclyde’s primary concern is to ensure that Scotland’s global reputation for high-quality higher education is preserved and enhanced. It welcomes the shared commitment to this objective by members of all political parties. Strathclyde believes that it is in Scotland’s best interest for the Parliament and the Higher Education sector to work together in partnership. It is in that context that I welcome the opportunity to give evidence to the Committee.

In considering the Post-16 Education (Scotland) Bill, I believe the Parliament should ensure that measures are proportionate. The University accepts the need for the sector to demonstrate that public investment in higher education results in positive outcomes for students, the broad economy and wider society. It believes that the necessary checks and balances are provided by the existing regulatory framework. The Scottish Funding Council’s existing powers – delivered through the Letter of Grant, Financial Memorandum and recently introduced Outcome Agreement process – are extensive, and provide the necessary public assurance that the sector is delivering.

This country has successfully been able to balance a strong regulatory framework with the underlying principle of institutional autonomy. This has allowed the development of distinctive institutions capable of competing with the best in the world. Nowhere in the UK can this be seen better than in Scotland, which punches well above its weight, with tangible benefits for Scotland. Parliament should ensure the principle of autonomy is protected in this Bill. It is critical in allowing institutions the flexibility they need to compete on a global platform and to generate the type of research and knowledge exchange which will grow the economy, increase employment and generate wealth.

Strathclyde has demonstrated that it is possible to pursue a distinctive mission while meeting its obligations to society. It is the leading research intensive university in Scotland for the admission of students from the most deprived areas in Scotland (as measured by the Scottish Index of Multiple Deprivation).

As a direct consequence of the current level of institutional autonomy in Scotland, the University has also and has been able to secure a series of notable investments which will make a direct positive social and economic impact in areas such as energy, climate change, health and technology. The University’s priorities align well with those of successive Governments.
Freedom to determine our approach has allowed us to be innovative. Initiatives in the course of the past year include:

- Agreeing to binding and specific targets to increase participation by groups underrepresented in the sector as part of the Outcome Agreement negotiation process.
- Securing the UK’s first Fraunhofer Centre, bringing Europe’s largest organisation for applied research to Glasgow, and creating the new Fraunhofer Centre for Applied Photonics. The Centre, based at the University will be a hub for industry-driven laser research and technology for a variety of sectors including healthcare, security, energy and transport.
- Securing two Technology Strategy Board “Catapult Centres” for Offshore Renewable Energy and High Value Manufacturing with a strong prospect of winning a third Centre imminently.
- Working with industry, and responding to sector demand for skills, by developing an Engineering Academy – in partnership with the FE sector – and a new undergraduate degree in Biomedical Engineering.
- Supporting sustainable economic growth by developing a distinct approach to industrial collaboration – partners include Boeing, Rolls-Royce, GSK, Aggreko, Babcock, Jaguar and the Weir Group.
- Taking a ‘whole lifetime’ approach to widening access, in partnership with our Students’ Association, through working with the Children’s University and the Age-Friendly University Initiative

In awarding Strathclyde the title UK University of the Year, the judges said: “Its focus on ‘useful learning’ and on really meaningful work with industry had come together in an impressive way.” They said: “Strathclyde stood out as an institution that had an extraordinary understanding of where it was, where it wanted to be and how it was going to get there.”

Our strategy and innovative approach is due to the fleetness of foot and flexibility of approach which the principle of ‘responsible autonomy’ and appropriate accountability – already in place provides. I do not believe Parliament needs to legislate in these areas.

The Bill should reinforce the principle of responsible autonomy which has served us so well in Scotland, and Parliament should be wary of the unintended consequences of changes which might, at some point in the future, be used to undermine this principle, and in doing so undermine Scotland’s ability to compete in an increasingly competitive global higher education environment.

Professor Sir Jim McDonald
Principal and Vice-Chancellor
Introduction

The University of Strathclyde Students’ Association (USSA) represents over 21,000 student members, both undergraduate and postgraduate, from a wide variety of backgrounds across Glasgow and beyond. We have a proud history of campaigning on behalf of all students whatever their situation, and believe in the power of education to transform lives.

We welcome the Government’s Post-16 Education (Scotland) Bill, and broadly agree with its aims.

However, we are concerned in particular with the lack of future-proofing within the Bill, and are worried that in its current form, some elements of the Bill will fall into disuse. We go into these areas in more detail below.

As we are a university Students’ Association, we restrict our comments to the areas most relevant to our members, i.e., those under the headings Terms and conditions of higher education funding (Sections 2-4) and Review of further and higher education (Section 14) in the draft legislation.

Higher education institutions: good governance

We welcome the provision set out in section 9A of the Bill, and believe it will ensure that our higher education institutions are appropriately governed.

However, we are concerned that this is phrased as an option, not an obligation on Scottish Ministers, leaving it open for this strong governance requirement to be dropped by subsequent Governments. Should this happen, this would, we believe, be detrimental to higher education institutions, and therefore we recommend that the word ‘may’ is replaced with the word ‘must’ in section 9A.

Widening access to higher education

We welcome the Bill’s section on widening access, and strongly urge the committee to grasp this opportunity to ensure that all higher education institutions take on their responsibilities to widen access and put sufficient resources and expertise behind such work.
We particularly support the provision in the Bill for statutory Widening Access Agreements (WAAs), and the link of these WAAs to the receipt of public funds. We believe that this will ensure there is strong widening access work across Scotland.

However, we are concerned that some institutions will avoid ambitious targets, particularly with the possibility of funding being conditional on compliance with WAAs. Therefore, we recommend that the Bill includes an expectation on higher education institutions to be ambitious in their target setting when forming their WAAs.

Linked to this, we believe the Bill should place a duty for Scottish Ministers to annually present to members a review of the impact that WAAs are having, and how institutions are fulfilling their responsibilities in this regard. Doing so will help ensure that widening access work is properly scrutinised.

Furthermore, again as in Section 2 of this document, we are concerned by the use of ‘may’ in section 9B(2) of the Bill. Whilst we understand the need for legislation to be flexible in order to meet the needs of future Governments, the use of ‘must’ in place of ‘may’ in section 9B(2) would ensure that WAAs become a permanent feature of receiving funding from the Scottish Funding Council (SFC), without dictating the content of those WAAs.

We also suggest that the committee uses this opportunity to consider and clearly lay out provision for appropriate sanctions in relation to higher education institutions complying as in section 9B(2).

Finally, alongside NUS Scotland, we would like to see increased power for the SFC, allowing it to act independently on issues of access to higher education institutions. This would ensure that all WAAs are assessed and monitored fairly, and ultimately that fair access to our higher education institutions is safeguarded and promoted for all.

**Fee cap: students liable for higher education fees**

USSA has a stance of ‘no fees’ in relation to higher education, and so we do not support the implementation of fees for students from the rest of the UK (RUK).

Given this position, but acknowledging the reality of RUK fees, we would like to see the legislation reflect a lower fee cap for RUK students than is currently proposed. In particular, we recommend that in section 9c(3)(b), the word ‘total’ is inserted before the word ‘amount’ in the first line; that the phrase ‘in any particular academic year’ is removed; and that the phrase ‘that year’ is replaced by ‘those years’. This would prevent Scottish institutions from providing the most expensive undergraduate degrees in the UK (as is currently the case).

Furthermore, we support NUS Scotland’s call for the removal of variability of fees between institutions and across courses, as we believe that variable fees lead to the
unnecessary marketisation of higher education, with applicants applying for degree courses based on cost, not suitability.

Finally, as we have previously suggested in conversations with MSPs, we would like to see this Bill legislate for a defined proportion of RUK fees to be ring-fenced for widening access/ bursary support for RUK students, in order that they too benefit from widening access as a result of this Bill.

Review of further and higher education

We are concerned that section 14 of the proposed legislation emphasises efficiency, increased collaboration and the economical use of funds to the extent that it does, as this section could be both perceived as and used as a way to cut provision. However, we recognise that this power of review as it stands in the proposed legislation could also be used to protect local provision and prevent courses from being cut by further and higher education institutions. We therefore cautiously welcome section 14 of the Bill, as long as measures are put in place to ensure that communities affected by any review are properly consulted.
On resuming—

**Post-16 Education (Scotland) Bill: Stage 1**

**The Convener:** Under our third agenda item this morning, we will take formal evidence on the Post-16 Education (Scotland) Bill. We will hear evidence from two panels. The first panel is made up of Professor Gerry McCormac, principal and vice-chancellor of the University of Stirling; Professor Sir Jim McDonald, principal of the University of Strathclyde; Sir Timothy O’Shea, principal and vice-chancellor of the University of Edinburgh; and Professor Seona Reid, director of the Glasgow School of Art.

I apologise for the slight delay in starting this session. Liz Smith wants to raise a particular point.

**Liz Smith:** Thank you, convener. As you know, I wrote to you yesterday about two concerns that I have about the scrutiny procedure for the bill. The first of those is about the availability of the written evidence that we have received. I understand that 75 to 80 submissions have been made to the committee. However, only some of those are available to us and a substantial number—about 50—came to us only at lunch time yesterday. That makes our job rather difficult, because it has been hard for us to ascertain the overall views of both sectors. This morning, we are taking evidence from people in the higher education sector, but it has been difficult for us to discern the different views in that sector in the information that we have.

My second concern is on what I believe is an important aspect of the bill. The committee will have to make a judgment on whether to enshrine governance in the bill. As I understand it, we will have to make a value judgment on the forthcoming code of governance, which the chairs will prepare, but it will not be available to us for two months. It will be difficult for us to make a judgment—in fact, I do not think that we can do it without the code being available to us.

**Neil Findlay:** I strongly agree with Liz Smith. We raised the issue at last week’s meeting, and the situation remains the same. Without the document, we will have great difficulty in scrutinising what is proposed.

**The Convener:** I thank members for raising the issue. Clearly, we raised it last week, and I thank Liz Smith for raising it directly with me yesterday.

On the first concern, the written evidence that has been submitted so far was supplied to members yesterday lunch time, as Liz Smith said. That was not enough time for us to go through it
properly for this morning's meeting. I accept that
the timetable is tight, but I hope that members will
understand that the information and evidence
were given to them as quickly as possible.

Liz Smith is quite right: some submissions are
not yet with us and the individuals have asked for
an extension. Given that we require the
information in order to carry out our job, we have
agreed to an extension, but we want the
information to come to us as quickly as possible
so that we can carry out our work.

As Liz Smith will be aware, I also said in my
reply yesterday that we will leave the door open to
call further witnesses as we go through so that, if it
is necessary, we can either call witnesses back or
call new witnesses, as appropriate, later in the
stage 1 process. That will be difficult for us, but I
am sure that, if we wish to do it, we can manage it.

On the code, the bill team said at last week's
meeting that the intention is to make a draft
available by stage 2. My only comment is that it is
not unusual for codes, guidance and so on not to
be available during the passage of a bill. This is
not the first time by any means. I am sure that
members who have been here for a few years
have witnessed that. However, if the committee
deems it necessary to call witnesses later in the
process on that basis, we will leave the door open
to that. It is unusual, but it can be done. We could
call witnesses at stage 2, to take oral evidence on
the code once it is published, but it would be better
to take a decision on that nearer the time, once we
see the information.

I thank members for raising those concerns with
me, and I thank the panel for their indulgence.

Before we begin, I remind the panel that not
everybody has to answer every question. If you do
not need to answer, please feel free to remain
silent on any point that you wish. We seek as
much information as possible, but there is no point
in going over the same ground if it is not
necessary to do so. We will try to keep our
questions to particular sections of the bill, as we
go through it.

We will start with university governance, and Liz
Smith will begin.

Liz Smith: Thank you, convener. When
Professor von Prondzynski's review was
published, the recommendation was that a code of
governance be set up, and the indications are that
the universities are happy with the suggestion of a
Scottish code. However, the bill proposes to
extend ministers' powers considerably further than
the von Prondzynski review recommended. Will
panel members give us their reflections on that?

Sir Timothy O'Shea (University of
Edinburgh): I will answer first and then I will see
whether any of my colleagues wants to pitch in.

In the universities, we regard engagement
between the chairs of our governing bodies—to
whom we are responsible as principals—and the
Scottish Government on a code as a productive
activity.

This is a good hook for me to express our
principal anxiety about the bill. We support the
bill's intentions with regard to widening
participation and having greater efficiency in the
sector and greater accountability, which all make
very good sense to us. At the same time, we are
well aware that Scottish universities are seen as
particularly successful in world terms and that
outside commentators relate that success directly
to the responsible autonomy that we discharge.

In recent years, I served for four years on the
strategy committee of the excellence initiative that
is designed to improve the German universities;
and recently I had the honour of being the deputy
president of the French investissement dans
l'avenir endeavour, which is about improving the
quality of the French universities. It is made
explicit in France and Germany—it is also clear in
the Republic of Ireland—that people find the way
in which our universities discharge their
responsible autonomy to be one of the key
reasons why Scotland's university system is so
disproportionately successful. Our ability to create
subsidiary companies, for example, and to engage
with each other in pooling partnerships, without
recourse to ministerial control, is seen as a key
success factor.

As I said, we support the bill's overall intention,
but we are anxious that there might be,
 inadvertently, a reduction in responsible autonomy
and that a future Administration could intervene in
a way that would be unhelpful to the success of the
universities in meeting their targets for
widening participation and research.

As this is a fundamental point, I wonder whether
Sir Jim McDonald would like to comment on it as
well.

Professor Sir Jim McDonald (University of
Strathclyde): I will do so if I may, convener,
unless there is going to be a supplementary
question.

Liz Smith: I was just going to ask you about
something in your written evidence.

Professor McDonald: I absolutely agree that
the strong governance and transparency with
which we discharge our responsibilities are
fundamental. It is certainly the intention of the
review of governance to ensure those.
I echo Tim O’Shea’s concerns about ensuring that there is a balance between our responsible autonomy, which we will no doubt speak about over the next hour or so, and the scrutiny to which we correctly present ourselves and which holds us to account. However, in all of this, I am sure that there are other matters on which I should present myself to Liz Smith.

Liz Smith: On that point, Professor McDonald, you said clearly in your written submission that you felt that autonomy was crucial for innovation and you gave some examples of how you felt innovation had worked as a result of that. To take up Sir Tim O’Shea’s point, the overall scenario is that the world HE sectors that are doing particularly well are those with enhanced autonomy that is fairly free of the state. That is shown by figures from the Organisation for Economic Co-operation and Development and the World Bank, and by other statistics. Is it inappropriate for the Scottish Government to consider moving in the other direction, so that there will be enhanced powers for ministers in relation to HE?

Professor McDonald: I welcome your recognition of the issue. The Shanghai tables of universities that perform best on the international stage show that those with greater autonomy perform better. The World Bank has also presented statistics on that, which the committee may be aware of. I reiterate that there is no separation between strong governance, absolute autonomy as we pursue our strategies and the transparency with which we must present ourselves and success. We must keep that balance in mind.

Tim O’Shea gave you an example from Edinburgh. In my own case, having the autonomy as an institution four years ago allowed the University of Strathclyde to recast its mission as an international technological university. In so doing, our court held us to account and put us through the mill on having an evidence-based strategy, as did our students and our union colleagues. On that journey of resetting our strategic intention, we were scrutinised by all the key stakeholders, including our Government partners. I stress the word “partners”, because I value the partnership with Government and Government agencies, which is part of our story in Scotland. It is not something that I would want to see disturbed, because it is excellent. For example, we work with the Scottish Further and Higher Education Funding Council, Scottish Enterprise and Highlands and Islands Enterprise. The context in which Scottish higher education is evolving provides a supportive platform.

On Liz Smith’s earlier point, the governance review is right and proper. It is correct that we are held accountable for the proper execution of our roles and responsibilities and the expenditure that we make. In all of that, though, there is evidence for autonomy in Scotland in determining a future that serves a Government strategic and policy-led purpose. The world-class institutions that we have in Scotland, including in Edinburgh, are testimony to the value that we are already playing back into the system.

11:00

Liz Smith: That has come through in virtually all the submissions that we have to hand from student associations, staff, principals and chairs. Obviously, the overall objective is to maintain that excellence within Scottish universities. The issue of autonomy—or responsible autonomy, to use your phrase—is appropriate.

Drilling down a little bit further, last week we had the bill team here. In the submissions that we have to hand there has been a lot of concern about the distinction between the definition of “governance” and of “management”. In most of the submissions, there seems to be considerable reluctance to having “management” written into the bill. Why is that inappropriate?

Professor McDonald: It is not just the rhetoric in defining the difference between strategic leadership and management; it is that management is about delivery of a pre-approved strategy, and I would like universities to be tested on their strategy and their contribution to an aligned opportunity in Scotland. Management is really inside the machinery of the institution.

The policy intentions of the bill are clear and we support the principles. In drafting it, we must ensure that there is clarity on the purpose—what we are trying to achieve. The distinction between responsible autonomy and management of the institutions is important. If we have the trust and confidence that should be required of and in the sector, there is a chance to ensure that this is not just about running the organisations but about properly recognising the strategic alignment and opportunities for Scotland.

Liz Smith: Have you asked for the removal of the term “management” because you fear that taking that too far would impinge on strategic governance and perhaps on the academic work of your institution? Is that the main reason why you have asked for the word to be removed?

Professor McDonald: Yes.

Sir Timothy O’Shea: That is exactly right.

Professor Seona Reid (Glasgow School of Art): I want to pick up on Jim McDonald’s point about the importance of responsible autonomy enabling a diversity of sector that we do not
necessarily see elsewhere. In a small institution, the nature of the governance and management will be different from that in a large institution, but it will espouse, comply with, support and endorse the same principles of governance.

All universities, whatever their size and nature, support the code of governance whole-heartedly. However, enshrining it in legislation risks it being misused by future Administrations to apply a uniform governance model that would be inappropriate in a diverse sector.

**Liz Smith:** I will finish with a question on diversity. What would you like to see within the code of governance that is being developed that is not within the current UK code but that you do not want to be enshrined in legislation? What is the advantage of having a new Scottish code of governance?

**Professor Reid:** I think that it can speak to the other forms of accountability that exist within Scotland—it can be specific about the context. It is difficult to see where the principles would differ from the code in the UK.

**Neil Findlay:** I am having difficulty picking up why it might only be future Administrations that might misuse the powers that are given to them.

**The Convener:** I think that that is quite clear.

(Laughter.)

**Neil Findlay:** I am confused by that.

The evidence from Universities Scotland, which we received only very late yesterday, says:

“We do not see a need for the higher education provisions in the Bill, which create new and in some cases quite extensive and unspecific powers over higher education institutions.”

Really it is saying that there is no need for the bill. Is there a need for the bill?

**Professor Gerry McCormac (University of Stirling):** As my colleagues have commented, the policy objectives of the bill are laudable, but we do not feel that legislation is necessarily required to give effect to those objectives. The sector has been particularly successful in a range of areas, including widening participation and some of the other issues that are addressed in the bill, without the need for specific legislation.

**Neil Findlay:** Perhaps the other witnesses could just nod if they agree with that, because that will save some time.

**Professor McDonald, Sir Timothy O'Shea and Professor Reid** indicated agreement.

**Neil Findlay:** That is fine. We have clarified that the panel agree.

**The Convener:** That makes it slightly tough for the staff producing the *Official Report*, though.

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**Neil Findlay:** It can state, “They all nodded.”

Therefore, how can we ensure that the aims are achieved without legislation? People have spoken about the grant letter and that kind of stuff. Finding out how you see the aims being achieved without legislation is key to our deciding whether we need the bill.

**Professor McDonald:** You have clearly picked up on the point that existing measures and mechanisms allow the universities to be properly overseen and held to account. You know about the letter of grant and the financial memorandum. More recently, outcome agreements have been introduced by the Scottish funding council, led by the Scottish Government. Some of those agreements are very detailed and they will evolve, as they have been in place for only a year. That has been a learning process for the funding council and the sector, so we will evolve and refine the way in which the outcome agreements sit alongside the institutions’ autonomous missions. I remind the committee of the context in which the agreements have developed. Individual institutions have made commitments on widening access, knowledge exchange and patterns of provision.

Through the conditions of grant and the memorandum that sits alongside that, and through the outcome agreements, we believe that the mechanisms exist to allow us to be held to account and to deliver on and add value to the public expenditure on universities.

**Neil Findlay:** Some institutions have failed miserably to extend or open up access. Will the process that you have set out force them to change?

**Professor McDonald:** I do not accept the premise of that. Every university that I am aware of works hard to ensure diversity in its population of students. We have seen a great deal of innovation over the past few years, and not just through the outcome agreements, although they have certainly focused attention. There has been plenty of innovation and engagement with society and broader socioeconomic communities over the past few years. I do not recognise that there has been failure. In fact, it is quite the opposite—I would say that there is a great deal to commend the sector at large, in different ways. As Seona Reid mentioned, there has been no single approach to widening participation. Some of the value has been in the great deal of innovation from different universities, which has informed the sector more broadly.

**Neil Findlay:** I might be missing something, but 2.2 per cent of University of Aberdeen students are from the most deprived areas and the figure for the University of St Andrews is 2.6 per cent. I
do not know what measure of success that could be allied to.

**Sir Timothy O’Shea:** The universities would not accept your notion that we have failed miserably. The 20 per cent most deprived areas in the Scottish index of multiple deprivation is one available measure, but a variety of measures exist that must be taken into account. The SIMD 20 is an imperfect measure because it is a postcode measure. Another measure, which we use strongly at the University of Edinburgh, is whether residual family income is low. Other measures include whether the family has ever had anybody at university and whether the student is at a low-achieving—in terms of university success—school. There is also the overall family context and whether, for example, the potential student has serious caring responsibilities.

The University of Edinburgh is the key leader in the Lothians equal access programme for schools. Last year, it had 1,200 participants who were not expected to go to university but who went on to university-level study at various universities in Lothian. Of them, nearly a third—371—went to the University of Edinburgh. The university also took in 130 students through the Scottish higher education partnership. Sixty-two students entered last year through our innovative pathways to the professions scheme, whereby students in medicine, law or architecture partner with students who are not expected to go to university, and 93 adult returners successfully entered. The University of Edinburgh gave out more than 1,000 substantial bursaries and scholarships for new entrants last year.

That success and that commitment are demonstrated across the sector, so we do not accept your characterisation, which is based on a single measure, which does not capture access needs. If we used the measure that the deputy convener suggested, it would tell us that there are no access students at all in Shetland, because there are no SIMD 20 postcodes there.

The debate must be conducted in a proper way and the whole range of measures must be considered. The commitment of the Scottish universities to widening participation is total, and we have had demonstrable success over the past 10 years.

**Neil Findlay:** I used the figures that have been presented to us; I am sure that the other criteria that you suggested are relevant. However, I suggest, with respect, that the Government is seeking to legislate partly because of the approach that you are presenting. The Government thinks that things have not gone far enough so it must legislate. That is the reality.

**Sir Timothy O’Shea:** I am sorry, deputy convener, but we have all voluntarily engaged in outcome agreements that have explicit targets on widening participation.

**Professor Reid:** I will give figures from the sector. Over the past six years, there has been a 16.9 per cent increase in SIMD 20 university students. There are 3,053 more students from those postcodes than were at university six years ago. The figures are misleading in the terms in which they are being presented.

There has also been an increase in state-school participation and in the number of full-time undergraduate degree entrants with socioeconomic classifications of 4 to 7. If we use SIMD 20 and other indices, we see that the number of students who are coming from the most deprived backgrounds is increasing. That is happening in response to the programmes that every university is undertaking.

Those are not easy wins. We need to recognise that, particularly in Glasgow, we are talking about schools in which 4 per cent of leavers enter higher education—that is a very low rate. All our work is about trying to work with partners in education and further education to increase the figure by increasing aspirations and the bridging activities that allow us to get people with higher aspirations into higher education, whatever that higher education might be.

**Professor McDonald:** On the evidence base, some of which the committee will have and some of which it will not have, I reiterate Seona Reid's point. Many initiatives predate outcome agreements, which shows that, on the basis of responsible autonomy, institutions in the sector have been working together as well as individually. In my institution, the University of Strathclyde, we grew our MD 40 entry to first year from 687 to 736 people between 2010-11 and 2011-12 and we seek to grow the number further. Among the research intensives, we have the highest number of MD 20 entrants into university.

I am proud of that. Such work is part of our social mission and I am sure that other universities recognise their role in supporting gifted young people, regardless of their socioeconomic background, to achieve their potential at university.

Of course the sector wants to do more. You will have seen from the universal sign-up of principals to the principle of widening access that institutions are keen to push on with that strategic objective, for ourselves and to help to meet the Government’s objectives and ensure that we produce more school leavers who are ready for university and for the workforce as we build a knowledge-based economy.
Neil Findlay: I am aware of Strathclyde’s long-standing commitment to widening access—you even let me in. [Laughter.]

11:15

Professor McCormac: In 2006-07, the University of Stirling admitted 538 students from SIMD 40; in 2010-11, it admitted 710. Through the recent outcome agreement with the Scottish funding council, we have again agreed to increase by 135 the number of students from those categories during the year and to put on special courses during the summer to ensure not only that they enter university but that they actually succeed, are retained in the sector and go on to complete their studies. That is crucial, and all my colleagues in all of Scotland’s universities are making enormous efforts to ensure not only that we admit students but that they have a successful experience and exit university with a qualification.

The Convener: We have strayed into the issue of widening access. We will come on to that but, for the moment, I want to bring the questioning back to the issue of governance.

In his opening remarks, Timothy O’Shea cited pooling and subsidiary companies as a couple of examples of what autonomy allows you to achieve. In what way would a Scottish code of good governance interfere with that activity?

Sir Timothy O’Shea: It might not, but it seems to us that the current negotiations between the chairs—as principals, we are, of course, accountable to the chairs—and the Scottish Government on a voluntary code are the appropriate way forward.

The Convener: So you have no evidence that a code of good governance would impact on your organisations’ ability to continue to carry out that work.

Sir Timothy O’Shea: It all depends on its shape. As I have indicated, I spend some of my time giving advice to other higher education systems, particularly those in Germany and France. If you were to task me with writing a governance code that reduced autonomy, I could do that for you—after all, many German universities cannot set up subsidiaries—and if you were to task me with writing a governance code that increased autonomy, I could do that, too.

The Convener: But do you expect any code of governance that might be produced to reduce your ability to do any of those things?

Sir Timothy O’Shea: It has to be an anxiety, particularly if the legislation is underspecified. I heard the deputy convener make a wee joke about the current Government, but the universities have had a very constructive engagement with the four Governments since devolution and have flourished in comparison with other European and indeed the English higher education systems. However, the anxiety is that if a future Government were given the apparatus to intervene in our management or governance structures it might choose to do so. If you look around Europe, you can find examples of countries where the Government or, indeed, regional Governments have intervened in universities’ governance and it has usually been unhelpful.

Professor McCormac: We currently adhere to a code of good governance and utilise it fully in our organisations. Seona Reid was right to point out that a Scottish code of governance would contextualise that and ensure that the different circumstance in Scotland was respected. It is worth examining that matter.

Beyond that, however, the passing of legislative powers restricting our capacity as organisations to reflect the diversity of mission that is of huge benefit to Scotland and the Scottish economy poses a real risk to the sector. As has been said, other countries look to emulate our autonomy, because they recognise the success of the higher education system in the UK and US. As Sir Tim O’Shea has said, Germany, France and others are trying to give their universities more autonomy to make them as successful as we are and we would see it as a retrograde step to pass legislation that might reduce the university sector’s autonomy.

The Convener: I am glad that you mentioned the current code, which I am sure that you all abide by, because I am struggling to understand why there should be such an issue about a new code.

As the debate that took place among committee members before we started to take evidence bears witness to, the code is not in the bill but is separate from it. It is referred to in the bill, but the detail of the code will not be included in primary legislation. What is the source of your anxiety? What is your main problem with the new code?

Professor McCormac: Under the bill, ministers would have control over whether the unspecified code was utilised and might put in place some other code. That is where our anxiety lies. We are not anxious about looking at, reflecting on and reviewing what we do, because that is a constant process. We do not know what the new Scottish code of governance might look like. We are open and receptive to seeing what it says. Our concern is about legislation that would pass to ministers the power to control that.

The Convener: What opportunity have higher education institutions had to input to the development of the new code?
**Professor McCormac:** I think that all HEIs have been visited or are in the process of being visited by the consultants who have been appointed by the chairs in Scotland. I think that student bodies and a wide range of other stakeholders are engaged in that process. The consultants have not yet visited the University of Stirling; I think that we are due for a visit in the next few weeks.

**The Convener:** So everyone has been visited and asked for their opinion of and input into the new code.

**Professor McCormac:** They will have been by the end of the process.

**The Convener:** Before the code is published. Okay.

I have a final question on governance. Is there a difference between your level of anxiety about the term “governance” and your level of anxiety about the term “management” as they are expressed in the bill?

**Professor McCormac:** Governance is about setting the policy and strategy in the way that Sir Jim McDonald articulated eloquently. An anecdote that is told is that the boat is steered through governance and rowed by management. That is very much the case. Management is about the operation and optimisation of the strategic plans. Governance and management are very different things. It would not be in the interests of the institution to have interference with the management.

**The Convener:** Last week, a member of the bill team—Tracey Slaven—said in evidence to the committee:

“The phraseology in the bill refers to governance and management. Discussion with the sector has indicated that the focus on strategic management may have some unintended consequences and that that has gone slightly wider than we anticipated. We are therefore happy to talk with the sector about the detail of that as we get to stage 2.”—[Official Report, Education and Culture Committee, 15 January 2013; c 1746.]

From that, it sounds as if the Government is reconsidering the position. Is that your understanding?

**Sir Timothy O’Shea:** Yes. I met Tracey Slaven yesterday and that was my exact understanding.

**Professor McDonald:** That is helpful.

**Sir Timothy O’Shea:** It is very helpful.

**The Convener:** It is helpful.

Do members have any more questions on governance before we move on?

**Neil Findlay:** Some of the submissions, particularly the one from Universities Scotland, refer to concern about ministers having more power in other areas. Will you explain some of your concerns about such centralisation?

**Sir Timothy O’Shea:** I will make an opening comment on that, and then my colleagues might want to respond.

Scotland’s higher education system is very particular. Unlike the system in England, we do not allow institutions that do not award the PhD degree to have the title of university. The Open University in Scotland is an important part of the offering in Scotland, and we have two highly successful art schools. We also have the University of the Highlands and Islands, which is particular to and highly appropriate for the north-west of Scotland, and for which there is no obvious model in any other part of the country.

We are anxious about that diversity. There are tremendous differences in scale—for example, the University of Edinburgh is about five times the size of the average British university, but some of the other Scottish universities are just a proportion of that size. That diverse system is working well, so we would be anxious that an attempt to systematise might inadvertently be unhelpful, for example to the art schools with their particular missions, to UHI or to the big universities such as Strathclyde, Glasgow and Edinburgh.

**Professor McDonald:** I want to return to the question of concerns about governance. I do not want to be too historical, but the western tradition of establishing institutions that are autonomous and free from the fear of input or direct steerage from Government, the media or other special interest groups is a fundamental principle that is at the heart of what universities should be about, not only in Scotland but internationally.

On governance and scrutiny in particular, we recognise that the committee is well informed. However, I just want to remind us that as well as having independent lay members of the university court, we have the senate, which is the supreme group that looks at academic autonomy. Over the years, the universities, including my own, will go through scrutiny from the Scottish funding council, the Quality Assurance Agency for Higher Education Scotland, independent accountants, the university court audit committee, bodies regulating the professions—be that in humanities, science, engineering or business—and independent external advisers.

Through all that, the universities sector is perhaps one of the most scrutinised sectors in society. We must continue to be scrutinised and to be accountable, but I want to ensure that we understand that as well as the correct governance review that we are going through, the platform for scrutiny, testing, challenge and accountability is well built and is there for historical reasons.
However, for the universities, independence of thought and the ability to challenge Government, society and thinking are fundamental and precious, so we must protect them.

The Convener: Thank you. I want to move on to widening access, an issue that we have already strayed into. George Adam will start the questions.

George Adam (Paisley) (SNP): Thank you, convener, and good morning, gentlemen. I will ask a question that is similar to one that I asked the bill team at last week’s meeting. Widening access is about retention, as well as access. After the students’ initial challenge of getting into institutions, the challenge for the institutions is to retain them. I would like to hear how you deal with that.

As has been said, various universities are good at getting students from a variety of backgrounds. For example, in my constituency in Paisley, the University of the West of Scotland is particularly good at that. If we are giving extra funding to ensure that we get more people involved in higher education, why do we not put all the money into an institution such as the UWS and just say, “You’re good at this—you continue”? Why are we almost rewarding the failure to an extent of some of—not all—the ancient universities, whose record on widening access is not that great?

Neil Findlay: Convener, may I make a point about that?

The Convener: Yes, briefly.

Neil Findlay: My understanding is that there is no provision in the bill for extra funding for widening access. That point might be helpful for the discussion.

Sir Timothy O’Shea: I do not think that the notion of rewarding failure makes particularly good sense in this context. In the recent bidding for access, we have mechanisms that the Scottish funding council introduces, at the behest of the Scottish Government, which provide extra resource for the successful recruitment and retention of widening-participation students. Therefore, there is no sense in which anybody is being rewarded for success, but there are funding mechanisms—it is appropriate that they exist—that take into account the fact that the widening-participation students will on average require more money. They will require more resource prior to coming to university and more resource when they are at university to ensure that they are successful; that is entirely appropriate. I do not think that there is any way in which someone could suggest that the current funding mechanisms for widening access are rewarding failure.

11:30

We have a set of arrangements that have been voluntarily agreed by the universities with regard to the extra resource necessary to improve our position on widening participation. After all, there are three phases—recruitment, preparation for study and extra support during study—all of which require resources. In that regard, the Scottish funding council’s current mechanisms are appropriate and I think that the universities are successfully using them to improve the position on access.

Professor Reid: We should approach the issue of widening participation on the principle that all students, whatever their background, should have the same choices as all other students. If we are challenged in that area, it is our responsibility as institutions to ensure that we work hard to remove barriers, raise aspirations and make those choices available.

Professor McDonald: The UWS has been mentioned, and I have to say that what Seamus McDaid and his colleagues have been doing there is an excellent success story.

Going back to diversity and the successes that each university is able to present, I realise that how the rest of the panel perceives the issue is another matter but I believe that every university has a compelling story to tell about how seriously it has taken the issue of widening access. Strathclyde, for example, is actively seeking a meaningful partnership with its own students. I know that our student president will give evidence very shortly, but I should mention that the university’s students association has innovated the StrathGuides programme, which makes a direct connection with Strathclyde’s interest in schools with low participation rates.

As Seona Reid said, we should celebrate diversity and the innovation that is generated at the Glasgow School of Art, at Edinburgh, at Stirling, at Strathclyde and so on is something that we all share. Indeed, Universities Scotland’s committee and engagement structures mean that if Gerry McCormac, say, discovers a certain approach it can be shared with the rest of us. Of course, the breadth of activity that we have through the responsible autonomy approach allows us to examine particular approaches and find out whether they can work for us given our geography, our region’s societal and economic make-up, and so on.

Harry Burns talked very recently about socioeconomic challenges in and around Glasgow, and Strathclyde has a particular chance to engage with those in SIMD 20 and 40, what with the number of underprivileged and talented young people we might be able to elevate into
these opportunities. Again, there is no homogeneity in Scotland. Because the socioeconomic mix is different, universities will take different strategic approaches; however, the innovation that comes with diversity is an approach that we all share and can celebrate. The UWS has taken a number of exemplary approaches of which we are aware, and where we can we will try to take the best of them in the context of what we as individual institutions are trying to achieve.

George Adam: I am probably going to the other end of the scale, but another very media-led question relates to the possibility of high-achieving students being displaced as a result of efforts to widen access. Obviously, some kind of balance is required.

Sir Timothy O'Shea: The fact is that universities have a limited number of places and that working hard on one constituency will change the balance. The mediating factor is that this coming year the Scottish Government is providing an additional 1,700 places, which will be focused on widening participation and will therefore not result in displacement. Inevitably, however, something will happen if you have a limited resource and change the mix.

George Adam: It is a competitive environment.

Sir Timothy O'Shea: It is highly competitive.

Professor McCormac: The additional 1,700 places that Sir Tim O'Shea has just alluded to are spread across all the universities. We have all agreed to take on additional students and to put in place support mechanisms to ensure that they are given every opportunity to succeed. As that cohort moves through the system, we will be held to account for successful retention of those students and the successful completion of their courses. We have managed to do all that without legislation.

However, the bill seeks to enshrine that in some way in legislation. As we enter into the process, we do not know how the cohort and the individual students who are going through the system will respond. The bill provides more of a straitjacket for us to operate within. However, we would like to have the flexibility that currently exists to be responsive to the needs of the individual students and society.

Sir Timothy O'Shea: Displacement is a charged notion. Over the past 100 years, the mix of students going into universities has changed. If we look at the statistics, we see that the big displacement—it is startlingly big—is one with which most people would be comfortable: we have moved from a position in which women were a small minority of university students to one in which female students are the majority. We could regard that as being more appropriate and gender fair or, if we wish, we could use the language of displacement and say that boys or males have been displaced from university by women. However, if we look at the statistics from 1945 and random years until now, we see that the change has been quite dramatic.

Joan McAlpine: I have some questions about some of the specific measures that you use, or could use, to widen access.

What are your views on interviews? It has always struck me as strange that universities in this country do not interview more and tend to rely on paper qualifications. Some of the Ivy League American universitites—Massachusetts Institute of Technology is the one with which I am most familiar—put a lot of resources into interviewing all the students so that they can judge their potential, as opposed to judging it just by what is on paper.

Obviously, someone who went to a high-achieving, fee-paying school would be more likely to have straight A's than somebody who went to a school that was in more difficult circumstances, who might not have quite such a fantastic set of results. How someone has performed against their peers and against the circumstances in which they found themselves can come out only in interview, as can the young person's potential. Why do you not interview more?

Sir Timothy O'Shea: I will offer a starting comment, mostly from the point of view of the University of Edinburgh.

There are two reasons why we do not interview more. First, the data from universities in the UK system that interview—such as the University of Oxford and the University of Cambridge—does not give one comfort that that process would help us with widening participation. There is a certain amount of scepticism about a 20-minute or half-hour interview.

The University of Edinburgh has about double the applicants that the University of Oxford and the University of Cambridge have together. We have about 50,000 applicants, nearly all of whom, to judge by their paper qualifications, would be competent to come to the university. It would really not be feasible to run 50,000 interviews. My colleagues would not be doing anything else; we would have to stop teaching for a couple of months.

Therefore, because of volume and the apparent reliability of the interview technique, one is fairly sceptical about interviews.

Professor McDonald: I agree with Tim O'Shea. However, there are examples of interviews being applied. It is anecdotal, but the evidence exists if you are interested.
I am an ex-head of department in electronic and electrical engineering. Every applicant who indicated that electrical engineering at the University of Strathclyde was one of their choices was interviewed. It was a big overhead, but it gave us some insight into the broader mix and some of the depth. However, the care that had to be taken in that process meant that, to be fair to all those individuals, a diverse interview team was necessary. As a consequence, we had to take enormous care to ensure that we did not introduce any accidental disadvantages en route. Nonetheless, interviews can be appropriate.

Another example relates to our outcome agreements and is an example of us innovating. We have not mentioned it, but it concerns how the sector adds value to economic growth in Scotland. In the University of Strathclyde, we are about to launch the engineering academy in direct response to a stated requirement from business and industry, particularly around the Glasgow area—Babcock International Group plc, BAE Systems, Scottish Power and SSE plc.

In many ways, we are going to have two-year interviews with the youngsters who will come through the college sector. Again, we have to be subtle and also innovative in understanding how to pre-select and how to engage with our partners. All the universities that are at the table today—and, I dare say, most universities in the sector—have meaningful partnerships with their colleagues in the college sector.

Although we have the new regional restructuring, which in and around Glasgow will mean four groups, some of which were previously three separate colleges, at steady state, the 400 kids will be prepared and pre-qualified, as it were, through the colleges, but they will also be interviewed and, more important, supported and developed by the industry partners that get alongside us and our college partners.

I would say that a mixed approach needs to be applied. We need to be subtle and to apply different techniques as and when they are appropriate.

Sir Timothy O’Shea: If we take the intention behind your idea of interviewing and characterise it as direct engagement with widening-participation students, that is certainly what we should do. In our successful Lothians equal access programme, we have directly engaged with 1,200 potential university students. A part of that might be something like an interview to encourage them to raise their aspirations, but it is not a question of having a big queue of students and giving them 15-minute interviews. To take the spirit of your question, I think that the key is for us to engage directly with potential widening-participation students, but not to attempt to interview the entire set of applicants for the sector.

Professor Reid: Because we are tiny, we interview, and we consider portfolios and not just academic qualifications. Interestingly, the interview is the most contentious part of the process. In the research, the jury is out on whether interviews are a fair means of selecting candidates. There is some evidence that they are not and that they can be discriminatory as well as supportive. There is no single approach to admissions that supports widening participation.

My colleague to my right has not mentioned it, but the University of Edinburgh has an effective system of contextualised admissions whereby it scores differently applicants from particular postcodes or backgrounds in order to acknowledge that academic achievement might be less well developed in some schools and areas than in others.

Professor McCormac: Admissions is a particularly complex area and it is exactly the sort of thing that we see the institutions having responsible autonomy and control over, rather than having something done to us. It can involve, for example, portfolios of artwork, proficiency in music, grades in an exam or a wide range of other things. There are professionals who have spent many years assessing the capacity of students. When we admit a student, it is not just about their getting over a hurdle to get on to a course. It is about our assessing the individual’s competency and ability to complete the course, so that we are not setting people up for failure. The process is complex, and we try to execute it as fairly as possible.

The Convener: Thank you. We move on to section 4 of the bill, on the tuition fees cap. Neil Bibby will start us off.

Neil Bibby: A number of bodies, including Universities Scotland and the University of Stirling, in its submission, have said that they are broadly content with section 4. Do you support the intention to have a cap on fees for rest-of-UK students? If so, why do you support it?

Sir Timothy O’Shea: What is in the bill is in the spirit of the voluntary agreement that I, as acting convener of Universities Scotland, negotiated with the cabinet secretary. That voluntary agreement, which is capping us on a year-by-year basis compared with England, Wales and Northern Ireland, has met the desired intention, which is that we wanted there to be no dramatic swings in numbers. We wanted there to be no dramatic reduction in rest-of-UK students, and no dramatic increase.

Our view is that that is a strong success, if I can express it in that way. The data for entry in 2012
and—now that we have passed the Universities and Colleges Admissions Service deadline of 15 January—likely entry in 2013 show that the fee regime that was put in place has exactly met the Scottish Government’s policy objective, which the universities supported. Therefore, we are content with continuing on the exact basis that we are on at present.

11:45

Neil Bibby: Do your universities receive more money from giving degrees to rest-of-UK students than they receive from giving degrees to Scottish and European students?

Sir Timothy O’Shea: We have to account for the whole situation. If I can speak particularly about Edinburgh, we have committed to having the best bursaries in the United Kingdom, partly because we are committed to widening participation and partly because we were concerned about the possible flows. As I said, about 1,000 of our intake came in with bursaries. The highest amount that we provide to support students is £33,000 over the four years, and the scheme is uncapped. At Edinburgh, we have also committed many millions of pounds to a new personal tutor system to provide support. Overall, the financial position is neutral, and the pattern of students from different parts of the United Kingdom coming to Scotland shows that the Government’s policy objective has been met and that the universities are in the appropriate place.

Neil Bibby: Do you receive more money from English students who study at Scottish universities than you receive from Scottish and European students?

Sir Timothy O’Shea: It is a bit more. As I said, we have been investing heavily in bursaries. At Edinburgh, we are dramatically improving our position on bursaries for Scotland-domiciled students.

Neil Bibby: You say that the funding from English students is “a bit more”. Am I correct that your university and others are marketing themselves to English students to come and study in Scotland?

Sir Timothy O’Shea: I can speak for Edinburgh university on the issue, but not for other universities, so I will let my colleagues comment on that. Edinburgh wishes to maintain the current balance of Scottish, European Union and RUK students, and we have been broadly successful in achieving that.

Neil Bibby: Obviously, there is a concern that the Scottish Government wants to widen access, but the number of English students coming to Scottish universities is increasing. As I understand it, there is no additional money for widening access, so there will not be a huge increase in the overall number of places. Therefore, the displacement issue has a potential impact on widening access. We must also consider the potential for an increase in the number of rest-of-UK students to improve your financial state.

Professor McCormac: To take the situation at the University of Stirling last year as an example, we had funding for 212 rest-of-UK students taken from us by the Scottish funding council. Our expectation was that, by charging fees to students from the rest of the UK, we would replace the resources that were associated with those 212 students. We recruited 180 rest-of-UK students to Stirling, which leaves us with a deficit in the overall sums of money.

As we said, 1,700 additional places have been provided this year across all the universities in Scotland to admit students from the SIMD 40 group. I imagine that the money that was withdrawn from rest-of-UK students in some way enhanced the coffers that allowed that process to take place.

Sir Timothy O’Shea: If you compare the 2012 statistics for the Scottish higher education system with those for 2011, you will find the position to be broadly neutral, with a very modest increase in rest-of-UK, Scottish and European Union students. We have heard the First Minister contrast Scotland’s positive position with the position in England. The point is that the position in Scotland is available; all you need to do is look at the statistics, which are readily available and show a small positive change in the numbers and a larger change with regard to the success of widening participation.

Neil Bibby: I agree that we need to keep an eye on the statistics to see how things are progressing.

One of the submissions suggests that the bill is unclear about charges for Welsh students. What is the current set-up for such students? Are there any comments on the matter?

Professor McCormac: I believe that only a very small number of Welsh students come to Scotland but, in funding terms, they are treated exactly like other rest-of-UK students such as those from England or Northern Ireland.

Sir Timothy O’Shea: Just to elaborate slightly, I point out that students from England, Wales and Northern Ireland are treated in such a way that they end up in exactly the same position with regard to the personal demand on their finances. The concern with the drafting of the bill was that, inadvertently, Welsh students might not be treated on a par with English and Northern Ireland students. Of course, that is not the bill’s intention;
whether that be on library or other support spend on educational or pedagogical materials, both of what they received and of the quality of the students have been taught and their perception of what they received. An obvious national programme is the national students survey, which indicates how important the student voice on the pattern of provision that is to be welcomed.

Professor O’Shea: I want to reinforce those comments. If you look at the statistics for universities in the post-war period, you will see that Government interventions to—as it were—predict demand have very often been unsuccessful. The simple approach is to trust students; assume that, when they decide to go into computing, psychology or creative arts courses, they are being rational; and ensure that universities as autonomous institutions respond to that demand as quickly as possible. If you look around the world, you will see that demand-led university systems are much more successful in providing appropriate tertiary education to their students than systems in other countries in which Government departments attempt to predict demand, and simply choose not to turn up, it would be hugely disadvantageous to the sector. As a result, we suggest that the current demand-led model is practical and fit for purpose.

Sir Timothy O’Shea: Let me build on that point, which I agree with. The student voice on the quality of provision, students’ selectivity and their experience of programmes is increasingly important. An obvious national programme is the national students survey, which indicates how students have been taught and their perception both of what they received and of the quality of the spend on educational or pedagogical materials, whether that be on library or other support activities. Of course, students’ employability and employment at the end of a programme are also important, so in the performance of programmes we are not dealing with a closed system. Students make value judgments and, in making their career choices, they will look at universities’ specialisms, which are quite different. That comes back to the point about diversity of provision. However, I think that it is important and correct—I am sure that you will hear more on this shortly—that the student voice on the quality of provision and the student experience is becoming ever more important, and that is to be welcomed.

Professor Reid: It is worth saying that universities do not exist in a bubble, as they engage with a very wide range of stakeholders. Universities can also anticipate trends within society and identify areas where new programmes and new areas of demand may open up. That is the appropriate way in which to identify the shape of higher education, both for the stakeholders who depend on it and for the student applicants who will benefit from it.

Liz Smith: I have a quick question on that section of the bill in response to what you have just said about provision being demand led. Obviously, that varies between higher education and further education, not least because FE receives something like 75 per cent of its funding from the public purse, whereas for HE the percentage share that comes from public funds is diminishing. Would that section of the bill be better if the issues were separated out, so that HE was dealt with slightly differently from FE?

The Convener: A yes or no answer would do.

Sir Timothy O’Shea: We would be reluctant to pontificate on what is appropriate for the colleges, but we are very clear that student demand and student choice are fundamental as far as the universities are concerned. We need to have autonomous institutions that can quickly respond to student demand. If you look at the pattern of demand over the past 50 years, you see that student demand varies quite dramatically. Very sensibly, we now have a great demand in the creative arts and in my own area of computer science, which hardly existed 30 years ago. We do not feel able to say how things should be done for the colleges, but we are very clear that the universities should be able to engage directly with the student voice on the pattern of provision that we provide.

The Convener: Colin Beattie will move us on to the next question, which is on college regionalisation.

Colin Beattie: Professor von Prondzynski’s “Report of the Review of Higher Education
Governance in Scotland” states that Scottish universities should

“engage proactively … with further education institutions and any new governance structures that may be put in place”,

which is obviously a reference to the regionalisation of colleges. To what extent has that been happening already? Is that planned to happen?

Sir Timothy O’Shea: There is an awful lot of activity. At the University of Edinburgh, we particularly engage with what were the separate Edinburgh colleges both on articulation and on planning routes. I am confident that all the Scottish universities engage with colleges, which may not always be local colleges. For example, the University of Edinburgh is a long-standing supporter and partner of the University of the Highlands and Islands. We were a sponsor and supporter of the UHI before it achieved university status, although it is obviously a large distance away. I served on the academic board of the UHI and we have a very close and productive relationship with Sabhal Mòr Ostaig on Scottish studies and Celtic studies.

Professor McDonald: It is a good question, but that is an excellent example of how, over the past two years, the HE and FE sector has very effectively self-organised while acknowledging its autonomy and responsibilities.

I have the privilege of chairing two of Scotland’s research pools, in engineering and in energy. The latter involves a partnership across all the universities and there is also a college articulation.

Two years ago, there was a clear demand statement from the energy industry—oil and gas, offshore renewables and grid—that we need to invest in Scotland over the next 10 years around £50 billion in infrastructure, which will be critically dependent on high-quality and high-end skills from universities in the form of PhDs and MSc and BSc degrees and the research outputs that flow from the pools, which are conjoined in the partnerships that have been mentioned.

12:00

However, what is critical for the skills agenda is the requirement for a large number of modern apprenticeships, with people with higher national qualifications. As a consequence, and stimulated by the Scottish funding council in partnership with the energy technology partnership that I chair, the colleges self-organised into what they call the college energy skills partnership, which covers all Scotland and addresses a national opportunity for a global market. As a result, we have the potential for pull-through now of thousands of new modern apprenticeship jobs from the colleges. Many of those young men and women who will start their lives in the colleges will find themselves in industry, but a significant proportion of them, some of whom are represented here today, will flow to the universities to pursue a higher-order degree, with a good chance of employment at the end of it.

All of that came not from a nationally driven agenda but from an opportunity provided by the SFC, Scottish Enterprise, Highlands and Islands Enterprise and the universities and colleges working together effectively. It is an absolute exemplar of how the self-organising approach to opportunity leads to an excellent result.

Colin Beattie: Would you say that on the back of that, duplication among the different institutions has been eliminated?

Professor McDonald: I would say that there has been greater co-ordination and complementarity. On duplication, one cannot judge by a programme’s label what its detail might be. For example, in electrical engineering, the specialisations in institution X could be quite different from those in institution Y. Both will produce a BSc degree or an HND in electrical engineering, but the individuals’ educational experiences and their relevance could be different.

Again, what I am saying is more about co-ordination and partnership. The HE and FE sectors are showing that they can work together effectively. International opinion supports the view that pooling is an exemplar of how universities can work together to complement each other. I do not wish to make this an energy lecture but, for the University of Edinburgh and the University of Strathclyde, Tim O’Shea and I have regular strategic meetings with our research leaders to ensure that we complement each other in what we pursue and do. That then flows out to our colleagues in the University of Aberdeen and Heriot-Watt University, so that when we present the Scottish higher education scene on the international front, we present a coherent activity.

Universities and funding councils from around the world come here because of what we do together, which is to take an autonomous, responsible approach to concentrating on our separate missions, while working together to present much greater value.

Colin Beattie: Would I be correct in interpreting what you say as meaning that you have pursued the opportunity for shared services and resources within the group of universities?

Professor McDonald: Yes. Without going into too much detail—because of commercial confidentiality—I can say that Strathclyde and Aberdeen are in the process of making a significant joint investment in an enterprise
resource planning system for the operations of our universities.

**Sir Timothy O’Shea:** Colin Beattie’s question about shared services is a good one. Our universities have a really strong leadership position because of shared services. In joint procurement, we have a robust, jointly owned operation through which we do much better than any other group of organisations in the public sector or the quasi-public sector. I chair the joint information systems committee, so I know that the networking in universities is entirely run as a shared service. Through the Scottish higher education digital library—SHEDL—we share a lot of electronic journals, which reduces cost and improves access. Shared services are an important area for us, and the universities are conspicuously successful in putting together shared services.

**Colin Beattie:** Clearly, college restructuring changes the game plan throughout Scotland. What are the positive and negative implications for universities of college regionalisation?

**Sir Timothy O’Shea:** A simple positive would be that it makes things easier. It means that there are a smaller number of points of contact with larger colleges.

In Edinburgh, I now relate directly to Mandy Exley, who heads the new Edinburgh College. Before, it was slightly more work to relate to the three colleges that were immediately nearby and then the other three colleges that were a bit further away. It certainly makes it a little bit easier for us.

The relations are good. I mentioned the Lothians equal access programme and the 1,200 students who, through that, have gone into university. Almost 500 of the people who went into that programme went to colleges and about 100 coming out of colleges came to the University of Edinburgh.

With fewer points of contact, it will be easier for universities to manage their relationships with the college sector.

**Professor McDonald:** The immediate challenge is the transitional phase that we are in just now. We are supportive of, and very appreciative of, what the colleges are doing and going through.

I will mention another example of co-ordination and partnership. I talked earlier about the engineering academy that will be launched this year. In an interesting natural evolution, through the early part of the year, we co-ordinated our outcome agreements with the college groupings that are working with us in the University of Strathclyde.

That was a good indication of the strategic alignment. The university showed leadership but, in order to work most effectively, the colleges decided—they were not guided by us—to align their outcome agreements to give a much more coherent and credible proposition to put to the Scottish funding council for making the investment.

The biggest challenge just now is the transition phase that the colleges are going through. It will not take too long—perhaps the next year—before the new mode of operation starts to settle down.

**Professor McCormac:** If you talk to any of the universities in Scotland, you will find that the relationships with colleges are strong.

For example, the University of Stirling works closely with Forth Valley College. We have a number of programmes. To go back to the point about being demand led, those programmes are created in response to student needs. We work closely together to ensure that we meet the needs of the individual students, who seek skills sets and education that will lead them to employment. We also engage with the business sector, examine their projections for the skills sets and sorts of workforces that they will need and then respond to those.

The integration of universities and colleges and the connections through to industry are strong across the sector. That is done by institutions on the ground, without the need for any legislation to force us to do it.

**The Convener:** I was going to move on to questions on the next section of the bill—section 15, which is on data sharing—but I notice that the University of Stirling’s written evidence says:

“We understand that this provision is not intended to apply to universities.”

**Professor McCormac:** Sorry, is that from our submission or the one from the students union?

**The Convener:** It is from yours. On section 15, it says:

“We understand that this provision is not intended to apply to universities.”

I can see nothing about that in the bill.

**Professor McCormac:** Yes,

“From discussion with Scottish Government we understand that this section is not intended to create new duties on higher education institutions, since existing data collection and sharing is assumed to be adequate.”

**Sir Timothy O’Shea:** Are you quoting from the Universities Scotland submission?

**The Convener:** No, I am reading from the University of Stirling’s submission. It may be in other ones as well.
Professor McCormac: Yes, it is a duplication of what was said in the Universities Scotland submission.

The Convener: I am just trying to clarify the matter, because there is nothing in the bill to say that section 15 does not apply to universities, and paragraph 45 of the policy memorandum says: “When a provider of learning or training enrols a young person they will share a record with SDS of that young person’s enrolment along with other agreed fields.” Where does the understanding that it does not apply to universities come from?

Professor McCormac: I could not answer that question at this point in time. Perhaps one of my colleagues or someone from Universities Scotland could do so. Is it permissible for Alastair Sim to comment from the public gallery?

The Convener: It is not.

Professor McCormac: We will get you the information.

The Convener: I am sure that the information can be provided to us after the meeting. We will finish there and not ask you any questions on data sharing, if it does not actually apply to you.

I thank you very much for attending. We were slightly rushed, but I appreciate you taking the time to be with us this morning.

Sir Timothy O’Shea: We thank the Education and Culture Committee for an interesting and thoughtful set of questions.

The Convener: I suspend the meeting briefly.

12:09
Meeting suspended.

12:12
On resuming—

The Convener: I welcome our final panel of witnesses, who are Christina Andrews, vice president education and engagement, University of Stirling Students Union; Freddie fforde, association president, University of St Andrews Students Association; Malcolm Moir, president, University of Strathclyde Students Association; and Garry Quigley, president, Students Association of the University of the West of Scotland. We are running slightly later than intended, so I apologise for keeping you waiting. Given that you have sat through all the evidence and heard what the principals had to say, I hope that you can say whether you agree with that previous evidence. We can then move quickly on to areas of disagreement or any additional information that you would like to provide.

We will begin with Liz Smith, on university governance.

Liz Smith: Will you comment on the intention to legislate on the question of governance and management?

Malcolm Moir (University of Strathclyde Students Association): Our written submission states that, in the main, we welcome the intention to legislate. The principals said that they do not feel that it is necessary but, at Strathclyde, we are in the main in favour of it.

Liz Smith: Can you tell us why?

Malcolm Moir: Beyond the fact that it helps students associations to lobby universities, it is really because the measure will ensure that the system is sustainable.

Liz Smith: Can you give us an idea of why, in academic, educational, economic or social terms, legislating for a code of governance would help the universities and therefore be in tune with students’ needs?

Malcolm Moir: You have put me on the spot. Can you repeat the question?

Liz Smith: We have an overall agreement in all the submissions that I have seen—from students, members of staff, principals and chairs—that the overall ambition is to sustain Scottish universities’ educational achievements, which are significant, and to enhance their economic and social achievements and diversity. Will you explain why you think that having a code of governance in the legislation would help that process?

12:15

Garry Quigley (Students Association of the University of the West of Scotland): It would show good practice across the sector. We have met the consultant who is working for Universities Scotland and discussed the things that we like in the von Prondzynski report—for example, ensuring that the chair of the court is as independent from the senior management team as possible, and ensuring that the student president is involved in the selection of the principal. There is disagreement among student bodies about the role of the rector and whether the rector’s involvement is the best way of ensuring that students’ views are heard in the university court.

On the university principals’ submissions on governance and management, we do not think that there is anything in the bill that would infringe on the management of a university. For example, access agreements are very much fitted around a university’s local context and ultimately have to be signed off by the university court. At the UWS, for example, outcome access agreements very much
fit the local context and the need to address issues of retention.

To answer your question, the approach is to ensure that there is good practice across the sector and that good governance practice is shared across all the universities in Scotland.

**Liz Smith:** Do you therefore disagree with the principals from whom we heard this morning, who said that they would like to see “management” removed from the bill? Would you like to see it in the bill?

**Garry Quigley:** I go back to my point. I do not know whether there is anything in the bill that infringes on management, so we would possibly agree on that. The point is that some of the issues that were outlined in the von Prondzynski report—for example, in relation to access agreements—are very much decided by the institutions, not by the Scottish Government or the Scottish ministers.

**Liz Smith:** Last week, the bill team put the point to us—this is also mentioned in the submissions that I have read so far—that there is a bit of an issue around management involving the day-to-day running of some of the universities’ procedures and that, if taken to a fuller extent, what is proposed would start to impinge on the institutions’ academic freedom. Would you be quite happy with that?

**Garry Quigley:** We support academic freedom.

**Liz Smith:** Okay. Thank you very much.

**Freddie fforde (University of St Andrews Students Association):** In general, to echo sentiments that have been expressed about the von Prondzynski report, I think that it is helpful that this discussion has come up, because different customs have grown up in many individual universities, some of which are appropriate and some of which are not. I refer to the evidence that we gave last week to Dr West, who collected our thoughts on the matter.

I ask for a bit of clarification on the specific issue. I am not that experienced in the area, so forgive me if I am asking you to go over old ground. I have a question about the wording of proposed new section 9A of the Further and Higher Education (Scotland) Act 2005, which states:

> “The Scottish Ministers may ... when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.”

My reading of

> “any principles ... which appear to the Scottish Ministers”

is that it is a little vague. Can you elaborate for me how that might work and who those ministers might be? Is it—

**The Convener:** For clarity’s sake, I should say that we ask the questions and you answer them.

**Liz Smith:** That is a good question for the ministers.

**The Convener:** It is the Scottish ministers who are referred to.

**Freddie fforde:** I am uncomfortable with that bit.

**The Convener:** Let us explore that matter a little bit, then. I am sorry for interrupting Liz Smith.

**Liz Smith:** The question is very good, and we will put it to the cabinet secretary when he comes to give his evidence.

What you have said ties in with what Garry Quigley said. There would be an issue for some people, and he said that he is in favour of academic freedom. There would be an issue if some of the exercise of that power was taken too far. At what stage would that be, though? What are you comfortable with?

**Freddie fforde:** I find the wording ambiguous as it stands, if further questions are not asked.

**Joan McAlpine:** I am interested to know what the other representatives think. Do they feel that the wording is ambiguous?

**Malcolm Moir:** We think that the word “may” makes the provision seem almost optional. We would prefer to have a requirement, so we would substitute “may” with “must”, to make the wording more concrete.

**Christina Andrews (University of Stirling Students Union):** I do not have anything to say about the provision.

**The Convener:** We will move on to section 3, which is about widening access. I ask George Adam to kick off.

**George Adam:** You will have heard everything that the principals said. As I am Garry Quigley’s local MSP, he continually has a go at me about ensuring that we widen access, which I know is a big thing for the NUS nationally. The UWS’s figures in relation to the most deprived 20 per cent of data zones are quite good. However, a lot of the ancient universities do not seem to be as good at recruiting from such data zones and widening access. What are your thoughts on the way forward for widening access to universities?

**Garry Quigley:** I will tell the committee what we at the UWS are doing. You are right to say that we have a very good record on widening access. Just under 25 per cent of the students who come to the
UWS are from an SIMD 20 background, but we should not be the only one, or one of only a few, to recruit such students. More universities must ensure that opportunities are available to all.

The UWS has strong engagement with the south-west articulation hub—for example, a lot of students articulate into third or fourth year. Although we are a regional university, we are still rooted in the communities of Ayr, Dumfries, Hamilton and Paisley. We have a high number of part-time students, many of whom come from the most impoverished backgrounds. It is fair to say that the university has a good relationship with us as the students association. We do various activities that help to widen access to students in local areas.

Where we fall down is on retention. Our record on access is good, but our retention levels are poor. I refute the point that widening access means high drop-out rates. Glasgow Caledonian University is a good example of an institution that widens access but has a good record on retention. If all universities are to widen access, everyone acknowledges that the right level of support must be provided, to ensure that students are retained.

In the past two years, we have called for a national research project that looks into the student experience in Scotland and asks why students drop out. We would hope that that would give us answers and solutions to improve retention rates overall.

I will let the other folks discuss the projects that they are working on to widen access.

Malcolm Moir: The University of Strathclyde is reasonably good on widening access—about 13 per cent of admissions are from the SIMD 20 group. We welcome the additional places that have been funded this year at the ancients—the additional 20 places at the University of St Andrews, which were in the news, will represent quite a percentage increase.

I echo what Professor Sir Jim McDonald said. Progress is being made, and we have to start somewhere when figures are released. The key is to ensure that progress continues in years to come.

At Strathclyde, we are working with the university on a major project, and we are running one ourselves—StrathGuides—which the principal mentioned. That involves engaging with local schools in which a low percentage of students enter higher education institutions to encourage students to think about education beyond high school and to teach survival skills for university, such as budgeting and lecture note taking. The aim is just to show that it is possible and that they can easily go on to university if they wish. We hope that the majority of the 40 additional spaces for which Strathclyde has received funding for widening access will be filled by people from SIMD 20 areas, rather than SIMD 40 areas. Obviously, as we are in Glasgow, we are situated quite well for that.

Christina Andrews: Widening access is important to us all. Institutions are starting to make headway on that but, as always, progress tends to be slow, and the student unions and associations want to speed it up a little. The University of Stirling tends to sit in the middle ground on the number of people that we get from the SIMD 20 areas, but our retention figures are also in the middle ground. It is important to have a balance between the two. The statistics show that the UWS and GCU both have high access rates but, on retention, the numbers start to differ. For Edinburgh and St Andrews, the numbers on access are similar, but the retention rates are different—Edinburgh has a slightly higher retention rate than St Andrews. In looking at widening access, we must consider what support is available and ensure that institutions are appropriately supported to cope.

Freddie fforde: Christina Andrews finished on the exact issue that I want to talk about. It is the elephant in the room. I represent the institution that has by far the worst record on the issue. We are all aware of that and agree that we have to do more. If there is one thing that I want the committee to walk away with today, it is how different each institution is—the reason why I am here is to emphasise that. We have talked about the different programmes that universities have. St Andrews has to do a lot more, but it needs support with that, because we do not have an urban area to draw on. I am not surprised that we have low numbers of people from areas of multiple deprivation and that widening participation is a challenge for St Andrews, because we are in the middle of nowhere. To the north, in Dundee, there are two universities; in Edinburgh, there are at least another two or three; and, of course, trying to get students over from Glasgow is a big challenge.

I am sorry for indulging in such personal experience, but what I really want to come out of the process is that universities—particularly St Andrews, as that is where my experience comes from—are provided with the right kind of support to implement their widening participation programmes. I know that the proportion of money that is spent on the outreach work that we do, such as summer schools, is not very big in comparison with the resources that are spent on other matters. I urge the approach of taking each institution on its merits and challenges, and having funding agreements that reflect those specific challenges. Funding should perhaps be contingent on what works for each university. For outreach programmes in schools, we have to go a long way
to reach potential students. We need more money to be invested in that, based on evidence of what works. That would be much more helpful.

I feel rather embarrassed for my students that we get kicked the whole time. Students come to me complaining that they feel that they are being positioned in the media as the wrong kind of people and that St Andrews students do not care about people who are not from the same background as them. That is just not the case. In defending my constituency, I find that to be an enormously difficult challenge. I apologise again for giving my personal experience, but we need more understanding of the particular challenges that we face, rather than a general blanket approach.

12:30

George Adam: To be fair, when I have asked about St Andrews, I have said that questions about St Andrews have been media-led, given that it is easy to look at the figures for those who go there.

According to the principals, they were getting to this stage slowly but surely and without the need for legislation. However, I think that a look at some of the figures suggests that legislation is needed to widen access. Do you agree?

Garry Quigley: I do not agree with the principals’ views. Indeed, the NUS report states that we have been waiting 40 or 50 years for a record that we can be proud of.

Neil Findlay: I do not think that any reasonable person is having a go at individual students at St Andrews, although we might be having a go at the defences that are put up, often by the institution, as reasons or excuses for not making progress. Forgive me for being somewhat critical, but it appears that you might be buying into that when, for example, you say, “St Andrews is in the middle of nowhere”. It is not exactly too far from Dundee, Kirkcaldy or the rest of Fife, and I think that we need to be a bit wary of St Andrews trotting out yet another excuse.

In its submission, the University of Stirling suggests:

“the process for developing outcome agreements did not adequately involve students and has led to outcome agreements with little to no student input.”

Is that a general feeling across the board?

Christina Andrews: I wrote that partly because, as you know, sabbatical teams tend to change year on year. Last year, it was agreed by the president and vice president at academic council—after which the issue went to the court—that the principal would decide about outcome agreements in the principal’s strategic group, which has very few members. It is all very well for people to say, “The students on the court ticked this off, so it’s absolutely fine,” but the fact is that, although the University of Stirling is trying to get in more students from SIMD 20, it is not getting in enough and needs to be more ambitious.

Garry Quigley: All outcome agreements tend to get signed off at the court, which has two student representatives. However, we do not have much of a chance to make any input into those agreements. Even though we broadly agree with and support everything in the agreements, we think that there should be more space in the process for involving students. After all, we are important stakeholders in the university.

Malcolm Moir: I agree entirely. We would welcome the chance for the students association to have more input. Of course, things start to get complex when you try to work out how that would happen, given the difficult nature of these documents. As Christina Andrews pointed out, the teams change every year, so I and my predecessor wrote a joint letter to the principal setting out what we were looking and hoping for in the outcome agreements. However, it is difficult to make any input beyond that. We sit down in various meetings to discuss education strategy and so on and through our two representatives on the court we sign off the agreement but we would welcome more input into its drafting. As I have said, though, I do not know how that would be done.

Freddie fforde: Can I just register my agreement with that by nodding my head?

Neil Findlay: That is fine.

Liz Smith: All four principals told us quite clearly that although SIMD is important it is not, on its own, the most accurate document. Indeed, they all gave examples in that respect. If memory serves, I believe that Seona Reid said that, in the past six years, there had been a 16.9 per cent improvement; the principal of the University of Edinburgh outlined quite a long scenario about how Edinburgh has improved; and we heard the same from Stirling and Strathclyde. Do you agree that these are important criteria that can be worked on to benefit people from different backgrounds and that they might be even more successful than a simple examination of the SIMD analysis?

Garry Quigley: We would welcome moves to get a much truer description of where a student is coming from. To be honest, the response that you mention was a sign that principals do not want to make improvements when it comes to widening access. We have been talking about the issue for too long. We cannot afford any more delays in finding out a true picture of the student profile.
Liz Smith: Do you dispute the figures?

Garry Quigley: There are flaws in a system that looks at postcodes. However, that is the only system that bodies seem to use at this stage.

The Convener: We will move on to the issue of the fees cap.

Neil Bibby: What is your position on the provision in the bill to put a cap on fees for students from the rest of the UK? What do you believe that cap should be?

Freddie fforde: I should first of all make clear that one of the reasons why I do not know my colleagues on the panel very well is that they are members of the NUS and I am not. That clarification might be helpful. They will represent the NUS’s views, but I will not.

As I understand it, there is a proposal to make the cost of a Scottish degree the same as it would be south of the border—that is, you would get four years for the price of three. I hope that I have not misunderstood the position. I think that that is absolutely right. I do not think that there should be a difference, for the reasons that have been laid out previously.

I have a concern, however. I will find out on Friday whether our union is going to be rebuilt, which will be a huge project. We need a new sports centre. All our accommodation is falling to bits. My concern is that, without extra support from the Government, the four-for-the-price-of-three approach will create a huge funding gap—of millions of pounds—which might lead to an impact on front-line student services of the sort that I have just mentioned. Although I absolutely agree with the principle of the fees being no higher in Scotland than they can be south of the border, I worry about what will be done to make up for the loss in revenue for universities and how that will impact on services that my students would expect.

Malcolm Moir: We are here representing our students associations and not the views of the NUS.

Strathclyde welcomes the fees being capped, so that students from the rest of the UK are not spending more on their education than others are. Strathclyde has set the cap at around £27,000, which comes to £6,000 or so a year. That is great.

Fortunately, we are in quite a nice position in that we are not talking in the millions, as it stands. The sums will not break the bank, if that makes sense.

We welcome a cap across the country. We think that it should not cost more to go to university in Scotland than it costs south of the border.

Garry Quigley: We come at this from an interesting perspective, as we have a very small number of students from the rest of the UK—around 200.

I echo Malcolm Moir’s views. We support a cap that means that it is no more expensive to study here than it is to study down south.

We believe that there should be some sort of support and bursary packages. If the core message of the bill is to widen access, we must ensure that that includes students from the rest of the UK, so we do not end up with only the wealthiest students coming to Scotland to study. Again, a portion of the fees that are brought in has to be ring fenced for bursary and support packages.

We have only about 200 rest-of-UK students studying at the UWS, so the amount of funding that we could gain under that system is limited in comparison with what could be gained by an institution such as the University of Edinburgh, which has a high number of rest-of-UK students. We ask that the system be monitored to ensure that the amount of cash that Edinburgh can generate is not so much greater than the amount that the UWS can generate.

Christina Andrews: I echo what everyone has already said. There should be a cap on the fees that rest-of-UK students can be charged. However, I noticed that there was a reference to a fee cap within each academic year. It is important to consider what students will get from coming to Scottish institutions. As far as I am aware, most students will come to do a bachelor’s degree and end up doing an honours degree. That needs to be taken into consideration, because it means that the students need that additional year. It is also important to consider whether a fee is charged for the award that they will receive when they complete their course.

Malcolm Moir: Our stance is that there should be no fees and, in an ideal world, there would be no fees for education—it would be free for everyone. That would be the real solution for widening access—no fees for any students. That is Strathclyde’s stance, at least, and I hope that it is the stance of all students associations across Scotland and the UK.

The Convener: Do you mean no fees for rest-of-UK students as well?

Freddie fforde: Yes—equal for everyone. It is like that across the EU, anyway.

Malcolm Moir: I will go as far as to say that free education across the world is what students associations would be looking for.

The Convener: We will stick to trying to control the situation here.

Malcolm Moir: Right.
The Convener: Well, today Scotland, tomorrow the world.

Malcolm Moir: We have to start somewhere.

The Convener: Indeed.

Clare Adamson: I know that you all heard the question earlier about the Scottish funding council reviewing higher and further education with a view to ensuring that education is provided in a coherent manner across the sectors. Do you have a position on the premise on which that is based and how you see that moving forward?

Garry Quigley: There are two ways to look at it. First, it places a lot of power in the hands of the Scottish ministers. We would support it if it could stop a situation such as the one at Strathclyde a few years ago, when courses were removed. We would be less likely to support it if the Abertay issue arose again, when certain institutions were being forced to merge, without the consent of the two institutions.

Christina Andrews: I completely agree with what Garry Quigley said. It makes sense to review higher education. It is important that it will be a review of higher and further education, because it is about education as a whole—that is how I see it. Some people will say that what could happen is that certain courses at different institutions will be cut, because too many people are applying to them and we do not need them. However, the opposite can be said, because it is about protecting the courses that we need at the moment. For instance, if we suddenly need more nurses or more modern language teachers, more places can be created for those who want to go on a nursing course or a modern language teaching course, and so on.

Clare Adamson: The previous panel definitely talked about delivering a student-led demand system at the moment. Do you all feel that that is the situation at the moment?

Christina Andrews: It was mentioned before that there would be a change. At the moment, it is about meeting the demands of potential students. What could happen is that there will just be all these places and it will just be hoped that students take them. I do not think that that will happen. I hope and presume that it will always come down to demand and what people need but also what the country needs.

The Convener: I presume that you agree that it cannot just be demand led? We cannot all get what we want. As you indicated, there are clearly demands from industry and business for students and graduates in certain sectors. There is a limited pot of money and there are reasons why we cannot have a completely demand-led system. I presume that you accept that it is a balancing act.

Christina Andrews: Yes, I accept that. It is a balance between everything.

12:45

Malcolm Moir: We welcome section 14 but, from our perspective, we have to be cautious in the sense that it could protect courses and local provision but it could also cut them. The cost is another factor.

The Convener: In that case, what is your response to the following comment in “Putting Learners at the Centre—Delivering our Ambitions for Post-16 Education”? It states:

“there is too much duplication and unnecessary competition within ... regional universities.”

That would tend to suggest that something has to be done about that, or that there has to be some sort of intervention.

Garry Quigley: There still has to be a local context. At the UWS, we sometimes have the same courses at Hamilton and at Paisley. The distance between them is small, but one of the features of widening access is that—to use the phrase—people should have a university or college on their doorstep, so I suppose that that helps with that aspect.

The Convener: Does anyone else want to comment on the quote that I read from “Putting Learners at the Centre”?

Malcolm Moir: I am a strong believer in the free market and competition. This is my personal opinion. If a number of institutions provide the same form of course, they will strive to be the best and to deliver the best education that they can. I believe that that is a good thing.

The Convener: Thank you. We move on to questions on regionalisation and its impact on universities, from Colin Beattie.

Colin Beattie: I think that all the members of the panel were here when the universities gave their opinion on the subject earlier. Perhaps you could comment from your perspective on the positive and negative impacts of college regionalisation in relation to Scottish universities engaging with the colleges, and on whether there is any sign of institutions sharing resources and so on.

Christina Andrews: Could you repeat the question? Sorry.

Colin Beattie: Sure. Maybe I will break it down. What are the implications, positive and negative, for the universities engaging proactively with the colleges in terms of their regionalisation?

Garry Quigley: What we are looking for in any discussions about the college regionalisation is
recognised value of the fact that a high number of college students come straight to the UWS and we want that to be protected. We are also looking for the articulated groups that I mentioned earlier to be sustained and possibly to be extended so that college students could articulate into Strathclyde or Edinburgh as well. Those are the two key features that we would be looking for under the programme.

Malcolm Moir: With regionalisation, there is potential for student associations in the colleges to be more effective. Either last night or this morning I was reading through the explanatory notes, and I believe that having members of student associations on the boards will be a great thing. It will help us to work with those students associations. It is not just the institutions that need to engage with the regionalised colleges. The students associations will be able to work together better.

Garry Quigley: From our experience as an institution that merged a few years ago, one of the lessons that we learned as students was that it is important to have enough time and that students’ views must be listened to. During the merger process, the previous sabbatical officers felt that their views were not taken on board. Students should be involved in the merger process.

Christina Andrews: When it comes to institutions working together, I know that the University of Stirling is doing a lot more to work with Forth Valley College. Last year, a degree was introduced that is provided by the University of Stirling but three years of the course are done at the Forth Valley College campus. In the last year, the students come to the University of Stirling campus. It is good and positive that the institutions are looking into different things they can do.

Malcolm Moir made a great point when he said that it is not just about institutions working together. It is also about student unions and students associations working together to ensure that students are getting everything that they need.

Freddie fforde: I do not know enough about this to be able to add anything.

Colin Beattie: From what the university principals said, it seems that, as you stated yourselves, there is already a fair degree of exchange between colleges and universities. Will there be more opportunity to share resources with the regionalised colleges than at the moment?

Freddie fforde: You made a point about student associations. That seems to me to be an obvious and helpful link. It jumps out at me as making sense.

Garry Quigley: A large number of UWS students study in the college and vice versa. If the regionalisation agenda fits that purpose, it would be welcomed.

Malcolm Moir: The University of Strathclyde is working closely with some colleges on articulation. I am not able to speak for the university on sharing resources. I imagine that that would be welcomed, but the cuts that are happening in colleges will not help the resources and universities will not be able to make up for the £36 million of cuts.

Colin Beattie: I was not suggesting that the universities would subsidise the colleges.

Garry Quigley: If resources are shared, we need to ensure that the university students who study in the college or vice versa are not forgotten about because they are not on the main campus. Too often, we hear that the UWS students at the City of Glasgow College feel that they are not represented or not given the same level of support as students who study at the main campus.

Clare Adamson: I have a quick question about what the witnesses said about the integration and joint working between the colleges and universities. They said that, although work has been done on widening access, it is not happening quickly enough. Work on integration between colleges and universities is going on, but is the pace of change quick enough?

Freddie fforde: No.

Malcolm Moir: No.

Garry Quigley: There seems to be indifference in the relationship between some universities and colleges. It seems to be much easier for a student coming from a college to articulate into advanced entry to UWS than to the University of Edinburgh, perhaps. Every university must play its part in widening access and in articulation.

Freddie fforde: Contextualised admissions and recognising different entries into university come into that as well. Ultimately, one university can take only so many Scots. It is easy for a university to say that it will take the applicants with five As, of which there is a hugely disproportionately lower number in the lower SIMD groups, if we are using that measurement.

For contextualised admissions to work, there needs to be more assistance for, or pressure on, the universities—however you want to do it. When I have talked about it at my university, the reaction has been, “Well, sometimes, maybe.” There needs to be some form of coercion to recognise potential. It would also be useful to share best practice across universities—for example, sharing certain situations in which interviews have not worked.
Malcolm Moir: If contextualised admissions are the same across the board, there is no longer an issue. As Freddie fforde said, there are only so many people so, if the University of Strathclyde looks to increase its percentage of students from SIMD 20 or SIMD 40 backgrounds but does not increase its outreach, it might find that it is taking some of those students away from Glasgow Caledonian University. However, it would be fantastic for Scottish education if we could increase the outreach and, through standardised contextualised admissions, increase the number of people who are interested in education, want to apply to university, are able to do so and have potential.

The Convener: We are almost out of time, so I will ask a final question and I ask each of you for a short answer. What are your hopes and expectations for the bill? What do you hope will come out of it in terms of benefits for students at universities? I will start with Malcolm Moir and work along.

Malcolm Moir: Widening access is the main issue. I want to be able to sit down in university meetings and say, "This has been legislated for. You need to work with us on it. We have these additional places, so what are we going to do? How is it going to happen?" We can talk about why for so long, but we need some sort of leverage that allows us to ask, "How are we doing this?" That is the main thing.

Garry Quigley: I have the same hope about widening access, but we need to bear it in mind that widening access is about not only getting students into university, but retaining them and allowing them to graduate at the end. We need to be more aware of the reasons why students drop out and to be more prepared for the potential pitfalls of widening access. I hope that the institutions, the Scottish Government, the Scottish Parliament and student associations start to discuss what more they can do to help retain students from all backgrounds at university.

Christina Andrews: Good governance is about having transparency in institutions, which I think will come from the bill. Widening access is about all the universities working together to improve the intake. They should not only encourage students, but support them when they get there. I hope that the bill will encourage that.

Freddie fforde: As I said earlier, my main concern is to ensure that there is an understanding of the different challenges that different universities face. Obviously, I am reflecting my experience here, but I must resist what Neil Findlay said earlier about me recycling old arguments. The University of St Andrews not having the kind of local population that is found in the University of Glasgow, for example, is one instance of a particular local problem. There are different local problems at different universities.

What I hope for is an understanding that we are not enemies here. I hope that the student associations, the universities and the Parliament can work together to analyse the problems and come up with a sophisticated and mature solution, rather than viewing it as about being confrontational, with one versus the other. The problems are much more complicated than that. I referred earlier to ambiguity in the bill. The question seems to be what we can do to get one solution that looks good. Every institution is different, though, and the sooner the Parliament appreciates that different solutions will work in different contexts, the better.

The Convener: Thank you very much. I thank you all for coming this morning.

Just before I close the meeting, I give apologies from Liam McArthur, who has been delayed by transport difficulties. He had hoped to be here, but he has unfortunately failed to manage that. He has emailed me his apologies.

I close the meeting to the public.

12:58

Meeting continued in private until 13:04.
1. Written evidence from the University of Stirling on section 15 stated “We understand that this provision is not intended to apply to universities.” Written evidence from Universities Scotland was slightly different, as it stated “From discussion with Scottish Government we understand that this section is not intended to create new duties on higher education institutions, since existing data collection and sharing is assumed to be adequate.” It would be very helpful if you could clarify whether or not this section is intended to apply to universities, as this will help to inform the Committee’s future questioning of witnesses (the Committee has arranged a dedicated evidence session with SDS).

**ANSWER:** The provision at section 15 will apply to universities but within the subordinate legislation we plan to introduce statutory guidance that will set out how universities will meet their data sharing requirements through currently utilised data sharing protocols with Student Awards Agency Scotland (SAAS). This means that although the new duty will apply to universities they are not required to carry out any new or additional work to satisfy the duty within the Bill.

2. At the Committee’s meeting on 15 January, Tracey Slaven stated in relation to section 2: “The phraseology in the bill refers to governance and management. Discussion with the sector has indicated that the focus on strategic management may have some unintended consequences and that that has gone slightly wider than we anticipated. We are therefore happy to talk with the sector about the detail of that as we get to stage 2.” On Tuesday’s meeting, Sir Timothy O’Shea confirmed that he had met Tracey Slaven and understood that the Scottish Government was reconsidering its position. Again, it would assist the Committee’s ongoing scrutiny if you were able to provide further clarity on the Scottish Government’s position at this stage.

**ANSWER:** The purpose of the provision on governance is to achieve the correct balance of ‘responsible autonomy’ around good governance, based on the recommendation of Professor Von Prondzynski’s review. We have already had discussions with sector representatives about the precise wording of these provisions to ensure that they meet our shared aims here and will consider suggestions made at Stage 2.
31 January 2013

Mr Stewart Maxwell MSP
Convener Education and Culture Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Scottish Index of Multiple Deprivation 2012

Following on from the Evidence Session of the Education and Culture Committee last week I thought that you may find it useful to note the definition of the SIMD 2012 index identified by the Scottish Government.

Taken from the key findings of the SIMD 2012 publication from December 2012 and available at http://www.scotland.gov.uk/Publications/2012/12/2370/;

“There were 742,200 people living in the 15% most deprived areas of Scotland. However, it is important to remember that the SIMD identifies deprived areas not individuals, so not everyone living in a deprived area is deprived, and not all deprived people live in deprived areas. Of the 742,200 people living in deprived areas, just under a third (31.3%) were income deprived.”

This is exactly why the University of Edinburgh advocates the use of data such as the level of family income to assess real deprivation rather than a measure that relies on identifying a location. We have found that using family income in addition to care leaver status, disability, single parent and first in family to attend University in our admissions process and also in awarding scholarships and bursaries to be particularly effective in identifying need.

I feel this point was made during the excellent and informative debate earlier in the week but wanted to follow up that we remain committed to widening access at Edinburgh but are also committed to identifying the individuals who are most in need.

Yours sincerely,
Introduction

The Board of Edinburgh College welcomes the opportunity to respond to the Bill. Catering for 35,000 students, Edinburgh College is now the largest educational establishment in Edinburgh and the Lothians. It is likely to be among the largest single FE college in Scotland. As a newly merged college which will become a single Regional College once the Bill is enacted we feel our experience is directly relevant to the process. Our Chairman and Principal would be happy to provide further oral evidence to the Committee as required.

Overview

We are supportive of the aims of the Bill. Since the incorporation of the colleges in the 1990’s there has been an increasing atomisation of provision across the sector without sufficient opportunity for strategic work and planning. We believe that the move to a regional approach to the planning and delivery of further education will go some way to correct this position. We believe also that it will help to ensure that provision meets the needs of communities, learners and employers.

Moves to widen access to university education are welcomed. Increasing opportunities for colleges and universities to combine their strengths and jointly deliver courses up to degree level should enable more cost effective access to higher education for both student and public funds.

We have concerns over the increased focus on young people in the 16-24 cohort, and believe this area is more problematic than allowed for in the Bill. Edinburgh College in common with others in the sector continues to provide educational opportunities for all adults within our communities together with building links with employers to support their staffing needs. We do not impose restrictions here, whether in age, experience or area of work. We feel it is important to retain a flexible approach for the good of both commerce and learners.

We are concerned that a move away from this provision would adversely affect the opportunities for economic development particularly in our poorest communities. In addition we think it is vitally important that employees and employers are provided with a range of opportunities for personal and workforce development. We are not convinced that the imposition of this one size fits all age limitation is either welcome or helpful here.
Changes in Funding and Planning

We note the increased involvement of Skills Development Scotland in the sector. We welcome the opportunity to have better data available to all involved in planning provision that this new involvement offers. We look forward to working more closely with SDS in this regard. However, at this stage, it is unclear how advanced the “data hub” development work is and what its relevance is unless it also collects employment information over a reasonable time period post the period of further and higher education. We are concerned that this process may lead in time to colleges needing to develop extra student monitoring information and to interact in detail with a further regulatory body in addition to SFC and OSCR.

We would also have serious concerns over the potential policy and funding disconnect between SDS and those of the Scottish Funding Council. We are concerned that the increasing number of funding bodies and mechanisms may be inefficient and make it difficult for Regional colleges to plan effectively for a financially sustainable future. We would like more clarity on the process of future funding, the monitoring of outcomes and how unused money will be recycled between funders, colleges and other education providers.

In addition the change in the types of funding mechanisms appears to be occurring with little reference to colleges and moves to change the underlying funding mechanism for core grant provision also seem to being “rushed” through with little thought to the potential effect on community and employer requirements.

Governance and Regional Colleges

We have concerns over the proposed structure of a Regional college board of management and in particular the intention to remove the legal requirement for a Principal to be a board member. As good practice, we believe that if the board is to fully exercise its function in “securing coherent provision of high quality fundable education” in an “economical, efficient, effective manner” it should contain at least one member of the executive team. In both the private and third sector it is commonplace that the principal executive officer of a company or organisation is a board member and regarded as good practice. We see no rationale why this should not be the case in the college sector.

In addition, under the current legislation, the Principal \ Chief Executive of a college is the Accountable Officer for the college and as such responsible for its activities. The proposed legislation appears unclear as to which individual or body will be responsible for actions and outcomes at a Regional college.

We recognise that different parts of the country will have different forms of local provision. We also endorse the need for a common approach at regional level and the need for greater central planning and strategic control. However, there is in our view,
currently a gap in the governance framework and the intention to provide more central control. What appears to be missing at this stage is reference to a framework for performance measurement, decision making, review and appeal when seeking to identify a “non-performing” college and the reasons for such non-performance.

In our view Outcome agreements with SFC should play a central role in this process, and while we recognise that work on outcome agreements is on-going, we believe it would be useful for the supporting information to the Bill to recognise this process or such successor processes as providing the framework for performance review.

Dangers in the present approach

As we said at the outset, Edinburgh College welcomes the direction of the Bill and the move towards increased strategic planning and accountability, particularly within our local communities. We believe it offers a better future for learners, industry and key stakeholders, and those employed in the sector itself. However we are very worried that this potential positive development will be undermined and damaged because of the pace of change relative to changes in funding and provision.

As identified in the Policy Memorandum, college mergers have the potential to save substantial sums of public money. Similarly, changes in the funding criteria and policies could potentially help provide better focus and responsiveness. However, those processes are jeopardised if change is not coordinated and the pace of change achievable.

We commented earlier on the changes in funding mechanisms and the threat of a disjointed approach between the SFC and SDS. This needs to be addressed urgently. As importantly, merger and regionalisation activity is being undertaken against a backdrop of rapidly reducing funding to the further education sector (i.e. the potential savings identified are already being “banked”). Colleges will have to reduce costs rapidly to remain financially sustainable and there is a risk that opportunities for our students and our communities will be compromised.

We believe savings and efficiencies can be achieved but the current pace of financial cuts runs the risk of creating a funding crisis and short term staffing and educational difficulties which actually militate against the successful achievement of those positive changes. We must have a properly applied pace of change and reform, particularly to funding mechanisms, if we are to avoid the risk that will otherwise be placed on the operation of colleges and our shared aim to improve outcomes for our students and the community.
Lead Scotland

Lead Scotland is a charity that enables disabled adults and carers to access inclusive learning opportunities. At a local level, we do this by providing direct support to learners through flexible person-centred learning opportunities and individualised guidance and support to help them plan their learning journeys. At a national level, we provide information and advice on the full range of post-school learning and training opportunities, as well as influencing and informing policy development.

The Post-16 Education (Scotland) Bill covers six areas: university governance, widening access, tuition fees cap, college regionalisation, review of fundable FE and HE and data sharing. Our expertise stems from Lead Scotland’s experience in widening access to educational opportunities and so this evidence will predominantly focus on that aspect of the Bill.

Young people with additional support needs are a particularly vulnerable group. Such young people are more likely to experience social disadvantage and often experience significant barriers in accessing post-school education, training and employment, and are more likely to become disengaged with learning as a result of low self-confidence and lack of appropriate support. Support for disabled students is also likely only to

Widening access to education

While we welcome the goal of widening access to higher education, the focus and particularly the target indicator, the portion of students from SIMD20% postcodes, is somewhat simplistic and narrow. The historical lack of access to HEIs is due to a range of complex factors. This single, narrow indicator opens up the possibility for HEIs to potentially ignore entire populations, such as disabled students and carers, who could access these educational opportunities with appropriate support. This exclusionary focus is reflected in the recently published university outcome agreements. Our analysis shows that the terms disabled student, disability or Partnership Matters rarely, if ever, are mentioned in the 2012-13 outcome agreements. In a typical example, an institution regarded issues under equality as only to do with general student intake, writing: “The University does not have a challenge in terms of its recruitment of disabled students and so targets for improvement are not required.”

Such a view ignores the complexity of student populations and the key role that issues surrounding disability play in access and retention. This link between disability and access appears strong in the FE sector: compared to universities, colleges have both double the proportion of students from the most deprived backgrounds and double the rate of disabled students.
Access to education is particularly important for the life outcomes experienced by disabled people, including in areas like employability and gender equality. Disabled people are less likely to have a degree and more likely to have no qualifications at all, have much lower employment rates and are more likely to be economically inactive. For instance, people with mental health or learning difficulties, which are strongly associated with social disadvantage, have much lower employment rates compared to both the average population and those with other forms of disability. There are also important considerations of social class, disability and gender; disabled students with access to HEIs under current arrangements are significantly more likely to be male and middleclass.

**Data sharing**

The third sector in Scotland has a large number of learners aged 16-24. If the data sharing plans in relation to Skills Development Scotland are extended to the third sector there will need to be adequate coordination and support to deliver on these duties.

**Making the transition from school to university more effective**

From our experience, many schools, local authorities and universities are unaware that the transition aspects of the Additional Support for Learning Act apply to learners making the transition to university. This legislation specifically requires schools/education authorities to start planning the support needed for young people with additional support needs around one year before they expect to leave school. In practice, many disabled students receive inadequate support through the transition to post-16 learning (what the EHRC label ‘stalled transitions’).

Appropriate transitional arrangements, such as agreeing and arranging reasonable adjustments and funding, are crucial in ensuring positive outcomes for students with additional support needs. The Post-16 Transitions policy and practice framework is a good start, but our experience with the Partnership Matters framework suggests that firmer arrangements should be put in place to ensure that schools and local authorities carry out their duties regarding transition from school for young people under both the Additional Support for Learning Act and Partnership Matters.

**The role of Community learning and development (CLD) and national coordination**

There are a range of learners who are likely to need targeted support in order to effectively re-engage in learning. This can be because of their support needs, individual goals, or requirements for residential support. These groups include:

(i) **Learners with profound and complex needs**  
(ii) **Young people transitioning from special schools**  
(iii) **Young carers**
At present, CLD providers in both the voluntary and local authority sectors receive funding and guidance from a mixture of local and national sources. As a result, provision, quality and support arrangements can be variable across the country, and learners are likely to experience a different learning opportunity depending on where they live.

In addition, as the focus of mainstream education moves towards younger learners and employability, the role of CLD will become vital for many older learners or for those who wish to access lower level courses, where less support is available. The current fractured nature of post-16 funding, particularly in CLD and the third sector, is undermining the opportunities and successes for many of Scotland’s most vulnerable learners. Some form of national coordination is required to ensure that Scotland is able to maintain its commitment to lifelong learning and that these opportunities are provided within an integrated national education system.

Introduction

UNISON is Scotland’s largest public sector trade union representing over 160,000 members delivering services across Scotland. UNISON members deliver a wide range of services in post 16 education including advice, research support, IT, finance, learning and student support services, cleaning, administration, libraries, technical and security, porter services, careers advice and management. These employees are often the face of education in Scotland and contribute a great deal on the overall student experience, providing the foundations for high quality learning for all. UNISON Scotland is able to collate and analyse members’ experience to provide evidence to inform the policy process. We therefore welcome the opportunity to provide evidence to the Education and Culture Committee.

Evidence

UNISON members in Higher and Further Education (HE and FE) feel that management and governance bodies do not engage adequately with staff both on the day to day running of institutions or on organizational improvement and development. Nor are they properly accountable for the public money they spend. UNISON has argued for some time that there needs to be greater oversight of management of these institutions. UNISON believes that colleges in particular would benefit from improved governance and public accountability. We therefore welcome the new ministerial powers in relation to boards.

More needs to be done to improve the quality of college boards and it may be these proposals could improve this particularly if board members are directly elected. UNISON is disappointed that the proposed regional boards will not include union representation unlike the proposals for HE. Our members have little or no contact with board members leaving them feeling the boards have little understanding of the day to day running of colleges and the implications of the decisions they make at board level. Moving to regional boards risks creating even more distance. Communication with staff is only via line management. This is not always of a high standard with our members in particular excluded. It is often one way i.e. management tell but don’t listen. If board members had more contact with staff they would be better informed, more able to challenge management information at board level and therefore to improve the running of the college. Union representatives are best placed to undertake this role as they are directly accountable to their members through the democratic structures of the unions involved.

UNISON members in HE are generally supportive of the proposals contained in the Von Prondiski report on governance in higher education and hope that these changes are not watered down when in the final bill.
UNISON fully supports the aim of widening access to higher education and is therefore concerned that the cuts in FE budgets and proposals to merge colleges will make it much harder for people from under-represented socio-economic groups to access higher education. Further Education is a key route to higher education for those from groups who are currently under-represented in HE. Proposals to concentrate courses into fewer venues in the name of efficiency will make it harder for the government to achieve its aim. We have already seen a two percent drop in the numbers of part-time students, another important route for underrepresented groups. The fact that college courses can be undertaken close to home is really important. This cuts down on travel and childcare costs: key barriers to those on low incomes accessing and completing courses. Travelling long distances makes it difficult to work alongside study and also adds to any childcare costs as children have to be looked after longer. Transport links are often poor which makes it difficult and expensive to travel. Some people also lack the confidence to undertake study out with their own areas. There is also the added issue for young men who often face or fear violence when they travel out with their own communities. Local delivery of courses is crucial to people embarking and finishing their further education and training. Confidence and qualifications gained through undertaking FE provided the impetus for many to go on to Higher education.

College regionalisation is about budget cuts not improvement. Colleges have already cut over 1300 jobs; courses including vocational courses like aeronautical and aircraft engineering, computer animation, digital gaming green-keeping, and horticulture have been cut. Thousands of people were unable to find a college place this year. We believe that regionalisation could make a difficult situation worse. Instead of improving accountability and efficiency the current proposals merely merge colleges. Aside from the impact on students and the local economy our key concern is that many of the roles undertaken by our members will be moved into a “big shed” type delivering services across colleges and possible regions. Shared services are still the default option for improved public service “improvement” despite the lack of evidence that they improve public services or make substantial savings. In fact the experience of most public sector organisations in the UK and internationally is that moving to shared services creates a period of disruption and at best takes five years to make any cost savings.

The Roe Report called for longer hours to offer more flexible learning opportunities to help learners combine work and study but instead we see colleges closing earlier.

The proposals round regionalisation claim that there will be savings though the sharing of many so called back room services. This approach to service delivery still has many advocates despite the lack of evidence of them either bringing improvement or making any savings of the type needed to deal with the current spending cuts. In Further Education roles like librarians, finance staff, and welfare staff risk being pushed into a “big shed” delivery model. These require face-to-face contact with students.

Shared services are in fact extremely costly and have high upfront costs. The investment ratio is 2:1. Often costs are pushed to another department. The National
Audit Office report indicates that so far projects have taken five years to break even. Key issues:

- Initial costs of shared services are underestimated because implicit costs and externalities are often not included.
- Introduction of shared services is complex and costly and requires detailed research.
- While some cost savings can be achieved, targets are rarely met.
- Savings are mainly from job losses.
- There are job losses in regional areas which affect the viability of rural communities.

Evaluation of shared services projects has shown that savings targets are rarely achieved. One reason for this is that planned savings are often treated as real savings which encourage decision makers to back a project. UNISON is concerned that the same mistake is being repeated in the proposals. The Minister claims that the changes will make savings of £50million; this sum is based on estimates rather than actual savings achieved elsewhere. The only savings that have been realised in the quotes used are from the City of Glasgow merger; the rest are estimates for example the Edinburgh college merger business plan assumes a saving of £9million. This has yet to be realised. It is also estimated that will cost £14.6million. The City of Glasgow savings are almost exclusively through job cuts.

Audit Scotland’s submission to the audit committee indicates that the costs of the regionalisation programme will be £54million. So even if the savings do materialise they will be outweighed by the costs until 2015.

Merging colleges in recent years has been difficult for the staff concerned. Consultation with staff has been minimal and the key staffing issues have been unresolved long after mergers have been pushed through. If changes on this scale are to be made than the staffing issues have to be resolved as beforehand so the new bodies can focus properly on delivery. The people who deliver services cannot be an afterthought it is they not structures that deliver improvement and increased efficiency.

UNISON believes that if this is to go ahead these issues need be resolved as part of the process rather than as an afterthought. Many require negotiation with the appropriate Trade Unions. Issues include

- Who will the employer be?
- How will staff transfer to a new employer?
- Will there be a national set of terms and conditions for staff?
- How will these be negotiated in future?

Legal obligations such as TUPE need to be acknowledged in the legislation. The Water Industry (Scotland) Act 2002 provides an example which could be followed in this Bill, updated to the 2006 TUPE regulations.

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1 Correspondence from the SFC 14th November 2012 to the Scottish Parliament Audit committee.
Transfer of staff

The Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I.1981/1794) apply to the transfer of functions by section 21, whether or not they would so apply apart from this section.

It is also important to include an amendment to clauses 23K(4) and 23L(5) to ‘consult with a view to seeking agreement,’ mirroring TUPE Reg13(6).

The Post Merger Evaluation of City of Glasgow College is frequently quoted to support the view that merging colleges is the best way forward. Our members do not feel that this evaluation reflects their experience. Contrary to the impression given many issues remain outstanding and staff morale is very low. Ignoring UNISON’s warning around these types of issues during changes in the Police Service has already led to difficulties. It is essential that the same mistake is not made here.

Careers Advisers need to be fully involved in post-16 support. They are the key professionals trained to ensure that people are able to make the right career choices throughout their working lives. The need for support in the areas of advice, information and guidance has never been greater and we should be enhancing and resourcing these services accordingly. They welcome the proposed improvements in data sharing. However, the last two years have seen a cut of up to twenty percent of frontline services within Skills Development Scotland. This has led to some office closures and greater difficulties for people accessing services at a time of high unemployment.

It has also led to a re-focusing that puts more onus on web based services as opposed to crucial face to face support. Although a website can provide information to those who can access it, it cannot provide the kind of support and guidance that most people require. Young people in particular need to be supported to have a realistic view of their competencies and aspirations to ensure they make the right choice. This requires face to face interactions with trained careers professionals.

Conclusion

UNISON represents a range of staff delivering post-16 education. We have used their experience to inform this evidence. The cuts in funding leave the sector facing enormous challenges. Fully involving both users and staff in developing programme for change rather than imposing from above is the best way to improve services. We therefore welcome the opportunity to participate in this consultation and look forward to further participation in the process of change.
Post-16 Education (Scotland) Bill: Stage 1

The Convener (Stewart Maxwell): Good morning. Welcome to the fourth meeting in 2013 of the Education and Culture Committee. Please ensure that all electronic devices, particularly mobile phones, are switched off.

Today, we will take further oral evidence on the Post-16 Education (Scotland) Bill. Today's session focuses on those sections of the bill that are of particular relevance to the further education sector.

On our first panel, we have Mandy Exley, the principal of Edinburgh College; Paul Sherrington, the principal of Banff and Buchan College; Carol Turnbull, the principal of Dumfries and Galloway College; and Susan Walsh, the principal and chief executive of Cardonald College.

The principals represent a range of colleges: those that have already been through a merger; those that are planning to merge; those that will become regional colleges; and those that may remain the same. The committee hopes that hearing from differing perspectives will help us to understand better the opportunities and challenges that the sector faces in light of the proposed bill.

We will move straight to questions, as we have a lot of areas to cover.

Liz Smith (Mid Scotland and Fife) (Con): There is a striking degree of evidence in the colleges' submissions about the fact that you feel that you have done a pretty good job over the past few decades of ensuring that you not only have the highest standards of education on offer but have been able to offer a diverse range of students different opportunities and to build on a lot of the local demands from within your own areas and your own economies. Our approach to post-16 education must take account of that context and ensure that we can give the best deal to a wide range of learners.

Do you think that the proposed changes to the governance of colleges will be able to enhance the ability of the colleges to deliver the best education?

Susan Walsh (Cardonald College): The issue of governance cannot be separated from the issues of autonomy and accountability.

The Post-16 Education (Scotland) Bill suggests two different types of governance: one for the regional colleges and one for the colleges that sit within the multicolleage regions, which will have a regional strategic body overseeing coherence within the region.

The boards of the regional colleges will maintain pretty much the same shape, although the bill does not specify what committees are required and how they will be accountable. For the multicollage regions, some clarity is still required on how the assigned college boards will work with the regional strategic boards.

I will speak from my own region's experience. At the moment, we have seven colleges in Glasgow but we hope that, by 1 August, we will have three. We previously had a strategic grouping called the Glasgow colleges' strategic partnership, which worked collectively on how best to rationalise curriculums, introduce common policies and procedures, and try not to reinvent the wheel. That has now transformed into a much more formal strategic partnership.

One of the things that our regional lead—Henry McLeish—and the chairs and principals of the seven existing colleges discussed was what the future relationship between the regional strategic board and the colleges would look like, because we are clear that we do not want an additional layer of bureaucracy. One of the strengths of the incorporated college sector was its ability to respond to local need. Within Glasgow, that local need can be very local or can be part of the Glasgow metropolitan response.

There is an issue for the multicollage regions about exactly how the regional strategic body will work with the assigned college boards. It seems that, under the bill, those assigned college boards will be small. My college will have a budget of £41 million but a board of between only seven and 10 members to ensure that it is properly governed and accounted for. There is still work to be done on the quality of the college and on the finances.

Liz Smith: Is there a bit of a disconnect between the ability to have good governance over the new set-up and the ability to ensure that funding is placed correctly?

Susan Walsh: That is one of the points with which the regional strategic body will have to grapple. The bill gives the regional strategic body the ability to transfer assets and staff between colleges. There will be a tension between the colleges' legal status as incorporated colleges and the fact that they will be working with a strategic
board. A tension will exist in the colleges’ legal positions and in their governance.

**Liz Smith:** Are you concerned that there might be some diminution of autonomy for the parts of the college?

**Susan Walsh:** That is a possibility for the assigned constituent colleges.

**Mandy Exley (Edinburgh College):** Where there is a single college within a region, the ability of the regional board to make a coherent regional strategic plan is enhanced. We are in favour of that direction of travel and there is a real opportunity for such planning. The situation does not carry the same complexities as a multicollege region.

**Liz Smith:** Given what you just said about the importance of overall strategic planning, would it be correct to say that your concerns are more to do with the details of the proposals in the bill than their principles?

**Mandy Exley:** Yes, that is correct. We are concerned about accountability and autonomy, which Susan Walsh mentioned.

One of the key proposals in the bill concerns the appointment of the chair of the board and other board members. It strikes me that good progress is being made in the higher education sector with respect to the use of codes of practice as opposed to measures being stipulated in legislation. That is a direction of travel that regional colleges would support.

We utterly understand the importance and relevance of identifying and appointing a chair or regional lead—whichever way that perspective lies—through ministerial appointment. However, we feel that the wider board could be appointed under a code rather than necessarily through ministerial appointment.

**Liz Smith:** Would you prefer the changes to be made without too much of a heavy legislative hand? Could some of them be made without being in the bill?

**Mandy Exley:** Yes. We will be planning on a regionally coherent basis with our partner universities and, if there is an appropriate code for us to follow, we at Edinburgh College do not see what the distinction is between the way in which we may operate and the way in which they may operate.

**Neil Bibby (West Scotland) (Lab):** I would like to follow up on that. In addition to the Scottish Further and Higher Education Funding Council, we will have regional strategic bodies in some areas but not others, as well as regional colleges. To that we must add Skills Development Scotland’s involvement in colleges. Is there not a danger that the different approaches that are taken in different areas will lead to inconsistencies and will become confusing for staff and students?

**Paul Sherrington (Banff and Buchan College):** The changes that colleges have experienced recently in the sources of funding have been a real challenge. It was very welcome that some of the money from the employability fund was transferred back to the funding council and reintroduced via a student unit of measurement model. Even though that model is not perfect, it is a model that we understand.

I think that there is an issue with the degree of consistency. If there is some settlement over the next year as we drive through the positive sides of regionalisation, we will, I hope, avoid the issues that you have alluded to; otherwise, the situation will become difficult and might well impact on the student experience.

**Mandy Exley:** One of the advantages of regionalisation—the opportunity to do things coherently—can be undermined by the complexity of different sources of activity and funding. As Paul Sherrington says, if we are to work on the premise of regions and regionalisation, the distinctiveness of regions should be recognised; otherwise, why do we have regions?

We come back to the concept of what is autonomous and accountable. Our belief is that it is entirely possible to be accountable but to retain a level of autonomy that reflects a particular region appropriately. There could be an argument that consistent application across the board is necessary, whereby whatever happens must happen everywhere—we know that that is not the case with the bill—or we could reflect appropriately the importance of the region.

The funding models are a different matter. The governance and accountability arrangements within regions could well be slightly different as a consequence of what is most relevant and coherent for each region.

**Neil Bibby:** If there is a regional strategic body with assigned colleges, what will happen if the assigned colleges do not meet the agreements with the regional strategic body? Will the funding be taken away?

**Susan Walsh:** That is an extremely good question. It is one of the questions that we, as a sector, have asked to be addressed.

Where there is one region and one college, it is quite clear what will happen—the relationship will be between the funding council and the regional board. That is where decisions will be taken about whether there would any detriment to funding. The same thing will happen with a regional strategic body, but what will happen when one college is
working extremely well and is highly productive and another college—for whatever reason—is not reaching the same levels of performance?

One thing that is missing from the bill is exactly how performance will be measured. We would like to ensure—this goes back to one of the points that Mandy Exley made—that there has to be flexibility. The success of a region will depend on the economic and skills needs of that region. In some areas, it may be a case of concentrating on the 16 to 19-year-olds; in others, it may well be about looking at the proportion of over-24s who have no qualification. The issue is using a fantastic sector to maximise the potential of Scotland’s people.

Liam McArthur (Orkney Islands) (LD): I want to follow that up. You talk about the flexibility that is needed to cope with the different circumstances that may arise within a region. The submission from Edinburgh College mentions a separate but related issue—the absence of “reference to a framework for performance measurement, decision making, review and appeal when seeking to identify a ‘non-performing’ college and the reasons for such non-performance.”

I suppose that that broadens out the question and takes us back to the issue of accountability and the independence of institutions. Will you expand on that concern? It would also be helpful to know whether it is shared by other members of the panel.

10:15

Mandy Exley: Work is on-going with the funding council on the development of outcome agreements. We have an analogous situation to the one in the university sector in terms of the way in which we are planning to use resources most effectively within the regionally coherent context. Equally, however, we have high-level measures within an outcome agreement context around which performance and, more important, lack of performance are far less clear.

That might simply be an evolving issue, but if we are to talk about performance and accountability at governance and board level, and there is an overall strategic responsibility for effective distribution of resource and therefore delivery of whatever the resource is for, it would be helpful to have a clearer sense of what the performance framework is. That might well be developing through that particular route, but at present there are some complexities associated with the different sources of funding and different funding masters.

Over the past six months, we have had some significant discussions on the way in which Skills Development Scotland funds activity that the college sector delivers. As Paul Sherrington said, we are delighted that we are going to have a stepping stone approach rather than the full-scale shift that was intended. We are grateful that that situation has changed, but, in the widening access context, we also have funding coming via universities where colleges deliver the first two years of degrees and so on. Therefore, we are developing in a short time a multiplicity of places from which money comes into a governance model that is then required to perform effectively, but the outcome agreement process is not yet at a stage at which we can fully understand the framework for performance measurement.

Liam McArthur: Could some of that be captured in the code of conduct that you have talked about, or is it at too high a level?

Mandy Exley: I do not believe that it is at too high a level. You had an interesting discussion with the higher education sector about its widening access outcome agreement and what will happen if it does not meet it, and it would be no different to have that conversation with the college sector. What is important in that context is the fact that the real benefits of regionalisation are in regional coherence, so it would be helpful to have a coherent approach for accountability and governance for post-16 students, whether they are in the university sector or the college sector.

Liam McArthur: Your written submission supports the broad principles and direction of travel.

Mandy Exley: Yes.

Liam McArthur: However, you seem to have suggested on a number of occasions that the way in which the bill is phrased cuts across the achievement of those broad principles.

Mandy Exley: I am not sure that it is entirely due to the way in which the bill is phrased. Because there are some unanswered questions about how lines of accountability will work, as Susan Walsh said, it is more difficult to be fully clear about how the process will work in terms of accountability.

Liam McArthur: Should there be trust so that the regional strategic body or the regional board, once it has been established and you have the outcome agreement in place, is left to get on and deliver without having intervention or opportunities for intervention at each and every stage?

Mandy Exley: Yes. We would like to be left to get on, not on the basis of not being accountable but on the basis of having both a level of professional and educational expertise and a level of board membership that is about clear stakeholder interest from communities, citizens and the public, such that we do things in the best interest of the region and its public.
Central planning can lead in some cases to some interesting unintended consequences of always needing to direct. We make the point about demographics strongly in both the Colleges Scotland submission and the Edinburgh College submission, and Susan Walsh made the point about age groups. We are not suggesting for one minute that having that level of planning is not important, because of course it is. I have children, too. Why would it not be important? However, at the end of the day, the lifelong learning agenda is hugely important to us in the college sector, and the people who are furthest removed from being economically active are not necessarily aged under 24.

Most young people—16, 17 and 18-year-olds—sit in some sort of unit, be that a family or otherwise, in which other members will equally need support with learning, education and the ability to get themselves into the workforce. When we plan something minutely that then translates into a governance process, it will not always necessarily achieve what we want it to. Autonomy is very important for that reason.

**Liam McArthur:** There appears to be a clash of Government policy between the priority attached to youth employment for 16 to 19-year-olds and those up to 24, and the wider mission of colleges in lifelong learning. I am not sure how a code of practice or an outcome agreement could be put in place to deal with that clash.

**Mandy Exley:** I hope that what we are discussing is the reform of a process that will not be reformed again shortly when economic circumstances change. If we are setting out something for the long term, which is what we hope we are doing, then Liam McArthur is right, because there will always be a level of tension between policy and practice in what we deliver. What we want is the clear autonomy to be responsive to what is needed at different points in time. A level of central planning and diktat can sometimes lead to unintended consequences.

**The Convener:** Does anybody else want to comment on the issue?

**Carol Turnbull (Dumfries and Galloway College):** From my region’s perspective, it is important to have flexibility on student places and age groups, because the number of 16 to 19-year-olds who make themselves available for work is decreasing because they are choosing to stay on at school. Our focus therefore tends to be on the 18 to 24-year-olds and those who are 24-plus.

We feel that it is important to have flexibility so that the college can make a case, in partnership with education services and other relevant partner bodies, for having higher numbers of a certain age group. We will still follow Government policy, but we must understand why circumstances might be different in our region and respond to that, which is also the case for other regions.

**The Convener:** Sorry, but can you clarify what in the bill would stop that happening?

**Carol Turnbull:** There is nothing in particular in the bill that would stop that happening. It is probably more about our outcome agreements with the funding council, which perhaps have more focus on 16 to 19-year-olds and more of that group coming into the college sector.

**Paul Sherrington:** I agree that there is nothing in the bill as it stands that would prevent us from focusing on local need. Our region is in the process of merging colleges, and the big issue that we face in getting the appropriate strategy and governance for our local need is ensuring that we can offer a broad and balanced curriculum across Aberdeenshire and do not alienate or disenage from communities in the north. For instance, they might be concerned that centralising some of the curriculum will disenfranchise them and that they will lose services currently available to them in Fraserburgh. There are also big issues about, for example, travelling, student support and childcare costs. Therefore, there are concerns, despite the fact that we are assuring people that the vision is to plan coherently and regionally but deliver locally, which is how we understand the concept of putting the learner at the centre.

I think that people’s view is that time will tell and that they will need to see how the changes work through. Part of our work is to ensure that we get representative governance that understands the differences between rural and metropolitan environments so that we have representation and buy-in. We must ensure that the arrangements that fall out of the bill will be flexible enough to be implemented regionally and reflect the north-east’s needs. We want to ensure that, as well as focusing on priority groups such as 16 to 19-year-olds, we are able to take into account the needs of isolated communities, where there is a different and diverse agenda.

**Susan Walsh:** I struggle to find the underpinning philosophy in the bill. When the Further and Higher Education (Scotland) Act 1992 came in, it was very much market driven with the aim of setting up a competitive marketplace. Some colleges did well, and some colleges did not do particularly well. Perhaps a weakness in that set-up was that the colleges that did not do particularly well were not left to fall to the market but were kept up, because people understand that education is a social good and is an absolute essential in a democratic society.
I can see in the bill some of the frustrations that the Government might have had with the colleges that perhaps fell below the standards expected of them. Mandy Exley talked about how the bill addresses issues of Government policy, but I think that the thing that is missing is responsibility. We have accountability and autonomy, but we do not have anything about responsibility. If the question about who is responsible was answered, it would help us to understand what people want of us.

Clare Adamson (Central Scotland) (SNP): Good morning. Paul Sherrington mentioned putting the learner at the centre, which is where the Government has been driving at with the bill. I can understand that outcome agreements need to include specific measures on generic issues such as retention and destination, but it is my understanding that flexibility and regional variances should also be captured in the outcome agreement. If we get the outcome agreement right, will that not make performance measurement automatic from that?

Paul Sherrington: I think that the outcome agreements are evolving. In my experience, we are beginning to use the outcome agreements to articulate a more ambitious strategic vision for the region. We are on the second iteration of that, and it is a process that we will all need to understand.

Outcome agreements ought to be focused on the medium and long term, so they ought to be high level. They should encourage regions to be ambitious about putting the learner at the centre and about coming up with their own version of the future rather than just being driven by a set of contractual numbers. However, they inevitably still contain an element of contract, which in my experience can make them quite short term in their vision. To be honest, I think that we will all need to learn from the experience and move them on.

Mandy Exley: From an Edinburgh board perspective, we have grappled a little with the conversation on doing strategy and planning in the context of an outcome agreement. As a board that has been in existence since 1 October, it has been quite a buoyant conversation.

As members may appreciate if they attended yesterday’s launch of the joint project between Goodison Group and the Scotland’s Futures Forum on making Scotland a world-leading learning nation by 2025, one of the benefits of that sort of scenario work is that it enables us—as a board and for our region’s benefit—to look a bit beyond where we might be in an outcome agreement to the local, national and global context.

We have generally taken the view that the outcome agreement should be falling out of, as opposed to necessarily driving, that regional strategic direction. That approach then enables us to take the opportunity, particularly within the outcome agreement’s first section on efficient regional structures, to reflect more broadly and more widely in considering the direction of travel that we wish to take. In that context, the point about autonomous governance becomes central and the appointment of board members becomes crucial.

Liam McArthur: I am interested in Paul Sherrington’s comments about the approach that has been taken in the north-east to the specific challenges of isolated communities in Aberdeenshire. When I visited Banff and Buchan College a year or so back, I noted that there was marked pride in the federated arrangement that had been developed over time not just with other colleges but with the universities in the area.

10:30

You talked about trying to allay concerns about centralisation and disenfranchisement. It is clear that there is anxiety in the student community and I think that there is also anxiety among some staff members that the boards have chosen to go down the route of merger. Such an outcome did not seem likely 12 months ago. It would be helpful if you could explain why you came to that decision. What are the safeguards for Banff and Buchan College, which is markedly smaller than Aberdeen College? How can the college’s rural funding be protected and guaranteed under the new structure?

Paul Sherrington: You are correct, in that we signed a federation agreement in October 2011. The two colleges were to work together to achieve regional coherence, while remaining independent. However, from about October last year we began to consider the likely consequences of the bill, and we thought that the governance arrangements that would be required if we remained a multicollage region with two colleges would be unnecessarily complex.

We thought that we would serve the region and its learners best by reviewing our options. After fairly detailed options appraisal, we chose to move ahead and create a new, single regional college. From the outset, we were clear about what we wanted to achieve and we appraised our options against a set of outcome criteria on which the two boards agreed.

It is fair to say that two critical issues probably tipped the decision in favour of a single college. One was efficient and simple regional governance. We thought that, as we moved forward, we wanted to be outward focused and future focused; we did not want to tie up time and resource in inward
discussion about two colleges and their relationships with the strategic planning body. The other issue was the need for increased efficiencies and balanced budgets, to ensure that learners are well supported throughout the region. That is why we came to the conclusion that we did.

You asked about protections. We wrote to the Scottish funding council to inform it of our decision, and we asked for assurances about rural funding. We have had a positive response. We are in the process of creating a strategic vision, and the two boards are working closely together. There is a degree of harmony and sense of purpose in the two boards, and we are ensuring that we articulate that vision and put in place structures to ensure that learners in Fraserburgh and Peterhead will not lose out. That is right up there— I think that our first key outcome is the maintenance of services to learners in Fraserburgh.

We are talking to students and staff about efficiencies, but not at the level of curriculum—that is business as usual, which we are trying to maintain, although there are challenges. If I am honest, there is a sense of, “We’ll see how it goes.” Students want to see detailed planning in place, but we are not there yet. For next year, it is business as usual, but we have not yet produced a detailed curriculum plan for the following year and the year after that.

However, because of travel issues and all the other issues that you would expect in a rural environment, we recognise that students want access to FE locally. They do not want to have to travel for an hour and a half a day. We are aware of that and we have assured students that that is our ambition.

Liam McArthur: What you said was interesting. The suggestion that the bill was a catalyst for merger as opposed to sticking with the federation model does not chime with what we have been told, which is that mergers will happen only where they are driven from the bottom up, on the basis of academic improvement and what is delivered for students. You said that, when you looked at the bill, you realised that the best way of making things work would be by going down the route of merger.

I am slightly concerned about your description of the benefits of simplicity and efficiency that arise with a merged model. I understand that point but, sometimes, efficiency and simplicity override some of the granularity and messiness that are involved in reflecting different needs and opportunities across a region. There is a concern that, if that is the driving force, the eye is being taken off the ball in terms of reflecting the needs across the region, particularly in the more rural areas. Is that a fair comment, or do you think that the outcome agreement that you are signing safeguards against that?

Paul Sherrington: I think that we will put in place safeguards. It is our intention that the disaggregation of activity across the region, which will be led by regional need and learner need, will be on the basis of planning regionally but delivering locally. We are devising a strategic plan that articulates those objectives clearly. That strategic plan, as Mandy Exley said, will drive our regional outcome agreement and will make it quite clear that there will continue to be services for learners in the north-east.

I think that the simplicity and ease of governing and managing with one board, as opposed to doing so with a board and assigned colleges, are an issue. We want to move forward and plan ambitiously for the future, and we believe that we can achieve that more coherently in a single-college region.

Liam McArthur: That is interesting—there has been a long journey in a short space of time. Coming to that conclusion within two years of signing a federation agreement in October 2010 is pretty fast.

Paul Sherrington: The environment has changed significantly in that time. We have responded to those changes and have reflected on the decision that was made. We have always kept a weather eye on the middle ground in terms of the operating circumstances that we would find ourselves in.

That decision was not made lightly. It was made on the basis of a detailed options appraisal and a consultation exercise, which will be on-going. That consultation exercise, and a lot of our activity from now until the point at which we arrive at a vesting day, will be concerned with what the new college will look like and how it will prioritise the needs of learners.

The Convener: I am keen to move on, but the areas of accountability, autonomy and funding have been mentioned and we are keen to explore those issues.

Liz Smith: The Colleges Scotland submission raised significant questions about the situation in which the principal of an assigned college would be appointed by the regional board. It said:

“There does not appear to be any precedent for this model in the public sector in Scotland, where the terms and conditions, including the performance review and remuneration of the principal is set by one legal entity but the contract of employment held with another legal entity.”

Do you have concerns about that?

Susan Walsh: I am the only person here who is affected by that.
The issue is the role of the employer in relation to their employees. Whether we are talking about the principal, lecturers or members of support staff, employers have rights and responsibilities. The bill takes apart that contractual and psychological obligation that employers have to their employees. If the principal of an assigned college has a relationship with their regional strategic board that defines that person’s salary and terms and conditions, where does the loyalty lie? Does it lie with the assigned college or with the regional strategic board? The assigned college might get only 70 per cent of its total funding from the regional strategic board.

The principal should have the drive to ensure that the additional funding continues to be generated by that college. There is an inherent tension there, and there is a legal issue over employment legislation. There is also a psychological issue: in order to get the best from the individual, there needs to be clarity.

The Convener: I want to follow up on that, as I might be slightly confused. You seem to be suggesting that that is a unique position. What is the difference between what you have just described and, for example, my previous position? When I worked for Strathclyde Fire Brigade, my conditions of service and pay and everything else were set by Strathclyde Regional Council. Where did my loyalties lie? What is the difference between what you are describing and the regional council setting my pay and conditions while I worked for a particular entity within that organisation, Strathclyde Fire Brigade?

Susan Walsh: You have just answered that—it was a particular entity within the organisation. My understanding of the legal standing of the fire service is that it was not an incorporated body. The assigned colleges will still be incorporated bodies, and that is where the tension is.

The Convener: That is where the difference is.

Susan Walsh: Yes, that is my understanding.

The Convener: I am sure that we will explore that as we go along.

Joan McAlpine (South Scotland) (SNP): I have a supplementary to Liam McArthur’s line of questioning a couple of questions back. He asked Paul Sherrington about the challenges of ensuring that all a region’s outlying areas are catered for. I want to ask Carol Turnbull, as somebody in a single-college region in a rural area, how she has found that. Does that work effectively in Dumfries and Galloway?

Carol Turnbull: As you know, our college has two campuses, one in Dumfries and one in Stranraer, which are 75 miles apart. There is a challenge in managing multiple campuses. In theory, it is fairly straightforward for us to move to a regional board. We already have strong partnerships in Dumfries and Galloway. In some senses we are lucky, as we have one local authority and one national health service board, so it is easier for us to get together. The regionalisation agenda will help to strengthen those links and, to an extent, it will formalise them.

We are in the unique situation of having a regional lead appointed in Dumfries and Galloway, Dame Barbara Kelly, although her role involves bringing the universities and the college together on the Crichton campus and dealing with learning for Dumfries and Galloway from that perspective. Funding will still come to our college regional board, and we will still be administered by our college regional board, but we will have an obligation and a part to play in the overall Crichton campus arrangements. For me, the important aspect will be the relationship between the chair of that group and the chair of the regional board, and how they will work together.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Most members of the panel have mentioned their concerns about the balance between accountability and autonomy. It is obviously important to get that right. From the Government’s point of view, accountability means ensuring that the public funds are being spent in the right way and on the right things, with the results coming out as part of that. Will outcome agreements be able to encompass accountability when it comes to what the colleges are doing? Will they be able to deliver that reassurance?

Susan Walsh: It is about how colleges plan their business. I will use Glasgow as an example, because it is probably more complex than any of the other emerging regions. At the moment we have seven colleges, which work collaboratively. We share an economic and skills analysis with regard to what is required by the wider Glasgow region, as well as by Glasgow city. From that, we develop a portfolio, showing the provision that we will offer. Alongside that, we develop a set of performance measures for ourselves. Every college will have its own balanced scorecard—its own way of measuring its own performance. Having delivered that portfolio—effectively and efficiently, I hope, and at a standard that we find acceptable for our students—we then assess our own performance.

Those performance measures will contribute to the regional outcome agreements, but they do not make up the regional outcome agreements. Those agreements have evolved, and they now include something like 10 measures and 29 indicators. My concern is that we end up with detailed strategic planning but we lose the responsiveness that we
need to the requirements of employers, schools or university partners.

10:45

We need to be accountable for the public money that we receive, as we are stewards of that money, and it is not ours. Therefore, we need someone to say, “I’m giving you this, but I want X, Y and Z for it.” The colleges always look at all those other performance measures, because it is not just about the money. For us, accountability is also about stewardship, good behaviour and governance. There is a public financial accountability element, but there is also a behaviour element. We all feel strongly about that in considering how our sector is governed.

I do not know whether that answers your question.

Colin Beattie: I am looking at the issue from a fairly simple point of view. The local authorities have outcome agreements that they agree with the Government. Like colleges, local authorities use a wide range of other indicators to manage their business on a day-to-day basis. Is that not the sort of model that you should follow? You would still have all your indicators for your day-to-day business, but you would also have the high-level outcome agreements?

Susan Walsh: I do not think that any of us would dispute that high-level outcome agreements are useful. The issue is that, at this moment, we have 10 measures and 29 indicators, although I must say that that is much better than the 129 financial indicators that we had at one point, so there is an improvement. My concern is that the system will lose flexibility and become reified, and then we will not have that flexibility that allows really good and dynamic colleges to do the things that Scotland needs them to do.

Colin Beattie: How do you envisage the colleges accounting to the Government for the money that is spent?

Susan Walsh: We would have a number of indicators, but we do not want the regional outcome agreements to say that we will have 374 16 to 19-year-olds and 29 hairdressers and so on, as that level of detail is unhelpful. We need qualitative and quantitative measures of colleges. I am sure that every college that is represented today will have employer engagement surveys and will work with schools and universities. We should not lose that qualitative element and have only the quantitative. If I am asked to deliver 74,323 weighted SUMs, you can bet your bottom dollar that more than 74,323 weighted SUMs will be delivered.

Colin Beattie: Given that the Government, supported by most political parties, is focusing on things such as youth unemployment and employability, particularly in the 16 to 24-year-old age range, do you not agree that there should be an outcome agreement that is focused on that and which the colleges would have to deliver against?

Susan Walsh: That might well be within broad parameters—it might talk about having between 600 and 650 places that are focused on 16 to 19-year-olds or the 24-plus group.

Recently, the funding council changed the date at which the age is measured for 16 to 19-year-olds. In Glasgow, we actually counted all the 16 to 19-year-olds, but the funding council moved the date and now, according to the statistics, we have fewer 16 to 19-year-olds in our colleges, when the fact is that we have many, many more. There is an issue about statistics and how the evidence is gathered.

Mandy Exley: I will add a comment from our perspective. As Colin Beattie knows, we try to work closely on the single outcome agreements across the three local authorities in the area that Edinburgh College supports, and we have welcomed the Government’s position on the review of the process for community planning. I hope that we are learning from that process about autonomy and governance and how partnerships work together effectively to hold partners to account as we move forward with regionalisation for colleges, because there is real value and advantage in that.

It is always a huge challenge at college board level to try to demonstrate the golden thread that exists between the college’s strategic planning process and the three other community planning single outcome agreements. So the way that things are moving forward is helpful and positive. Equally, we acknowledge the Government’s need to take a national view on certain things and to be able to gather information and data on particular policies or national issues. Therefore, as Susan Walsh said, having a high-level indicator in an outcome agreement in response to a particular point is helpful from a national position. However, as we do in community planning, we need to ensure that, when we consider that national policy position, we reflect it appropriately within our local contexts and regions rather than it being driven from a central perspective.

If we have guaranteed a place in education or training for all, we should be able to measure whether we are achieving that, but colleges are only one part of that process and that measurement.

The coming together of what we are doing on developing and evolving outcome agreements on
the back of all the experience that local authorities have and the way that the governance arrangements are changing is helpful. However, we want to avoid some of the things that local authorities have gone through in the past five or six years, such as getting too bedevilled with the detail and having mammoth documents that try to track and plan, with lots of different indicators about where we are.

Sir John Elvidge was well noted for saying that we can often hit the target and miss the point. We would like to keep to the point.

Neil Findlay (Lothian) (Lab): Edinburgh College’s submission says:

“We believe savings and efficiencies can be achieved but the current pace of financial cuts runs the risk of creating a funding crisis and short term staffing and educational difficulties which actually militate against the successful achievement of those positive changes.”

Angus Council community planning partnership says:

“in practice, recent changes to college funding for school-college partnerships have already restricted the range and volume of provision available to young people.”

To summarise, the submissions that we have received support the principle of regionalisation but say that, in practice, it has been undermined by the depth and speed of the cuts that are being imposed. Will the witnesses comment on that and give us some evidence as to how the cuts are impacting on their institutions?

Mandy Exley: I will pick that up as a general point. I am sure that my colleagues will also comment.

The pace has probably been the most challenging aspect of regionalisation. I alluded earlier not only to the pace but to the complexity of the different funding environments. We might say that, in some respects, funding is being moved around rather than entirely taken away. That complexity is as challenging as the total size of the available pot of money.

All along, since we moved towards merger, Edinburgh College has had conversations about pace. However, we are not experiencing the impact of cuts in Edinburgh. We have not cut, and are not cutting, any provision.

Neil Findlay: Does that include provision for part-time students and students with disabilities? If I was to ask your college for statistics on provision for those students, would it show exactly the same provision as in previous years?

Mandy Exley: We would not show exactly the same provision because we never show exactly the same provision year on year in any particular context. However, we would be able to show that there has been no material or significant shift or change for any particular disadvantaged group. We would show an increase in class sizes and in what I would call “productivity” and staff would call “hard work”. Those measures are relevant to our ability to maintain resource as close to students as possible.

Where we are enacting cuts is in the context of management and merger. It is the pace of that that causes us real challenges.

Neil Findlay: So that I can get others to address the same points, I ask you to address staffing numbers and quality of provision.

Mandy Exley: From our perspective, quality of provision has been maintained. We have recently had our annual engagement visit from the Education Scotland inspectors. Two of the former colleges, Stevenson College and Edinburgh’s Telford College, had the most recent inspection reports. We are doing our level best to keep resource as close to students as possible—hence my reference to the management changes—in order not to affect quality.

Neil Findlay: Convener, it might be helpful if I follow up on that point and go to each of the witnesses—

The Convener: You can ask one final question, and then we will move on.

Neil Findlay: I have two final issues for Edinburgh College. I might be wrong about this, but I have heard from constituents that, although Edinburgh College usually produces its prospectus about nine months before courses begin, the prospectus for this year has not been produced or has been delayed. What is the reason for that? Secondly, can you confirm that the cost of the merger process has been £17 million so far?

Mandy Exley: In answer to the first question, as you can imagine, when three organisations are brought together and they have 5,500 courses and a broad curriculum, to put that into a single place and space as a single document overnight is quite a task. Our new curriculum offer, which we launched last week, was reviewed with a wide range of staff over quite a long period, including the time leading up to the merger. It is now out in the public domain. It will probably continue to be tweaked and altered as we move forward in order to address some of the sheer logistics, rather than anything else, that are associated with that.

On the second question, I cannot confirm that the cost of the merger has been £17.6 million. That figure was quoted in a bid that went to the Government’s transformation fund at an early stage. We were going through a rapid period of change in process and we were asked to give an indication of what we thought the potential costs might be. The figure reduced to £14.2 million in
the business case that was presented before the merger proposal in April of that year. To date, we have spent £5.8 million on the merger process.

Neil Findlay: Do you expect the cost to be £14 million?

Mandy Exley: We do not expect it to be quite as much as that but, as we move forward, there are complexities in relation to the releasing of staff through voluntary severance schemes and so on, and some of those things are difficult to predict, as I note in our written submission. In some instances, such as for information technology infrastructure, we have had lower costs than we anticipated.

Neil Findlay: So the bulk of the cost will be in redundancies.

The Convener: Neil, we will get the rest of the panel to—

Neil Findlay: But these are important points, convener—

The Convener: They are important points—

Neil Findlay: —and we did spend 45 minutes on the previous section.

The Convener: They are important points. I ask you to wrap up your questions because I want all the panel members to respond.

Neil Findlay: Yes, absolutely.

The Convener: If you want to ask a final question, I will let you back in after all the panel members have responded. Carol, will you try to summarise your views on some of the points that Mr Findlay raised?

Carol Turnbull: On the cuts, it is a real challenge for us, as a small rural college, to achieve economies of scale and efficiencies. We have two campus sites and the distance between them makes things difficult. There is no choice but to duplicate some of the costs.

Three years ago, the previous principal and the board recognised that the public sector resource was going to be reduced and they took steps to reduce the size of our staff complement. Because of that, we have been able up to now to maintain our student numbers within the budgets that we have been afforded. Where we have had to make reductions is in our part-time provision. The focus and the funding have moved away from that. Whereas we had, perhaps, 8,000 part-time enrolments three or four years ago, we are now down to about 4,000 in total. We have had to shift our resource in that way to focus on full-time places for young people.

Neil Findlay: What about the issues of staff losses and the like? How many staff have gone?

Carol Turnbull: A total of 41 members of staff left three years ago. Not all of them were full time. Since then, we have maintained our staffing complement and we anticipate that we will be able to do the same for 2013-14.

Neil Findlay: That was 41 out of how many?

Carol Turnbull: I think that the total at that time was nearly 300.

Paul Sherrington: Over the past two years, our staff full-time equivalent figure has dropped from 237 to 220 through a process of not replacing staff who have left and staff who have taken voluntary severance. The activity around our weighted SUMs has fallen. Like Carol Turnbull’s college, we have prioritised, in the first instance, full-time provision for 16 to 19-year-olds and workforce development for 19 to 24-year-olds. We see less short part-time engagement. In the past, we would have had about 8,000 enrolments, of which a significant number would be part time. However, that number has fallen to nearly 6,000.

11:00

Over the past two years, we have closed two of our outreach centres, which were in the west of our area, in Keith and Huntly. We still operate in that area, doing training and offering programmes, but we do not do it from a leased, bespoke centre. We have found a way in which to work with partners and use their premises. We also work with fewer schools than we used to. Previously, the college probably delivered a greater proportion of its SUMs in schools than a lot of colleges did, but we have cut back. In the past, we possibly worked with 14 schools, but now we work with six or seven and we prioritise the schools from which we recruit full-time students so that, as they begin their journey, we can support their transition into college more effectively. Some schools in rural areas are in danger of falling betwixt and between colleges, but we are working closely in a coherent, regional way to ensure that we plan provision more effectively.

Susan Walsh: Cardonald College’s portfolio has changed slightly over the past four years, so there was some change before there was any talk of regionalisation or merger activity. Mr Findlay asked about learning support and part-time students. We were delivering 21 per cent of our provision in learning support areas, some of which were well outside our region. As a college in south-west Glasgow, we delivered provision in Port Glasgow, for example, which is far away from our normal catchment areas.

We rebalanced our curriculum. Like other colleges, we focused on the Government priorities of 16 to 19-year-olds and key sectors, but we also took a number of measures internally. We
increased class sizes and looked at alternative ways of delivering, not just for students but for staff. We have managed to more or less maintain levels of activity, partly because staff have been willing and flexible enough to take on different roles and look at different ways of doing things. A simple example is that we normally sent two members of staff a year to get their teaching qualification, which is very expensive, but we worked with the trade unions and the staff and came up with a new model, which means that, for the past two years, we have sent 14 members of staff to get their teaching qualification. That was possible because the staff gave up teaching remission time. Through collaboration and co-operation we have managed to arrange alternative delivery.

Like every other college, we have lost staff, but it has all been through voluntary severance. We have lost 50 FTE over the past two years, out of 450. However, we have increased productivity and changed some publicly funded courses into commercially funded courses. For example, anyone who wants to do a course in patchwork quilting in the south and west of Glasgow will now have to pay for it. That kind of move released weighted SUM activity so that we could take in more students in other areas and it increased our commercial income. We have a sales team who knock on doors and sell our provision to employers. That takes a lot of effort from staff whose main focus is on supporting students, but we have been able to do that. However, as a large college in what will be a multicollege region, I am frightened that I will lose the ability to respond in those ways.

Neil Findlay: I have two brief questions. First, what reserves does your college have? Secondly, do you believe that the bill is being driven by financial priorities or by educational priorities?

Susan Walsh: There is obviously a lot of discussion about what is a reserve. However, the amount of available cash that Clyde college will have on 1 August is £8 million.

Neil Findlay: And educational priorities or financial priorities?

Susan Walsh: I think that there is frustration, in some cases, about the sector’s ability to fulfil its potential. I honestly do not have a view on whether the driver is political, financial or educational; what I know is that the college sector will find the best way to respond. Our job is to try to influence Government in relation to how we can best help Scotland’s learners. The Government, because it is elected, has a mandate to make decisions. On the financial element, our job is to persuade people that we are a good investment.
**Neil Bibby:** What do you think will have the biggest impact on student learning: the bill, or continuing staffing and funding cuts?

**Mandy Exley:** Sorry, the bill or...?

**Neil Bibby:** Continuing staffing cuts and funding cuts to colleges. What will have the biggest impact on student learning?

**Paul Sherrington:** Funding cuts.

**The Convener:** Panel members and I seem to be having the same difficulty. What exactly do you mean by your question, Neil? Will you expand on it, so that it is clear?

**Neil Bibby:** I am asking what will have the biggest effect on student learning—the provision and the quality of learning. Will the bill make a big and positive impact on student learning, or will student learning be more affected by funding cuts and staffing cuts? Which is more important, in the context of provision for students?

**Mandy Exley:** We should always find resources to support those who need support most. We should always try to find those resources.

However, how we find those resources could, over the longer term, be better after a process of regionalisation. As a taxpayer and citizen who considers the public pound, I take the view that, in the long term, that could be better if we work in a more regionally coherent way and look at our relationships with universities, local authorities and community learning and development. The process of reform could help us to spend that money more effectively and better.

Of course, taking money away in the short term will have an impact. That will always have a disproportionate impact on those who need it most, whether the reform is to welfare or to education. Philosophically, that is not a place that I would like to be in. However, I think that the regionalisation process could ultimately provide a greater benefit to a wider group in the longer term.

**Carol Turnbull:** I certainly support Mandy Exley’s view on that. I think that regionalisation will bring added benefits from working more closely with the university sector through articulation, with local authority education services and with employability partnerships. That means that together we will address the specific needs of the region as well as the needs at national level.

However, as always, budgets are extremely important. Everyone across the public sector is extremely stretched, and we need to recognise that by being innovative and creative about how we address those issues.

**Paul Sherrington:** From my point of view, the issue depends on how much longer and how deep those cuts will continue to be, so I cannot give a yes or no answer. Turning the question round, if I was asked, “What has the potential to effect the greatest improvement and have the greatest impact on positive outcomes in the sector?” I would say that, although I accept all the positives in the bill and we have embraced the reforms, if there were a means or opportunity to reverse those cuts—I realise that this is a wish list—we would be able to exploit all the advantages that regionally coherent planning provides for joined-upness with schools, universities, employers and other colleges. If something could be done to arrest the decline in funding—the cliff fall that we are facing—we could exploit those changes more effectively.

**Susan Walsh:** I think that regionalisation has the potential for great benefits, and those of us who worked in previous regional administrations could see some of those benefits. However, in those previous regional administrations there were also strictures and barriers to innovation and creativity. In securing the benefits that we previously had within regions, we need to ensure that we do not reify the system because, when that happens, colleges start to be sluggish and not respond quickly in doing the things that Scotland’s communities, people and employers need.

The Post-16 Education (Scotland) Bill could be improved to provide greater clarity. There needs to be definitions about responsibility and about what exactly is good and bad performance. I also think that there needs to be something about partners working together. The bill is full of, “The colleges will do X, Y and Z,” but it does not say what other partners, such as the funding council, SDS and the universities, will do to help us.

On your question about which will bring the greatest benefit, the answer is that we need a level of investment in Scotland’s colleges. I am talking not about buildings but about an on-going revenue stream that allows us to invest in Scotland’s people. Regionalisation is just a mechanism to help us to make that investment count for more.

**The Convener:** Clare Adamson has a question on surpluses.

**Clare Adamson:** In the “Report of the Review of Further Education Governance in Scotland”, Professor Griggs recommends that a college’s surplus should be limited to 10 per cent of its annual revenue. What is your position on that recommendation? According to figures that we have been given, the sector has £200 million-worth of reserves, but there are huge variations between the different colleges because of the competition model that was set up.

Mandy Exley said that she had two months’ worth of cash to meet operating costs. I can
understand what effect that might have on a business that might not have another guaranteed source of funding, but is that a reasonable point given that funding for colleges from the Government and other sources is not going to dry up overnight?

Mandy Exley: I should make a couple of points in response. First of all, Audit Scotland’s report on Scotland’s colleges has been a helpful resource in understanding the sector’s health.

There is of course an obvious advantage to us in being a Government-funded body. For a start, our bond is clear when we are working in partnership with citizens, employers, businesses and others. Equally, however, given the number of financial health indicators that, as Susan Walsh mentioned, the sector has had over the years, I do not think that having 60 days’ worth of cash in hand is the best position to be in. I sit as a director on a couple of companies and am never enamoured when I find that there is only that much cash in the system. After all, so many adverse things can arise, particularly in the current economic climate.

I find the term “reserves” interesting. I know that Colleges Scotland is trying to unpick some of this issue to give us a clearer picture of what is liquid, cash or real working capital versus what are reserves in a broader sense. My honest answer is that the situation feels tight to me. I would rather have 90 to 100 days’ worth of cash or working capital than 50 to 60.

The Convener: I have to say that I take Clare Adamson’s point. It is unlikely to happen, but there might be some businesses that can see that on 1 March, say, they will have zero income and the money that they have will have to keep them going. However, that is just not going to happen with a college. If you are concerned about having only 60 days of reserves, are you really operating in the real world?

Mandy Exley: I think that this all comes down to colleges’ strategic direction and what they do in a wider context.

I should perhaps put these figures into context. About 15 per cent of Edinburgh College’s turnover—about £10 million or £11 million—comes from sources other than public funding. That money generates a bottom line that is reinvested in certain quite expensive activity that happens in places where we really cannot afford to do it. If an institution is to be diverse and sustainable in the long term, it needs the variety of sources of funding that, as Susan Walsh made clear, it generates to help in that respect. As charitable organisations, we try to identify other areas of activity that will help to underpin support for local communities and citizens.

For those reasons, I view the situation differently. I am not saying that I do not acknowledge that a certain amount of money will always be coming in if we contract to do a certain amount of business. However, as we have seen in recent times, the money has gone down quite a lot.

The Convener: Your description of it made it seem that your income could turn to zero overnight and that you would have to use the money—

Mandy Exley: I do not think that I described it as if it could suddenly turn to zero.

The Convener: Well, you did not say that—you said that you had 60 days’ worth of cash.

Mandy Exley: But if we want to be in a comfortable position with regard to sustaining our workforce, paying our staff, paying our bills within a 30-day period and committing to everything that we think is really important, cash flow and working capital are important. You asked for my view—that is my view.

The Convener: Absolutely. You might agree or disagree but, in its report, Audit Scotland clearly stated what it viewed as reserves and put them into two categories. It also indicated—correctly, I think—that your reserves have doubled over the past few years. What is your view of the suggestion that the sector use some of those reserves for its on-going work?

Susan Walsh: The question is how reserves are classified. In the legislative framework within which we operate, we are autonomous independent organisations and, as a result, must ensure that we are going concerns. I think that that is where Mandy Exley’s point about having available cash comes in.

The reserves that we have are not stuff in the bank—well, they are stuffed in the bank, because we have treasury management policies to ensure that we maximise the income that we get from that money, which is for reinvesting in students, ensuring that our staff are well trained and investing in our estates. It is also necessary for dealing with the changing nature of pedagogy, because we are moving from classroom-based delivery to greater use of e-learning and independent learning. There is an investment plan for that money; it is not just sitting in a cupboard somewhere.

It is important that colleges have been prudent and have shown that they can generate income, but not all colleges can. John Wheatley College in Easterhouse, which is one of the colleges in the Glasgow colleges strategic partnership, faces...
huge social challenges and has an entirely different portfolio from my college. I can go out and sell to the Saudi Arabian Government; it cannot do that.

You asked whether we should have reserves. I think that reserves are important. Should they be used for the benefit of the sector? I think that that is to do with national coherence. We have talked about regions providing internal coherence. As yet, no one has told me who is going to provide coherence for the regions. That is the next level up. Your question can be answered only if we know what that national coherence will look like. It would appear that, to date, it has not existed.

Liam McArthur: I have a couple of points on governance issues that we have not touched on. The bill contains a statutory requirement for staff and student representation on the boards and the strategic bodies. We have had evidence, including from Edinburgh College, about there being no requirement for the principal to be a member of the regional college board. In addition, Asset Skills Scotland has expressed its concerns about the lack of statutory representation of employers on the board.

Will you expand on the concerns that you have about the principal, and touch on what underlies your concern about employer engagement? Is the absence of a provision in the bill on employer representation a weakness, or can it be addressed in other ways?

Susan Walsh: I feel extremely strongly about employee representation. Under the existing legislation, the board has on it a member of the teaching staff and a member of the support staff. They are full members of the board; they are not representatives. It is a weakness not to provide for broad teaching and support staff representation. If a college has only one staff member on the board, that does not take account of the fact that members of staff have different perspectives, different views and different aspirations. I would be much more comfortable on any board—whether it was an assigned college board, a regional board or a regional strategic board—on which the totality of college staff were represented.

Mandy Exley: With respect to the Edinburgh College position, we have been developing our board configuration in the context of where a regional board will sit. With respect to staff and student representation, we sit with two members of staff and a student on the board, and we will continue to do so as we move forward with the legislation.

I am in two minds about having an employer representative as a statutory board member. What is important is that the board is appropriately reflective of the needs of the regional economy and the national context. Without good employer representation on a board, there will not be a good balance of board membership, but I would not necessarily subscribe to the view that an employer representative should be a required member. That goes back to the question from Liz Smith about the composition of boards and autonomy, and our point about who appoints the board. With more autonomy, it will be possible to ensure that there is a good mix of board members.

The point that my board has made about the membership on any board of the principal relates to the role that a principal has in supporting educational leadership, which is an issue that I hesitate to talk about, as I feel that I have a vested interest. Because the role of the principal involves educational leadership, the contribution that a principal brings to a board represents that very facet. If there is not a principal, you might suggest that there must be a statutory role on the board for someone who provides educational leadership. There is nothing to demonstrate that the role of a principal as part of a board as it is currently set out in statute is bad, wrong or does not work. As a board, we have therefore wondered about the direction of Professor Griggs’s recommendation in that regard.

I refer back to the higher education sector and the university court. It would be pretty much unheard of under the code and through custom and practice not to have a vice-chancellor present at court. Hence, in the boards that I sit on, the chief executive is always present—and hence the Edinburgh College position.

Liam McArthur: So, the ability to attend and address the board would not be sufficient to pick up the aspects you mentioned about the input that a principal would be expected to offer a board.

Mandy Exley: Yes. Susan Walsh made the point about consistency of practice. The university sector operates under a code in which, in effect, through custom and practice, a vice-chancellor is always present. They give that leadership and it happens in every university. Their not being at the board would be the exception rather than the rule. Why not, for consistency of educational leadership across regions, have the principal there by statute, rather than by invitation?

Paul Sherrington: The new regional planning board in the north-east would view it almost as essential that the principal be part of the board; it would not be good enough simply to have the principal attend. The principal needs to be part of the board, to share its vision, to sign up to its code of conduct and behaviours, and to go out and model and articulate that to the wider constituency. There is a lot of good practice around principals being part of that process. If they were simply to turn up to answer questions or
provide a report without being part of the whole governance agenda, there would be a dislocation in the vision of the board and in how things were implemented on the ground. I do not understand why the principal would not be part of the board.

I do not have a strong view on the subject of employer representation. I am sure that boards would deal with that point. Clearly, however, representing the wider context of the communities that are served is important in order to get the balance right.

The Convener: We are rapidly running out of time, so I want to move on. Joan McAlpine has questions about equality issues and support for learning.

Joan McAlpine: A number of organisations have raised concerns about support for disabled students. The written evidence from Lead Scotland discusses how the most recent outcome agreements have said very little about disabled students, and mentions the fact that there are very few targets for disabled students. Is that your experience, as principals? Do you think that that might change in the future?

Carol Turnbull: Dumfries and Galloway College treats every student and every application the same. There are no specific targets in an outcome agreement in terms of disabled students, but neither do we put up any barriers. We support and will continue to support disabled students who come to the college. There is no change in how we treat applications.

Mandy Exley: The reference was specifically in relation to higher education outcome agreements on widening access and the statistics from Lead Scotland relating to disability. There are continuing financial pressures and constraints around being able continually to support students with complex disabilities and learning needs. By that, I am referring to cases where students are not necessarily able to progress in their learning—based not only on a criterion-referenced approach but on a learner-referenced approach. When we come to the discussions about regional outcome agreements with other partners in other bodies, we need to consider much more coherently—within outcome agreements and regarding single outcome agreements—how best we can provide support.

I have a deal of sympathy with Lead Scotland’s position on the issue, but the colleges cannot address it in their own right. As Carol Turnbull said, we do not set specific targets on the subject. However, in our role in community planning, we need to look at the issue in a broader context and, perhaps, to be more explicit about it than we currently are.

11:30

Joan McAlpine: Do other witnesses agree?

Paul Sherrington: I agree. Our outcome agreement has no specific targets on students with learning difficulties or disabilities, but it refers throughout to disabilities legislation and our responsibilities on diversity. We have specific objectives in our newly created strategic plan—they are currently in the college operational plans—on how we will work collectively with partners. We have formed a newly constituted partnership matters agenda group with local authorities and others to deal with the issue as fairly and consistently as we can.

I know that some of our existing students on our employability programmes and their parents have concerns about how we might rationalise that provision in the future. At this point, there are no such intentions—we are talking about local delivery and access. It is important that we continue to talk about and articulate that.

Susan Walsh: As I have said, our college had a fairly high level of supported learning in its portfolio, which has reduced mainly through a focus on local provision rather than diverse provision in regions that are well beyond our boundaries.

We need to focus on the benefit to the student and the partners that we work with, such as social work departments. If a student can benefit from an education experience at whatever level, we will do our best to help and support that student, when we can make reasonable adjustments to enable that.

In relation to part-time students, female students and learning-support students, the available activity has been reprioritised. The issue is how to manage that sensitively to keep the breadth and aspiration in the curriculum and ensure that it is not exclusive in a detrimental way.

Joan McAlpine: I understood that the move in outcome agreements to have more certificated courses, for example, was perhaps damaging some courses for learning-disabled students, because those courses were not certificated. Have courses changed to dovetail more with outcome agreements by having certificates at the end or by being linked more to employability?

Mandy Exley: We have certainly moved significantly to use organisations such as the Award Scheme Development and Accreditation Network for certification. That involves using not criterion-referenced learning but learner-referenced learning, which means that we can identify progress in ways that are different from normal assessment. That is crucial to employability.
In the past, we have been guilty of producing far too many so-called college certificates for pieces of learning, which employers would not recognise in the future. In the past four or five years, colleges have moved significantly away from that. The discussions around “Putting Learners at the Centre—Delivering Our Ambitions for Post-16 Education” have referred clearly to non-recognised qualifications, but the number of them has reduced dramatically over the years. That is good, and it is good for students.

Susan Walsh: The question is what is appropriate for the student. The definition of “non-recognised qualifications” is not particularly clear. Mandy Exley referred to college certificates. For some students with learning difficulties, those certificates are absolutely appropriate, because they represent the highest recognition of those students’ potential at that point in their lives.

The funding council is—helpfully—looking at the definition of “recognised qualification”. I hope that it will not build its new definition so tightly that it removes from the system what is appropriate for students who have learning support needs.

Paul Sherrington: I agree. We have used a range of certification, at whatever is the appropriate level. We have not felt under any pressure to change the things that we do in the best interests of students as a consequence of an outcome agreement. It is one of those areas where we reflect that back. It is a regional decision based on our experience. We would resist being driven in any direction simply because of some sort of view about what is inappropriate. We have a view about that and we would express it.

Joan McAlpine: What Susan Walsh said struck a chord with me. Some of the learning-disabled people’s organisations that spoke at the cross-party group on learning disability suggested that in the past, some students had been parked on the same college course for years and years and were not making any progress. I am getting a sense that that sometimes happens.

Susan Walsh: No. I have worked in a number of colleges and my experience is that staff work very hard to progress students. It might be a slow progression, but they still progress students. If you look at the curriculum that my college offers, you can see those progression routes. What happened in the past was that a student with a learning difficulty went to a college and, having worked their way through a progression route, was not ready to take on employment opportunities and so they decided to go to another college and do something else. They might go in at a different level or they might repeat some of their previous work. It is not unusual for me to go to a college and meet someone who has been a student at another college. They say, “Hello Susan,” and I think, “I recognise you.”

We need to ensure that there is no disarticulation between that which is available educationally, and that which is available for people with learning difficulties that will engage them and give them something purposeful to do, which might not be in the college sector.

Paul Sherrington: A really positive result of the regionalisation agenda could be people’s transition into colleges and out of colleges into the wider community becoming more focused as a consequence of the relationships that we build with others outwith our sector.

Neil Findlay: We know that there have been significant cuts in provision of courses for people with learning disabilities; the Scottish Consortium for Learning Disability said that there has been, I think, a 34 per cent cut. You have mentioned cuts to part-time places. We have had evidence about how that has impacted on women learners, in particular.

The concept of lifelong learning seems to have gone off the agenda and we seem to be focusing on a narrower group, which means that a load of people are being excluded, or are at risk of being excluded, from the college set-up. In my view, colleges are about lifelong learning. What is your view?

Susan Walsh: Colleges have a responsibility to respond to strategic and policy drivers but they also have a responsibility to ensure that they deliver for communities: that balance is the issue.

One of the good things about being an autonomous independent organisation is that you can say, “This is not a good thing”, so we can do our best to ameliorate challenges that might be caused by focusing solely on policy drivers. We need to take responsibility for ensuring that we actively continue to engage with particular student groups.

Mandy Exley: I have a great deal of sympathy with what Neil Findlay said. It is why we made a statement on age in our submission. We discussed that earlier. Liam McArthur asked whether there is tension between the policy and the bill. Yes, there is tension, but the issue is to recognise where policy currently sits and—as Susan Walsh said—to have the autonomy to support as far as possible the people who are furthest from the workforce.

We are talking about people who are not economically active, which is where you want to get them to be. We are also talking about people who are currently in work and want to get better jobs. We have the clear purpose, within the framework of “Putting Learners at the Centre”, of
helping people to get a job, keep a job or get a better job. The getting a better job bit is about lifelong learning, which is not necessarily about someone’s age. That is an important part of what we need to do.

**The Convener:** Thank you. Our final question is from Liam McArthur.

**Liam McArthur:** Susan Walsh talked about the benefits of colleges being autonomous organisations. We started the evidence session with panel members’ concerns about the funding council’s review powers over course provision—if there are any more comments on that, please let us know. However, the funding council is also being given powers to review the number of post-16 further and higher education bodies. The Scottish Government has made it clear that it is for colleges to restructure that on a voluntary basis. Paul Sherrington gave an example of where that has changed over time. Do any of you feel that there may be circumstances in which the funding council may require the coming together of bodies in a way that is not being done at the present time, or is that inconceivable?

**The Convener:** Panel members do not have to speculate if they do not want to.

**Susan Walsh:** That might require the funding council to actually do something. [Laughter.]

**Liam McArthur:** You sound sceptical.

**Susan Walsh:** I am disturbed by your lack of faith.

**The Convener:** We are often disturbed by Liam’s lack of faith.

**Susan Walsh:** We talk about regional coherence and what the regions will be able to do better, but nobody has talked about national coherence, which is partly where the weakness lies. If we are saying that there will, because of the bill, be clarity about how we will ensure national coherence, that would obviously require a body to ensure that it was implemented. That may involve, for example, saying that instead of three colleges there should be one. However, I do not think that that has entered our thinking, because we are dealing with fast-paced change in a difficult funding situation and trying to do the best for Scotland’s learners.

**Paul Sherrington:** I recognise the scenario in which the strong links in the north-east enable fairly seamless transition from colleges to university, for example. We are fortunate, because we have built those links over time, and the articulation routes that we have now agreed, almost at a contractual level, work very effectively. That was done through encouragement and building the support and the model. I am sure that the funding council would be keen on replicating that model across Scotland, and we would like to see that.

To go beyond that—if that got to the nub of your question—there are different senses of purpose. Certainly, I feel that my organisation has a different sense of purpose than HE. We focus 80 per cent of our activity on what I would call non-advanced FE. We work on introducing people to the employability pipeline and getting them to the point at which they can get a job. I hope that, no matter what, that focus or sense of purpose would be retained and not lost. I am not sure whether that answers your question.

**Liam McArthur:** It does so as much as I could expect.

**The Convener:** Okay. I thank all the witnesses for coming along this morning. We have spent a little more time on the discussion than we intended, but that was necessary as we were discussing an important part of the bill. The panel’s views are obviously extremely important for our deliberations for the stage 1 report. Again, I thank you for taking the time to be with us.

11:43

*Meeting suspended.*

11:48

*On resuming—*

**The Convener:** For our second panel of witnesses, I welcome to the committee Chris Greenshields, chair of Unison Scotland’s further education committee, and David Bass, who I believe is senior policy and information officer at Lead Scotland. Members will be aware that Penny Brodie, executive director of Lead Scotland, was to attend the meeting, but I believe that she has been trapped by the weather.

**David Bass (Lead Scotland):** She is snowed in.

**The Convener:** She sends her apologies. Garry Clark, head of policy and public affairs from Scottish Chambers of Commerce has also sent his apologies, which means that we are without a representative from that body. However, I am sure that we will get on fine with the panel that we have.

**David Bass (Lead Scotland):** She is snowed in.

**The Convener:** She sends her apologies. Garry Clark, head of policy and public affairs from Scottish Chambers of Commerce has also sent his apologies, which means that we are without a representative from that body. However, I am sure that we will get on fine with the panel that we have.

**Liz Smith:** Mr Greenshields, your submission states very clearly that Unison members
“feel that management and governance bodies do not engage adequately with staff both on the day to day running of institutions or on organizational improvement and development.”

That is a very clear statement. Can you provide us with the detail of the evidence that led you to make that statement? How does that lack of engagement have a detrimental impact on the way in which the colleges deliver education?

Chris Greenshields (Unison Scotland): We have done quite a bit of work on staff representation at board level. We have checked quite widely with our members in Scotland’s colleges to ask about their impression of how staff representation works in colleges. From that information, it is clear that there has been—and is, even now, when key decisions are being taken in colleges—a lack of engagement. We think that there is still a lack of consultation with staff and trade unions. We are still not invited on to partnership boards or the shadow boards that are operating at present. When college boards have taken decisions to merge recently, there has been very little consultation with staff. That is what we feel.

Liz Smith: My second question was about how a lack of engagement has a detrimental impact on colleges’ performance in delivering education. Can you be specific about how that lack of engagement has caused any college problems?

Chris Greenshields: Trade unions have found it very difficult when they have tried to get to board level to resolve disputes before they escalate and create problems for students and for the organisation. Historically, the boards have left decisions that they see as non-strategic to senior management—I think that senior management has encouraged them to do so. We think that some issues that we have seen over the past few years could have been avoided if there had been proper engagement with the trade unions.

Liz Smith: Has that been true in all colleges across Scotland, or has there been a particular difficulty in specific colleges?

Chris Greenshields: There has certainly been a difficulty in specific colleges, but the general feedback from our stewards in colleges suggests that there is a similar problem throughout Scotland.

Liz Smith: The college principals told us earlier that they recognise that the regionalisation reform process could be very helpful in setting out more strategic aims, but they are also concerned about individual colleges losing autonomy. Do you agree with them on that?

Chris Greenshields: We broadly welcome the changes in governance, which we think are well overdue, as we said in our written evidence. On the lack of local autonomy for colleges, for years we have struggled to get Government involvement in issues that have an impact on colleges because the Government had no power or control. Therefore, we welcome the fact that the colleges will be a little bit more accountable to wider bodies. However, the issue for us is that the changes in the legislation will not address our representation issues, which are about having staff reps on multicollege regional boards.

Liz Smith: For the principals this morning, the definition of autonomy was how well a college can respond to the needs of a local area or economy. Their concern, which I presume you share, is that they are not convinced that that is sufficiently spelled out in the bill. Do you agree with them on that point?

Chris Greenshields: I am not so sure that that issue is related to the governance side, but I can see that regionalisation may have an impact on the ability of colleges to act in the best interests of their local communities.

Neil Bibby: Given the different structures, there will be the potential for inconsistencies among the regional strategic bodies in different parts of Scotland. In Unison’s opinion, what are the human resources challenges of that? I notice that you mention that the Transfer of Undertakings (Protection of Employment) Regulations 1981 should be enforced. What do you see as the HR challenges?

Chris Greenshields: At the moment, we—and everyone we speak to—are still unclear about how the system will operate post regionalisation. We have very little idea, especially in the multicollege regions, of who the employer will be, how that will work and what access we will have to resolve disputes or grievances, should they arise. That gives us difficulties. We urgently need clarification of what the position will be, because we are careerering towards change that is going a bit unchecked.

Neil Bibby: That is all for now, convener.

The Convener: I would like to pursue a couple of those points.

In response to Liz Smith, you mentioned that you had a number of concerns about the boards, one of which was about representation. I presume that your concerns relate to boards in the multicollege regions and in single-college regions, although maybe that is not the case. Could you expand on what your further concerns are?

Chris Greenshields: Under the bill, the plan is that the regional boards will have two staff representatives. Our experience is that staff reps perform a role, but it appears from the evidence that we have gathered that the approach to
delivery is inconsistent; in some cases, the role of staff rep is non-existent as far as communication and the proper representation of the staff is concerned.

We feel that the trade unions should be involved. We understand that they are involved in the universities, and we do not understand why that involvement is not being extended to the regional boards and the colleges. We have a structure behind us: we operate at national, regional and local levels, and we have wider staff structures that can inform us and help us to do the best job for college staff. We also know how to operate in a wider campus structure. We have all of that. In addition, we have facility time and we are directly accountable to members. We do not feel that the staff reps have those things, and we think that it will be difficult for them as the system widens and they start to operate in a regional context.

**The Convener:** Can I stop you there? You can continue in a moment, but I want first to clarify an issue to do with staff representation on and membership of boards. You will understand that boards have to be of a manageable size. I presume that you are suggesting that we move to having a guaranteed place for trade union representation on the board. Is that correct? Is that what you are suggesting?

**Chris Greenshields:** It is.

**The Convener:** Are you suggesting that there should be one place per board, regardless of the fact that a number of different unions are involved, or are you suggesting that there should be one place per union?

**Chris Greenshields:** We are suggesting that there should be one place per union for support staff and for lecturing staff.

**The Convener:** Would it not cause some difficulties in relation to the size of boards if a variety of unions were represented?

**Chris Greenshields:** We are talking about two additional representatives, which we do not see as a major issue. There are currently two places for staff reps. We are saying that perhaps we should consider those staff reps being trade union reps.

**The Convener:** Thank you. I am sorry—I interrupted you. Please go on.

**Chris Greenshields:** The other area that we have a problem with relates to multicampus regions and, specifically, the assigned college boards, which were previously called local boards. In areas where the size of the board is smaller, there will be one staff representative for the two different sets of staff. We have no faith that that will work. That is quite a different arrangement from that for staff in the regional colleges. A different process is involved. We feel that that needs to be addressed urgently.

The trade unions have been engaging with a number of regional college chairs to ascertain their views on that, and we have had encouraging responses.

**The Convener:** You said that having one staff rep is a problem. Why is that a problem?

**Chris Greenshields:** Because the two groups of staff might face quite different issues after regionalisation. Given that support staff and lecturing staff each have an understanding of their own area, I think that there would be a lack of faith that the reps would work for both sides.

12:00

**The Convener:** We will now move on to deal with some of the issues around accountability and autonomy, which you heard us discuss earlier.

**Neil Findlay:** In the evidence that we have received so far, there seems to be some support for the principle of regionalisation, but there is a fear that it is being undermined by the pace and depth of the cuts. Will you comment on that and on what is happening in the college sector because of the pace and depth of the cuts?

**Chris Greenshields:** As you know, 1,300 jobs have been lost in the sector in the past 18 months alone, and we hear of an expected £50 million in savings from the regionalisation process. Taking an average salary of about £20,000, that figure represents—at a rough estimate—about 60 jobs in each of the previously existing 37 colleges.

The college that I work in currently has about 100 support staff. If we lose 60 jobs, it will be carnage in terms of the support that we provide to our students. We do not think that there is a real plan for what service will be put in place after those cuts.

The cuts are having an impact at the moment. The waiting lists for students who are applying to the college have been extended. There are queues for students who want access to the necessary funding. Staff are overworked, with people doing the jobs of two or more staff. There is a variation in support services across Scotland, depending on whether a student is studying part time or full time, which campus they are studying at and which college they attend. Some colleges provide adequate careers services, counselling services, library services or bursary cover, and some colleges do not, because they have chosen to redirect those funds while letting staff go. More students are being directed to online services, which is having a real impact, as can be seen from what happened recently with the Student Awards Agency for Scotland, with lots of students still
waiting for funding as we approached Christmas. Such issues have a huge impact on a student’s ability to progress through their course.

We think that the focus on more online services and on detaching services from the frontline will cause students increasing problems. The changes to the Careers Scotland service, which is now part of SDS, mean that higher national certificate and higher national diploma students in our colleges no longer have direct access to a careers officer and are, instead, directed to the website. We do not think that that is adequate.

Lecturers are being given more administration and admissions work. We are even hearing stories of students having to jump on public transport to go to different campuses in order to get the support that they require, such as funding for progressive studies.

The cuts are creating a situation that is difficult—to say the least—for students. With the predicted level of cuts after regionalisation—another £50 million—and the fact that there is no plan in place for what service will be delivered thereafter, we think that there will be carnage in terms of support services for our students.

Neil Findlay: Does David Bass have any comment on how the cuts will impact?

David Bass: It is important to differentiate between regionalisation and the impact of the cuts. From our perspective, the cuts and the pace of the cuts have had an impact on FE student support and on the opportunities that are available to older disabled learners. That is something that we will probably get further into later on.

Neil Findlay: Do you think that the bill is being pursued in the interests of educational excellence or for financial reasons?

David Bass: It would be beneficial to have a more public debate about why the bill is being pursued and what the implications are likely to be. For example, is the focus on one age group a temporary response to the recession or will it be a more permanent feature of our education sector?

The availability of opportunities for lifelong learning is a serious issue, particularly when we consider the education sector as a whole. The community learning and development sector is now being funded through the early years intervention fund, with a focus on younger students as opposed to the second-chance learners with whom we have more traditionally worked. That and the fact that, traditionally, Scotland has a low level of active labour market policies will combine to produce some pretty nasty effects for some of the second-chance or older learners.

Neil Findlay: Will you elaborate on that?

David Bass: Sure. The August labour market report showed decreasing employment for the 26- and-above age group as opposed to the 16 to 24-year-old group on which the bill focuses. As the college principals mentioned, the economically inactive portion of the population is growing even though, technically, unemployment is falling. Those are segments of the population that CLD and colleges traditionally served.

The Convener: You mentioned the bill’s focus on 16 to 24-year-olds. The bill makes no mention of any such focus. It is about post-16 education and introduces the regional structures about which we have been talking. It is also about widening access.

David Bass: I guess that I am talking more about post-16 education reform in general.

The Convener: Right. The concentration on 16 to 24-year-olds is a policy. It has nothing to do with the bill as such.

David Bass: Yes.

Chris Greenshields: It is clear that two things are going on. It is Unison’s belief that the colleges are not merging for any educational rationale. Similarly, they are cutting without any educational rationale.

Mark Batho from the Scottish funding council talked about the potential for merger efficiencies and savings figures being based on estimates. We have a problem with the fact that all the predicted savings are based on estimates.

I think that Edinburgh College said recently that 60 per cent of the job losses through which it expected to make savings would come from administration. That was to protect learners. We are not quite sure what the rationale is behind protecting learners by making 60 per cent of the job losses in support services. The college also mentioned that £8 million of the £9 million of cuts that it was expecting to make in the merger related to staff.

I am not sure that the colleges are embracing the change for any reason other than to address the cuts that are coming their way. We also believe that they are being forced into merging for fear of being cut adrift as lone bodies within the region thereafter. The impact is huge.

Neil Findlay: On the bill, the focus on 19-year-olds is being facilitated through the outcome agreements.

The Convener: Not the bill.

Neil Findlay: Yes—the outcome agreements.

Colin Beattie: I would like clarification about part of Unison’s submission, which makes some fairly strong statements on shared services. I want
to confirm whether those statements are informed by experience in England and Wales. I assume that the National Audit Office report that is mentioned in the submission refers not to Scottish experience but to English and Welsh experience. Does Unison have any evidence from experience in Scotland?

**Chris Greenshields:** The evidence that Unison supplied comes from further afield than Britain—it comes from even as far afield as Australia. We could pull together the evidence that we have on Scotland for you and perhaps forward it on at a later date.

There is a document from the Association for Public Service Excellence and Unison Scotland, which contains quite a lot of information. It concluded that front-line and back-room services were closely interlinked and were interdependent, and needed to remain so. It said that separating them was often found to be a design mistake and left higher-paid staff to do the tasks previously done by less qualified people at greater cost. The document uses quite a lot of evidence from a variety of sources. We are happy to forward that on as well.

**Joan McAlpine:** I have a supplementary question. I do not know whether you had the opportunity to catch our previous evidence session with the college principals. They may have had some qualms about the details, but a number of them said that they saw benefits in regionalisation, through its ability to help them to plan better and reach wider groups. That does not seem to square with what you are saying.

**Chris Greenshields:** I think that there will be some benefits in a regional approach. We would not disagree with that. Our issue is that the whole thrust of regionalisation is not really about taking a regional approach. Rather, it is about delivering budget cuts, and we think that that will have a dramatic effect on our learners as well as, obviously, staff in the area. We think that courses will be focused on certain areas and that that will impact on local delivery. We do not think that a variety of courses will be available locally any more. Obviously, the availability of a variety of courses helps to improve and widen access. We think that access will be restricted. If we go down that route, we need to build in guarantees that that will not happen.

**Joan McAlpine:** Do you accept that there was duplication of courses in the past and that there may have been courses that resulted in people not getting jobs when they left college? Do you accept that policy makers really need to address that?

**Chris Greenshields:** I think that it is true that in some areas we should deliver courses where such outcomes are possible. There is duplication, of course, but in what you say you ignore the fact that people who access local colleges want to study locally. Their childcare may be local, and they may not want to travel to the south side or to a college 20 miles away where the provision of public transport, childcare or whatever is uncertain. We have evidence that suggests that people want to study locally. We work in our local communities. Our members and staff are out there speaking to people about trying to reduce barriers to access to education, and we know that people are intimidated about going into college or further education, especially those who have been excluded for some time. People might go on a college course that runs in a variety of areas, but we think that that approach is necessary. Such duplication is perfectly acceptable to us.

**Joan McAlpine:** I totally accept what you say about access, but there may have been overprovision of certain courses in the past. There was a lot of overprovision in beauty therapy, for example. Many students wanted to study beauty therapy, but left at the end of the course without having any job to go to. Is it responsible of colleges to provide such courses if there is overprovision of them and there are no jobs at the end of them?

**Chris Greenshields:** Absolutely not. We are not saying that there should not be control or a wider approach to what we offer. That is in everyone’s interests and it will happen, but we do not necessarily think that the bill, or what is driving it, specifically addresses that issue.

**The Convener:** I would like to clarify something. You seemed to suggest that the bill would remove local courses and that the connection between a campus and the courses that it runs in a local community would somehow be lost. However, Paul Sherrington, who was on the previous panel, made it very clear that his priority is to ensure that local delivery is maintained. There may be changes in names and structures, but the local delivery would be maintained. That is his top priority.

**Chris Greenshields:** We think that, given the level of budget cuts that are on offer at the same time as we are going through regionalisation, the colleges will make decisions on courses. That is already happening. I caught the tail end of the previous session, when the drop in part-time courses was referred to. We know that students who need access to education use part-time courses to try to get a foothold on the further education journey. Colleges may say that they will maintain courses, but we do not have a lot of faith in that happening, given the budget cuts that are coming.
12:15

Liam McArthur: It might be worth exploring that a little further. We heard from the previous panel some concerns about the funding council's review function and the way that provision is made. Paul Sherrington articulated where his priorities lay but said that the funding council view of efficient, economic provision across a region might conflict with those priorities. Do you have any observations to make about the level of responsibility and influence that the funding council has in relation to course provision across a region? How do you see that working?

Chris Greenshields: We are concerned about it, because we do not believe that the funding council particularly protects access arrangements for college students. Courses are disappearing off the radar and in many cases provision is disappearing. Recent figures on the education maintenance allowance show that there has been a 12 per cent drop in students from the most deprived backgrounds accessing further education. Other figures show a 7 per cent drop in students from disadvantaged backgrounds accessing HE, too. Given that the funding council that is currently in place is not protecting access, we find it difficult to believe that it will do so in a post-regionalisation context after the cuts.

Liam McArthur: How would the relationship work? Obviously, a significant amount of funding is going from the Government to the colleges through the funding council, either individually or on a regional basis. However, as we heard this morning, colleges' autonomy and ability to respond flexibly to the needs of their areas and regions are seen as absolutely critical. How do we ensure that the bill does not imbalance that relationship and that it provides a degree of accountability while allowing colleges' autonomy and flexibility at regional and local levels to be maintained?

Chris Greenshields: I would not like to speculate about how that is going to pan out. The regional outcome agreement is designed to try to help that process. We do not really have a suggestion to make about how the funding council should liaise with the colleges or the regions, other than to say that there should be guarantees that there will be provision, which should be enshrined in the regional outcome agreements.

Liam McArthur: I want to return to some governance issues. You have talked about staff representation. Staff and student representation is provided for in the bill, but you voiced opposition to the proposal made by a number of colleges and Scotland’s Colleges that the principal should be a member of the regional college board. What is Unison’s resistance to that proposal based on?

Chris Greenshields: Our resistance at the moment is based on the fact that trade unions will not have a presence on the regional board. We recognise that there have to be checks and balances and independent checks on how principals operate. We have seen to our cost over the past 20 years that that might not have worked particularly well. It is healthy and it would make sense for there to be a clear dividing line.

Liam McArthur: Mandy Exley said that in the university sector it is inconceivable that the vice-chancellor would not be a member of the university court and asked why universities should have their governance structured so differently from colleges. Do you envisage a situation in which vice-chancellors would not be members of the university court?

Chris Greenshields: We have already said that under legislation the involvement of trade unions in the college sector is quite different from the involvement of our colleagues in the universities. We would welcome further discussion about that.

Liam McArthur: Colleges Scotland has questioned why the principal of an assigned college would be appointed by a regional board. Does Unison have particularly strong views on that?

Chris Greenshields: No, I do not think so.

Liam McArthur: I think that it was Asset Skills that expressed concerns about the fact that there was no statutory provision for employer representation on the boards. It was stated across this morning’s earlier panel that it was inconceivable for a board that was truly reflective of the needs of any region not to have that engagement and representation. Therefore, those witnesses did not see a need for that to be enshrined in statute. Do you share that view?

Chris Greenshields: That probably happens already, realistically. As far as providing a legislative back-up for that is concerned, we are comfortable with what is there already—outwith the trade union representation.

Clare Adamson: Correct me if I am wrong, but you seem to be saying that the rationale for the proposals is financial, rather than being for the benefit of the young people, in terms of educational outcome. Is that fair to say?

Chris Greenshields: That is our suspicion, yes.

Clare Adamson: We have taken quite a lot of evidence, for example from the Federation of Small Businesses, on the mismatch between college students and the jobs that are available in different areas. Joan McAlpine spoke about overprovision in certain areas and there being no strategic look at provision. The Government has stated that it is putting the learner at the centre,
with regional centres of excellence and with expertise being exploited across each region, although it can still be delivered locally.

I find it hard to see where you are coming from. I do not know whether you heard the earlier evidence, but the Cardonald College principal referred to the market competition system that was set up by the Conservative Government in the 1990s. Some colleges have been able to become income generating and supporting, whereas others have failed in that context. Surely if the issue was just financial, we would be closing colleges that were not performing.

Chris Greenshields: You have spoken about whether regionalisation would deliver locally. There are ways of delivering that without the sort of forced mergers that we have seen and are seeing—and that is combined with the £50 million cuts. Usually, the biggest change in further education for more than 20 years would be given some time so that we could properly consider its impact, how it would work and so on. We have not had that—colleges have been forced into a merger agenda, and they are going down that route at the same time as trying to deliver drastic budget cuts without any long-term plan on how to do that.

There is an understanding that everyone will deliver the cuts. People are saying that there is a possibility that that can happen, and some of the written evidence that we have seen suggests that there is confidence that the cuts can be delivered, but no one really understands what the college sector will look like thereafter.

On regionalisation, if we had been involved we would have said that there are ways to deliver improvements to avoid some of the duplication—although we do not accept that duplication is an issue across the board. As was mentioned earlier, there could have been local issues. That could have been delivered without forced mergers.

Clare Adamson: You use the term “forced mergers”, but we have not received any evidence—certainly from the college principals in their evidence—to say that there have been forced mergers. The colleges are meeting the challenge of the post-16 expectations and are coming together to do that. The word “forced” is very strong in that context.

Chris Greenshields: It depends who you ask. The feeling on the ground is that, in the past, colleges were reluctant to merge. We are now seeing them going speedily into the merger process. Our understanding is that is because they are afraid that if they do not, they will be cut out after the regional boards start to distribute the funding. That is our suspicion.

Clare Adamson: You mention in your written evidence that certain courses have been cut, for example “computer animation, digital gaming, green-keeping and horticulture.”

Have they been cut from one campus or are they no longer available throughout Scotland?

Chris Greenshields: Those courses are disappearing from particular colleges. Again, the issue is local delivery. It does not matter whether a course is being delivered in a college 50 miles away—if we are cutting courses locally, that will still have an impact on students who want to undertake those courses.

The Convener: I want to move on to the issue of equality and support for learning.

Joan McAlpine: In Lead Scotland’s evidence, under “Widening access to education”, you say that “entire populations, such as disabled students and carers”, could be ignored. Is that not going a bit far? Are you suggesting that a proportion of the population will be cut off entirely from higher education?

David Bass: It is probably written somewhat dramatically, but that does not mean that it is not a legitimate concern in the discussion on access to education.

Joan McAlpine: You say in your evidence that you are unhappy with the outcome agreements for 2012-13 because they are not specific enough about disabled students. I think that that is a fair summation of what you say. However, presumably if the outcome agreements were different, you could use them positively to help disabled students. The issue is not the outcome agreements per se, but perhaps how they have been written in the past.

David Bass: The issue that we were getting at was the more simplistic way in which widening access was being discussed in the bill. There is concern that when you talk about it on that high level, you lose a bit of the complexity that you need to understand the issues and make a difference. I think that that was reflected in the outcome agreements. The concern is that it might be reflected elsewhere in student support and in the wider Scottish Government provision.

I think about it as almost an issue of supply and demand. The simple Scottish index of multiple deprivation 20 per cent indicator increases the demand for students from those areas. What you really need are policies and practices that will increase the supply. A student who is disabled who could go to university needs support early on in school. He or she needs supported transition, and their support systems at university or college...
need to be set up early. They really need “Partnership Matters”, which is the framework for arranging support to function properly. Civil servants in the higher education and learning support unit who have been working on “Partnership Matters” have been transitioned to other areas. There is evidence that that complexity and detail of making progress happen on the indicator is being lost.

Joan McAlpine: In what way should the bill be changed in order to deliver what you would like it to deliver?

David Bass: That is a very good question. I do not have a perfect answer; I wish that I did. That conversation involves a number of people.

Joan McAlpine: With regard to college provision for learning disabled people, the college principals who gave evidence seemed to think that by changing the certification of courses, they would be able to serve that proportion of the population well in future and that they were bound by equality legislation to do so.

12:30

David Bass: I think that the responses from the college principals on that issue were very good, and I generally support what they said. What they hinted at, but did not quite articulate, is that the issue needs to be discussed as part of a wider conversation that includes, for example, the role of SDS on employability issues, the integration of adult health and social care and CLD provision. The colleges provide one piece of support for disabled learners, but Scotland has made a decision to provide inclusive learning, which means that colleges need to deal with people with more complex needs, who cannot get what they need from colleges. Colleges also have students who progress slowly, but those students will not be able to be supported for eight years as they were previously. When those students move into the community, they will need options for how they will continue their learning. That comes back to the concept of real lifelong learning, which I think is missing.

Neil Findlay: From a previous job working in schools, I know that those who know the pupils the best are often not the headmaster or teacher but the support staff who work with the pupils day in, day out. I assume that Unison members in that position in colleges, whether they work in support for learning or in information technology support, probably get to know those students best. What impact are the cuts having on groups such as disabled students, students with learning disabilities, women and adult learners?

Chris Greenshields: You are right that for most of our members, although we often hear about cuts to what are termed back-office service delivery and admin—such terms are banded around quite a lot—the reality, especially in the context of avoidable cuts in the college sector, is that that is not the case. Most of our staff on the ground have a degree of office work, but most of them are also front facing. Very few of our members have no interface or engagement with students, and that is how it should be, because students should inform everything that we do.

As I alluded to earlier, the cuts are having a huge impact on our services, particularly for those groups that you have mentioned. Our members try to find innovative ways to ensure that services are provided for those groups, but the reality is that those groups of people, whom we see more than any other groups because they need more help, are now being denied that help. We are beginning to find that services inevitably close earlier or are not offered in some campuses. People are referred to websites and so on, which does not suit every student. Every student is different, so although that might suit some, it will not suit many others. There is a huge impact on students.

Neil Findlay: Can you give us some practical examples of services that are being removed? What impact does that have on people?

Chris Greenshields: The access to guidance advisers that students need to help them with funding issues, which might previously have been available as a drop-in service, is now restricted to certain times that are not always suitable. For example, young parents often have to run off home, so their financial position may not be organised or put in place as early as possible. That can then have an impact because it is a major reason for students withdrawing from college. Not only is there a reduction in the times when students can access guidance advisers, but such services are being limited in a way that is inconsistent from college to college. As I mentioned earlier, the services that are available from college to college are inconsistent—some colleges do not supply services that are available at other colleges—and we are now finding that that is the case with the reduction in the services that are offered.

Clare Adamson: I want to ask the question that I put to the previous panel about the Griggs review’s recommendation on college surpluses. Obviously, under the current structure, there have been quite a few issues with industrial relations over the years. One college principal said that one reason for the surpluses was the need for strategic training and staff development. Do you generally agree with the review’s recommendation that surpluses should be limited to 10 per cent? Do you share that college principal’s view that surpluses
will be used strategically to improve pedagogy and conditions and towards regional or national pay bargaining?

Chris Greenshields: Are you asking whether I agree that surpluses have been used for that purpose or whether I agree that they will be used for it?

Clare Adamson: Both.

Chris Greenshields: We would be interested in the figures on how much of college budgets and surpluses have been used for staff development. We would encourage more of that crucial activity and we are concerned about it.

The legislation identifies—rightly—that some of the surpluses or reserves that colleges have sat with should be put back into the pot, and we agree with that. We should discuss further the level of surplus that a college needs to have to ensure that staff training and so on take place. We can have a wider debate about how much surpluses should be and whether they should be standardised.

Liam McArthur: I appreciate that we are talking about the extent of surpluses rather than whether colleges should have them, but one argument—I think that Mandy Exley made it this morning—is that having such headroom in finances is critical to entering into longer-term contracts with staff and providing security. I presume that Unison would support colleges having a level of working capital that provided the assurance that would not only allow staff training and development work to take place but underpin college staff contracts with a degree of certainty and security.

Chris Greenshields: Absolutely—we would not disagree with that. We have found wide variation in colleges’ surpluses and reserves, so what you describe has not been happening—colleges have kept reserves and surpluses for different reasons. However, we would not disagree with the point about working capital.

The Convener: The suggestion is that a surplus should be limited to about 10 per cent of a college’s annual revenue. Is it sensible to suggest that the maximum that is kept in reserves should be 10 per cent and that anything beyond that should be used for the sector’s betterment?

Chris Greenshields: We would like more transparency and more analysis of the financial figures, of exactly what 10 per cent would amount to and mean locally and of how the system would work. To come up with a percentage, we need to understand what is required locally.

Clare Adamson: Your submission raises a question about a lack of standard terms and conditions and pay scales in the sector—variations have built up in the current structure. Would you like movement towards standardising terms and conditions and towards regional or national pay bargaining?

Chris Greenshields: Unison is consulting its members on national bargaining, given the changes that we are going through. Without prejudging that consultation, I think that we would be interested in pursuing national bargaining.

Without doubt, we must look at the services that are being offered nationally and ask why pay varies so much, given what we have talked about. Service delivery also varies—that depends on the college that students go to, where they live in Scotland and even their college’s financial health. We would like that to be addressed and we are making moves to that end.

The Convener: Your submission says:

“Legal obligations such as TUPE need to be acknowledged in the legislation.”

If the obligations are legal, why does the bill need to acknowledge them?

Chris Greenshields: We were advised that it was important to have in the bill a provision on consulting with a view to seeking arrangements. We would like that to be built on.

The Convener: I am trying to ascertain why that is necessary. If something is a legal obligation, the Government is legally obliged to apply it. What would be the advantage of acknowledging the legal obligation in the bill?

Chris Greenshields: We are concerned about how some TUPE issues have been dealt with to date. Unison is dealing with TUPE issues for staff in the sector who are outsourced. We are talking about addressing the issue and ensuring that TUPE is underpinned in the bill.

The Convener: What are the issues?

Chris Greenshields: I will not go into details, because some things are going down a particular legal route. However, recent issues relate to how the outsourcing of staffing was handled.

The Convener: I am slightly puzzled. I do not see the analogy between the issue that you raise and the bill. The bill is not about outsourcing staff.

Chris Greenshields: I know that.

The Convener: I remain puzzled.

Neil Findlay: I am aware that some people believe that there is no need to put the issue in the bill, but others see that as a double lock—that is the descriptor that I have heard.

The Convener: If it is the law, a double lock is not needed. However, we have explored the question enough.
I thank the witnesses for coming along and taking the time. I am particularly grateful to David Bass for stepping in at the last moment because of snow elsewhere.

Meeting closed at 12:41.
Introduction

This document builds on the evidence provided by the Board of Edinburgh College on 18th January 2013. It focuses on key areas of consideration raised in the original evidence. The document seeks to provide greater insight based upon the practical experience gained from the managing a college merger process and the challenge of managing the resulting college.

The College Principal, Mandy Exley, will provide oral evidence to the Committee in February 2013.

Overview

We are supportive of the aims of the Bill. A move to a regional approach to the planning and delivery of further education will help to ensure that provision meets the needs of communities, learners and employers.

We welcome moves to widen access to university education. Colleges and universities combining their strengths should enable more cost effective access to higher education for both student and public funds.

We have concerns over the increased focus on young people in the 16-24 cohort, and believe this area is more problematic than allowed for in the Bill. We continue to provide educational opportunities for all adults within our communities together with building links with employers to support their staffing needs. We feel it is important to retain a flexible approach for the good of both commerce and learners.

A move away from this provision would adversely affect the opportunities for economic development particularly in our poorest communities. In addition we think it is vitally important that employees and employers are provided with a range of opportunities for personal and workforce development.

We have three areas of specific concern which are covered in more depth:

- Changes in Funding and Planning;
- Performance Measurement and Review;
- Unintended consequences of the current approach – the proposed pace of change.

Changes in Funding and Planning

The increased involvement of Skills Development Scotland (SDS) in the sector appears to be driven by the desire to collect more information about the student body without clarity as to how this information will improve opportunities for employment.
Colleges already collect and remit substantial course and student data to the Scottish Funding Council (SFC)\(^1\).

We are concerned that this process may lead in time to colleges needing to develop extra student monitoring information and to interact in detail with a further regulatory body in addition to SFC and OSCR.

We have serious concerns over the potential policy and funding disconnect between SDS and those of the SFC. We are concerned that the increasing number of funding bodies and mechanisms may be inefficient and make it difficult for Regional colleges to plan effectively for a financially sustainable future.

Colleges have relatively fixed costs with a fully timetabled teaching workforce “committed” to course provision once the courses are opened to application nine months in advance of a term starting. It is unhelpful and inefficient for output targets and funding mechanisms to be changed mid-stream.

To cope with late changes, colleges have to cut or merge courses at late notice to the disadvantage of potential students; or alternatively design and offer new courses which may meet government targets but may not provide value in terms of student employment needs. These courses may require different delivery skills from those available from currently employed resources, increasing costs of delivery.

We agree with the process of outcome based monitoring and funding but colleges cannot currently change timetables overnight. Student, employer and employee expectations are set by two major start dates for courses; September and January. Moves to change or stop courses need time for consultation with students and those college employees affected by the changes.

We would welcome a dialogue which seeks to identify the educational and employment trends within our Region and nationally to enable a partnership approach to planning, funding and delivery of Further and Higher Education.

This process need not shy away from the challenges of reduced public funding, but should provide a better chance of colleges meeting the needs of students and the wider community than the current approach which appears to “rush” through changes to funding structures and amounts with little obvious thought or understanding of the operational challenges of delivery.

**Performance Measurement and Review**

We endorse the need for a common approach at regional level and the need for greater central planning and strategic control. However, there appears to be a gap in the governance framework and the intention to provide more central control\(^2\). What appears to be missing at this stage is reference to a framework for performance measurement, decision making, review and appeal when seeking to identify a “non-performing” college and the reasons for such non-performance\(^2\).

\(^1\) Bill S15
\(^2\) Bill S12
In our view Outcome Agreements with SFC could play a central role in this process, and while we recognise that work on outcome agreements is on-going, we believe it would be useful for the supporting information to the Bill to recognise this process or such successor processes as providing the framework for performance review.

**Unintended consequences of the present approach – the pace and complexity of change**

We welcome the direction of the Bill and the move towards increased strategic planning and accountability, particularly within our local communities. However we are very worried that this potentially positive development will be undermined because of the pace of change relative to changes in funding and provision.

As identified in Clause 7 of the Policy Memorandum, college mergers have the potential to save substantial sums of public money. Similarly, changes in the funding criteria and policies could potentially help provide better focus and responsiveness. However, those processes are jeopardised if change is not coordinated and the pace of change achievable.

We commented earlier on the changes in funding mechanisms and the threat of a disjointed approach between the SFC and SDS. This needs to be addressed urgently. As importantly, merger and regionalisation activity is being undertaken against a backdrop of rapidly reducing funding to the FE sector (i.e. the potential savings identified are already being “banked”).

The merging regional colleges need to reduce costs rapidly to remain financially sustainable whilst at the same time bringing together differing cultures, curriculum, management and administrative approaches. The scale of this challenge should not be underestimated and there is a risk that opportunities for our students and our communities will be compromised.

The majority of costs within the colleges relate to staff. The push to rapidly reduce staff is being supported by central funding but the speed of reduction will lead to knowledge being lost and will stretch management capabilities. These changes are taking place in the context of “preferred no compulsory redundancy policies” when employment opportunities are limited and employees face considerable employment uncertainties. Taken together, these factors may lead to many staff simply “staying put” hence achieving the required reduction of staff costs is complex. Within Edinburgh College management staff will reduce by 50% in the ten month period post-merger. This is clearly referenced within the merger business case and in real terms is a reduction in both costs and number of posts. The reduced teams will manage the same level of curriculum delivery as before, broadly the same number of staff and deliver the restructuring activity required across academic and support areas to ensure institutional sustainability.

It is inevitable that some areas of academic and student support activity will cease. In most cases this will be as a result of a rational process which identifies the weakest area of provision against the new direction of the sector. However, there may need to be an element of compulsion if the job reductions required for sustainability are to be achieved.
Colleges need clarity on the proposed timetable, costs and funding support for the delivery of long term changes to the sector. Harmonisation of terms and conditions will require funding. If funding is not available centrally, colleges will need to further reduce costs; primarily staff costs in order to fund these changes. The importance of a “national contract” for the terms and conditions of employment of staff directly related to learning and teaching, if not national pay would be an important support for merging colleges, both in terms of financial and workforce planning.

The cost of merging back office services should not be overlooked. This has been specifically excluded from any central merger funding but combining payroll, HR, finance and student record systems is a material activity. Management, staff and cash resources are required.

Meeting the changing needs of students will require continuing investment in both technology and buildings. Colleges will also need the flexibility to change the process and style of curriculum delivery; this must be considered in any harmonisation process.

Colleges face difficult choices. If costs are not reduced, there will be less cash available for investment in teaching technology; potentially short changing our students.

Edinburgh College currently holds cash balances of circa £11m. This represents only two months expenditure on staff and other operating costs. There is little room for error and delaying the process of job reduction whilst core grant funding continues to be cut will lead to problems.

We believe savings and efficiencies can be achieved, but the current pace of financial cuts runs the risk of creating a funding crisis and short term staffing and educational difficulties which actually militate against the successful achievement of those positive changes.
Colleges Scotland welcomes the opportunity to provide evidence on the general principles of the Post-16 Education (Scotland) Bill. Our response concentrates on the key issues and potential areas of concern arising from these proposals for the college sector.

Introduction

This legislation will mark one of the most significant changes to affect the college sector since incorporation. Colleges have been supportive of the move to regionalisation; a process now well underway. Within the next 12 months, we expect to see mergers and federations being taken forward across Scotland, and new institutions established. The governance arrangements, which are a primary concern of this legislation, will fundamentally alter how those institutions are to be structured, managed and funded in future, and the powers they will have. It would establish regional bodies in a hierarchical structure above colleges in some regions – an entirely new approach for the education sector which will require detailed scrutiny.

The Bill would also create new duties on data collection and sharing, widening access and would confer powers on the Scottish Funding Council (SFC) to regularly review provision.

The guiding principle for these reforms must be the benefit to the learner, and for the learner to benefit. We see it as essential that colleges remain autonomous bodies with the ability to adapt to the needs of their area or region; determine how best to use their assets and people; to establish new partnerships between or across regions or other education providers to improve the offering to learners; be able to work efficiently and without unnecessary bureaucracy and, crucially, to have clear lines of accountability for the decisions they make on the use of public funds. Below, we discuss some of the potential issues with, and solutions to, ensuring this Bill can meet these aspirations.

Colleges Scotland would be pleased to provide further evidence on any of these points.

College Regionalisation

Colleges have welcomed the regionalisation process, and as stated above, change is well advanced. The provisions in this part of the Bill establish new governance and accountability structures for the operation of these regions. Colleges receive a significant proportion of their funding from the public purse, and effective accountability structures must therefore be in place. Our view is that any organisation which delivers services funded by government should be effectively held to account for that activity,
regardless of the proportion of funding that represents. It is also important to bear in
mind that colleges are autonomous institutions which undertake significant commercial
activity, amounting to around 25%\(^1\) of total income, though in some institutions that
proportion is far higher.

Regional Strategic Bodies (Bill Sections 8-13)

The most significant concerns about the Bill relate to the ‘two-tier’ nature of the
proposed regional strategic bodies and their constituent colleges. The establishment of
regional strategic bodies sees a significant shift in powers for funding, strategic
approach and the ability of college boards within the region to manage their staff and
assets.

Intention and role of the regional strategic body: A regional strategic body could, in
itself, deliver non-education services, raising the question about whether these bodies
are intended to be the vehicle of required support for a regional board, or to be
significant organisations in their own right, which acquire premises, financial assets and
staff delivering services previously delivered within the colleges.

Future proofing: Since the publication of *Putting Learners at the Centre*\(^2\) in September
2011 there have been two college mergers completed, and nine further mergers are
proposed\(^3\). The Bill in its current form would appear to assume that these mergers will
go ahead as planned, with the parties named, and be completed by the time it is
enacted. The Bill will now require amendment to remove the Aberdeen and
Aberdeenshire regional board, assuming that the proposed merger of Aberdeen College
and Banff & Buchan College goes ahead as intended. In terms of future proofing, it is
important to ensure that where structural changes would deliver benefits for learners,
there are not additional barriers being created as an unintended consequence of this
Bill. The establishment of regional bodies with the power to deliver services, acquire
assets and staff, could make it more challenging for such changes to take place within
or across regions in future. For example, it would be challenging for a college within a
region to merge with a college or regional college outwith that region. In these
circumstances, the unintended consequence is that the regional boundaries could
potentially act as real barriers to making future changes that could benefit learners.

Ability to meet and exercise functions under 1992 Act: The Bill does not seek to
amend the powers set out for colleges assigned to regional strategic bodies. While the
powers of a regional strategic body are in some ways similar to the SFC, they also
introduce additional powers for the regional strategic body which would allow decisions
to be made on finances, assets, liabilities or obligations of assigned colleges as it would
determine. These could present significant issues for the assigned college – in meeting

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deep stake in the outcomes that it expects from the further education sector, as it typically contributes something in
the order of 75 per cent of colleges’ income”.

\(^2\) Putting Learners at the Centre – Delivering our Ambitions for Post-16 Education, Scottish Government, September
2011

\(^3\) As at 15\(^{th}\) January 2013
its obligations as an employer, in balancing its finances and in provision for its area and learners.

**Ability to transfer staff:** A regional strategic body could require the transfer of staff to itself or to other colleges within its region, as well as across other regional strategic bodies or regional colleges. There are issues here given that the regional strategic body would not be the employer but would be determining employment conditions. There is an impact in terms of the colleges' ability to plan, and on the ability of an individual to determine their place of work. In some cases, assuming for example that a member of staff was seconded from a college in the region to the regional strategic body on curriculum planning across the colleges, or on advising as to funding allocations to those colleges, a conflict of interest could arguably arise.

**Asset transfers:** Similarly, the regional strategic body could move assets from colleges to itself, other colleges within its region, other regional strategic bodies or regional colleges. There is an impact here in terms of the colleges' ability to plan its spending and provision, but furthermore there is potentially an impact in terms of commercial activity – if a college has accrued income from non-regional strategic body funded provision, whether that would also be subject to these provisions, and could see, in the most extreme case, the ability of the regional strategic body to transfer financial assets from a successful institution to support one that may be at risk of failing. As is proposed in regard to the Highlands and Islands colleges within the University of Highlands and Islands (UHI), Colleges Scotland proposes that such transfers of staff and assets be made by agreement with the colleges, rather than by order.

**Appointment of college principals:** There does not appear to be any precedent for this model in the public sector in Scotland, where the terms and conditions, including the performance review and remuneration of the principal is set by one legal entity but the contract of employment held with another legal entity. This process goes much further than appointment process oversight. Issues of dispute could be difficult to resolve in these circumstances. It is unclear what role the college itself would have in the appointment, yet the college would be meeting the cost of the salary of that principal and would potentially not be involved in setting the level of that salary. There is also the potential for terms and conditions of the principal's post being very different to those of other college staff. Colleges Scotland proposes that appointments be led by colleges and approved by the regional strategic body.

There is also no detail on the procedures for the appointment of the chief officer of the regional strategic body, who would, as described in the Financial Memorandum “operate at a strategic level, comparable to principal level”. Colleges Scotland would welcome clarification on the appointment and term of service for these appointees.

**Accountability and accountable officers:** The accountability rests with regional strategic body whereas responsibility rest with colleges in a multi-college region. This may impact in terms of equalities or health & safety duties. In terms of financial

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4 Post 16 Education (Scotland) Bill – Financial Memorandum, p25, para 144 (a)
accountability, it is unclear whether accountability rests with the chief officer of the regional strategic body or the principals of the colleges assigned in the region. The recently published *Overview of College Regionalisation Plans* from the Scottish Government states “members of the board of management of an incorporated college and members of regional boards, including chairs, would be personally accountable to the person/body who appoints them”. ⁵ This requires further scrutiny, currently, boards have collective accountability for decision making, this could therefore possibly constitute a shift from the usual principles of board governance, accountability and liability.

**Board membership from the colleges:** The Bill sets out that the membership of a regional college board can be 12-18 members, which will include a chair appointed by Scottish Ministers, two staff members and two student members. Principals may attend the board, but not necessarily be members. In terms of membership of the board, there is therefore no guarantee that all the constituent colleges will be full members. Colleges Scotland would welcome consideration of provisions to ensure that all constituent colleges have a voting member on the regional board, given the powers this board would have to make decisions on the finances, assets and staffing of those colleges.

**Costs:** As regional strategic bodies would exist separately to colleges, they will incur additional costs to run, which the Financial Memorandum identified as around £2 million per year, on an ongoing basis. On an individual basis, these estimated costs may prove to be too low, and do not include likely costs for shared services. There may be issues in terms of staff brought into these bodies being able to continue their pension arrangements etc. There are future potential issues in terms of VAT in providing shared services which may also require to be considered. Clarification is also required as to whether these costs will be met from the expected allocations to the sector, and if so, whether those would be met from the national or regional funding allocation, or whether additional monies would be made available. It also proposes for regional strategic bodies to perform functions previously undertaken by the SFC. We would reasonably expect that the activity of the SFC could reduce, and funds be made available for such functions undertaken by the regional strategic bodies, rather than the allocation for teaching provision.

**Year end:** For regional strategic bodies, being classified as public bodies sees their year end become March rather than July, following a standard public sector financial year (FY) rather than academic year (AY) in terms of their accounts. This presents a two-fold issue for both clarification on how/whether this applies and the impact on the wider sector. Since the 2005 Act, no order has been laid to officially allow colleges to work to an AY end, which we understand is being considered by SFC and the Scottish Government, and should be clarified for this Bill.

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⁵ *Overview of College Regionalisation Plans*, Scottish Government, 10ᵗʰ January 2013, page 2, para 6
Regional Colleges and Colleges within a Regional Structure (Bill Sections 5-6)

The provisions for regional colleges are generally welcome and present fewer concerns than those relating to the regional strategic bodies and the colleges which are constituent.

Principal membership of the board: The principal is effectively the chief executive and board membership ensures that the role is not seen as lower in stature. This provides for equality among all the members, which Colleges Scotland considers important for the most effective running of a board, in line with principles of good governance. Colleges Scotland proposes that the college principal remains a member of the board. We see this as an important principle for regional colleges and assigned colleges, and would mirror arrangements for university principals to be members of governing bodies.

Chair appointment and remuneration: In terms of the use of the public appointments system, it is hard to justify such a process for one member of a college board, but not for others. The chair is intended to be ‘first among equals’ and there is a risk of being seen to elevate the chair through this measure in appointment and remuneration, as well as in how they are accountable. Other board members, excluding staff and student members should be appointed in adherence to a code of conduct, rather than by Ministerial approval. A further issue of consistency is in the scenario that emerges where a chair can be remunerated for their position on a small college board, but a chair of a substantially larger college board, offering perhaps many times the level of provision, but within a multi-college region, would not.

Board membership: The removal of an upper age limit for board membership is welcome, however there may be merit in considering setting a lower limit of at least 16 years. The Bill also proposes to end the exemption for local council members to chair college boards, however as councils can be competitors in terms of post-16 provision, there is a potential for conflict of interest which may require further consideration. Similarly, the Bill does not appear to prevent a member of staff of a college being the chair of the board which could potentially present a conflict of interest.

Board size: For colleges within a multi-college region, their board size is very limited. These boards could be managing substantial resources – meaning larger colleges could have smaller boards. There are potential issues here in ensuring that committees of the board can be populated, without presenting the risk that the same members form the quorum, and have a burden of work above that of those in regional colleges. There is also potentially an issue about whether the staff member is drawn from teaching or support, which is a move from current arrangements where both have members.

Charitable status: The Scottish Government have given assurances that charitable status will not be affected by these provisions, but given the extent of change, and new Ministerial powers, we would welcome the Education and Culture Committee seeking information and clarification from the Office of the Scottish Charity Regulator.
The issue is particularly important for those colleges within a multi-college region, given the powers that the regional strategic board have to move assets and liabilities. Trustees of such an assigned college would not have direct control over the assets and liabilities of that charity, and therefore may not be able to act in the best interests of that charity.

**Terms of appointments and reappointment:** The Bill proposes a change that would allow ongoing reappointment of board members without limit. There is a potential risk of stagnation within boards’ membership as a result. This is another area which requires debate as to what would be optimal for robust board operation.

**Transitional arrangements and Ministerial powers:** It would be helpful to have clarification on the intention of the Minister as to whether or how the powers in this section on appointing new board members or removing existing ones would be used, and for what purposes, as well as what transitional arrangements would be put in place to go from existing boards, including such appointees, and those appointed under provisions set out in the Bill. Colleges Scotland would propose that other college board members are appointed by adhering to a code of conduct rather than by Ministerial approval.

**Highlands and Islands Region and UHI**

**Unique approach:** The Highlands and Islands region will be in a different situation to that of other regions. Our reading of the provisions would see the regional strategic body being the University Court, but there is no detail as to how this would work in practice. The working group on the future structure and functions of the UHI\(^6\) recommended the establishment of a further education (FE) committee of the University Court which would have delegated powers to plan and allocate funding for FE provision. Its chair would be a member of the University Court and members of the FE committee would include the chairs of boards of the assigned colleges. Movement of staffing and assets would be subject to the permission of the colleges. It is unclear from the Bill or associated documents whether that will be the intended arrangement.

**Funding:** Funding for further education provision would therefore flow through the University Court, rather than directly to the college. While we would hope that this supports a joined up approach to provision and learner journeys, it is important that this does not see FE and higher education (HE) funding enter a competitive scenario or present any conflict of interest. The cost of establishing these arrangements is assessed to be marginal in the Financial Memorandum, however it would both be unlikely and concerning if there were not moves within UHI, as the body deciding on the distribution of funding for FE to several colleges, to ensure it had the appropriate expertise and capacity in place to make analysis of the impact of such decisions, as would be expected of the SFC.

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\(^6\) Working group on future structure and functions of the University of the Highlands and Islands, report to the Cabinet Secretary for Education and Lifelong Learning, 1st October 2012
Other Issues

New funding formula: A further change that will occur as part of the reforms will be a new funding formula for college provision. Consultation on this new approach is expected this year from SFC. There is a potential issue to consider in terms of the new multiple funder approach this Bill will develop, with funds derived from SFC for regional colleges, regional strategic bodies for their constituent colleges, and UHI for the Highlands and Islands colleges, as well as Skills Development Scotland (SDS) for any continuing initiatives such as the Employability Fund. This approach will have a significant resulting impact for colleges, particularly those in multi-college regions on how they can plan provision and ensure accountability and transparency. This should be considered within the general principles of the Bill. The Education and Culture Committee has previously identified in the budget process lack of clarity in the terms used and approach to funding.

Unincorporated colleges: It is unclear to what extent the Bill will impact on the unincorporated colleges and those funded by local government. Assuming such colleges are not affected by the legislation, some of them would nonetheless sit within a regional structure in which the decision making process will rest within a regional college board, and that relationship requires clarification.

Data Collection and Sharing with Skills Development Scotland (Bill Section 15)

Compliance based approach: This section of the Bill has not previously been the subject of detailed consultation with the college sector, and has significant implications to be considered. The aim to centrally record the activity of all young people has great merit, but could be more difficult and costly to achieve than is indicated in the policy and Financial Memorandum. It may require major investment in ICT infrastructure. The recent report from Audit Scotland: Scotland’s colleges – Current finances, future challenges highlighted the risks arising from poorly planned and managed ICT projects.

The current way records of students and of applications are kept within the sector is not uniform. For example, at application stage, some colleges record applications from each student for all courses, while some record each application to a course, though an individual may apply to more than one course. Overall performance data is returned to the SFC electronically at year end, which is used to assess colleges against key performance indicators (KPIs). It is not clear how the required data would be collected and how frequently, but would likely be required to be continuously updated, for example for any circumstance where a young person might change or leave a course. An individual signifier will be required for each young person to allow them to be tracked across institutions and public bodies, which will be developed by SDS. This may require a centralised database system that institutions could access, such as used by the UK Border Agency (UKBA) to record compliance on Tier 4 which has presented challenges for education institutions. Or, it may be based on paper returns, which are currently used by SDS for the New College Learning Programme compliance. The likely impact of whichever system chosen is of significant and ongoing administrative
activity, involving new ways of recording and monitoring data including for example, recognising data protection issues, as well as ensuring SDS are informed of any changes as they happen, to meet compliance requirements.

It is hard to see how this would not have additional costs both in terms of systems and staff time. These issues may be present for other organisations as the system will have to support information received from schools, universities, Department for Work and Pensions (DWP), training providers and potentially employers. These are key issues for consideration, and we are not convinced such activity could be subsumed within existing costs, as they would require significant additional activity.

Assessment of risk: The criteria for collection include not only quantitative data, but also potentially qualitative data, for the number of young people at risk of disengaging with education. It is not clear how this would be measured, but as above may involve additional activity beyond data sharing and collation to make such assessments. These provisions require careful consideration for the impact they would have.

Review of Further and Higher Education (Bill Section 14)

Barriers to change: As was described above (paragraph 8) there requires to be effective future proofing of this legislation. The ability for SFC to consider provision and potential efficiencies is positive and should be focused on ensuring effective regional delivery, rather than protecting or being restricted by the boundaries of that region. Delivery for the learner must be paramount and flexibility for colleges to seek to meet any future needs or adapt to change should not be restricted or unnecessarily complicated.

Other providers: It would also be helpful for SFC in conducting such reviews to be empowered to consider provision being delivered by other funders, such as SDS, to ensure the system is being considered in full.

Widening Access (Bill Section 3)

Colleges Scotland welcomes these provisions for HE. In improving access it would be worth investigating duties on colleges and universities to work with each other in and across regions to seek to improve widening access opportunities, for example through articulation routes.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Committee of Scottish Chairs

Introduction

This submission is made by the Chairs of Court of Scottish Higher Education Institutions (being the Senior Governors in the case of the ancient universities).

The Chairs of Court confirm their continued commitment to good governance, widening access, accountability and efficiency in the use of public and other funds. In this submission we set out our clear belief that Sections 2, 3 and 14 of the Bill are both unnecessary and, as currently drafted, detrimental to the interests of universities, education, research, the economy and society in Scotland. We also explain why we believe Section 4 to be unnecessary. We conclude by setting out our concerns at the general drafting of the Bill which leaves it open to differing interpretations and therefore confusion as to its application.

The Courts of the HE institutions are the governing bodies and are made up of students, staff and lay members selected from a wide range of private, public and third sector backgrounds, who properly reflect the breadth of society that they serve. The members of Court serve, in effect as the trustees of the institution and are responsible for setting strategy and accounting to all the different stakeholders for the proper use of funds. The Chairs of Court have a particular responsibility for the governance of their institutions.

In exercising their responsibilities for governance, the Chairs have taken a lead in promoting standards of governance. The accepted standard of good governance under which they have been operating is the CUC Code of Governance developed by the Committee of University Chairs. This is accepted throughout UK and is being used increasingly as a template for countries overseas. The Scottish Chairs are currently developing a Scottish Code of Governance that should apply to the particular situation of Scottish HE Institutions, informed by the relevant findings of the Von Prondzynski Review. The Chairs recognise that good practice is continually developing and that processes and procedures need to be updated on a regular basis. There must also be flexibility to allow for the diversity within the HE sector where it is clear that no one structure can be appropriate for all institutions. It is generally accepted that differences from the Code can be introduced on an "explain or comply" basis in which any differences are set out in the institutions’ annual statements. This brings such differences to the attention of the Office of the Scottish Charity Regulator, the Scottish Funding Council and others who have an interest in HE governance. It should be noted that all universities in Scotland are charities and therefore subject to charities’ law which already gives an important safeguard to their governance arrangements.
The Scottish HE institutions are a vital sector of the Scottish economy. They are also highly effective at attracting overseas students which has a positive effect on the culture of universities and their neighbourhoods, has an immediate benefit to the economy and in the longer term creates overseas links that are beneficial to international trade and commerce. The ability to attract overseas students is largely a result of the high international standing of Scottish universities. Four of them are ranked within the top 200 universities of the world and eight in the top 400. Similarly, the ability to attract the best international staff depends on Scotland being seen as an open and encouraging environment in which to develop their research and teaching. This must not be put at risk.

**Autonomy**

Each higher education institution in Scotland enjoys a position of autonomy - reinforced by the Prondzynski Report on Higher Education, where it is stated “They (the HEIs) enjoy, and should enjoy, a high level of institutional autonomy” and “We believe that a core principle of higher education is the protection of academic freedom, in accordance with the UNESCO recommendation concerning the Status of Higher-Education Teaching Personnel, made in Paris on 11 November 1997”.

We believe that the current Bill, as drafted, is a threat to the autonomy of HE institutions and will give unnecessary control over the governance and management of universities to ministers with the potential for misuse by future administrations. It could have detrimental long-term effects in maintaining Scotland’s international competitive position and achieving the benefits which Government and Parliament expect from public investment in higher education. It has been recognised throughout the world that one of the reasons for the success of universities in Scotland is the fact that they are autonomous institutions and not subject to political control. Many other countries are now removing their universities from the political direction and control by government and giving them greater independence in order that they can emulate the kind of success which the Scottish sector has achieved. It therefore seems to be perverse that there is a move in Scotland to reduce the autonomy of universities at a time when other countries are seeing the value of it. Universities operate in an increasingly global marketplace for both teaching and research and it is therefore imperative that our universities are able to sustain their international reputations for the benefit of themselves and Scotland as a whole.

It is important to bear in mind that autonomy is wholly consistent with funders securing satisfactory outcomes for their funding. In the case of tax payer funding this is achieved in a number of ways including internal and external Quality Reviews, annual reports to the SFC and Outcome Agreements. These are currently introduced through the mechanism of the Funding Council setting a condition of grant. Chairs fully endorse the need for accountability and recognise their responsibility for ensuring that public funds are used effectively and for the purposes for which they are granted.
Each university in Scotland has its own distinct ethos, strategy and policies. This has created a broadly diverse sector ranging from the four ancient universities, through the chartered institutions, the post-92s, UHI and the Open University to the small specialist institutions. This diversity is one of the great strengths of the system and excellent teaching and research are undertaken everywhere. Different students and researchers are suited to different institutions. The Chairs believe that the independence and diversity of the sector need to be cherished and that imposing a “one shoe fits all” system will potentially undermine this.

The remainder of this submission contains a summary of the Chairs’ concerns about (a) three sections of the Bill which they see as posing a particular threat to institutional autonomy and the future strength of Scottish universities, and a further one that they believe is unnecessary, and (b) the confusion and uncertainty that they fear the proposed legislation will cause.

Section 2

Section 2 gives powers to the Scottish Ministers to impose any principles of governance or management which appear to them to constitute good practice. The Chairs of university governing bodies fully support the need for good governance and through the development of the CUC Code of Governance and now the Scottish Code, have been in the forefront of developing standards of good practice in the sector over the past decade. The lead that has been taken by Chairs of governing bodies shows that legislation in this area is unnecessary. The same outcome could be achieved through a condition of grant which would allow greater flexibility.

The proposed legislation is also potentially detrimental to the well being of the sector and so the country. The Chairs do not believe that the imposition of “any principles of governance or management which appear to Scottish Ministers to constitute good practice” is correct or acceptable. They believe that any principles of good governance must be supported by sound independent evidence and agreed with the sector after due consultation. In addition the inclusion of "management" in this Section is especially concerning as this would be an even greater erosion of autonomy. It is the duty of the governing body to set out the management processes and controls to ensure the necessary accountability to all the various stakeholders of the institutions. A governing body of an institution cannot properly be held accountable for the operation of that institution if it cannot determine its strategy and supervise how that strategy is implemented.

Section 3

Section 3 of the Bill deals with widening access. All Scottish HE institutions are committed to widening access and the Chairs support this. However, given the differences between institutions, one of the great strengths of the sector, it is important that individual institutions can take measures that are appropriate to their institution to achieve the necessary widening access. The Chairs do not agree that Ministers should
be able to "impose terms and conditions" to achieve these ends because such terms and conditions could be detrimental to other strategic aims of the institution. For instance a Minister could instruct a university to lower its entry grades or to provide a support infrastructure that is unaffordable and could adversely affect financial sustainability. The Chairs therefore believe that widening access agreements should be agreed and not imposed, which is the approach that has been being taken with the Outcome Agreements that have been introduced in the last twelve months.

Section 4

Section 4 is concerned with fee caps for students. The policy statement notes that the cap is to reduce the likelihood of students deciding not to come to Scotland on financial grounds. All universities welcome students from throughout the UK and overseas because of the diversity that they bring to their communities and, now that the numbers of RUK students are no longer controlled, these students potentially bring additional income. In setting the level of fees, universities must take into account the cost of providing courses and the desire to attract students. It is inconceivable that any governing body should set its fees at such a level that students would be discouraged from applying. The Chairs, therefore, believe that this section is unnecessary.

Section 14

Section 14 gives powers to the Scottish Funding Council to undertake reviews of the extent to which educational programmes are provided in a coherent manner, and to make recommendations. The Chairs agree that the universities must account for their use of public funds and show that these funds are used economically, efficiently and effectively for the purposes for which they are provided. As stated above, that should be achieved through arrangements such as Annual Reviews to SFC and Outcome Agreements. However, the decision as to which courses are taught in an institution is a matter for that institution as they are linked to the strategic direction of the institution, research capability and ability to attract other students from overseas, the EU and RUK. Giving the SFC the power to specify what should be taught where would be a serious threat to academic freedom as well as autonomy.

General Drafting

Not only do the Chairs believe that Sections 2, 3 and 14 are detrimental to the interests of universities in Scotland, and so to Scotland as a whole, and that Section 4 is unnecessary, they are also concerned at the detailed drafting of these sections.

Any Bill should be clear in its interpretation but these sections have already generated considerable discussion among lawyers as to how they will be interpreted.

Section 3 gives powers to Ministers to instruct an individual institution to take specific measures to increase participation by socio-economic groups who are under-represented in higher education generally. If the sector as a whole performs slightly
below target, then Ministers may impose conditions on an individual HE institution even if its own performance is well above that target. There is no indication as to how "disproportionate" should be evaluated. It needs to be recognised that widening access is a challenge for all parts of the education system and that, at present, schools in deprived areas produce proportionately fewer young people equipped to benefit from higher education. The Chairs do not accept that the Ministers can specify a widening access "agreement" as it would not, by definition, be an agreement.

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<tr>
<th>Committee of Scottish Chairs (CSC)</th>
<th>Signatories</th>
<th>Professor Bill Stevely, the Open University</th>
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<tr>
<td>Sir Moir Lockhead, University of Aberdeen</td>
<td>Mr Eddie Frizzell, University of Abertay Dundee</td>
<td>Mr Keir Bloomer, Queen Margaret University</td>
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<td>Mr Eric Sanderson, University of Dundee</td>
<td>Professor Stuart Monro, University of Edinburgh</td>
<td>Mr Mike Salter, Robert Gordon University</td>
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<td>Professor Stuart Monro, University of Edinburgh</td>
<td>Dr Graham Forbes, Edinburgh Napier University</td>
<td>Lord Iain Vallance, Royal Conservatoire of Scotland</td>
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<td>Mr David Ross, University of Glasgow</td>
<td>Mr Tony Brian, Glasgow Caledonian University</td>
<td>Lord Jamie Lindsay, Scotland’s Rural College (SRUC)</td>
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<td>Mr Philip Rodney, Glasgow School of Art</td>
<td>Professor Matthew Maclver, University of the Highlands &amp; Islands</td>
<td>Professor Ewan Brown, University of St Andrews</td>
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<td>Mr Richard Hunter, University of Strathclyde</td>
<td>Mr Richard Blackburn, University of the West of Scotland</td>
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The EIS has long believed that FE governance was poor as it had little democratic accountability and insufficient transparency, all being propped up by the 1992 Further and Higher Education (Scotland) Act. The EIS supports the aims of the Post-16 Bill to increase accountability and transparency, but the EIS has significant concerns regarding some of the Bill’s aims; in particular the college regionalisation programme. The purpose of this evidence however is, with respect to FE, to comment on the provisions of the Bill rather than its aims – as the EIS has already submitted its concerns on college regionalisation and how it may be used as a vehicle for delivering cuts and rationalisation.

The Post-16 Bill does not make any fundamental change to the HE sector and sadly, it does not enable the recommendations of von Prondzynski’s Report on University Governance which would need legislation. Whilst the Cabinet Secretary for Education & Lifelong Learning supports the vast majority of its recommendations, the EIS supports all of its recommendations.

Higher Education

Section 2

In principle, the EIS welcomes Section 2 of the Bill, of adding a Section 9A to the 2005 F&HE Act to enable Scottish Funding Council (SFC) funding to be conditional on HEIs complying with governance standards which to Ministers constitute good practice within HEIs. The EIS is concerned that the Bill requires Ministers (i.e. the Government) to define and judge what good HE governance practice is. This would mean that the ability of the SFC to act is in effect limited and controlled by the Government’s opinion. It is also not clear how Ministers would form such an opinion, especially since HEIs are not covered by Education Scotland and the SFC considers itself to be a “light-touch regulator”. The governance/management flaws at the former Edinburgh College of Art were not acted upon until the body became unviable.

The Government may choose to rely on Scottish Code of Good Higher Education Governance currently being drafted by a steering group led by HEI governors, if so, then this should be explicitly stated.
Section 3

The EIS welcomes Section 3, adding a Section 9A to the 2005 Act regarding widening access to fundable higher education. The EIS has been concerned that the Government’s widening access policies were not being applied to all universities equally and that some Universities were effectively exempt from widening access – thus stratifying Scottish HEIs. The EIS hopes that provision will remedy this concern.

The EIS supports the policy of no tuition fees for Scottish domiciled students. The EIS notes that the Bill prohibits the Government discriminating between different post-graduate teacher training courses on the basis of subject matter – which could make future workforce planning for teachers more difficult.

Further Education

Section 5

The EIS supports the requirement that any regional college (i.e. a single college region) would have regard to all fundable FE activity within its region, although it finds it difficult to understand what other FE fundable bodies could exist within a single college region.

The EIS notes that regional colleges must have regard to other fundable HE provided by other post-16 bodies (such as HEIs). The EIS would like this duty extended to HEIs within the region, i.e. for them to have regard of other HE funded activities within their region.

Section 5 para 23B (5), the EIS believes that the omission of the trade unions from a list of bodies that each Regional College needs to seek collaboration with is unfortunate and calls for this to be amended.

Section 6

Section 6 of the Bill deals with the membership of boards of regional colleges and the EIS is content with the wording, although the EIS strongly believes that there should be a greater number of academic staff on such boards.

Section 6 of the Bill also deals with the membership of a “board of a college which is not a regional college” and the EIS is concerned that this is the only staff representative on these boards.

The EIS is also concerned that all appointed members of non-regional college boards are directly appointed by the regional board. The EIS believes that this will mean that non-regional colleges will become puppets of the regional board – especially as the chair will also be appointed by the regional strategic body. There is also a distinct lack of interaction with the local community and stakeholders.
The EIS also supports the recommendation by von Prondzynski that trade union representatives should be on HEI governing bodies, to be extended to the FE sector’s regional and non-regional college boards.

The EIS welcomes the provisions that college principals will not be automatic ex-officio members of their college boards - believing that the right to attend and address board meetings are appropriate.

The EIS is cautious about the effects of (new) para 3C regarding the Government issuing guidance on board membership. The EIS believes it is important to avoid any perception that the boards’ membership is politically motivated or restricted in a non-transparent manner.

**Section 7**

The EIS is generally content with the principles behind section 7, and recognises the existing right of Scottish Government Ministers (under the 1992 Act) to remove and replace any board member if a college no longer meets its statutory duties.

Whilst this Bill does not expand the ability of members to remove members of college boards, it does perpetuate the ability of Ministers to pick and choose which board members to remove from any college or regional strategic entity board. The EIS would prefer using this Bill as an opportunity to limit Ministers ability to remove and replace any board member, to that of removing all or none of the appointed members.

The EIS does not believe that Ministers should have the right to remove and bar student or staff members, since they are elected not appointed. The EIS believes that the Bill should be amended to reflect this.

The EIS is content for the Scottish Funding Council – as the fundable body - to make a recommendation to remove any appointed board members to Ministers for regional colleges and regional boards. The EIS is not comfortable with the Bill’s intention for regional strategic bodies – as the fundable body – to make a recommendation to Ministers to remove any appointed board member from non-regional college boards.

The EIS notes that the government uses the term ‘assigned college’ where it was using the term ‘local college’ prior to the Bill.

The EIS welcomes the fact that principals of assigned colleges (non-regional colleges) will no longer chair their college board, as the EIS believes that this would have confused the roles of chair and chief executive.

The EIS notes that regional boards (i.e. Glasgow and Lanarkshire) will appoint the chairs of assigned college boards, which is a sign of their pre-eminence under the Bill.
Whilst the EIS sometimes has issues regarding the way in which the SFC exercises some of its duties, at least the SFC ensures that there is a consistent approach across Scotland. The SFC has a corps of professional staff, many of whom have served in the sector for many years. Transferring some of the SFC’s duties to regional bodies (as mini-SFCs) is ambitious and risky in the view of the EIS, and is not likely to promote consistency across Scotland.

**Section 8**

The EIS recognises that Ministers currently have significant powers to close colleges and move certain staff under the 1992 and 2005 Further & Higher Education Acts.

The EIS notes the Bill’s proposal that Scottish Ministers, after consultation, may establish, abolish or re-name a regional college board. Further they may, after consultation, add, remove or amend any entry relating to a fundable post-16 education body. The EIS is concerned that Scottish Ministers may, by order, assign (in certain circumstances) colleges to any regional strategic body.

The Bill thus enables Ministers to carry out significant future re-organisation of the FE sector, including forced mergers in the future, without further statutory provisions. This is unwelcome as the EIS believes that any significant FE reorganisation should be subject to Parliamentary scrutiny. In other words, the Bill’s requirement for consultation is insufficient for any significant change or reorganisation to the FE sector, as there is already a perception that some consultations are not carried out at a formative stage.

The EIS recognises that the Bill gives the Highlands and Islands FE region a unique statutory position. The EIS has concerns with the University of the Highlands and Islands being the regional strategic body for that region. It would seem to put the FE sector for that region under the control of the University – especially if the University, uniquely among the multi-college regions, has the statutory freedom to appoint the regional strategic body membership.

**Section 9 - Funding**

The EIS has concerns that funding in Scottish FE sector will become more complex by having two main governance structures: regional colleges in single college regions and assigned colleges in multi-college regions, each with its separate and different funding model. The Bill also gives Sabhal Mòr Ostaig and Newbattle Colleges a unique shared status, as well as giving UHI a unique governance structure.

The EIS suggests that the SFC should have a greater role in overseeing the ‘mini-SFC’ functions of the regional strategic bodies.
Section 10

At the moment, FE provision is fragmented to individual college level – as each college’s board of management makes its own decisions whilst receiving direct funding from the SFC. This commonly agreed weakness prevents a coherent or indeed planned FE sector throughout Scotland.

The proposed regional strategic body functions will hopefully produce a regional level of coherence, but may fail to deliver a nationally coherent FE system.

The Bill introduces the concept that each regional body must monitor the performance of its assigned colleges – performance monitoring will thus become atomised in Lanarkshire, Glasgow and UHI compared to the SFC monitoring for regional colleges. The EIS is concerned that a nationwide coherent approach may not be achieved by such a structure.

The Government’s explanatory notes accompanying the Post-16 Bill (para 156) state that the SFC duties to assess regional strategic bodies would be exercised by Education Scotland. The same paragraph also states that Education Scotland would “include the review of regional colleges, regional boards and colleges assigned to regional strategic bodies.”

The EIS welcomes the requirement that regional strategic bodies must consult with staff trade unions, and would like this duty to be expanded to one of collaboration too.

The EIS welcomes para 23L of Section 10 in which a regional strategic body may require its colleges to transfer staff - if transferring responsibility for providing any particular programmes of learning or courses of education from one of the regional strategic body’s colleges to another one of its colleges.

It is clearly the Government’s intention for regional boards to allocate their funds as they think best across a region – and the assigned colleges within their region. Over time, this will inevitably lead to some courses expanding whilst others contract within a region. Paragraph 23L ensures that staff move with the moved courses, and the receiving college will not have the ability to veto or cherry-pick staff. The absence of this clause could lead to staff being made redundant as a regional body moves funding over a period of time for courses from one of its colleges (eg college A) to another of its colleges (eg college B) which would involve two separate processes of making staff redundant at college A whilst hiring new and possibly different staff at college B – since they are separate employers. Such a process would be a ‘slow kill’ for staff in college A.

Where different colleges have already merged (or will have merged) to form a single regional college, then staff in a similar position would be protected in a similar way to the provision above, since the transfer of teaching between different locations within a single employer would involve the duty to offer suitable alternative work (i.e. redeployment to the affected staff) before any redundancy could be progressed.
In other words, the Post-16 Bill’s clause 23L (3) simply gives staff within a multi-college region the same protection they’d have if they were within a single college region.

The EIS suggests the following clause, or another to similar effect, to be inserted as new point 23 L (10) in section 10 of the Bill (page 16):

“The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) apply to the transfer of staff by section 23, whether or not they would so apply apart from this section.”

This approach would be consistent with the law and the current custom and practice carried out in Scottish college mergers.

Whilst the EIS supports the transfer of staff from one college to another within a region, para 23L (3) goes too far in allowing regional strategic body staff to be transferred to another regional strategic body or to any regional college (i.e. outside the region’s own regional strategic body). In theory, the Bill seems to allow an employee of an assigned college to transfer against their wish to the regional strategic body, from which they could then be transferred to any other regional strategic body or regional college in Scotland. The EIS believes that such powers are too wide ranging.

These powers of compulsory staff transfers do not seem to apply to UHI, despite it being a multiple college region. On balance, the EIS supports this. Transferring staff across other Scottish FE regions may be considered reasonable (suitable alternative employment) but the Highlands and Islands is so geographically large that posts in other colleges may not be considered reasonable as it may involve moving house or staying overnight – and therefore should not be compelled.

The Bill however does need to have further powers to protect academic staff within UHI Academic Partner Colleges if courses are moved by the Highlands and Islands strategic regional body (i.e. the University of the Highlands and Islands) – so they enjoy the same job protection as their other FE colleagues. One suggestion is that if any post or role is moved, then by statute (in the Bill) it should be offered to the original post-holder on a voluntary basis with a reasonable relocation package.

Section 11 - Regional Boards

The EIS notes the ability of a regional board to appoint a chief officer and other such employees as it considers appropriate, as set out in Section 11, Staff 10 (1). The EIS understands that regional college boards already have this ability. Whilst the EIS understands the necessity of regional boards having its own staff to carry out regional duties and functions, there is clearly a concern that their funding will mean that teaching funds will be top sliced – safeguards and guidance need to be put in place to prevent this from happening.
The EIS welcomes the fact that regional college principals are ex-officio observers (with speaking rights) to regional boards, rather than members.

The EIS is concerned that Scottish Ministers and the regional board chair need to agree on all appointed members to all regional boards, as this may give rise to the perception of political interference or that membership of such boards could be blocked for undisclosed reasons.

Section 14

The EIS welcomes the ability of the SFC to carry out statutory reviews of further and/or higher education. The effects of the move to an outcome agreement driven form of funding for both HE and FE need to be investigated. Further fundamental change and restructuring proposed is for the further education sector in particular needs to be properly monitored and reviewed.

Section 15

The EIS believes that colleges should keep appropriate student data. The Bill seems to put the onus on “a person” and the EIS hopes that this does not mean individual teaching staff. Clearly if this does affect changing teaching staff duties, then it should be a matter of negotiation.

Section 16

The Government’s explanatory notes accompanying the Post-16 Bill state that section 16 allows the chairs of regional colleges to be remunerated.

Whilst the EIS is not against the principle that chairs should be remunerated, such remuneration should be at a reasonable rate and not high enough to tempt chairs to take on some of the duties of the chief executive.

Summary

If it’s the Government’s wish to create a nationally incoherent FE structure with a myriad of different types of colleges, governing bodies and funding mechanisms with separate regulations for each, then this Bill is the way to go about it.

The complexity of the proposed structure will confound all but employees and public policy experts. The Government’s Post-16 Bill’s explanatory notes on costs and savings state; “The continued focus of college boards on the merits of a single college regional structure means that their number is likely to fall further.”

If the Government is clear that single college regions are better than multi-college regions with their regional strategic bodies, why is the Government going to so much
trouble and complexity to set up two college funding and governance structures, each with its own statutory underpinning?

That said, the EIS does acknowledge that the Bill does give Minister’s the legal powers to tidy up the different structures and mechanisms within FE sometime in the future. The Bill may therefore be perceived as a device to enable the transition from a single college system to a regional college, assigned college and regional board system, whilst simultaneously implicitly encouraging the demise of the assigned colleges and regional boards into a single system of regional colleges. In other words, the Bill allows the creation of a two tier college structure whilst waiting for the last ‘voluntary’ college mergers to create a single tier college system. For completeness, I should add that Highlands and Islands Region, Sabhal Mòr Ostaig and Newbattle colleges remain outwith the tiers alluded to above.

The Government has failed to give staff and staff trade unions a larger role to play in colleges and their governance, which will not help the success of these reforms.

If the Government’s aims for regional colleges and regional strategic bodies are to be realised, then these bodies will shape and change the current delivery profile of FE in our communities. It is right that staff are protected by the Bill insofar as teaching staff would move with any course or teaching that a regional strategic body transfer between colleges.

The Government’s decision to pass on the governance and funding for FE within Highland and Island region’s colleges to the University of the Highlands and Islands, and allow that body to decide its membership may ultimately resolve the current struggle for ascendancy within UHI, possibly making full merger more likely. It is however a matter of concern that FE has been taken over by a Higher Education Institution.
Introduction

NUS Scotland welcomes this opportunity to provide written evidence on the Scottish Government’s proposed Post 16 Education (Scotland) Bill, and fully support its progress at Stage 1.

We are pleased to see the bill propose legislation to promote moves towards fairer access for students from deprived backgrounds. Similarly, while there are risks, college governance reforms should see stronger student representation, hopefully backed up by non-legislative changes coming out of the recent Griggs review of FE governance.

However, there are areas where we believe the bill could be strengthened and improved. For example, we cannot avoid the fact that it contains proposals to provide a legislative underpinning to fees for RUK students of up to £9,000, without any protections for the poorest RUK students, going beyond the worst excesses of the Westminster model.

Widening access

As NUS Scotland’s recent research report *Unlocking Scotland’s Potential* found, Scotland continues to have the worst rate of access to higher education in the UK for students from poorer backgrounds, with the (limited) progress we have seen largely coming as the result of increased numbers in college higher education.

As such, a legislative standing for the new Widening Access Outcome Agreements was a key recommendation of *Unlocking Scotland’s Potential*, and we welcome provisions for this in the bill. We have long believed that it is important to create a defined link between the public funding universities receive, and the public benefit they provide.

As we recommended in *Unlocking Scotland’s Potential*, to ensure these agreements are enforceable, legislation is necessary. We would, however, be interested to see if the bill could go further in ensuring the longer term sustainability of efforts to widen access.

In particular, we would welcome exploring potential ways to ensure that the bill is “future-proofed”, including consideration of:

- An annual review of the provision’s effect on access: As was done with the Graduate Endowment (Abolition) Bill, we believe that it is important to ensure we

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1 Full report and annexe available at: 
regularly review the outcomes which are being achieved by access agreements, and to ascertain how institutions are undertaking the responsibilities placed upon them.

- **Ensuring greater research, policy, and oversight:** Looking to England, there is a dual role played out by the Sutton Trust and the Office for Fair Access who, respectively, undertake policy and research on fair access and ensure national oversight of efforts to improve fair access. We would be keen to see how an organisation or body undertaking this creative role could be fostered in Scotland, and there is potential for this to be combined with, or work in parallel to, an independent monitoring body.

**Tuition fee cap**

NUS Scotland opposes the principle and practice of charging any student to study. The provision contained within the bill to set the maximum amount chargeable by Scottish institutions to RUK students, linked to the maximum amount they would be liable to pay in any given *academic year* elsewhere in the UK, means that, due to the four year degree structure of Scotland, we now have potentially the most expensive higher education system of all the UK countries; up to £36,000 as opposed to £27,000 elsewhere for a standard honours degree.

Despite such high fees, there are none of the protections we have seen as a result of higher fees in England, including the role legislated for the Office for Fair Access (OFFA). This is exacerbated because the higher fees system in Scotland has resulted in RUK students being removed from the student numbers cap. The net result being that RUK students now fall between the cracks of the SFC and their home country’s funding council, with no one to safeguard access or ensure minimum standards on bursaries and other such support.

Furthermore, variable fees mean we will have legislated for a market in higher education in Scotland, with fees that may change depending on course and institution, which we wholly oppose as student choice could become affected by price rather than academic considerations.

While we remain opposed as a whole to charging students, we do believe there are general principles which any system of RUK fees should adopt, including:

- **A lower cap:** At the very most, fee levels should ensure that the *total degree* cost faced in Scotland is no higher than elsewhere in the UK.

- **Removing variability:** Fees should be capped and fixed, perhaps combined with greater equalisation of the fee amount attached to EU/Scottish students, to ensure parity between Scottish/EU and RUK students and avoid the marketization of higher education in Scotland.
• **Introduce minimum standards on fee-waivers and bursaries for RUK students:**
  There should be minimum standards to ensure protection for the poorest RUK students, in a similar way to the minimum standards required in England, combined with responsibility placed somewhere within the system for oversight of these standards.

• **Robust consultation measures for changes:** Any future changes to the status quo, and in particular the fee cap, must be required to undergo specific and robust consultation with all relevant stakeholders before going ahead, rather than automatically in line with decisions elsewhere in the UK.

**College regionalisation**

NUS Scotland has consistently advocated greater involvement of college students in the decision-making of their institutions, and welcome provisions in the bill to achieve this. We remain open to regionalisation and mergers on a case by case basis, provided they are driven by bettering the student experience or extending opportunities, rather than purely financial considerations. Indeed, the legislative changes to college organisation can only be successful if they fully involve student representatives from the start, and we are pleased to that the bill recognises the need for defined student representation.

In tandem with legislation, there are a number of important non-legislative changes agreed to in the government’s response to the Griggs review. Taking these forward should be a high priority for the government and SFC, or there may be a need to introduce further legislation, as things progress. Examples include more structured funding for students’ associations on a defined ‘sum per head’ basis and the development of a Strategic FE Forum.

Similarly, on a note of diversity of representation, as seen in the recommendations of the HE governance review, we believe there should be a greater commitment to representation by women, who make up over 50% of the FE and HE sector, yet remain hugely underrepresented on boards.

The reorganisation provided for in the bill offers an opportunity to ensure greater financial sustainability and stability than might, at times, be otherwise lacking and which could be exacerbated through regionalisation. Ensuring regional responsibility for, and distribution of, certain budget lines would provide much more certainty, and a greater safety net.

Finally, while we recognise the importance of colleges to the local and national economy, and to ensuring a highly skilled workforce, we also believe that recognition should be forthcoming for the wider societal good they produce, and it will be vital that large regional colleges do not lose their connection with local communities, with local access remaining a priority. Colleges play a huge role in providing opportunities in education for those who most often are at risk of never benefitting from it, and have a tremendous role in fair access.
In principle, the bill’s provisions could be strengthened by:

- **Enshrining equal representation**: A requirement for fairer and more defined representation of women on college and regional FE boards, as seen in the HE governance review, is a priority for NUS Scotland.

- **Regionalisation of key budgets**: Regionalisation of student support budgets would provide much greater stability to a budget line which, due its cash-limited design, is extremely volatile. Similarly, the government agrees on the need to ensure students’ associations are strengthened, appropriately funded and autonomous. One way to achieve this could be through the regionalisation of these budgets.

**Review of further and higher education**

While we can see the potential risks a review of provision could have there are also possible benefits a review of this sort could have to protect provision. Over the past few years we have seen a number of high profile examples of institutions undertaking large scale course closures and staff redundancies, often with little perceived academic benefit. We believe that the power to review could be (and should) be used in situations such as these to protect the sector from negative reductions in provision. However, it is necessary that any decisions to review (or, after the fact, to follow through on a review’s recommendations) are fully transparent, and have been through robust consultation.

Therefore, we believe it is important that any legislative power to review is safeguarded by a defined consultation process, including key stakeholders (including NUS Scotland). This will go some way to ensure this power is used to improve provision and the sector rather than threaten it.

**University governance**

NUS Scotland welcomed the VonProndzynski review into higher education, and indeed as a member of the group was central in forming its recommendations. It has long been our view that, while we fully recognise and believe in the full and proper autonomy of our universities, as recipients of huge sums of public money it is important that they are fully transparent and accountable to their staff, students, and wider communities.

Currently the Chairs of University Courts (CUC) are taking forward work on developing a code of good governance practice, referenced in the bill. As the Cabinet Secretary made clear at the time, this group is not supposed to replicate the work of the previous review, but instead find a way within the sector to agree a code based firmly on its recommendations. We will need to await the final published code, but we are pleased to see the bill reference adhering to any such code as a condition of grant. We are currently waiting to see the proposals for a Code and will hope to see this prior to reaching Stage 2 of the bill, to ascertain any legislative changes that will be required
either to implement the code, or indeed changes required to implement parts of the VonProndzynski Review not dealt with by the Code.

Data sharing

As we recommended in *Unlocking Scotland’s Potential*, we believe that that institutions should undertake proactive work to reach out to potential university students at local schools and colleges, for example by ‘talent spotting’ potential students who perform above the median of their classmates, to apply to the university and to engage with any bridging support on offer from the university. This would mean that widening access and ensuring positive destinations starts before the point of application.

As such, in order to promote and enable this, we believe that universities (along with colleges) should be among those who are required to have information shared with them by SDS.
Skills Development Scotland

Introduction

Skills Development Scotland (SDS) is Scotland’s skills body, focused on contributing to the delivery of the Scottish Government’s Economic and Skills Strategies. We set out our vision and future development and delivery plans in our Corporate Strategy (2012-15) and annual Operating Plan (2012-13).

SDS’ key aim is to deliver support to those who need it most, particularly young people. SDS is working collaboratively with partners across Scotland to enable young people to move more successfully between learning and work opportunities. This submission provides an overview of the work we are doing in relation to data sharing between partners to support this ambition. SDS welcomes the data sharing elements of the Post 16 Reform Bill as being clearly supportive of this.

Data Sharing

Young people, especially those with disadvantages in life chances, benefit from the best support they can get at transition points such as leaving school and entering college. The Scottish Government and 16+ Learning Choices/More Choices More Chances (MCMC) delivery partners recognise the value that data sharing brings to successful delivery for young people and, to enable this, SDS is tasked by the Scottish Government with developing and sustaining the 16+ Learning Choices data hub for the benefit of all involved partners. At this point the main data sharing partners are SDS, all local authorities and colleges in Scotland, the Student Awards Agency for Scotland (SAAS) and Jobcentre Plus. SDS approaches the 16+ Learning Choices data hub as a joint endeavour between data sharing partners and focuses on the key success factor of embedding data sharing in the robust legal, governance and technical framework which make up the 16+ Learning Choices data hub.

The intended benefits from the data hub are:

- a more effective and personalised service for young people, leading to more young people in positive destinations;
- removal of data gaps and duplication to provide more effective and easier working for front-line service delivery staff;
- more comprehensive and robust management information that supports well-informed strategy decisions;
- more accurate and complete reporting to Scottish Government, particularly in relation to Opportunities for All.

The aim of the 16+ Learning Choices data hub is to achieve these benefits and support young people from S3 onwards by providing the central mechanism in Scotland for bringing together and sharing the information available on young people and their learning choices. Effective, straightforward data sharing between partners will support 16+ Learning Choices and Opportunities for All by achieving a more complete and reliable data set for all partners, allowing them to quickly identify and engage with any young person dropping out or failing to complete their learning choice, with a view to re-engaging them in the system.

At the time of writing, the core legal, governance and technical frameworks are in place, and SDS current activity is centred on sustaining and enhancing the data hub so that it can progressively better meet the needs of all partners and respond to evolving service delivery and management of reporting needs.

**Finance**

Given that the majority of the technical (i.e. Information Technology) work to enable multi-partner data sharing through the data hub is already in place, and also bearing in mind that all partners already own and sustain substantial customer data recording systems, the figure of £52,000 quoted in the Financial Memorandum to the Bill represents a likely estimate of incremental costs to make small modifications to partners’ systems, to increase or enhance their ability to share data through the 16+ Learning Choices data hub as the latter adapts to partners’ evolving business needs in relation to Post-16 Reform, particularly Opportunities for All.

**Conclusion**

SDS welcomes the data sharing elements of the Post 16 Reform Bill. These complement the ongoing work that partners are undertaking to enable multi-partner data sharing for the benefit of young people. Thorough parliamentary scrutiny of both primary and secondary legislation and the effective implementation of the legislation will help to provide clarity and shared understanding for the legal framework within which this work takes place.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Universities Scotland

Scotland’s higher education institutions (HEIs) share the Scottish Government’s commitment to good governance, wide access to university based on ability regardless of socio-economic background, and efficient provision which meets learners’ needs. We welcome the Scottish Government’s affirmation to the Parliament\(^1\), that universities’ responsible autonomy is an informing principle of their policy.

We do not see a need for the higher education provisions in the Bill, which create new and in some cases quite extensive and unspecific powers over higher education institutions. Scottish HEIs are already proud to be delivering important economic, social and cultural benefits in line with the Scottish Government’s aspirations for the nation’s wellbeing. There is much the sector can achieve for Scotland when working autonomously with Government. HEIs are already robustly accountable for their use of public resources through the funding regime operated by the Scottish Funding Council (recently supplemented by the introduction of Outcome Agreements to further ensure that public investment is directed at delivering priority outcomes in line with Ministerial priorities), and through multiple lines of accountability to other funders and regulators. While universities are keen to continue to work with the Scottish Funding Council to widen access by under-represented groups, the Bill gives the impression that there is a problem which needs to be addressed through legislation, which in our view is not necessary. The Bill’s purposes can already be achieved through conditions of grant and through Ministerial guidance to the Scottish Funding Council, and we are concerned that the proposed legislation as currently drafted may give future administrations powers which are susceptible to misuse.

However, if the Scottish Government is committed to legislating, we believe there are important refinements which must be made to the Bill which are consistent with its overall purposes, but which are required appropriately to define the respective roles of Ministers, the Scottish Funding Council and of institutions to safeguard the vital principle of responsible autonomy upon which the continuing success of the sector depends.

In proposing these amendments we have particular regard to the principle of ‘responsible autonomy’, i.e. that universities and other HEIs are responsible for delivering public benefit in return for public investment, but are best able to succeed in this and in their wider missions when they are operating within a framework of clear institutional autonomy.

Our emphasis on responsible autonomy is founded on the international evidence that university sectors which enjoy robust autonomy are best able to make a successful contribution to the economic and social wellbeing of their nations. This is recognised in

\(^1\) Oral evidence by Scottish Government to Education & Culture Committee, 15 January
multiple studies e.g. ‘The governance and performance of universities: evidence from Europe and the US’ (Aghion et al, 2009) and Financially Sustainable Universities II: European universities diversifying income streams, EUA (Estermann & Pruvot, 2011).

This concept is further articulated in two separate articles published by the World Bank:

‘...institutions that have complete autonomy are also more flexible because they are not bound by cumbersome bureaucracies and externally imposed standards, even in light of the legitimate accountability mechanisms that do bind them. As a result, they can manage their resources with agility and quickly respond to the demands of a rapidly changing global market.’

The Challenge of Establishing World-Class Universities (Salmi, 2009)

‘The basic principle behind institutional autonomy is that institutions operate better if they are in control of their own destiny. They have an incentive to change if they can directly benefit from their actions; they can be entrepreneurial and reap the rewards... If a group of institutions in a university system is given autonomy to respond to national policy goals as they think fit, there is a reasonable chance that they will choose different ways of reaching the same goal... Had they been centrally directed, this variety would have been unlikely.’

Global Trends in University Governance (Fielden, 2008)

The trend across Europe is now towards increased university autonomy as a means of generating success, and European Commission policy is an affirmation of responsible autonomy:

‘Universities should have the freedom and the responsibility to set their own missions, priorities and programmes in research, education and innovation; to decide on their own organisation and on the bodies necessary for their internal management and the representation of society’s interests; to manage their own physical, financial and intellectual assets for research and education, their budgets (including fundraising) and their partnerships with academia and industry; to recruit and set the compensation rules for their permanent and temporary staff and to target their collective efforts towards institutional priorities in research, teaching and services. In doing so, universities need to accept that they are fully accountable to society at large for their results, including the cost-efficiency with which these are achieved.’

[EC Memo 06/190]

We organise our comments according to the relevant sections of the Bill. Specific proposed amendments are outlined in Annex A.
Section 2: Higher education institutions: good governance

We support the objective outlined in the policy memorandum of embedding the intended Scottish Code of Higher Education Governance as a standard of good practice expected of HEIs. Compliance with good practice in institutional governance is already required by the Scottish Funding Council as a condition of grant (through the financial memorandum defining SFC’s relations with institutions). This is currently achieved through the compliance by all institutions (on a ‘comply or explain’ basis) with the existing Committee of University Chairs’ Governance Code of Practice and similar compliance with a new Scottish code (currently being developed by a working group established by the Chairs of Court) could be secured in the same way through conditions of grant without the need for specific legislation.

However, if the Parliament chooses to legislate in this area, we seek amendments which are consistent with the stated policy intention and with the principle of responsible autonomy.

The amendments focus on four specific areas:

1. The role of the Scottish Ministers. In our view it is not Ministers’ role to determine what constitutes good HEI governance in an autonomous sector. Ministers have a legitimate interest in ensuring that public funds are committed to well-governed institutions, but it is not appropriate for them to be the arbiters of what constitutes good governance. It would be more consistent with responsible autonomy, with existing charity legislation\(^2\), and with the long-established principle that universities should not be subject to political direction, if the Scottish Funding Council had the power which the section currently assigns to the Scottish Ministers. Significantly, the Von Prondzynski review of higher education governance recommended a role for the Council, rather than Ministers, in relation to introducing a new Scottish code of governance.

2. The breadth of the power to require compliance with ‘any principles...which appear... to constitute good practice’ is also of concern since it gives a very wide discretion to prescribe at any time what those principles may be. If the intention is to require observance of whatever specific code of governance may for the time being be in force, this should be stated more clearly. It would be of major concern to universities if Ministers had a power which could in future be used arbitrarily to prescribe ‘good practice’; the development of standards of good practice needs to be owned by the governing bodies who are responsible for its implementation.

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\(^2\) Consideration needs to be given to whether the powers sought by the Scottish Ministers in the Bill would jeopardize the charitable status of HEIs. The Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") at section 7(4)(b) provides that:

"(4) A body which falls within paragraphs (a) and (b) of subsection (1) does not, despite that subsection, meet the charity test if - ...(b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities."

If the new Bill, once enacted, is taken to form part of the constitution of a higher education institution within the meaning of section 106 of the 2005 Act, then further scrutiny must be given to whether the Ministers' proposed new powers will prejudice charitable status.
3. The reference to ‘management’ is inappropriate and should be removed. Governing bodies are responsible for ensuring that the institution is managed in a way which successfully implements the institution’s mission and strategy. The senior managers of the institution are accountable to the governing body for achieving this. These principles and responsibilities are fundamental to good governance and reflect the principles and practices which apply to other bodies and institutions in receipt of public funds, and are consistent also with the respective accountabilities of Boards of Directors and senior managers in the corporate sector. They would be seriously undermined if Ministers (or the Council) assumed responsibility for determining how universities should be managed.

4. As with the existing Committee of University Chairs governance guidance, it should be possible for the Council to require compliance on a ‘comply or explain’ basis. There may be particular legitimate reasons which the Council can accept for why compliance with a specific requirement of the Code by a specific institution at a particular time is not required, e.g. in relation to requirements for particular committees/committee membership. This may particularly be the case for small specialist institutions or the Open University in Scotland, which do not fit the general model of HEIs. The ‘comply or explain’ principle is the trademark of corporate governance across the UK, as recognised by the UK Corporate Governance Code, which applies to HEIs on this basis.

**Section 3: Widening access to fundable higher education**

All Scottish HEIs are committed to widening access. The Universities Scotland publication Delivering for Scotland includes a commitment from all Principals that:

“I strongly believe in widening access to our universities. University should be equally open to any learner with the appropriate academic potential to benefit, regardless of their social or economic circumstances. It is of equal importance that those learners are properly supported to complete their studies successfully and fulfil their potential. Each university is able to point to its own distinctive and considerable achievements already made in these areas. I am committed to delivering progress in the next few years and, in so doing, contributing to an improvement in the university sector in Scotland’s record on widening access and retention. Principals share the determination that universities should play the fullest role possible in the pursuit of these goals, working in partnership with schools, colleges and others. This is the spirit in which I will lead work within my institution to meet the outcomes on access and retention that have been agreed with the Scottish Funding Council.”

We do not believe that legislation in this area is necessary, since the SFC can use existing powers in relation to conditions of grant/development of funding instruments to achieve the policy objective. However, we recognise that the Scottish Government has a manifesto commitment in this area. We are therefore seeking specific amendment of the Bill provision to ensure that the regime it describes is more accurately aligned with the Outcome Agreements process. A revised section is proposed in the Annex.
Specifically:

9B(1): The power here is wider in scope than is consistent with the policy intention to enable ‘widening access agreements’, and should be framed more specifically to deliver this. It also creates a confusion or duplication between the duties of Ministers and the Council in relation to widening access, with the cumulative effect of 9(B)(1)-(3) giving both Ministers and the Council detailed roles in determining widening access requirements.

9B(2): The current drafting is unclear about the role of the Scottish Ministers. We would accept the premise that Ministers should in general terms be able to guide the Council to develop widening access agreements with institutions as a condition of grant to institutions, though this is achievable through the guidance which Ministers annually give to the Council on an administrative basis and does not require legislation. However, the current drafting can be interpreted as giving Ministers the power to specify the content of a widening access agreement for a particular institution, which would be directly contrary to the principle of responsible autonomy and would represent a direct political intervention in a university’s admissions decisions, which are an important element of academic independence. This must be resolved by amendment. The current drafting can also be interpreted as enabling Ministers to prescribe in detail the generic form of a widening access agreement, which would be a level of political direction at odds with responsible autonomy. We believe it should be for the Council, working with institutions, to specify the detailed form of a widening access agreement, within the general guidance from Scottish Ministers that such an agreement may be required. A consequential amendment to the Bill’s Schedule is also proposed in the Annex.

9B(3): The description of ‘widening access agreement’ is inaccurate in the light of the policy intention that it should form part of the Outcome Agreements which are negotiated between institutions and the Council as a condition of grant. Specifically, Outcome Agreements cannot be characterised as ‘an agreement under which a higher education institution is to take actions specified by the Council...’: In line with the principle of responsible autonomy, and reflecting the policy and practice on Outcome Agreements, the initiator in defining the content of an Outcome Agreement is the institution itself. So it would be more accurate to define the widening access agreement as ‘an agreement under which an HEI is to take actions proposed by the institution and agreed with the Council for the purposes of...’.

Section 4: Fee cap: students liable for higher education fees

We are content with the policy of this section. We propose technical amendment to ensure that the policy intention is delivered: as currently drafted it is unclear in relation to the fees levels which may be charged to Welsh-domiciled students, for whom the Welsh Assembly Government has put arrangements in place to entitle them to receive grant support for the difference between the maximum Welsh university fee for Welsh-domiciled students (£3,465) and the fee they are liable for if they choose to study at a UK university outside Wales. The new section 9C(3)(b) proposed in the Bill could be
read as restricting the fee charged to these students by Scottish universities to the maximum Welsh university fee.

Section 14: Review of further and higher education

We recognise the existing role of the Council in securing coherent provision and the obligation on Ministers and the Council to ensure that public funds are being used efficiently and effectively. In practice, we believe the Council already has the necessary capacity to do this, through its duty under section 3 of the 2005 Act to secure ‘coherent provision’ and through conditions of grant. We are concerned that the provisions as drafted are inconsistent with responsible autonomy, and that provisions which have been conceived in regard to the college sector are being applied inappropriately to the university sector. This section should be removed or very substantially amended in relation to HEIs.

Particular issues include:

14(2)(a): We do not believe it is the Council’s responsibility to decide on the number of fundable higher education institutions. These are autonomous institutions, and as long as they meet the criteria and conditions of grant for funding by the Council they should be eligible for receipt of funding. Also, if it was known that the future of an HEI as a fundable body was under review, that institution would face particular competitive difficulties in attracting and retaining staff, and in securing research funding and building relationships with industry, and in competing in international student recruitment markets.

14(2)(c): As drafted, this provision is contrary both to responsible autonomy and to academic freedom. It is the responsibility of institutions themselves to decide what ‘types of programmes of learning or courses of education’ to provide, a role in which the Senate or equivalent body, representative of the academic community, has an important voice which was affirmed by the Von Prondzynski Review. While the Council has a legitimate role in discussing with institutions whether provision appears coherent, this role can be discharged without the necessity for this legislative measure.

14(6): In relation to HEIs, any report by the Council would have to be to the governing bodies of the institutions concerned, not to the Scottish Ministers since Ministers are not responsible for academic provision by autonomous institutions. This separation of responsibility is an important safeguard against decisions as to what should be taught where, the content of provision, and the standards to be applied, being subject to political expediency and change every time a new administration assumes office.

Section 15: Duty to provide information to Skills Development Scotland

From discussion with Scottish Government we understand that this section is not intended to create new duties on higher education institutions, since existing data collection and sharing is assumed to be adequate. We will, however, give very careful scrutiny to any order proposed under section 15(1).
Specific Universities Scotland proposals for amendments.

Section 2 Higher education institutions: good governance

Proposed revised section 2:

2 Higher education institutions: good governance

After section 9 of the 2005 Act insert—

“9A Higher education institutions: good governance

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution, subject to subsection (2), to comply with the Code of Good Governance for Scottish Higher Education Institutions, or such other code of governance as agreed between the Council and higher education institutions for the time being in force.

(2) The Council may agree with a higher education institution that the application of provisions of the code be varied in particular circumstances proposed by the institution.”

Draft Amendment:
In section 2, page 1, line 15, at the beginning insert <(1)>.

In section 2, page 1, line 17, leave out from <any> to end of line 19 and at end insert <the Code of Good Governance for Scottish Higher Education Institutions, or such other code of governance as agreed between the Council and higher education institutions for the time being in force.>

In section 2, page 1, line 19, at end insert—

<(2) The Council may agree with a higher education institution that the application of provisions of the code be varied in particular circumstances proposed by the institution.>
Section 3 Widening access to higher education

Proposed revised section 3:

3 Widening access to higher education

After section 9A of the 2005 Act, inserted by section 2, insert—

“9B Widening access to fundable higher education

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under 12(1), impose a condition on a higher education institution requiring compliance by that institution with a widening access agreement.

(2) A widening access agreement is an agreement under which a higher education institution is to take actions proposed by the institution and agreed with the Council for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).

(3) For the purposes of this section, a socio-economic group is to be treated as under-represented in fundable higher education if participation in such education by persons in that group is disproportionately low.”

Draft amendment:

In section 3, page 1, line 23, leave out from <terms> to end of line 26 and at end insert <a condition that the Council must, when making a payment under 12(1), impose a condition on a higher education institution requiring compliance by that institution with a widening access agreement.>

In section 3, page 2, line 1, leave out subsection (2)

In section 3, page 2, line 6, leave out <specified by> and insert <proposed by the institution and agreed with>

3 Renumbering of sub-sections (3) and (4), as (2) and (3), required.
Section 4 Fee cap: students liable for higher education fees

Proposed revised section 4:

4 Fee cap: students liable for higher education fees

After section 9B of the 2005 Act, inserted by section 3, insert—

“9C Fee cap: students liable for higher education fees

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1)—

(a) where the payment is made to a fundable post-16 education body which provides fundable higher education, impose on that body a condition that it complies with the requirement set out in subsection (2);

(b) where the payment is made to a regional strategic body, impose on that body a condition that it must, when making a payment under section 12B(1) to any of its colleges which provides fundable higher education, impose on the college a condition that it complies with the requirement set out in subsection (2).

(2) The requirement is that the post-16 education body to whom the payment is made is to secure that the fees paid to it—

(a) by persons in respect of whom it is authorised or required to charge higher fees by virtue of regulations made under section 1 of the Education (Fees and Awards) Act 1983 (c.40) (or by such class of such persons as the Scottish Ministers may by order specify);

(b) in connection with their attending such courses of education as the Scottish Ministers may by order specify,

are not exceed such amount as the Scottish Ministers may by order specify.

(3) The Scottish Ministers, when making an order under this section, must seek to ensure—

(a) that, subject to any exceptions which they consider appropriate, it applies only in relation to fees payable by persons who have a connection with the United Kingdom; and

(b) that the amount of fees payable by a person attending any course of education provided by a post-16 education body in any particular academic year does not exceed the maximum amount of fees, as prescribed in any enactment, payable in respect of any course of education provided elsewhere in the United Kingdom during that year, whether payable by the person attending the course of
education elsewhere in the United Kingdom or by any other person or public authority.

(4) The Scottish Ministers may not specify courses under subsection (2)(b) in such a way as to discriminate between different 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.

(5) References in this section to the United Kingdom include references to the Channel Islands and the Isle of Man.

Draft amendments to section 4:
In section 4, page 3, line 3, leave out <which that person would by virtue of any enactment be liable to pay if attending any higher education course> and insert <, as prescribed in any enactment, payable in respect of any course of education>

In section 4, page 3, line 6, after <year> insert <, whether payable by the person attending the course of education elsewhere in the UK or by any other person or public authority>

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4 Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 contains a definition of a “person” as including “a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland”. It does not specifically include a reference to a public body or government department, for example, the Welsh Assembly Government, and so the words ‘public authority’ have been included in the amendment.

5 Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 contains a definition of a “person” as including “a body of persons corporate or unincorporated and a partnership constituted under the law of Scotland”. It does not specifically include a reference to a public body or government department, for example, the Welsh Assembly Government, and so the words ‘public authority’ have also been added.
Section 14: Review of further and higher education

Proposed revised section 14:

14 Review of further education

After section 14 of the 2005 Act insert—

“14A Review of fundable further education

(1) The Council may, with the consent of the Scottish Ministers, review the extent to which fundable further education is being provided by post-16 education bodies in a coherent manner.

(2) A review may relate to fundable further education generally or to any particular aspect of such education and may, in particular, include a review of—

(a) the number of post-16 education bodies who provide fundable further education or any particular aspect of such education;
(b) the number of regional strategic bodies who provide funding for fundable further education or any particular aspect of such education;
(c) the types of programmes of learning or courses of education provided by post-16 education bodies;
(d) the efficiency or effectiveness of the arrangements for the funding or provision of fundable further education or any particular aspect of it;
(e) whether the coherent provision of fundable further education can be improved by increasing collaboration between any persons involved in funding or providing it;
(f) the funding or provision of fundable further education, or any particular aspect of it, in particular areas; or
(g) any aspect of the legislation or administrative framework which governs the funding or provision of fundable further education.

(3) When seeking the consent of the Scottish Ministers to conduct a review, the Council must provide a case for review which—

(a) describes the scope of the proposed review; and
(b) explains why it is satisfied that any pre-conditions to conducting a review which the Scottish Ministers may determine are met in relation to the proposed review.

(4) The bodies to which this subsection applies must provide the Council with such information, and make available for inspection such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.
(5) Subsection (4) applies to—
   (a) post-16 education bodies; and
   (b) regional strategic bodies.

(6) 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.

(7) The Council, when conducting and reporting on a review, must have
regard to the importance of ensuring that public funds provided for
fundable further education are used as economically, efficiently and
effectively as possible.”

Draft amendment:
In section 14, page 26, lines 1 to 22, in subsection (2), leave out <or fundable higher education> each time it appears.
Paragraph 6(6)(i) of the Schedule to the Bill

Proposed revisals to paragraph 6(6)(i):

(6) In section 9—

(i) in sub-section (12)(a), after “(7)” insert “and in section 9C”,

Draft amendment:
In the Schedule, page 35, lines 7 to 8, after <(12)>, leave out

<—

(i) in paragraph>

In the Schedule, page 35, leave out lines 9 to 13.

Note to amendment:
Paragraph 65 of the Explanatory Notes to the Bill states in line 3 that “Paragraph 6(6) of the Schedule to the Bill makes various amendments to section 9 of the 2005 Act including inserting new section 9(5A) amending section 9(6).”. There is nothing else said about the amendment that will be made to section 9(12) of the 2005 Act by paragraph 6(6)(i) of the Schedule to the Bill.

Paragraph 6(6)(i) of the Schedule amends section 9(12) of the Further and Higher Education (Scotland) Act 2005 to permit the Scottish Ministers to impose terms and conditions of grant upon the Scottish Funding Council framed by reference to the criteria for the admission of students if such terms and conditions are in pursuance of the powers that Ministers propose to give themselves in the new Section 9B of the 2005 Act.

The combination of section 9B and the amended section 9(12)(b)(ii) and 9(12)(c) gives the Ministers very considerable powers over university admissions, going beyond what would be considered consistent with the principles of responsible autonomy and academic independence for higher education institutions, and the schedule as currently drafted gives Ministers specific power to require institutions to comply with admissions criteria for students. This overturns a specific prohibition at section 9(12)(b) of the 2005 Act as currently in force, which prevents Ministers from setting conditions of grant which interfere with the selection or appointment of academic staff or the admission of students, since these are core areas of academic judgement. This is an unprecedented departure from the principle that political considerations should not be brought to bear on such matters.

In addition to the amendments proposed by Universities Scotland in respect of section 3 of the Bill (in respect of the new section 9B in the 2005 Act), we therefore seek the removal of the provisions contained in paragraph 6(6)(i) of the Schedule to the Bill.
Education and Culture Committee
Post-16 Education (Scotland) Bill
University College Union Scotland

UCU Scotland has nearly 7,000 academic and academic-related members in Scottish higher education institutions (HEIs). We welcome the opportunity to respond to the Scottish Parliament Education and Culture Committee’s call for written evidence on the Post-16 Education (Scotland) Bill.

Introduction

We welcome the provisions in the Bill to widen access to universities and the inclusion of a legal requirement for universities to meet standards on governance. However, we have concerns over the legislative powers to review course provision as this opens up the possibility for a government to directly influence courses and content. We also oppose the introduction of a fee system that introduces a market in those undergraduate students from the rest of the UK.

University governance

We welcome the provision in the Bill to make good governance a legal responsibility. However, the code of governance is presently being developed in Scotland but will not be finalised in time to be considered during the passage of the Bill.

Further, the code is not being developed with the proper scrutiny of Parliament and in a manner that is contrary to a Parliamentary statement on 28 June 2012. Instead of leading a review, the chairs of court have formed a steering group of their own members which does not include representatives of staff and students.

UCU believes that a governance code should deliver recommendations to improve the management and governance of universities in Scotland; restore the confidence of staff in the governing bodies; and strengthen the autonomy, democracy and collegiality of Scottish higher education institutions.

We call for the full implementation of the Review of Higher Education Governance, RHEG, report and call for the code to implement the report’s proposals. That review, chaired by Professor Ferdinand von Prondzynski, took evidence from a wide range of bodies, despite a small budget, limited secretariat and a tight timescale. The panel drew on representatives of the whole sector but still managed to produce a report with dissent on two issues from one member. UCU does not believe that the present consultation and evidence sessions on a Scottish code are justified, as this evidence has already been collected by the review of higher education governance.
We recommend that the new code should implement the proposals in the Review of Higher Education Governance report.

Widening access

UCU supports initiatives to widen access so that the most talented students are admitted to our universities, irrespective of their social or financial background.

UCU has called for greater emphasis on contextualisation in admissions but this can be problematic and there may be a need for a statutory duty to protect institutions and in particular admissions staff from libellous claims. However, the proposals only legislate to force institutions to broaden access and it is not clear that this alone will protect institutions.

The widening access agreements will in practice be included in the outcome agreements between the funding council and institutions. We have concerns over how these will be agreed, as they have been rushed through in many cases, avoiding the full democratic process within Universities. Further, there has been a lack of proper consultation with staff and students.

The funding council has a legislative requirement to consult but has introduced these outcome agreements without that consultation. UCU believes that the staff involved in widening access should be included in developing these agreements. Further, the main outcome should not just be the admission of students from diverse backgrounds but an increase in graduates who then go on to find employment. Decreasing drop-out and ensuring students from diverse backgrounds graduate is the responsibility of all staff.

We recommend that the legislation includes a responsibility to consult with staff and students.

Tuition fees cap

UCU opposes variable RUK fees and agrees with the Cabinet Secretary that education should not be a market. We recognise that an increased fee is required but we would prefer that a fixed fee is introduced. Given the fact that most universities are charging the highest fee, we recommend that if a fee cap is included in the legislation that this is set at £6,375 which was the level suggested by the government in the consultation on the Draft Student Fees Order 2011. This would reduce the market in fees for students from elsewhere in the UK.

Section 3(b) under clause 4 that states the level of fees, does not achieve equity with the rest of the UK as it limits the cap to a single academic year. We believe that Scottish
Institutions should not be able to charge more for a degree than the amount paid elsewhere in the United Kingdom. However, this legislation allows Scottish Universities to charge fees for all four years of a degree even though it would only take three years elsewhere in the United Kingdom and similarly for longer courses such as medicine.

We are concerned that the increase of fees in England gives a perception that Scotland is out of kilter, but according to the European Commission, nine other countries do not charge fees including all our Scandinavian neighbours. Further, English fees are the highest in Europe with very few countries charging more than €1000. Hence Scottish Universities are now offering the most expensive degrees in the UK and indeed Europe, if not most of the world.

There is an historical basis for taking a different tack, as when variable fees were first introduced in the UK Scotland set a fixed fee. That fee level was set after careful consideration by a working group bearing in mind the costs of studying in Scotland and including the probability of an extra year of study. This yielded consistency on the numbers of English students and ensured that extra funding went back into the higher education budget. Most importantly, the extra funding received went into the overall pot with individual universities not gaining additional money for taking on RUK students. We believe that these criteria must remain in order to avoid a scramble to recruit RUK students which will no longer count in the overall capped student numbers.

Given the emphasis on broadening access in the Bill, it is notable that the proposed widening access agreements will not apply to students from elsewhere in the UK. Throughout the rest of the UK, universities can only charge fees if they have introduced bursaries for less well off students and had these schemes verified. However, no such safeguards have been included in the legislation for other UK students who study in Scotland. We recognise that all universities are offering bursaries but these are voluntary and there is no inducement for universities to recruit students who would be eligible, or any facility to monitor the number of students on bursaries. Indeed, it would be financially beneficial not to recruit students from less deprived backgrounds as they would pay the full fee and be eligible for the bursaries that are funded by the institution.

**UCU recommends a standard fixed fee for all undergraduates from elsewhere in the UK.**

**College regionalisation**

While changes to colleges are not directly applicable to universities, the regionalisation of colleges should not lead to lack of choice for students and diminish the opportunities for articulation. Further, it should not be the case that only certain universities are seen as the choice for college students from a region. There is the possibility that the student articulation choices will be limited if colleges only form links with the university in their region. However, it may allow for greater development of articulation links if universities
only need to deal with a regional consortium as oppose to over 40 colleges across Scotland.

UCU opposes any notion of regional universities as we believe all universities should be responsible to the local community, the Scottish nation and have wider global aspirations. Further, any mergers should be institutionally led, fully including staff and students and not be driven by external funding pressures. We support institutional autonomy and the variation in mission between institutions.

One area where there is ambiguity is in the highlands, where there is already a body for the University of Highlands and Islands which has a remit of ensuring coherent higher education provision offered by the colleges. This board is to be extended to cover all provision in the colleges. As a university, this board will be covered by the code of governance as well as provisions in this section relating to regional college boards. It is important its role as a university is not diminished by this extension to further education.

Review of fundable further and higher education

UCU supports the notion that the Scottish Funding Council, SFC, should have an overview of provision across Scotland, a position that was first espoused in our manifesto for the first Scottish Parliamentary elections in 1999. Since then, we have consistently argued that the increases in costs for Scots to study in the rest of the UK make it even more important that Scottish Universities at least provides an opportunity to study all subject and in particular that no existing course is lost to the nation.

We believe that the funding levers and indeed the outcome agreements can be used to ensure coherent provision. While we welcome a review of provision across Scotland we are not convinced that the SFC needs legislation to allow this to happen and we are concerned that the legislation as drafted gives much greater powers than are required to undertake this role. Further this review would have to recognise the subtle differences in courses that have similar titles.

The powers in the Bill potentially open up all aspects of post-16 education provision to ministerial control as it allows ministers to review the types of programmes of learning or courses of education provided by post-16 education bodies.

This opens up the possibility of political interference in the provision and content of courses, undermining both the institutional autonomy of universities and the academic freedom of lecturers. While there should be a role for the Funding Council to ensure subject provision across Scotland, the clauses in the draft Bill go much further and are a hostage to fortune.

We recommend that the phrasing is modified to ensure that individual courses and universities cannot be reviewed and to clarify that this section only refers to overall provision in Scotland.
Post-16 Education (Scotland)
Bill: Stage 1

09:36

The Convener: The next item is further oral evidence on the Post-16 Education (Scotland) Bill. We have quite a busy agenda. First, we will hear evidence from David Belsey, who is national officer for further and higher education at the Educational Institute of Scotland; John Henderson, who is chief executive of Colleges Scotland; Robin Parker, who is president of the National Union of Students Scotland; Mary Senior, who is the Scottish official for the University and College Union Scotland; and Alastair Sim, who is director of Universities Scotland. Good morning to you all.

There are five witnesses on the first panel, so I ask committee members and witnesses to be brief in their questions and answers. If you feel that somebody else has already covered the points that you wanted to raise, you do not have to repeat them.

Neil Bibby (West Scotland) (Lab): Colleges Scotland’s submission talks about concerns relating to “the ‘two-tier’ nature of the proposed regional strategic bodies and their constituent colleges.”

Do the panellists believe that the regional strategic bodies will subsume the role of controlling employees and finance? What does that mean for the legal position of the boards of assigned colleges?

John Henderson (Colleges Scotland): The regional strategic boards will clearly be new bodies in the landscape. My understanding is that the assigned colleges will still be the employers of staff, but funding for the assigned colleges will largely come through the regional strategic boards. Therefore, in that they will have an element of control at the funding level, the regional strategic boards will be almost mini-funding councils.

Neil Bibby: I understand that the principals would be employed by the individual colleges, but the regional strategic boards and bodies would set the terms and conditions. Would that be legal?

John Henderson: It would be legal if the Parliament passed the bill; whether it is desirable is for the committee and the Parliament to consider. We think that there are problems with that. On the lines of accountability and the psychology, there is a risk of divided loyalties if a principal of an assigned college is appointed and their pay and conditions are determined by a body that is not their employer. Are they loyal to their employer and how do they account to their...
employer for their actions, or are they loyal to the person who determines their pay and conditions each year? There are potential difficulties with that, but I think that they can be surmounted.

I understand the thinking behind the bill, but if we look at the position with non-departmental public bodies, for example, we will see that the boards appoint the chief executives of those bodies but it is often the permanent secretary who will approve their appointment as the accounting or accountable officer. Therefore, there can be a measure of oversight at either the Government or regional strategic level without getting into the territory of employer. That is where I think the risk in the legislation is framed.

Neil Bibby: You question whether the position of the colleges and the regional strategic boards would be desirable. Do you believe that a move to regional strategic bodies with control over funding and direction could lead to individual colleges being akin to university departments or faculties? Is there a danger of high-performing colleges seeing their assets moved to less well-performing colleges by a regional strategic body?

John Henderson: There are clearly risks. A lot will depend on the regional strategic board. Rather than talking about four parts of the country, we are really talking only about Glasgow, Lanarkshire and the University of the Highlands and Islands area. How the bodies there form a relationship at a strategic level with the assigned colleges in their area will be very important. I am optimistic that they will not be heavy handed in their approach to the assigned colleges. However, there will clearly be tensions in relationships in a two-tier system, so it will be important to get the relationships right.

The relationships should be built on an enabling rather than a controlling basis, and I would like to see an outcome agreement in the contract between the two bodies. High-level outcomes would be set at the strategic level, but local delivery would be left to the assigned colleges. In the same way, the best approach for the sector nationally is to have a strategic funding council setting high-level outcomes, but leaving the regional colleges to deliver. Further education needs to be delivered locally, because what happens in Stornoway is very different from what happens in the centre of Glasgow or Edinburgh.

Neil Bibby: In your submission, you ask the Education and Culture Committee to seek information and clarification from the Office of the Scottish Charity Regulator on whether the bill will affect charitable status. Could you tell us a bit more about your concerns?

John Henderson: When oversight is changed between a funding body—be it the Government or a funding council—and a charity, there is a risk that the independence of the charitable trustees will be affected and OSCR will take the view that that would move it out of the charitable status camp. I wrote to the chief executive of OSCR asking him for his view on that. He said that the legislation is complex and that he needs time to look at it, so I do not have a definitive view on that.

Neil Findlay (Lothian) (Lab): The EIS’s written evidence states:

“If it’s the Government’s wish to create a nationally incoherent FE structure with a myriad of different types of colleges, governing bodies and funding mechanisms with separate regulations for each, then this Bill is the way to go about it.”

Does the panel wish to comment on that?

The Convener: Perhaps Mr Bibsey should start us off on that one.

David Belsey (Educational Institute of Scotland): What the EIS is getting at is that the bill will not create a single, coherent governance model for the Scottish further education sector. In fact, it will codify two main systems: single-college regions with a regional college, and multicollege regions with a regional strategic body. Even within the multicollege regions, there will be two types: the one that will probably be formed in Glasgow and Lanarkshire, and the one that will be formed in the UHI area. There is also a fourth type of governance model for the other two colleges, Newbattle Abbey College and Sabhal Mòr Ostaig.

The bill will create a system that will allow those different forms of governance to exist at the same time and the powers that it will give to a regional college board of management will be different from those that it will give to a regional board for a multicollege region. The bill will therefore not create a single, coherent system. In effect, the bill will create a multilayered system. That is the point that we make in our submission.

09:45

John Henderson: Coming back to my earlier point, I think that if you accept—as I do—that the approach that was recommended in the Griggs review of having one college per region will not be right in certain parts of the country, the question, then, is how you achieve coherence at a regional level. In this legislation, the Government has decided to answer that question through the use of strategic bodies. If, as I have suggested, those strategic bodies can be seen more as enabling than as controlling, the risks that the EIS and others have highlighted will be less likely to come about.

Robin Parker (NUS Scotland): In our view, there is a strong case for improving colleges’ governance. In particular, we must ensure that it becomes much more about meeting students’
needs through, for example, delivering courses that allow students to go successfully into the next stage of their lives, whether that be going into employment, going to university or undertaking some other form of study.

The proposed regionalisation has its positives and negatives, and I want to highlight two things in respect of which responsibility at a regional level would be good. First, the fact that each college can set its own rules on FE student support could lead to a postcode lottery, with students at different colleges subject to different rules governing the discretionary FE support that they receive. A national system of FE financial support would be ideal but moving responsibility for student support to regional level would be a positive step in that direction. Secondly, moving responsibility for strong student associations to regional level, as recommended in the Griggs review, would also be a positive step.

**Joan McAlpine (South Scotland) (SNP):** In its evidence, the EIS says that it “has long believed that FE governance was poor as it had little democratic accountability and insufficient transparency, all being propped up by the 1992 Further and Higher Education (Scotland) Act. The EIS supports the aims of the Post-16 Bill to increase accountability and transparency”.

Will Mr Belsey elaborate on how that lack of accountability affected industrial relations in the FE sector in the past?

**David Belsey:** The EIS shares the bill’s aim of improving the accountability and transparency of governance in the FE sector and we believe that its proposals for changing the governing bodies of colleges and regions are a good thing. However, the problem is that what the Government is suggesting is not what was suggested in the Griggs report. It is suggesting two main different ways of meeting the objective.

As for past problems, the perception was that boards were self-appointing. Because of the way in which the 1992 act was framed, they were structurally susceptible to the perception of cronyism in that board members were self-perpetuating and had very close relationships with principals. It was also felt that colleges were not run in an open and transparent way and, because they were not accountable directly to any other body—or, at least, it was very difficult to hold them to account—there was a range of governance standards and, one might say, effectiveness in Scotland’s colleges. As a result, problems such as those that arose at Adam Smith College were able to develop. We hope that the new system of governance will make it less likely that such difficulties will arise.

**Joan McAlpine:** Would Ms Senior like to comment on the issue of effective governance and industrial relations in the past?

**Mary Senior (University and College Union Scotland):** I would prefer to confine my comments to governance in higher education.

**The Convener:** I was going to ask a similar question, but we will come on to that later.

**Liz Smith** will begin our questioning on governance, which has come up every time that we have taken oral evidence.

**Liz Smith (Mid Scotland and Fife) (Con):** Just before I go on to that, Mr Henderson, what is Colleges Scotland’s estimate of the value of charitable status to the college sector?

**John Henderson:** I have not looked at that in the past couple of years. It was last looked at a couple of years ago, when it was found to be somewhere in the region of £50 million. That was very much an estimate and I have no way of telling what the current figure is.

**Liz Smith:** So you will be hoping that the answer to the letter that you have sent is that colleges’ charitable status is assured for the future.

**John Henderson:** It is important because, whatever the current figure is, it is likely to be significant.

**Liz Smith:** I want to ask about some aspects of governance that transcend both sectors. The majority of people who have sent in written submissions or given oral evidence have said that there is an issue around the autonomy of the sectors. Mr Henderson, you referred to that when you mentioned the concept of local delivery—you rightly pointed out that, in different parts of the country, colleges might want to do different things. Also, the Universities Scotland submission has been very careful about the term “responsible autonomy” in the university sector. Mr Henderson and Mr Sim, do you feel that the bill threatens to undermine that responsible autonomy?

**John Henderson:** I draw attention to one risk in the proposed legislation. I do not have any difficulty with the proposed public appointments process for the appointment of chairs of regional colleges or regional boards; the process will be transparent and open, and if there have been difficulties in the past, that will be an improvement. However, the appointments process for members of regional boards of colleges seems less transparent. It is not defined very sharply, which suggests that the chair will submit a list of names to the minister, who will approve them.

As I said earlier, I have no difficulty with ministerial involvement but, in this area, we run the
risk of turning back the clock to a time when ministers behind closed doors gave their approval for lists of people who were going into public bodies. We have moved on from that with the public appointments process. We either have an open and transparent public appointments process for all board members, or we have a system like the one that the universities might develop, in which they self-regulate through a code of practice, and it is made a condition of grant that their boards comply with that code. That enabling model, rather than a system that risks a lack of transparency, would lead to better governance in the sector. That is just one example of where the balance is tilted too much away from self-regulation and control through funding.

Liz Smith: What would be the detrimental effect on the college sector if we, as you said, turned the clock back a bit?

John Henderson: There is a fundamental question about whether the further education sector is a national service at all. In Scotland, we have a number of micro-economies in different parts of the country that require local delivery, but there are a few things that we could determine nationally. However, the risk in the philosophy underlying the bill is that too much will be pulled into the centre and away from what is important in local accountability, and there is no balance.

Where there is a need for central control and oversight, we need a light touch. The outcome agreements that the Government and the Scottish Further and Higher Education Funding Council are developing with the sector are good, because they are almost a high-level contract between the funders and those who are delivering the service. Of course we want a certain level of quality and a certain level of outcomes, but we do not want to get into the detail of curriculum planning by saying to a particular college that, for example, it should have a certain number of engineers or plumbers in a particular area. That would be a mistake.

Alastair Sim (Universities Scotland): I would frame my response by welcoming the fact that when Scottish Government officials were here on 15 January, they affirmed responsible autonomy as one of the principles that should lie behind the legislation. The cabinet secretary said words to that effect when he gave a speech last week at the Adam Smith business school at the University of Glasgow.

The policy intentions that have been expressed about the bill—about good governance, efficiency and wide access—are all right, but our perception is that, to some extent, in its drafting the bill has come adrift from the policy intentions. How the bill is drafted raises issues in relation to autonomy. We think that autonomy is important because the flexibility to respond and innovate is central to universities' ability to deliver social, economic and cultural benefits for Scotland and to deliver benefits that are aligned with the aspirations of the Parliament and the Government.

In our evidence we have pointed out areas where the bill needs to be improved at stage 2 if it is not going to open up those risks to our responsible autonomy in future. We have set out in some detail, particularly in relation to sections 2 and 14, ways in which we think that the drafting of the bill can be improved. I do not think that our specific amendments were attached to the papers that were circulated to the committee today. We have suggested detailed amendments, which we have been over with our solicitors and which we think would get the bill back into a shape that would deliver its policy intentions and close down those perceived risks to universities' responsible autonomy and capacity to deliver.

Liz Smith: When we had four university principals in front of the committee a few weeks ago, representing very different higher education institutions, they were clear about the dangers of too much Government involvement in the sector, not least because international trends suggest that those nations that are doing the best in HE are those where Government is a diminished part of the process. Government is by no means taken out of the process, because Government has, and must have, that responsibility. Nonetheless, the university principals all made the point that, as you have rightly said, to enhance their knowledge exchange and research and development, they need that responsible autonomy. Do you agree fundamentally with that?

Alastair Sim: It is absolutely clear in our evidence that responsible autonomy is crucial to universities' ability to deliver for Scotland. I do not think that there is disagreement over that policy. However, it is necessary to get the bill into a shape that is closer to that policy. We are looking for a specific change at stage 2 to get the bill into a condition that delivers the policy intentions and protects universities' responsible autonomy.

Liz Smith: I address my final question to Mr Parker and Ms Senior. Will you give us some detail about the areas in which you feel that the existing governance system in colleges and universities is not working sufficiently well and therefore has a detrimental effect on the educational experience? Where is the evidence that the governing code that we have at the moment is not succeeding in delivering the best possible education?

Mary Senior: The UCU supports responsible autonomy, but we think that the key principles that underpin that are academic freedom, collegiality and the recognition that we are working within a public education system. From our perspective, it
is really important that there is scrutiny of the governance framework that will come in for universities. We are concerned that there is no parliamentary scrutiny of the code of governance that is being developed. The UCU was supportive of the von Prondzynski recommendations, and it is important to us that the code reflects his recommendations.

10:00

You asked for examples relating to the higher education sector in particular. We have had a concern that university courts—the governing bodies—were rubber-stamping bodies that were not effectively scrutinising decisions that were being made in universities. An example is when a union presented a paper on a big change that was happening at the University of Glasgow. That paper was far more detailed than the one that was presented by the university's management on that specific incident. That is a concern. I guess that it was fortunate that the staff member on court was a trade union official who could present the union’s points.

There have been incidents in other universities in which there has been no scrutiny of decisions, including on closures of courses and departments. Obviously, that is detrimental to the student experience and has a profound impact on the staff affected.

Robin Parker: I will start with the university sector. Responsible autonomy is a concept that we support, too. The problem is that, far too often, that autonomy has not been exercised as responsibly as it should have been. For example, more than £4 million is spent each year on university principals' salaries. That spend is out of control in comparison with the rest of the public sector.

Mary Senior has already talked about course changes that have been carried out with little consultation or account of the local and national course provision needs. The lack of transparency in a lot of what is being exercised is a huge problem.

Other crucial examples are the diversity of the people who are on university and college governing bodies and widening access. Although I do not doubt the commitment that exists from the university sector to make progress on widening access, I think that we can all agree that the track record is not what it should be.

If the code of governance, as produced by the chairs, sticks to the recommendations of the von Prondzynski report, and we see that through, that will not only preserve the autonomy of universities but inject the greater responsibility that is needed. My key point is that, with universities in particular, progress needs to be made on governance. It is therefore right that there is a democratic intervention that increases the responsibility while maintaining the autonomy.

Mr Belsey made some strong points about the previous track record of college governance. In particular, I emphasise that, in the past, student associations in colleges have not had the involvement in decision making that they should have had. The bill provides an opportunity to increase oversight and accountability, with student associations and representatives overseeing the decisions that are being made by college boards. Crucially, more needs to be done to protect local access to college courses—often, having that course on the doorstep is fundamental in giving people access to education, whether for the first or second time. That is difficult against a backdrop of cuts. The views of the NUS on the financial situation are well known. However, it is crucial to have sufficient oversight of the decision making that is taking place. That can be achieved only with greater transparency and accountability of decision making.

David Belsey: Can I—

The Convener: Hold on a moment, Mr Belsey—you can come in in a minute. I want to bring in Neil Findlay because we must make some progress. I am sure that you can pick up on any remarks that you want to make while answering his question.

Neil Findlay: What role has your organisation played in developing the code of governance?

David Belsey: I will answer that and pick up on points that were raised in the previous question. The EIS shares the belief that higher education institutions should be autonomous, and shares the aspiration that they should exercise reasonable autonomy. The same is true for FE colleges.

Autonomy must be defined. It is not simply the ability to be flexible; it is the ability to make one’s own decisions. The fact that the regionalisation programme is going through Parliament now shows that the FE sector’s autonomy is not as great as that of the HE sector.

I turn to the point that poor governance can adversely affect the students’ learning experience. Our members in FE and HE are concerned that some governing bodies do not hold their management to account for their policies. A large amount of the casework that I see and do revolves around the university or college management’s almost unfettered use of power. That issue needs to be addressed—von Prondzynski’s report started to address it. We do not see the management and the governors as two separate entities, because some of the universities’ senior managers—for example, principals—are also governors. Under the structures that the bill proposes, principals will
be separated from governors; they will no longer be members of boards of management, although they will have the right to attend and speak at board meetings.

I turn to Neil Findlay’s question. I am sorry, could you ask it again?

Neil Findlay: Yes. That was like the “Mastermind” sketch on “The Two Ronnies”: I asked a question and you answered the previous one.

What role did your organisation play in developing the code of governance.

David Belsey: The two consultants met a group of Scottish Trades Union Congress representatives, including representatives of the EIS, to discuss the code. One of the consultants— I think it was Dr West—met EIS representatives separately about two months later. We have met twice and have presented our evidence, which we followed up by submitting written evidence via the website.

Robin Parker: At every institution, the consultants carrying out the review have met in various formats student representatives. NUS Scotland has met the consultants and has submitted evidence.

We are disappointed that there are not staff and student representatives on the steering group for the review; that is a major oversight. The most important thing, however, is the pudding that comes out at the end, and whether what is proposed puts into practice von Prondzynski’s report and whether the chairs stick to the tasks that they have been set.

As I have said, many issues need to be tackled. Despite the facts that the majority of students are female and that very close to 50 per cent of staff are female, the overwhelming majority of people on the governing bodies of universities and colleges are male. That is clearly something that needs to be tackled.

Mary Senior: I would echo Robin Parker’s concerns. The Cabinet Secretary for Education and Lifelong Learning said in the summer that staff and students would be involved in the process, so we were deeply disappointed that the steering group did not include staff or students. It was only when we made a significant fuss and raised the issue with the cabinet secretary that we got any more detail on what the group was and what it was doing.

The UCU met the two consultants of the group in November and, as Robin Parker said, the consultants then did a tour of all the HEIs in Scotland. Some of our reps had about half an hour with the consultants, but they were often in groups that included other representatives including senate assessors, and there was only a short amount of time. No minutes were taken of those meetings and our reps had real concerns about how meaningful they could be.

The UCU has been concerned that the whole process has been trying to unpick some of the good recommendations from the von Prondzynski review. We believe that that was a detailed and thorough process, so we have been concerned about what the new process on the code is trying to do. That is why we emphasise in our evidence the importance of scrutiny of the governance code, because it is fundamental to making the change. It is vital that we get the governance code right. We asked to meet the steering group and the chair—Lord Kelvin—but did not get to do that.

The Convener: Mr Henderson, do you want to say anything?

John Henderson: The question was largely about the code that is being developed for the higher education sector, but—

The Convener: I asked you because I am going along the panel.

John Henderson: Yes. As I said earlier, self-regulation through a code—albeit that the code is enforced through a condition of grant—is a desirable route for the college sector to take, as well. It seems to me to strike the right balance between what is being called responsible autonomy, and proper accountability to Parliament.

Alastair Sim: I have two comments to make. The first is in response to some people’s portrayal of the relationship between the university governing bodies and senior managers; I speak both in my capacity as a former university senior manager and as someone who works daily with university senior managers.

The university court is taken extraordinarily seriously and it is an extraordinarily testing experience to bring proposals before a court: you can expect rigorous examination and that your evidence and reasoning will be tested pretty severely. I am afraid that I do not really recognise, from my experience or that of my members, others’ portrayal of the relationship between senior management and university governing bodies.

Secondly, on the specifics of how the code is being developed, Universities Scotland is rather to one side, because the steering group that has been established by the committee of Scottish chairs is taking it forward. However, I know from what is happening in member institutions that an extraordinarily intensive process of discussion is going on at every institution. Those discussions are involving staff representatives, student representatives and lay members of the governing
body, and are getting various views that take account of the experience of people on the ground of how governing bodies are working and how the code can further embed transparency, involvement and accountability in university governance. From what I see from my position to one side of the work, it looks as though there is pretty thorough footfall on the ground to find out what people are thinking and to pick up ideas about how we can make university governance even stronger.

Neil Findlay: This is just a comment, but it seems to me to be extraordinary that a steering group has been set up that includes no student or staff representatives.

Colin Beattie (Midlothian North and Musselburgh) (SNP): EIS states in its written evidence:

“The EIS welcomes the provisions that college principals will not be automatic ex-officio members of their college boards—believing that the right to attend and address board meetings are appropriate.”

From other evidence I note that there seems to be no consensus on that. Some are content with how the bill is set out, others have no opinion, and one or two believe that college principals should have the right to be board members. I am interested to know what the panel thinks.

David Belsey: It is the considered view of the EIS executive that principals should not be members of their boards, whether regional board or a regional college board.

10:15

There is a belief that principals have had and have exercised excessive power in some cases and that a clearer division between governors and managers would therefore be a good thing. However, the EIS also recognises that principals need to be at the top table and that they need to express their views—as the lead academic or teaching professional—to the governing body, because their views are important. However, the principals should not be the sole voice of the profession on the governing body.

Robin Parker: I am not too fussed either way about principals. The principal is the one member of management about whom there is a case to be made for their being part of the governing body. It is unacceptable that in several universities there are three or four members of management—principals and vice principals—who are ex officio part of the governing body, and there is no doubt that that needs to be changed. One of von Prondzynski’s recommendations is that the principal should be the only member of management who is part of the governing body.

Similarly, often in university courts people who are not even members of the court dominate discussions. There needs to be a shift in the role that executive officers have in court settings.

If we continue down the path of college regionalisation, one of the key things that the bill should seek to achieve is a gender balance in colleges. The bill is the only window of opportunity in which to do that.

Colin Beattie: Is your position that you do not have a strong feeling about principals?

Robin Parker: Yes.

Mary Senior: UCU’s membership is primarily in higher education, so we have not commented on college principals and governance. However, I agree with Robin Parker’s points about university governance and the importance of von Prondzynski’s recommendations about trade union and student representation on boards, and I agree with the important recommendations about addressing the gender imbalance in governance and looking for individuals from a broad spectrum of society to serve on governing bodies. We have found that most members of governing bodies come from a private sector business background, which clearly needs to be addressed so that governing bodies are more reflective of society in general.

John Henderson: The bill seems to be a bit confused on this issue. We had the Griggs review, which—without any evidence, it seems—suggested that principals should not be members of governing bodies. Now we have the bill, which says, “Oh well, we’re not really sure. We’re going to leave this up to the regional college boards and the assigned colleges.” A situation will develop in which some colleges—probably the majority—will have principals as members of their governing bodies, and others will not. It does not seem very consistent.

It is desirable to have staff and student representatives on college governing bodies. Surely the college’s academic leadership should be represented on the board through the principal. In the same way, it seems that it would benefit universities to have principals on their courts. That seems to be an issue of principle and good practice.

The Convener: Do you have views on that, Alastair?

Alastair Sim: I do not have particular views on college governance. I just want to say that there should be robust student and staff membership on university governing bodies universally.

The Convener: Thank you.
We have a lot to cover, so I want to move on to the widening access part of the bill.

George Adam (Paisley) (SNP): Good morning. One of the more exciting things about the bill is that it deals with widening access for students. From some of the evidence that we have had, there appears almost to be a two-tier approach among universities; the University of the West of Scotland is doing well with getting students from different backgrounds, but in others only about 3.3 per cent of students come from lower socioeconomic backgrounds.

In a previous evidence session, a lot of principals said, “There’s nothing to see here—we would have eventually got there on our own.” However, directly after that, student representatives said that if the task was left to universities, it would probably take about 40 years. There seems to be debate about the issue in the sector. What are your views? What is the best way forward? Is it legislation?

Robin Parker: Legislation is important, because the outcome-agreement process that is taking place needs legislative underpinning. Something is needed to make it clear that widening access is every university’s responsibility—it is fundamental to what universities are about. Admission of the people who have the most potential to succeed is fundamental to the purpose of universities, so asking them to do that through core funding is no problem at all.

The legislation must happen. It is good that the process that is being set out will leave to the institution the exact way of enacting it. Every institution is being told that it needs to step up to the plate and do more for Scotland on this, but how they do that and the initiatives that they use will be up to them. We will support work by Universities Scotland to look at the evidence for that. There are examples of good practice on widening access; they just need to be stepped up and done on a wider scale. Every university needs to do more.

David Belsey: EIS supports legislation. It must be recognised that universities have done a lot of good work to widen access, especially in recent years. However, some universities have moved faster than others.

There is a question about how far universities would have moved if they had thought that legislation would never be a possibility. College articulation hubs are an effective means of widening access, but they are not agreed with all universities.

The balance in the bill is correct; it will allow widening access agreements to be part of outcome agreements, which will give universities the flexibility to deliver their own models for widening access. The bill will not force the use of a one-size-fits-all model. Unfortunately, however, if universities were left to themselves, the means of delivering wider access would not be applied consistently.

Mary Senior: UCU supports the bill’s widening access requirements and how the process will work through outcome agreements. It is important to consult staff and students in the development of outcome agreements, which would include consultation on the widening access process.

We recognise that there has, because of how outcome agreements have been developed in universities to date, been little time for consultation. We hope that, if the bill contains a requirement to consult staff and trade unions, that will help with the development of outcome agreements as we move forward. There has been little consultation of trade unions, because outcome agreements have been rushed in.

John Henderson: I will pick up on David Belsey’s point. Articulation between colleges and universities is patchy; it is excellent in some parts of the country—for example, north-east Scotland—but is less developed in others. It is important for college students and taxpayers that we do not add an extra year for students because that costs us and the individuals.

Smoothing of the articulation between college and university courses is important. The bill’s helping with that would be desirable. Funding, through a new arrangement that the funding council has introduced, is another way of encouraging that development.

Alastair Sim: I will comment at a statistical level first of all. As David Belsey said, significant progress is being made. Over the past six years, there has been a 17 per cent increase in university students coming from the most deprived areas. Similarly, there has been a 26 per cent increase over that period in the number of people articulating from college to university and an improvement of nearly 38 per cent in those articulating with advanced standing. Progress is being made across the board.

In our written evidence, we clearly state that university principals are committed to university being

“equally open to any learner with the appropriate academic potential to benefit, regardless of their social or economic circumstances”

and to

“delivering progress in”

improving the university sector’s

“record on widening access and retention.”
There is a clear commitment to keep driving that forward, which will always be a work in progress.

Mary Senior mentioned outcome agreements—the first round of which have shown significant progress in widening access. It was not an ideal process; the funding council did not make the rules of the game clear at an early stage, so universities did not understand whether they would be penalised for setting stretching ambitions.

The second round will show even further progress, especially because 1,000 funded places are being assigned to improve articulation and 700 to improve widening access more generally. In that round, universities were overbidding; they wanted to do more. If the funding council had been able to fund them, there would have been yet more places to enable access to be widened. One particularly encouraging aspect was the extent to which the research-intensive universities took the opportunity and overbid for more places so that they could extend their activity on widening access.

There has been a lot of progress, but widening access will always be a work in progress. Until the more general social problems that limit people’s attainment and aspiration from the early years onwards are resolved, we will not realise everybody’s full potential. However, we are certainly committed to widening access and have expressed that in our written submission.

On the bill, we recognise that the Scottish Government has made a manifesto commitment to legislate on widening access. We simply seek a technical amendment that recognises that widening access agreements should not be pronounced by the funding council for universities but should be genuinely negotiated agreements.

George Adam: On that note, the problem with negotiating and trying to sort out widening access agreements with individual universities is that there is a massive gulf between certain universities—I do not like to mention the ones that always get mentioned—and others that seem to be retaining students, such as the UWS in Paisley. How would you manage that without legislation from the centre?

Alastair Sim: Even at the moment, the funding council has wide powers to impose conditions of grant on universities. When I say “negotiation”, I do not mean something that lacks a hard edge. The amendment that we propose to the bill would not take the hard edge away.

We are pointing out that each university has its own strategy and mission, and has experience of what works for it in widening access—although that experience will be improved by the work that we are doing jointly with the NUS. The initiative should come from the institution, which should say how it can go further on widening access and retention. However, the negotiation should be hard edged and the funding council must consider whether the institution’s proposals represent attainable progress.

Robin Parker: The most worrying divide for me at the moment is not between the universities that have poor track records and those that have good ones, but is between those that have responded positively and constructively to the agenda and those that have responded defensively and taken the “Oh, go on then—we’ll do it if we have to” approach. We need the right financial and legislative incentives to ensure that all institutions respond positively and constructively to the agenda.

Crucial to underpinning that agenda is frequent reporting—for example an annual review of widening access progress to ensure that we are on track to get to greater fair access in less than 40 years. A year ago, it would have taken 40 years if things had carried on at the current rate. I hope that the fact that some universities responded constructively means that we are now on target for something better than that. We need collectively as a nation—with Parliament providing that oversight—to ensure that we are on track for quicker fair access.

10:30

The Convener: In its written evidence, UCU raised a specific issue, saying that "there may be a need for a statutory duty to protect institutions and in particular admissions staff from libellous claims".

Can you expand on why UCU said that?

Mary Senior: We emphasise the need for greater contextualisation in admissions and we are mindful that such an issue may create difficulties for people who feel that they are not getting into university for a specific reason.

Having looked at the evidence that the committee has considered previously, I know that the issue of displacement has been discussed. I was interested in the witnesses’ response to that—that this is about the greater good; it is about widening access and ensuring that everybody who is able to participate in universities is able to access them.

We made that point to ensure that the university is not threatened by such libellous claims.

Liz Smith: On the UHI scenario, in the Colleges Scotland submission there was a concern about how that regional body would operate—at least on a funding basis—because it is a very different structure. Can you explain that concern in detail?
John Henderson: The issue with UHI is the relationship between the centre and the constituent parts. The legislation will give a lot of authority to the university regarding the provision of FE. I understand that it is not possible to enshrine the idea of having an FE committee in the legislation. I also understand that the university proposes to have an FE committee, with the chairs of all the colleges serving on that committee. However, that will be left to agreement, so there are some risks around that process—we need to ensure that the centre will not suck away too much autonomy from the local colleges. That is where the worry lies with regard to UHI.

UHI is a tremendous institution; having that combination is a tremendous development in Scotland. We were talking earlier about the articulation between college and university. In the UHI model, it is possible to start at a non-advanced level and go right through to the PhD level and to do so in a much smoother way, perhaps, than in other parts of the country. There are great advantages to UHI but we have to be careful as we develop UHI that the individual colleges do not feel that their autonomy is being pulled into Inverness, because we all know that Dunoon and Lerwick are a long way from Inverness and the world looks different there.

Liz Smith: As I understand it, the university court is, in effect, the regional body in the UHI set-up. Does that present any concerns about the accountability of the funding process? Does that tie in with what you are saying about the colleges within UHI—that you feel slightly aggrieved that they might be on a university funding principle rather than being treated as colleges?

John Henderson: No; it is about the number of lines of accountability that will be in UHI. The funding council will give the money to UHI. UHI, by agreement, will delegate FE funding to the FE committee and then the FE committee will decide how it goes to the constituent colleges. The lines of accountability become much longer in that arrangement and there are risks involved.

Liz Smith: As you rightly point out with regard to the colleges within UHI, UHI as it stands is now a very different entity. How do you see the process of the negotiated settlements—if that is how we should describe them—taking place with a university court? Do you feel comfortable with the process that is set out in the bill?

John Henderson: Given that we already have UHI and the court, it is very difficult to see how we can have any other arrangement. The operation of all this will have to rely on the voluntary agreements between the colleges and the court and, critically, will depend on the extent to which the court truly delegates to the FE committee the authority for making FE funding decisions.

Liz Smith: Do you accept concerns that were expressed to us by colleges within UHI that some of their local delivery, which is perhaps even more crucial to UHI than to any other area, might be lost or diminished?

John Henderson: It is bound to be a risk. The real risk might well lie in the sensitivity of the machinery at the centre to decision making and perhaps taking decisions away from the local level.

The Convener: Is there a risk of a conflict of interest in the proposed set-up for UHI, particularly with regard to governance? Obviously further and higher education have different governance arrangements but, in this case, that will all be overseen by one body.

John Henderson: I do not think so. The arrangements for determining what happens on the higher education side of UHI are working reasonably well. However, FE provision needs to be delivered much more locally and have a certain amount of diversity, and what would be a bigger risk for somewhere like UHI would be if the curriculum were to be rationalised and local provision then diminished because it was not economic. After all, people cannot reasonably be expected to travel in the same way that they might travel in urban areas.

Joan McAlpine: Mr Parker and Ms Senior have been quoted in this morning’s Herald as taking issue with the suggestion by the committee of chairs that legislation is not needed to introduce a cap on tuition fees for students from the rest of the UK. I was interested in the language that was used; for example, Ms Senior said:

"The custodians of our world-class universities only seem to be interested in turning a profit"

while Mr Parker suggested that the written evidence from the committee making this point

"highlights how out of touch the people involved in university governance are with the students they are supposed to serve".

Given the strength of that language, I wonder whether both witnesses could put on record why they feel so strongly about the issue and whether we could have a response from the universities to their comments.

Mary Senior: We feel very strongly about the introduction of a market into Scottish higher education. In many ways, however, we have missed the boat, given the number of students from the rest of the UK who are already paying variable fees to study in Scotland. We are opposed in principle to tuition fees but, given the situation that we are facing in Scotland, we felt that the least worst option would have been a flat rate fee for the rest-of-UK students that could have
been agreed collectively and collaboratively within the sector. If that had happened, there would not have been this kind of market or competition and rest-of-UK students would not have been seen as the cash cow that they might be seen as now. That is why we were very concerned to learn that the chairs of court did not wish the fee to be capped.

Robin Parker: One of the benefits of devolution is the healthy competition that it has created between parliamentarians of all parties in Holyrood and in Westminster to do things better in Scotland, but this is one area—albeit quite small—in which the proposed legislation goes beyond even the worst excesses of what the Westminster Government has proposed.

The proposed cap on tuition fees for a degree will be even higher than it is for rest-of-UK students who decide to stay in the rest of the UK; I also note that the legislation proposes no regulation whatever for bursaries, which is something that even the Westminster Government has recognised is important in mitigating the damage that the fee system can do and indeed is already doing. As a result, the bill needs to move back in the direction of greater regulation of and control over something that is—it would be true to say—ultimately Westminster’s fault. We have seen the creation of a market, and a market needs regulation; that means lowering the fee cap and having more rules for and conditions on the amount of bursaries that are provided.

Alastair Sim: On the fee cap, since June 2011 a voluntary agreement has been in place between universities and the Scottish Government that universities here will not charge rest-of-UK fees that are higher than the maximum that is allowed elsewhere in the UK. That voluntary agreement was renewed in January at a meeting of university principals. That remains the policy until the bill comes into force.

The coverage in The Herald contains a pretty severe misinterpretation of what the chairs of court said in their submission. They were talking about means, not ends, and they do not see a need for the fee cap to be enshrined in legislation, but I do not think that anybody is arguing that universities should be charging fees that are ahead of the maximum elsewhere in the UK. That would not make sense, not least with regard to how universities can compete in a market.

The Convener: Regarding the misinterpretation, as you have described it, I heard reports this morning that chairs were calling for universities to have the freedom to decide how high or low their fees should be. It did not sound as though they wanted to determine how high or low their fees should be underneath the level of the cap—which is a voluntary cap at the moment. I was listening to the radio, not reading The Herald.

Alastair Sim: As quoted in The Herald, the chairs stated in their submission:

“It is inconceivable that any governing body should set its fees at such a level that students would be discouraged from applying.”

The Convener: What is the problem, then, with setting the fee cap?

Alastair Sim: I am interpreting it—you will have to ask the chairs about it later—

The Convener: I am sure we will.

Alastair Sim: I am interpreting it as a manifestation of the current policy, whereby universities are not looking to charge a fee that is greater than what is charged in the rest of the UK. By our calculations, the average Scottish fee is about £6,900, which is spectacularly below the average English fee. That is how principals and governing bodies have used their discretion. We are working closely with the NUS to compare data on rest-of-UK fees and to consider what is being done on bursaries. It is already being shown that means-tested bursaries here are well ahead of those that are being provided in the rest of the UK. The idea that there is some sort of profiteering going on here is bizarre. Funded places were taken out of the system by the Scottish Further and Higher Education Funding Council for rest-of-UK students, using the peak year of 2009-10, when the rest-of-UK population was particularly high. It has proved to be really hard work for universities to recruit RUK students to a level that makes up for the lost income.

Joan McAlpine: I return to what Robin Parker and Mary Senior have said. The written evidence from UCU points out that the changes in Westminster legislation are “out of kilter” with Europe, that the “English fees are the highest in Europe” and that our Scandinavian neighbours do not charge fees at all, so Scotland is much more in line with the rest of Europe. Can you clarify the point that you seemed to be making earlier, that the present dilemma has come about because of changes in England and because Westminster is out of kilter? Do you acknowledge that the Scottish Government exists off a block grant from Westminster, which does not cover the fees of English students studying at Scottish universities?

Mary Senior: Yes—I am happy to say that UCU opposes the Westminster system. However, there was a choice in Scotland. We very much welcome the fact that Scottish-domiciled students do not pay tuition fees, but we remain concerned that a market has been introduced for rest-of-UK students. We believe that there was an alternative
Robin Parker: But in England that is overseen by the Office for Fair Access, for which we have no equivalent in Scotland. That point needs to be addressed, too.

Neil Findlay: On Joan McAlpine’s point, I doubt whether the block grant covers the costs of students from France, Germany, Portugal, Spain or wherever, but we appear to accommodate them within our current budget.

The Convener: I more than suspect that that might be because of European Union legislation, but we are bound by that as we stand.

Clare Adamson (Central Scotland) (SNP): Good morning. I want to cover some issues surrounding data sharing. The policy memorandum indicated that the database would primarily be about students at risk of dropping out of the system. However, evidence that we have received from Skills Development Scotland seems to indicate that it has moved towards a full database of information about Scottish students and providing a service from secondary 3 onwards. Where do you think we are on data sharing? What are the implications, if any, for staff training and resources for institutions? Are you clear about how the database will help with intervention for students at risk?

John Henderson: Perhaps I can answer that one. Anything that we can do to help address the severe problem of young people dropping out of the system and not accessing education and training is desirable. Colleges do not have a problem about sharing data with SDS or others if the system is designed to achieve that goal. However, once we start designing data systems the problem is that they often grow arms and legs and become a bit more complex than was perhaps envisaged.

The risk with the proposals on data sharing is that we will end up with a system that will probably be more complicated and expensive than we had envisaged. That is not necessarily a reason not to do it, but it is a good reason to assess the costs and the risks a wee bit more than we have done. Some people expect that it will all be very straightforward and easy. The history of IT systems in the public sector suggests that these things are seldom as easy as they seem.

Robin Parker: I see some potential benefits in effective data sharing if it happens. The first round would be to provide a single application system for colleges that would enable us to identify prospective students and help them to get on to the right college course. It would give us stronger evidence about the number of college places that we need. There is the opportunity to increase the
number of college places given the economic and unemployment situations.

Something could also be done to help the widening access agenda by identifying high-performing school pupils, particularly in the type of school that does not send many people to university. That information could be shared with universities so that they could do more to support those people in applying to university, which would certainly help with widening access.

David Belsey: The EIS supports the principle but, as John Henderson said on behalf of Colleges Scotland, we do not know where the reality will take us and we worry that staff might require to fill in more forms and there will be more bureaucracy but limited benefits to their teaching.

Clare Adamson: There is a bit of concern about where the universities sit with data sharing. We have talked a bit about articulation hubs and so on. Will universities share in the data-sharing model?

Alastair Sim: From the conversations that we have had with the Scottish Government, we understand that it will be able to recover the necessary data about university level students from the Student Awards Agency for Scotland and the Higher Education Statistics Agency. We are all in favour of transparency of data and we do not believe that the imposition of new burdens on universities will be necessary to achieve it.

The Convener: The policy memorandum that accompanies the bill has a vision of the database looking at relevant young people who are “at risk of disengaging from learning or training”. How can a database identify those who are at risk of disengaging from learning or training?

Perhaps I should ask SDS that question, as it seems that you are as clear as I am on that point. Do members have any other questions?

Clare Adamson: The Colleges Scotland evidence contains concerns about the financial implication for colleges adapting their own IT systems.

John Henderson: There is a risk that the costs have been underestimated because the new system will be more complex to introduce than was envisaged.

The Convener: I thank the panel for coming along. The evidence has been very helpful to our consideration of the bill.

I suspend the meeting briefly to allow a change of witnesses.

Meeting suspended.

10:59

On resuming—

The Convener: I welcome members back to take evidence from the second panel, and welcome to the committee the witnesses on that panel, who will focus solely on the information-sharing provisions in section 15 of the bill. Marlene McGlynn is head of operations west and Alison More is head of strategy, policy and research, both at Skills Development Scotland. Good morning to you.

I think that Alison More wants to make some opening remarks.

Alison More (Skills Development Scotland): Yes. Good morning, and thank you very much for inviting us to discuss section 15 of the bill with the committee.

We thought that it would be useful at the outset if we gave a brief summary of our role in policy delivery, the purpose and principal benefits of the hub, and the progress to date in developing it.

As we indicated in our written submission, SDS plays a key role in contributing to the delivery of the Scottish Government’s economic and skills strategy. That includes supporting the delivery of a number of related policies, including the 16+ learning choices model and, more recently, the opportunities for all commitment. As members will be aware, both are aimed at ensuring that every young person is supported into a positive opportunity.

Although the OFA commitment applies to all young people, the focus is on those who are at greatest risk of not progressing to a positive destination when they leave school or of disengaging from a positive opportunity at some later point. In contributing to policy delivery in this area, we work in partnership with a range of bodies, including schools and colleges, to support all young people into a positive education, training or employment opportunity.

11:00

I turn to the purpose of the data hub. As individual young people engage with different partners at different points in time, no single partner has a complete, up-to-date picture of their current activity or status. That is the primary reason for having data-sharing systems in place—they allow us to share intelligence and to ensure that no one slips through the net, which is what happened before the implementation of the 16+ learning choices model in 2010. That underlined the need for collaboration and for robust systems and shared processes to track and monitor individuals to ensure that they got the right support.
at the right time to make a positive transition from learning to work. It was at that time that the Scottish Government tasked SDS with developing the data hub as the central mechanism for sharing such information.

To pick up on some points that have already been made in the course of the committee’s deliberation on the bill, it is important to recognise that the hub is a solution to the fact that partners have a variety of client management information technology systems, as you would expect. It provides a central point to enable us, together with partners, to bring together the core information on each individual. Therefore, the hub is an important tool in sharing and co-ordinating knowledge of young people’s participation and in ensuring that continuous support is available, particularly at points of transition, such as when young people leave school or college, when gaps in collective partner knowledge are most likely to arise. At those points, through shared information, SDS can identify individuals who have dropped out of positive activity and work with partners to ensure that appropriate follow-up action is taken. In that way, the hub facilitates early intervention to support a young person back into work, training or education.

As we see it, the key benefits of the data hub are that it helps to remove gaps in knowledge about what young people are doing and provides a more complete and up-to-date data set, which supports more effective delivery and, ultimately, a better service for young people. Overall, it means that more young people are supported into positive destinations, and it provides more accurate information on young people’s choices and transitions to support further development of policy.

We believe that the bill’s provisions are extremely important in supporting that process. Section 15 will increase the priority that is attached to the data-sharing process by moving it from its current voluntary basis to a statutory basis, which we believe can only make the shared information more accurate and more robust.

As far as progress is concerned, the position is that, in addition to gathering our own information on engagements with young people, the hub currently receives information from local authorities, colleges, the Department for Work and Pensions and the Student Awards Agency for Scotland. Within SDS, we are finalising work that will enable all that information to be combined with our client management system to produce up-to-date records that will enable us to share a combined set of information with relevant partners.

In summary, we believe that the hub is an essential tool in supporting young people’s transitions, as has been demonstrated by some highly positive experience of joint working with our partners. Therefore, we are fully supportive of the terms of the bill, as it can only strengthen the basis for data sharing and maximise the chances of young people progressing into positive opportunities.

I hope that that was a helpful overview. We are happy and ready to respond to questions.

The Convener: Thank you. You may have heard the question that I asked the previous panel towards the end of the discussion, and I will ask you the same question. The policy memorandum states that the data hub will identify young people “at risk of ... disengaging with ... learning or training.”

How will it do that?

Marlene McGlynn (Skills Development Scotland): Because it gives us the information that someone has dropped out of college—

The Convener: I heard you talk in your opening statement about somebody dropping out, but somebody who drops out is not at risk of disengaging; they have already disengaged—past tense. The policy memorandum talks about young people “at risk of ... disengaging with ... learning or training.”

How does the data hub identify those at risk of disengaging?

Marlene McGlynn: It identifies those at risk because we have lots of information on them. We get that information from all the partners, which means that we can identify young people who might have a lot of barriers that might have prevented them from continuously engaging in education. They might have had interrupted learning in school, so we would know that they might do that in college as well. Our work coaches can then support them. They can follow their progress when they go to college and have regular contact with them to ensure that there are no issues.

If a young person comes on to our list having dropped out of college, it does not mean that we cannot quickly get them back in if we can put the right support in place. Previously it might have been months before we knew that a young person had dropped out. Now we know it on a monthly basis. We can find out why they dropped out and whether it is possible for them to re-engage. That was not possible before but it is much more possible now.

The Convener: I have no problem with that. The speed of delivery of the information about somebody who has dropped out, and your attempts to support and re-engage them in education and training, are an obvious step forward. That is tremendous. However, I am
Marlene McGlynn: The data hub will hold a history of a young person's destinations. If a young person leaves school, goes to a training provider, drops out of that, goes on a college course and drops out of that, we start to see a pattern and that, clearly, there are issues that are preventing that young person from continuing in any education or training opportunity. We would have that information and, if that young person comes into SDS, we would want to find out what was causing that pattern. Do they feel that they cannot cope when they are in education or training? Is the issue their motivation or confidence, or is it issues in other places, for example because they have caring responsibilities or an interrupted housing situation? We would find out what the barriers were and how to remove them. Whereas at the moment we would all be sitting with our own information and bits of the jigsaw, hopefully the hub will give us all the pieces of the jigsaw.

Alison More: All of the partners have their own client management systems. Within those systems, many of them hold a field that tells them something about the individual that might indicate that they have particular needs or that they will be at risk. That information is held in the constituent systems.

One variable that we hold on the hub is a flag indicating that a particular individual has some issues that might put them at risk. For data protection reasons, there is no detailed information, but the issues can be followed up in a face-to-face discussion between partners. The hub is a source of information as part of a wider engagement between partners.

The Convener: I am keen to bring in other members, but I am still struggling slightly with this. I will ask two quick questions before I bring in Clare Adamson to move us on. First, how many young people will be on the database? What size will it be?

Marlene McGlynn: About 60,000 young people will come on to the database each year, so if we look at the numbers over a 10-year period, about 600,000 young people will be on the database.

The figures reflect the number of young people who leave school in Scotland each year.

The Convener: That is a massive database. It seems to me that it is a big piece of work. How many staff does SDS have, first to monitor and support the database and secondly to identify, monitor and support the young people?

Marlene McGlynn: First, on your concern about the numbers of young people, many of them go into positive destinations each year. If, after a period of time, they are not coming back to us for support, their records might well be archived. It will be possible to bring a record back immediately if a young person comes back in, but that approach will allow us to focus on the young people out of the 600,000 who are not in an opportunity at any given time. That would be the—

The Convener: Let me rephrase the question. How many active records will you be looking at?

Marlene McGlynn: Each year, about 7,000 young people leave school without an opportunity. Obviously, there is churn within the numbers. The 7,000 who leave on a particular date without an opportunity—

The Convener: Sorry. Maybe this is me but you said a moment ago that 60,000 young people a year come on to the system and now you have said that there are 7,000.

Marlene McGlynn: There are 7,000 who do not have an opportunity when they leave school.

The Convener: Is 60,000 the number of active records, or is it just 7,000?

Marlene McGlynn: The 7,000 figure is the number of records of young people who are actively working with us. The 60,000 figure is the number of young people who left school that year. Some 28 per cent of them will go to university, many will go into FE and so on. Those young people are already in an opportunity. The 7,000 will be those who are actively seeking an opportunity.

The Convener: Okay. I call Clare Adamson.

Clare Adamson: I seek a couple of quick clarifications. Does that mean that the database is a record of every pupil in Scotland?

Marlene McGlynn: Yes.

Clare Adamson: We had a wee discussion earlier about the hub growing arms and legs. I do not know whether you were here when Robin Parker was speaking, but I take it that the hub is not designed to be an application point for college courses. It will not be a portal for applications, like the Universities and Colleges Admissions Service system.
Marlene McGlynn: It will not, but it might well give colleges information on, for example, multiple applications. At present, young people rightly apply for the same course at more than one college. They might get an offer from both and turn one down.

Clare Adamson: You said that the information is coming from a whole load of different databases. It will be important for the hub to be able to identify a person that exists in several databases of the partners. How are you uniquely—

Marlene McGlynn: Previously, if John Smith did not start a course at a college, the college did not really know the reason why. Now, with the information that it will get, it will be able to see the reason, which could be that John Smith has started a course at another college.

Clare Adamson: How do you uniquely identify that person across different databases?

Alison More: There is not a single unique identifier. We use a combination of name, address, date of birth and Scottish candidate number to perform the matching process.

Clare Adamson: You said that there is at-risk information, and some students who come from the care system, for instance, could well have multiple addresses in different systems. How will you track down pupils and students who have had multiple changes in their lives, in their addresses and things?

Marlene McGlynn: Hopefully by giving them continuous support, knowing where they go and liaising with our colleagues in social work departments, for example, who also share with us—not through the data hub but on an annual basis—information on looked-after and accommodated young people. All young people who are looked after and accommodated will have coaching support from us on leaving school. We try our very best to continue to track them, and in most cases we are able to do that.

11:15

Clare Adamson: At the moment, if someone drops out of a college course, the college will know that that has happened and, hopefully, they will have mechanisms to try to identify what has happened to that young person. Are you saying that this will allow Skills Development Scotland to identify and flag up people who are at risk of dropping out of whatever positive destination they are in? Does that mean that Skills Development Scotland is taking on the responsibility for looking at retention in colleges? Is that an extension of what you do at the moment?

Marlene McGlynn: We are not looking to take on that responsibility; we are looking to support the individual. If that provides extra support for the colleges, that is fine, but what we are looking to do is to keep young people in positive opportunities and to ensure that those opportunities are the right ones for them. Our focus is really on the individual.

Neil Findlay: How does the system work at the moment? How do you record information at the moment?

Marlene McGlynn: In the data hub?

Neil Findlay: Let us take, for example, the work that SDS does with schools.

Alison More: We have our own client management system, as all the other partners do. We have a wide range of information on our clients in our own client management system. The hub is collecting only a subset of information from partners and pulling it together.

Neil Findlay: Maybe I am not being very clear. Let us say that an SDS adviser goes into a school, gives a presentation to a year group on the skills management framework. Is that what it is called?

Marlene McGlynn: It is career management skills.

Neil Findlay: Okay. The adviser gives a presentation to a year assembly and gives an introduction to the my world of work service. Is that what happens regularly?

Marlene McGlynn: No.

Neil Findlay: Do they give presentations to a class?

Marlene McGlynn: Yes.

Neil Findlay: Okay. Let us say it is to a class.

Marlene McGlynn: I will take you through the process. It would be a presentation to a class of 20 to 30 young people, because it is an interactive workshop, not just a talk. Career management skills is about introducing them to how to become a good career planner. The follow-on workshop that they get is about how my world of work is an environment where there are tools to help them to become an effective career planner. We would record that in their records.

Neil Findlay: So how long are those sessions?

Marlene McGlynn: Forty minutes to an hour for each of them, so together they take up to two hours.

Neil Findlay: Right, so for each pupil you would go to your database or the school’s database and tick two boxes on their record to say that they have had that and that.
Marlene McGlynn: Yes, it would be our database.

Neil Findlay: Right, so some box would be checked.

Marlene McGlynn: We call it an intervention for the purpose of our records. We would record the fact that we had seen that young person in a group session and what the intervention was.

Neil Findlay: Okay.

Let us say that an individual has left school and gets a job. How is that recorded?

Marlene McGlynn: It is recorded during the school leaver destination return.

Neil Findlay: But what if there is a gap and they get the job six months or a year after they left school?

Marlene McGlynn: That would still be recorded in the school leaver destination return. We contact all young people in Scotland each year in the year of their leaving. Whether they left in the winter or the summer they are all contacted to see where they are.

Neil Findlay: Presumably you do not get a 100 per cent return from that.

Marlene McGlynn: We get pretty near to it—we get a return in the high 90s.

Neil Findlay: Let us say that someone is at college and then they get a job. How is that followed up? Is the same type of survey done?

Marlene McGlynn: We do a six-month follow-up. We do the first survey in October of each year and we follow it up in March. Obviously, we need to find out whether a young person had a first opportunity that did not last that left them unemployed, for example, so we follow up the first survey in March.

Neil Findlay: What about the case load of an adviser at Skills Development Scotland? I sometimes cannot follow what their latest title is—I think that they are coaches these days. Whatever their job title is, what kind of case load do they have?

Marlene McGlynn: That depends on their job role. In school, they would be dealing with the young people in a school. We now have the work coach role for staff working with people with more intensive needs who need a lot more one-to-one support over a period of time. Over a year, their case load would be a maximum of 30 people and it would change over the year, as some people come on and some come off. We expect to provide an average of six months’ support for those young people.

Neil Findlay: I might well come back to that issue.

You mentioned the interface between the DWP, the Student Awards Agency for Scotland and the 32 local authorities. I understand that some of that work has been done, but the financial memorandum suggests that it will cost £52,000 to make all this happen. I do not know what sort of information technology project you can get for that kind of money; an information technology consultant would certainly not get out of bed for that these days. Have the huge majority of the interfaces and the other technical stuff needed to make all this work been done and what has the cost been to date?

Alison More: We do not have the detail of the development costs to hand—

Neil Findlay: Can you provide that to the committee?

Alison More: Yes. I should also point out that the figure in the financial memorandum is for the work required to enable partner systems to export the agreed shared data into the hub in a format that can be read, and we believe that the amount is adequate. Many partner client management systems can already create the subset of information in a format that can be read into the hub, but the £52,000 will resolve certain technical issues such as ensuring that the file format is correct.

Neil Findlay: It sounds like a bargain.

Liz Smith: In taking evidence on other issues, the committee has been asked to ensure that proposed changes to data processing are consistent with other legislation in this area, particularly on data protection. Are you able to assure us that the matter has been investigated and that section 15 is totally consistent with other legislation?

Alison More: We have very clear policies and procedures for handling data in compliance with the Data Protection Act 1998 and the physical data in the hub is held in an accredited data centre that complies with all the relevant quality standards and which is subject to regular audit.

Liz Smith: So there are no concerns about this legislation being inconsistent with any other legislation.

Alison More: I am not aware of any.

Joan McAlpine: Let me take you back 10 minutes to when you were responding to Mr Findlay’s questions. I was struck by your point about the difficulties in ascertaining data with regard to young people who had applied to several different college courses. Given that it sounds like there is no system in place to accurately reflect the
situation of young people who might be waiting for college courses, what might that mean for some of the figures that we have heard about so-called college waiting lists? It sounds, for example, as if there is a lot of duplication at the moment. Can you confirm whether that is the case and tell us whether in future the system will improve and give us more accurate figures?

Alison More: The data hub system collects only information on college enrolments and withdrawals; it does not hold information on waiting lists.

Marlene McGlynn: And will not do so in the future. That kind of information would require colleges to have a common application process.

Joan McAlpine: So there really is no way of saying whether or not there are college waiting lists or of accurately totting all of this up, is there?

Alison More: That is not the hub’s purpose.

Neil Bibby: As you have said and as we heard in the previous evidence session, SAAS provides information on young people going to university. Is it the most appropriate agency for sharing that information, or should that be the responsibility of universities? What is the reasoning behind that in the first place?

Alison More: I think that it has been recognised that that is the least burdensome way for the data on enrolments and withdrawals to be provided. If SAAS already holds the data, it makes more sense to get it directly from it than to go to each individual institution.

Neil Bibby: If one of the objectives is to identify people who are at risk of dropping out or disengaging, would it not be better to get the information from the universities as opposed to SAAS? That is why I asked the question. For example, would SAAS say who the young person’s adviser of studies is?

Alison More: No. Currently, the data from SAAS is only on withdrawals. There are plans to capture information on enrolments later in the year.

Neil Bibby: Would it be helpful if Skills Development Scotland knew who the adviser of studies of the young person who went to university was, as advisers of studies often speak to students to see whether there are any problems?

Marlene McGlynn: Careers guidance in the universities is offered by a careers guidance service, which would follow up on any young people who dropped out. We would come into contact with them if they came into our centres looking for support, but in their first two years of leaving university, they are generally served by the university careers guidance service. That is not to say that we do not give them support. If a student has gone elsewhere for their university course and returned home having come out of it, they would tend to come to us rather than go to the university. However, the universities have very good follow-up services for anyone who has dropped out.

Neil Bibby: I want to follow up on what Neil Findlay asked about earlier. On the case load and there being around 30 cases for each careers adviser, how many careers advisers do you have, or how many will you have?

Marlene McGlynn: I was not talking about the case load for careers advisers; I was talking about the case load for work coaches, who will be a mixture of people who were previously key workers and careers advisers. We could get you those figures if you want them.

Neil Bibby: Okay. That would be great. Thanks.

Neil Findlay: Can you explain the difference between a work coach and a careers adviser?

Marlene McGlynn: Yes. The intensity of the service that we offer depends on the young person’s needs. In schools, we offer a careers coaching service, which will offer a number of interventions to a young person, depending on their needs. That service depends on whether they can take information and make good decisions from it, or whether they need guidance to go through that process. Half a dozen people might be seen eight times in school on average, but if that has not really worked for them and there are still other barriers that prevent them from taking up opportunities, we might decide that they will get the support of a work coach on leaving school.

That approach is very much aimed at young people whom we have described as looked after and accommodated, or who have problems at home. They might have caring responsibilities or they might have been in custodial care previously. I am talking about all the barriers that can prevent young people from making a good transition. We would offer them the support of a work coach, who would give them weekly support or support more than once a week if that was required. They would also support the employer or the learning provider whom the young person had taken up the opportunity with to do everything to ensure that the young person is able to sustain the opportunity. The support is therefore intensive.

Some young people who have left school might have good qualifications and be ready to take up an opportunity, but they might decide to take their summer holiday before they do so and might miss the boat and end up coming in looking for an opportunity when perhaps fewer are available. They will get the support of a career coach to get them back on track and into a positive opportunity, but they will not need the same intensive support.
that is needed by young people who need a work coach.

The Convener: I want to take you back to the process of how the data will transfer. How often will the data be refreshed? How often will you get a data file from the various organisations?

Marlene McGlynn: Currently, the data that comes from local authorities for schools is refreshed every two weeks, so it is pretty up to date.

The Convener: And the other organisations?

Marlene McGlynn: That data is currently coming in, so it is still being worked with. Data has been coming in from the colleges. The hope is that there will be a two-week turnaround, as that must happen for the report to be accurate with all the information. Obviously, the information that is currently coming in from the DWP, for example, has to be analysed and we need to see whether we need all that is coming in and whether the fields are right to ensure that information is accurate when it goes back out. That is not yet going back out in a report, but our first lot of data came in a month ago from the DWP.

The Convener: Will all the organisations supply the information on a fortnightly cycle?

Marlene McGlynn: We would hope so.

The Convener: I want to push you on that. Saying that you “would hope so” is not quite the same as saying that they will. You have schools on a fortnightly cycle, you hope to have colleges on a fortnightly cycle and it sounds as though you hope to have the DWP on a similar cycle, but that hope is not quite as strong as it is for the colleges. Is your understanding that data will be supplied fortnightly? If not, is there an expectation or a hope of that? Who determines the cycle? Do you not tell the organisations what the cycle should be?

11:30

Marlene McGlynn: Yes, and we agree that with them. It is not compulsory for them to give us the information; they do it because we have a data-sharing agreement with them. The bill will allow us to be confident of that cycle.

The Convener: Assuming that the bill is passed, your expectation would be to get the information from all the organisations fortnightly.

Marlene McGlynn: Yes.

The Convener: How do you ensure the accuracy of the information that you are receiving from the organisations and that is in your data hub?

Marlene McGlynn: We can only hope that their records are up to date and accurate. If there are any issues around that—for example, because our information is perhaps a bit more accurate than theirs—the business rules will need to be changed. That is all about the last time that someone had contact with the young person. If information is collected fortnightly, we would expect their information to be as accurate and up to date as ours is. Therefore, the information should be robust.

Alison More: We are certainly working on the basis that partners are maintaining their own systems for their own business purposes and, therefore, the data will be as accurate as it needs to be for their purposes. It is not our role to check it all.

The Convener: That is why I was asking. It is not your role to check the data that is coming in.

Alison More: No.

The Convener: You accept that the data has been checked by the other organisations.

Alison More: Yes.

The Convener: How do you ensure that that happens? Do you know for a fact that they check it or how often they check it? What levels of accuracy do they have in their business?

Marlene McGlynn: No, we do not check it. However, it is in their best interests to have accurate information. If they are not checking it, it will be rubbish in, rubbish out.

The Convener: Do you ask them whether they are checking it?

Marlene McGlynn: Absolutely. Part of the agreement is that they put in robust information.

The Convener: An agreement is in place that effectively determines the level of accuracy that you would expect from the data. Is that what you are saying?

Marlene McGlynn: Yes—that the information is up to date and accurate.

The Convener: What level of accuracy do you expect?

Marlene McGlynn: That it reflects the most recent contact that they have had with the young person and it tells us what happened from that.

The Convener: I am sorry, but perhaps you misunderstood me. Recent information is not necessarily accurate information. What I am asking is whether the agreement states that any data coming in is checked for accuracy and the level of accuracy that you would expect. For example, it might have to be 98 per cent accurate or whatever the figure happens to be.
Marlene McGlynn: No, I do not believe that we have that, but we can check that for you.

The Convener: I would certainly find it helpful if we had detailed information about how the agreements operate and how the data transfer works.

Marlene McGlynn: We can certainly get that information for you.

The Convener: That would be helpful. Thank you.

Clare Adamson: I understand what information everyone is giving you apart from that provided by the DWP. If you have a record of every pupil in Scotland and they have a destination flag at some point, is it possible for them to drop out of all the partner databases completely?

Marlene McGlynn: Yes. I would guess that that is possible. There are always young people who could fall through. You can do your absolute best to get information on everybody that is out there but 16 to 18-year-olds who are unemployed but are not in receipt of benefits, for example, can sometimes fall through the net because they are not registered with the DWP. Their family circumstances might be such that they do not claim any benefits or they might not be looking for a job at the time. There are always gaps.

Clare Adamson: You did not mention employers in relation to figures, but you mentioned that employers would be providing information. Do you mean employers that have engaged with you already, including organisations such as Rathbone that provide training opportunities?

Marlene McGlynn: No. Employers will not put data into the data hub. I mentioned employers with regard to our support to them by providing work coaches if a young person goes into an opportunity.

Clare Adamson: How will you identify someone who has fallen off a training programme?

Marlene McGlynn: That comes through our corporate training system database, in which we record young people who are in training. That database also feeds into the hub, so we have accurate information on who comes off training.

Clare Adamson: So if someone serially engages in employment but fails to secure a long-term employment position, you would not be able to capture that through the hub.

Marlene McGlynn: We could not necessarily capture that, if that person was not engaging with us—unless they were claiming benefits in between times.

Alison More: We could identify them through DWP records and the unemployment register, potentially.

The Convener: I think that everybody is quite happy with the questions that they have asked. It would be helpful if you would supply as soon as you are able the information that you indicated you would supply on how the system works. I am not sure about other members, but I am always keen on flow diagrams. They might help us to understand how the process works.

Thank you very much for coming this morning. It has been most helpful.

11:35
Meeting suspended.

11:38
On resuming—

The Convener: Welcome back. Our third panel of witnesses is here to discuss the bill’s provisions on higher education governance. We have Tony Brian, chair of Glasgow Caledonian University; Stuart Monro, chair of the University of Edinburgh; and Alan Simpson, chair of the University of Stirling. Good morning, gentlemen, and thank you for coming along.

I believe that Alan Simpson would like to give us a brief opening statement.

Alan Simpson (University of Stirling): Thank you very much for inviting us to give evidence. As has been said, I am chair of court at the University of Stirling. I also chair the committee of Scottish chairs of higher education institutions. On my left are Stuart Monro, the vice-convener of court at the University of Edinburgh, and Tony Brian, who, as well as being the chair of court at Glasgow Caledonian University, is on the steering group that is preparing the new code of governance.

We are here to represent the committee of Scottish chairs, and you will have seen the written evidence on the bill that we submitted. As chairs of court, we are ultimately responsible for the governance of our universities; the principals are responsible for their management. Therefore, we are primarily concerned with the parts of the bill that relate to governance of universities, namely sections 2 to 4 and 14.

We would like to make three fundamental points. First, we fully support the need for good governance—all the chairs do. We support accountability and the need for accountability. Really, we support the overall intentions of what is included in the bill. Secondly, we believe that all the proposals relating to governance that are contained in the bill have been achieved in the
past and can continue to be achieved without the need for legislation.

Our third point is that the proposals, as drafted, go far beyond the stated intentions and could seriously erode the autonomy of higher education institutions in Scotland. As written, the bill would allow a future minister to specify any principle of governance or management that he believes is good practice.

It might be worth clarifying what we mean by governance. Basically, governance has four elements, taken from the von Prondzynski review. The first is the effective stewardship of the university to secure its sustainability in the medium and long term. The second is safeguarding the mission of the university and the services that it provides for the public benefit. The third is securing the proper and effective use of public and other funds, and the fourth is ensuring stakeholder participation and accounting to wider society for institutional performance.

It is generally accepted that there is no particular problem with governance in Scotland to be solved. Standards of governance in this country are high and that is reflected in the international standing of our universities. Autonomy is one of the bedrocks of a successful sector and, as it is currently drafted, the bill is a real threat to that autonomy.

Why is autonomy important? All institutions need to be able to react to external pressures and opportunities in appropriate ways. Because of the diversity of the sector, reactions will be very different in different institutions. Numerous studies have shown that the success of an institution is linked to its autonomy and, throughout Europe, universities are being given greater freedom so that they can emulate the success of universities in Scotland and the rest of the UK. As the cabinet secretary has said, the need for accountability and the need to protect institutional autonomy are not conflicting principles.

It is also important to understand that concepts of good governance are constantly evolving. What we consider to be excellent practice today will be standard practice in the future. There is great diversity between different institutions in Scotland, which range from the University of Edinburgh to the Royal Conservatoire of Scotland and the Open University in Scotland. To have rules that apply absolutely to everyone is virtually impossible, so the concept of comply and explain is essential.

As the committee knows, chairs have taken a lead in arranging for a steering group to prepare a code of governance that will apply to Scottish universities. At present, all HEIs adopt the code of governance that was prepared in 2009 by the committee of university chairs, which covers the whole of the UK. However, the von Prondzynski review challenged the sector to be more open and transparent in a number of ways, hence the preparation of a new code for Scotland. Such a code will reflect the recommendations of the von Prondzynski review but will be broader and go into other areas of governance that the review does not cover. The chairs believe that, once a code has been prepared, it will form a benchmark of good practice that will be an exemplar for the rest of the world.

We recognise that it is difficult for the committee to consider a code of governance that has not yet been published, so I will explain the timescale. After the publication of the von Prondzynski review in February last year, the chairs met and agreed that, as we are responsible for governance of the institutions, we should take a lead in developing a code of governance for Scotland. We checked with the funding council, which is the other body that might want to undertake the work, and it was content with our approach. In May, we met the cabinet secretary and discussed the membership of the steering group. It is chaired by Lord Smith of Kelvin, and the other external members are Dame Elish Angiolini and Simon Pepper. I can give further information on the members of the group if the committee would like to have it. The steering group’s terms of reference were finalised in August—members have seen a copy of them. The date for completion of the code is specified in the terms of reference as spring of this year. When we produced the terms of reference, we had no idea that a bill covering governance would be running in parallel with the steering group.

Consultation has been an extremely important part of the code’s preparation. Meetings have been arranged at all higher education institutions bar one—that was caused by a problem with dates. Consultations finished two weeks ago and the code is still due to be published in early April. There will then be an opportunity for people to comment on the code and supply additional evidence before it is finalised and implemented for the next academic year, which starts on 1 August. It is quite a tight timescale between now and August to get the code published and the comments in.

The Convener: Thank you for that helpful introduction. I am pleased that you have answered what I am sure would have been an early question, if not the first question, on when the draft code will be published. We are now talking about publication in early April, which I understand will be before stage 2. Is that correct?

11:45

Terry Shevlin (Clerk): It will be published after stage 1.
The Convener: But before stage 2, which is in line with what officials told us.

Some of the language that you used in your opening statement and your submission feels a bit apocalyptic, with phrases such as “seriously erode the autonomy” and “a real threat”—I will not quote them all. What makes you conclude that the bill has such apocalyptic implications?

Alan Simpson: We believe that the principles of good governance should be developed in a collegial manner with the sector, through discussions. However, the bill says that the Scottish ministers will have the power to impose “any principles of governance or management which appear to” them “to constitute good practice”.

That is imposition from outside and, in effect, political control, which would be a retrograde step in relation to what has recently been an accountable form of governance.

The terms “responsible governance” and “responsible autonomy” have been used today and they represent the way forward. A balance must be struck between the independence and autonomy of universities and their accountability.

The Convener: I accept that.

Tony Brian (Glasgow Caledonian University): If the Parliament and the Government are keen to legislate on the issue, we support the amendments that Universities Scotland has suggested and which Alastair Sim mentioned, which would take a much more acceptable approach in the drafting.

The Convener: I understand that, irrespective of any possible amendments to section 2, an imposition would not take place—ministers would not decide arbitrarily what would happen, and there would be a discussion. The chairs of court and others are involved in the process of producing the code. We have heard that you have gone round all the institutions—Alastair Sim mentioned that. I struggle to understand where the imposition would come from. Proposed section 9A of the Further and Higher Education (Scotland) Act 2005 is about requiring institutions to comply with the principles of good governance, which is surely not unreasonable.

Tony Brian: Our issue is particularly with the wording. The provision seems to give future ministers the ability to choose any code of governance that they want to apply, whether it is relevant to higher education or comes from another sector. I am not a parliamentary draftsman, but I understand that the wording does not provide for consultation or for the principles to relate to a generally accepted code for the higher education sector, whether that comes from another country or whatever. No such constraint seems to exist.

The Convener: Your concern is that the provision does not relate to codes or guidance on good governance from the sector.

Tony Brian: Yes—given that the Parliament and the Government are keen to legislate on the area.

The Convener: Absolutely—I accept that.

Liz Smith: As parliamentarians, we must make a crucial decision. In part, consideration of the bill is about whether we should legislate on governance or whether a non-legislative process will provide the assurances that you have given on better university education.

That decision must be based on the facts. At the moment, we are missing one set of facts: we do not know what the new code of governance, which is coming in April, will say. That makes our decision rather difficult. Can you say at this stage how the new code might allay the concerns raised by groups such as the UCU and the NUS, which feel that governance is perhaps not as good as it could be?

Tony Brian: I am probably best fitted to answer that one. I apologise, because I think that my answer will probably be seen as unhelpful, but I am afraid that it is just too early in the process for us to—

The Convener: That is not a good start.

Tony Brian: I know—I thought that I would just lead with my chin.

I apologise, but it is just so early in the process. The consultation process finished at the end of last month—in fact, it finished on 1 February. The two external experts whom the steering group engaged to help us do the work are now assessing the consultation evidence. The plan is that they will come to the steering group by the end of this month with their first conclusions and probably some draft wording. We will then have what I can only describe as a fairly packed March, when we will go through various iterations and meetings to try to come up with a draft code to meet the early April timeline that we have talked about.

I apologise, because we have not reached the stage in the process where we are able to say what the differences will be in detail. Clearly, we recognise that there is a desire for the code to embody more openness and transparency than the previous one perhaps did. As I think Alan Simpson hinted at in his introduction, the previous code has served us extremely well since it came
expressed his strong view to the committee that the responsible autonomy that the University of Edinburgh has developed in relation to its research potential, which has brought in a huge amount of money, and the knowledge exchange economy have been hugely successful because there has been no Government control. I take it that you share that view. Is it common to those on your university court and the students and staff whom you consulted?

Professor Stuart Monro (University of Edinburgh): Undoubtedly. The great advantage that the University of Edinburgh has—this is true of other universities in Scotland—is that it has an international footprint. That is important for Scotland because it brings expertise into Scotland and exports expertise from Scotland.

Having a vibrant higher education sector is of fundamental importance to Scotland’s economic development. In Edinburgh, not far from where we are sitting, we have the supercomputers that serve not only Scotland and the UK but significant parts of Europe. We must retain the flexibility to respond to such opportunities as they emerge. That is why the autonomy that is given to the universities and, indeed, their courts to respond—often very quickly—to those opportunities seems to me to be an important part of maintaining Scotland’s economic vibrance.

Neil Findlay: I am looking at your submission. I will read you a list to see whether we can identify anything from it. The submission says that the committee of Scottish chairs is Sir Moir Lockhead, Mr Frizzell, Mr Sanderson, Professor Mr Monro, Dr Mr Forbes, Mr Bloomer, Mr Slater, Lord Vallance, Lord Lindsay, Mr Ross, Mr Brian, Mr Rodney, Professor Mr MacIver, Professor Mr Brown, Mr Simpson, Mr Hunter and Mr Blackburn. We do not appear to have the most diverse group there.

Mr Simpson says that you decided among yourselves that you would run the steering group. That is hardly surprising. It seems like an old boys network, with people appointing themselves to come up with a new governance arrangement for universities. Do you understand why people would be cynical about that?

Alan Simpson: You say “run the steering group”, but we are not running the steering group; we set up a steering group that is independent from us. Yes, we have three chairs on it, but we also have Lord Smith of Kelvin, who is a very experienced director, and Dame Elish Angiolini. We also have Simon Pepper, who is an ex-rector—he wrote the book on guidance for rectors—and, therefore, understands the student perspective. They are the people who actually run the steering group; the chairs merely set it up.

We do not anticipate commenting on the code when it is prepared because we have experts to
do that. We will accept it and offer it for consultation.

Neil Findlay: You said in your introduction that you wanted to operate in a more collegiate manner, but no staff or students are represented on the steering group. How is that a more collegiate way of operating?

Alan Simpson: We believe that the real purpose is to consult fully in every institution. We have done that with one exception—the conservatoire—and, as I said, that was because the dates did not work. The conservatoire has nevertheless had an opportunity to provide input.

There has been a vast amount of discussion at each of the institutions. When the consultant came to my university, he met the lay members of court, members of staff and students separately. When he met the members of staff, representatives from all three unions that are recognised within the institution were present.

That is happening in every institution, so we are getting input from people. That is how we get the collegiate approach.

Neil Findlay: Did you consider having staff or trade union representation and student representation on the steering group? If not, why not? If you considered that but rejected it, why?

Alan Simpson: We considered it, but the difficulty was with finding one or two representatives who would cover the complete range. The NUS is not represented in all institutions. Also, four main unions represent probably about 30 per cent of staff around the institutions. It would have been difficult to get someone who was representative of that, which is why we went for consultation.

Neil Findlay: I want to get this right. You found it easy enough to get representatives of the chairs of universities, but you could not find someone who would have represented staff or students. That is your consideration, and that is why you rejected having such people sit on the steering group. Is that correct?

Alan Simpson: No one on the steering group is a representative. They are there as individuals. Lord Smith is there not as a representative, but as an independent chair, in the same way as Dame Elish Angiolini and Simon Pepper are on the group.

12:00

Professor Monro: I would like to approach the issue from a different angle. The steering group is not there to impose its views on what the code looks like at the end; it is there to make the thing happen. What is important is that we develop a code that is evidence based. That evidence is being gathered by consulting a wide range of stakeholders who are concerned with the whole of the higher education sector, including staff and students.

In my view, the best way in which we can embrace the views of staff and students is not by having them on the steering group, on which they would not be able to express their own opinions, but through the consultative process. Through that, they can provide the evidence that will inform what is in the code. It is important to make that distinction between the role of the steering group as the group that guides the way and ensures that the processes happen, and the role of those who present the evidence that will inform what is in the code.

Neil Findlay: I want to ensure that I am clear about this. Chairs sit on the steering group, so it is okay for them to comment, but—

Professor Monro: It is okay for them to guide the process.

Neil Findlay: So why is it not okay for staff and students to guide the process?

Professor Monro: What I was saying was that if we genuinely want to embrace the opinions and the evidence of staff and students, that is best done through the consultative process.

Neil Findlay: Why does the same principle not apply to chairs?

Professor Monro: It could do. I accept that.

Neil Findlay: Ah. We are getting somewhere.

Tony Brian: I will put a bit of flesh on the bones of that. In their university consultations, the external experts whom the steering group has engaged to go out to see all the institutions and the various trade unions and other interested parties from whom the committee heard earlier have seen more than 120 members of staff and more than 70 students to get differing views from across the spectrum in all sectors. I hope that that gives you some comfort that there has been very broad consultation.

Neil Findlay: I have one final point. In hindsight, do you think that it looks bad that people at your level are represented, but people who deliver the education or who are being educated are not included in the steering group? Would you concede that?

Alan Simpson: I do not believe that it looks bad, because the essence of the process is the consultation. The purpose of the steering group is to consult and to obtain the evidence.

Joan McAlpine: You have been talking up the consultation, but earlier in the meeting Ms Senior,
who represents the staff at universities, did not seem to be terribly impressed with it. I do not know whether you heard her evidence, but she said that some of her organisation’s members had been given very little time to put their views at the consultation sessions and that no minutes were taken, so the trade unions had no confidence that staff views were being taken on board in the consultation process.

**Tony Brian:** The steering group has certainly not had any direct feedback on gaps or lapses in the consultation process. What I heard earlier was interesting; I will speak to the external experts to gauge their views.

In my institution, the staff members whom I have managed to speak to who attended the sessions thought that they were useful and full. No one has mentioned to me that they thought that they did not have enough time, although I accept that that is just one university.

**Professor Monro:** I add that the consultative process has a website attached to it, so there is total transparency. It allows anyone who wishes to contribute to the debate to do so. The process is totally open, which is important, because there are many diverse opinions within a university. It is extremely important that we can tap into that diversity, and the website is another mechanism through which we can tap into the opinions of staff and students.

**Joan McAlpine:** I would have thought that you would have put more weight on the view of the staff’s trade union representative. However, even though the representative has already said, “Our staff are not happy with the consultation process”, you seem to be sweeping that away by saying, “It’s okay—everyone can contribute through the website.”

**Professor Monro:** Far from it. In fact, we are extending contributions beyond the voice of the elected trade union representatives. This is additional.

**Joan McAlpine:** Are you saying, then, that the voice of the elected trade union representative is somehow not representative?

**Professor Monro:** Not at all. We are listening to it and taking it into account.

**Tony Brian:** The committee should understand that, although many of our staff are members of trade unions, many are not—indeed, in my university, the figure is about 50:50—and we need to find some way of tapping into the understanding, knowledge, experience and submissions of people from all parts of the spectrum. That is what we have done in the consultation process.

**The Convener:** Joan McAlpine referred to evidence in the earlier session from Mary Senior, who talked about consultants coming along and spending half an hour with a mixed group of people comprising students, staff and so on, some of whom might be in a trade union, some of whom might not, all of whom expressed a variety of views. Is that how the process should work?

**Tony Brian:** We might have misled you—that is not quite how the process works. Certainly in my institution and as far as I know in all the other institutions bar, for reasons that I have explained, the Royal Conservatoire of Scotland, four separate meetings were held: one with staff, including trade union representatives and other staff members; one with students; one with lay governors; and the last with the principal and the executive team. In my university, the meetings lasted three quarters of an hour to an hour—the one that I attended certainly lasted about an hour—and so were quite extended. If you picked up the impression that there was only one half-hour meeting to cover the many audiences, I have to tell you that that is not what happened.

**The Convener:** I did not pick up the impression—that is what Mary Senior said earlier.

**Tony Brian:** I took her comments to refer to the meeting purely for staff representatives in the institution that she was talking about, not the meetings with all the other audiences.

**The Convener:** We will seek clarification on that matter, because that is not the way I understood it. Do members have any other questions before I press on?

**Joan McAlpine:** On a different topic, do you think it right for a university principal to be paid more than the Prime Minister of the UK?

**Professor Monro:** I am in no position to judge what the Prime Minister should be paid, but I might be in more of a position to judge the sort of salary that the principal of a university with a turnover in excess of £700 million a year should get. I do that through international benchmarking, which is the only guidance that I have; I look at what constitutes an appropriate salary for principals elsewhere and judge accordingly. I note that, over the past four or so years, the salary of the principal of the University of Edinburgh has not been increased, which I think has happened in response to an attitude that is around at the moment. However, that gives me concern because I know that somewhere down the line I or my successor will have to appoint a new principal of Edinburgh university, and I am not sure that I will be able to get a top-class principal on the salary that we pay the Prime Minister.

**Joan McAlpine:** Does anyone else wish to comment?
Alan Simpson: I have nothing to add.

Joan McAlpine: In 2010, which is the last year for which I have figures, the principal of Heriot-Watt University was paid a £39,000 bonus, taking his salary from £160,000 to £199,000. That seems a little excessive in the current financial climate.

Alan Simpson: I do not know the details of Heriot-Watt, so I cannot comment on that matter.

Neil Findlay: What is the pay ratio between the lowest-paid member of staff at the university and the highest paid? Have you done any work on that? I will not hold you three gentlemen to a response just now, but perhaps you can provide the committee with that information.

Alan Simpson: We can provide that.

The Convener: Another issue was raised this morning primarily because of comments from yourselves—not necessarily individually, but collectively—regarding the bill’s provisions on the fees cap. If you were here earlier, you will have heard some of the exchanges on the issue. Could you explain your thinking? Perhaps you can clarify the matter, as there was some debate between the committee and Alastair Sim about what exactly your view on the fees cap is.

Alan Simpson: We made it clear in our submission that we think that four sections of the bill are unnecessary, and that three are potentially detrimental. One of those that is unnecessary relates to fee caps. We do not view it as a particular issue—the provision is just unnecessary. It seems to be trying to address the possibility of making it less attractive for rest-of-UK students to come to Scotland by increasing fees to a level that would discourage them. That is my reading of the policy statement. All universities try to encourage students from the rest of the UK, which provides a diverse range of students. We certainly do not want to prejudice the people who come north from down south.

The Convener: I am sure that you do not but, given that the environment is competitive, and that students are competing against each other for places, if there are 100 places for students from the rest of the UK and there are 200 applicants, who are all willing to pay £9,000, and if there is no cap, is there not at least a suspicion that you could make the fees £10,000 or £12,000, in which case you might still get 150 or 120 applications? If you made the fees £15,000, you might get 100 applications. You would fill your 100 places and you would get £15,000 per student rather than £9,000. What is to stop you doing that?

Tony Brian: The chairs, as much as the principals through Universities Scotland, support the principle of restraining the amount that is paid by RUK students. That is why the voluntary code, to which Alastair Sim referred earlier, was put in place last year. As you heard this morning, it has been renewed again for this year.

The other reason why we think that legislation on that is unnecessary is that the sector is already addressing the issue—admittedly through voluntary means, but with great willingness. The chairs, the principals and Universities Scotland are all at one on the matter.

Professor Monro: I want to address the other side of the coin—fees are one side of the coin and bursaries are the other. There is an incumbency on all the Scottish universities to try and raise money from whatever sources to produce new bursaries so that young people—or indeed older people—who wish to come to university have the opportunity to do so and will not be disadvantaged by the fact that they are economically challenged or whatever.

In Edinburgh we have used a robust system to assess bursaries. It is not based on the Scottish index of multiple deprivation, but on an examination of the whole family income. That is a sustainable approach. The University of Edinburgh has invested a significant amount of money in providing bursaries to ensure a diversity of students coming into the university, which is what I think we are all trying to achieve.

The bursary money is simply given out, so the student has the opportunity to spend it in whatever way they like. It might be for paying the fees, for paying for their accommodation or whatever. In addition, there are accommodation bursaries for Scottish students. To some extent, that is to help the flow from the west to the east—there seems to be a fairly significant barrier, I am afraid, in getting students across to Edinburgh to take advantage of whatever Edinburgh university has to offer.

The Convener: I want to clarify this. If the level under the voluntary code is set, as it has been, at the same level as the maximum fees for the rest of the UK, what is the problem with legislating to set it at that level?

Alan Simpson: We have not said that there is a problem, particularly; all that we have said is that it is unnecessary.

The Convener: Perhaps you could confirm this. Perhaps the BBC was inaccurate in its reporting, but the news this morning seemed to say that the chairs wished universities to be free to set the maximum level as they saw fit.

Professor Monro: Not the maximum level. We wish to be able to set a level that is appropriate. We are trying to encourage as many students into Scottish universities as possible. There is a market there that will define that. It will not necessarily be on the way up.
The Convener: I am glad that you said that. You are saying that you want to be free to set fees at a level that is appropriate below the £9,000 fee at the moment.

Professor Monro: That is where we are at the moment.

The Convener: In what way does the bill interfere with that right?

Professor Monro: I do not think that it does.

Alan Simpson: We have not said that it does interfere with it.

The Convener: I am just trying to clarify—

Alan Simpson: I do not know where the BBC got its information from, but if you read it you will see that all that our submission says is that we believe that section of the bill to be unnecessary.

The Convener: Okay. I am sure that the BBC is as accurate as ever.

I thank you for coming along this morning, gentlemen. I very much appreciate it.

12:15

Meeting suspended.

12:18

On resuming—

The Convener: I welcome to the committee our final witness, Ian McKay, who is the chair of Edinburgh College board and the Edinburgh regional lead. I invite you to make a brief opening statement.

Ian McKay (Edinburgh College): I shall keep it brief, chairman. Thank you for the invitation. On behalf of all the regional leads and the chairs of the colleges, I welcome the opportunity to contribute to a long and difficult—and continuing—task for the committee.

The regional leads are very much the new kids on the block. We are only a few months old, which is perhaps evidenced by the noticeable lack of paperwork that we have given the committee. However, our experience may be helpful to the committee in its considerations, particularly as regards merger and the efficiencies that follow from merger, since that is such a fundamental part of the regionalisation process that is outlined in the bill and will be a major factor should the bill be passed.

More important, regional chairs will be a central part of the new apparatus and the most important part of governance. The committee has heard quite a lot about governance this morning. Corporate governance will be a critical part of the new structures. There has been criticism in the past, which has been repeated this morning in the committee, of the history of good governance within the sector. It is a view that I share. The changes that are envisaged in the bill offer the opportunity for us to begin to address that and to get it right—if it is ever possible in any corporate body to get it right—or certainly to aim in that direction.

The other side of the coin is, of course, money; in other words, finance and the opportunities for savings offered to the public purse by the merger process. Once the bill is made law, regional leads and regional chairs will play a critical part in that aspect of regionalisation. Indeed, members will have seen in the submission from Edinburgh College concerns about the scale and timing of the process and how it will be carried out, although we support the changes.

The changes that are being considered offer the opportunity for an authoritative voice that can advocate for the sector. That has been missing for some time and I hope that the move towards regional chairs will, with all the other things that are being talked about just now, such as the need for a central voice for management, changes in bargaining, and so on, mean that we will see a sector that can unite around an authoritative voice and leadership that will provide a way forward. We are giving the new kids on the block quite a tall order, although it is always nice to have ambition.

I will stop there. It is probably best to get on with questioning.

The Convener: Thank you. I will begin with a practical question. What exactly do regional leads do? As you say, you are the new kids on the block because you have just been appointed, so what is the daily, practical purpose of regional leads?

Ian McKay: I shall keep it brief, chairman. Thank you for the invitation. On behalf of all the regional leads and the chairs of the colleges, I welcome the opportunity to contribute to a long and difficult—and continuing—task for the committee.

The regional leads are very much the new kids on the block. We are only a few months old, which is perhaps evidenced by the noticeable lack of paperwork that we have given the committee. However, our experience may be helpful to the committee in its considerations, particularly as regards merger and the efficiencies that follow from merger, since that is such a fundamental part of the regionalisation process that is outlined in the bill and will be a major factor should the bill be passed.

More important, regional chairs will be a central part of the new apparatus and the most important part of governance. The committee has heard quite a lot about governance this morning. Corporate governance will be a critical part of the
with local colleges, talking about merger or perhaps facilitating an existing agreement to merge so that they can begin to move towards one regional college, which is the most common model. In places such as Lanarkshire, the regional lead is actively engaged in negotiating the terms on which that arrangement will come together.

Your question is a good one, convener. We are seeking a full answer to the question about just how much regional leads will be engaged, but we are part of the transition and we are moving into what I think will be the critical role of the regional chair once the bill has become law.

Liz Smith: The college sector has submitted quite a bit of evidence that suggests that it feels strongly that one of its greatest successes has been the ability to deliver locally. Some witnesses have also expressed concern that that might be diminished because of the bill. You said that you are the new kids on the block, so can you assure us that that local dimension will be part of the process by which you will deliver college education?

Ian McKay: It would be very foolish indeed if we lost that at the end of the process. One must also ask about the degree to which we have managed to achieve it under the current system. To my mind, the role of regional chairs—it is easier to speak of regional chairs, since you are talking about the post-bill situation—will be critical in ensuring that the regional bodies can balance achieving a strategic view for the region overall, engaging with key stakeholders and so on, with retaining the flexibility of local organisations and bodies.

I listened intently to some of your other witnesses this morning and I think that we can see in different aspects of the relationships of public bodies and organisations to education, particularly post-school education, just how easy it is to get gaps in the system and for people to fall through them. To my mind, the best way of getting round that is through what local organisations can offer. However, that is very different from a system that, to my mind, atomised further education in Scotland.

I put my cards on the table, because at the time of incorporation I was the senior official in the EIS who dealt with the further education sector. I was a big critic of the proposals for incorporation at that time. I am on record as saying—I think even in a parliamentary committee—that the proposals would have an atomising effect because the whole community would not be catered for in the way in which it had been under the previous regions. Unfortunately, in too many cases, that is what came to pass. Pooling us back into regions and giving us a better opportunity for scale and strategic advance will give what has tended to be the Cinderella sector of further education a better chance at the races.

Liz Smith: Thank you. That is an interesting answer. You said in your opening remarks that it was important that the college sector had a unified voice. However, we heard earlier this morning, particularly from your former colleagues in the EIS, of concerns that the FE sector will have different tiers. We heard concerns about there being two types of colleges and we had a substantial discussion about UHI, which is a different animal. Are you concerned that some aspects of the bill are creating divisions within FE?

Ian McKay: In a place as diverse as Scotland, it will be necessary to have a degree of variance in the way in which we exercise control over a national structure. It makes sense that there should be such variance. What does not make sense is when, through the variance, there is inequality or the emergence of a different purpose. To my mind, it is right and proper that the bill should try to recognise variance and local conditions. I would be a hypocrite if I said that local was good, but took no account of the local. If there is local variance, we should take account of it.

What is incredibly important is that there is good corporate governance, whatever individual shape or mechanism one uses in order to effect that. The problem is not the mechanism itself; the critical areas are the policies and attitudes that one brings to that, and the establishment of good corporate governance and good relationships between the executive and the board.

Liz Smith: Given what the EIS and Colleges Scotland said earlier this morning, do you accept that having different types of structure that reflect local delivery will mean different lines of accountability? Is it a concern to you, speaking on behalf of the college sector, how the accountability will relate to the Scottish funding council and Scottish Government ministers?

Ian McKay: I will have to give you a personal view just now, because I do not think that the regional leads have a collective view on the issue. My personal view is that, with regard to structure and accountability, I do not see that one necessarily follows the other. As I said, it is perfectly possible to have a variety of mechanisms, while ensuring that there is proper public accountability and transparency in the way in which a mechanism operates.

To my mind, good governance and a good relationship between the board and the executive are critical. When those get out of kilter, it does not matter how long the line of command is or how small or how big the institution is—you just have it wrong at that point. The accountabilities and so on...
that any executive should have in relation to the board get lost.

12:30

That issue is not unique to the college sector. There have been many instances of getting it wrong in different parts of the public sector and, indeed, in the private sector. One of the most important offers that we have through this bill is for us to try to get it right and to try to get that relationship working.

Neil Findlay: You mentioned the consideration about local access and local provision. My understanding is that the Edinburgh College joinery and construction campus in Mr Colin Beattie’s constituency at Dalkeith is going to be moved wholesale to Granton—a considerable distance away. Does that not reflect the concerns that many of us had about local access being lost? For example, how will young people from East Lothian or certain areas of Midlothian continue to access courses when they are moved to Granton?

The Convener: Given that your constituency has been mentioned, do you want to comment, Colin?

Colin Beattie: We are still seeking a great deal more information on the proposed move. It has just recently come to light, and I have written to ask for more information from Edinburgh College and also the local council, which is involved in the decision. I do not know whether much more information is available at this time.

The Convener: Perhaps Mr McKay can answer both those points.

Neil Findlay: What Mr Beattie said is very helpful because, as far as I am aware, the staff and the students—and the businesses that send apprentices to that college—are just as much in the dark about what is happening.

Ian McKay: It is a useful example. Your final point is wrong, Mr Findlay, as they are not in the dark; they have been spoken to as well. When Mr Beattie and others raised the issue—as you will recall, it appeared in the press a couple of weeks ago—I discussed it with the principal and asked whether there had been conversations. I am aware that there have been.

There is a much more important point behind the question than just the doings of Edinburgh College. It is about how we continue to reflect local demand, particularly the relationships with employers and other agencies in a locality when we are taking advantage of the strategic opportunities and so on of regionalisation.

That happened when I first started in FE, when all of the FE colleges in Lothian were part of Lothian region and were run by Lothian Regional Council. There were, at one and the same time, the democratically accountable body of the regional authority that had control over the colleges, and the different sites—they were called much the same thing when I first started: Esk Valley College, Stevenson College, Telford College, and Napier College—through which the general policy of the regional authority was carried out into the different neighbourhoods of Edinburgh and the Lothians.

The current situation is not very different. We have brought together local colleges that were previously competing with each other as regards provision—and the locality had to take its chances on what came out of that competition. We have taken those colleges and put them together. I hope that we are now in a position to take a more strategic overview, similar to the overview taken by the old Lothian region, as to how the provision is made available to people across the whole of the area.

It is not right to duplicate and overprovide in certain specialist areas. Particularly in highly technical areas, it is important that we are able to offer the best possible facilities. We would have a geographic spread for certain things; others would be sited in a place that allows us to build up a centre of excellence and of expertise.

The new Edinburgh College is still at the point—I remind you that we vested on 1 October—of having engagement with the community as to how, in the end, we will rejig the curriculum and the things that we do. However, that is part of what the process offers: the ability to bring together the quantum of the facilities available in colleges that were previously competing with each other and to ensure not only that communities get the provision that they need close to the point of delivery but, more important, that we have an opportunity to provide centres of excellence and good training for employers and the community across the region as a whole. Coming from my background, I can say that the process is very similar to what happened in the old local authority system.

Neil Findlay: My area of experience is the construction sector. A lot of courses provided locally would be access courses and courses provided in school. They would be low-level—not high-tech—localised provision that would give young people access into the construction industry. That seems to have comprised a significant amount of the work at the campus we are talking about.

Do you accept that, if your organisation moves the provision to Granton, people who are accessing it at the lower level will simply not travel to Granton and will therefore not get provision locally? The Scottish funding council actually
agrees—as, indeed, did Griggs—that the higher the academic level the more willing people are to travel. Can you confirm that?

The Convener: Before Mr McKay answers that question, I should say to Mr Findlay that, although it is perfectly acceptable for you to highlight a local example, we are interested in the principles of the bill and whether the outcome that you have described in your area is likely to arise in others. Perhaps Mr McKay could respond in those terms.

Neil Findlay: Forgive me, convener, but I think that it is for me to ask my questions and for you to ask yours.

Ian McKay: I am quite happy to answer the question—

The Convener: I am sorry, Mr McKay, but I need to clarify this point. This is an evidence-taking session on the Post-16 Education (Scotland) Bill; it is not about what is happening in your region, Mr Findlay. I am quite happy for you to use this example but I want you to stick to the bill and to examine the impact of any such example in relation to the general principles.

Ian McKay: Perhaps I can be helpful—

Neil Findlay: Excuse me, Mr McKay, but with respect, convener, that might be what you want to stick to. I am using a practical example to highlight issues in the bill that are real for people at the moment. It is highly relevant to our discussion.

The Convener: And I have said that I have no problem with your highlighting a practical example. However, an example is only an example. We need to discuss how it impacts on other areas with regard to the bill’s principles.

Ian McKay: Perhaps I can be helpful, because the two issues are inextricably connected. In every merger involving several colleges and sites, every college involved will have to go through exactly the same process of having to think through the merger’s opportunities and potential difficulties. Indeed, the same happens in any merger in any area of work.

I want to use Mr Findlay’s specific example to illustrate the point in the bill. Leaving aside the fact that thinking on this matter is still not clear, I should point out that, as it happens, one of the last things that I ever did as an FE trade union official was to negotiate the transfer of the building arrangements in which Mr Findlay has taken an interest from Stevenson College in the east of the city to Telford College at Granton in the north. All the departments and provision—which I would regard as entry level rather than low level—were transferred wholesale in and around 1987 because the two colleges, which were then under Lothian Regional Council control, recognised that such a move would maximise the potential of Telford College as it was then and offer a much better facility to better serve the trade and those coming into it.

There are statistics that show a falling away towards lower-level courses or entry-level courses, but it is important to recognise that there is immense change in the professions. I do not think that anyone accepts any more that they are just hammer-and-screwdriver professions; they are increasingly highly technical and they increasingly involve other areas of education, alongside the work.

I hope that in Edinburgh—and in any other part of the country that has to address the same process as the bill goes through—we will get good educational reasons and good reasons for serving our communities and the workforces in them that direct why things are made available in certain places. As it stands, my fear would be that unreasonable competition would emerge—a sort of bums-on-seats fight—that gets in the way of us doing the process right. Regionalisation and the strategic view that it offers us are an advantage, not a disadvantage, in such situations.

Liam McArthur (Orkney Islands) (LD): What I will say draws together a bit of what Neil Findlay and Liz Smith asked about. You talked about the importance of having a single authoritative voice, but you acknowledged the importance of recognising local variance. Do you accept the concern that the determination to have a single authoritative voice risks overriding the perhaps inconvenient and inconsistent voice that might emerge from local campuses and colleges?

Ian McKay: I do not see a local voice as inconvenient; I see it as a necessary—

Liam McArthur: Is it inconvenient to providing a consistent view across the sector?

Ian McKay: I will explain what I mean. I see locality not as a bad thing but as a good thing. Difficulties arise in a sector such as further education when there is unacceptable variance in the workforce’s terms and conditions—in the pay in different parts of the country—or in funding mechanisms, for example, which leads to inequalities across the country.

Another difficulty arises if the situation that pertains does not allow us to have someone who can stick up for the sector and argue on its behalf and if it does not allow the sector to reach a collective view. Even organisations such as Colleges Scotland, which was represented here this morning, are voluntary membership organisations—they do not provide a collective voice. If we returned to national bargaining—which has been speculated about and has been in the press—no mechanism out there could form the management side. No body in the sector has the
authority or legal status to take that role. That is what I mean by moving to a more effective collective national voice.

Liam McArthur: Neil Findlay referred to access and course content issues. It is not inconceivable that differences of opinion will exist across a region about where provision should be—indeed, you talked about problems of duplication and overprovision. However difficult it is for students to have their course relocated from Dalkeith to the north of Edinburgh, that is—to be frank—a lot more manageable than having a course relocated from Orkney to somewhere that is closer to Inverness, for example.

Is the concern legitimate that the pursuit of the strategic unity of view will—perhaps not immediately, when people are still fairly confident in their current positions, but over time—result in homogenisation in a region that gravitates towards a central view and downplays the voice of people in local campuses? The local voice is perhaps stronger at the moment as a result of where we are, whatever the problems with the current system might be.

12:45

Ian McKay: I refer you back to the points that I made to Ms Smith earlier. How you use the greater power for strategic work that is given through regionalisation is very much down to the policies and attitudes that you bring to it, but the bill does provide greater power. I agree with you that how it is used will be up to the bodies themselves, but I trust that they will be held to account.

Liam McArthur: Do you think—

Ian McKay: Let me finish. I do not think that that simple move in itself takes away the local advantages. However, what you are perhaps neglecting is that some of the apparent local advantages also bring with them problems of atomisation and unnecessary competition between different individual units, as well as a lack of cohesiveness in a sector that was always suffering from being the poor relation within education.

Liam McArthur: Can you point to the safeguards in the bill that would give people who have concerns a degree of confidence that, were any such situations to arise, there would be some recourse within what the legislation proposes, particularly given the wider concerns about the extent of ministerial influence in the college sector going forward?

Ian McKay: That is a wide question, as you are moving over two or three different areas, but I will try to answer it.

I see no less accountability in the bill for the regional committees that would be established through it than there is in the 1992 act for the college boards that currently run our system. I see no detriment there; in fact, I see the advantages that a larger strategic view gives. On the accountability—the corporate governance involved in moving from one to the other—I see no enormous difference between the two.

Liam McArthur: There is a shift in terms of ministerial appointments of principals and course content.

Ian McKay: I was just coming to that. The structure is the structure. A board is established either to run a college or to run a number of colleges or a college with a number of sites. The accountability of the boards must, indeed, be as transparent and as good as we can possibly make it.

The third point that you asked about is where the minister comes in. You are right to draw attention to that, as it has been controversial. I personally have no problem with the idea that the chairs of those regional boards—which will be important bodies—will be appointed through our public appointments structure in much the same way as the chair of an NHS local board or whatever would be appointed.

As to their accountability to the minister for doing their job, unfortunately, as we have seen in other areas of the public sector quite recently, it is normally the first port of call for both the media and the public when some problem arises in a public body to ask the minister to intervene and do something about it. As I understand the powers that are available in the bill, that is for the minister so to do. However, it would be bad governance all round were a minister to see their job as doing the job of the regional authority and interfering overly in the work of the people who are there to do that work. That would bring into question a behaviour on the part of the minister that went way beyond the legislation and was much more about a style of work, which would be unacceptable.

I am trying to stick to the facts and the corporate governance structures that exist throughout the public sector. Those of you who are as old as me will recall the Monklands affair and so on. From time to time, such structures require to be exercised and are, I think, legitimate ways in which the Government holds those of us who are appointed to public office to account for doing our job.

Liam McArthur: That is helpful. However, given recent events such as the cabinet secretary’s interventions in respect of roles over which he has no hiring and firing powers, there is understandable concern.
Clare Adamson: Mr McKay, would you like to address some of the concerns that have been raised about the myriad of arrangements that mean that in some regional boards the voices of the students and staff will be heard but that in other boards they will not be heard?

Ian McKay: It would be my wish that every regional board has representation from the staff and the student body on it, and the bill clearly goes in that direction. I would hope that that will be the case and that we will benefit from it.

I would hope, too, that a whole bunch of other areas of public life are represented on the boards. My view is that it is extremely important that we have private sector involvement because, by and large, it is private sector companies in which the people who come through the colleges look for employment. We need to have a good balance between what companies are doing and what further education is doing. I think that that applies to higher education, too.

Although I would like the boards to have wide representation on them, I do not think that it is a numbers game. I have had discussion locally with my student president on whether it is more beneficial to have one student voice or two on the board. Sometimes having two voices is not as good as having one voice that people know speaks for them.

What is more important is that proper arrangements are made at an institutional level to ensure that the representatives of the staff and students have sufficient back-up and resource to do the job properly. I do not think that it is enough simply to tick the box and say that we have someone on the board. I would imagine that members of the committee might find it very difficult to do the job that you do without the back-up that you have from the clerks and your own staff. Similarly, the important issue for me as far as good governance is concerned is that, when someone sits at the board table, they are well informed and well resourced and can do the job properly. In a way, I think that some of the discussion about numbers tends to deflect from consideration of what representatives do when they get on a board, which, to my mind, is by far the most important aspect of the issue.

The Convener: As members have no further questions, I thank Mr McKay very much for coming along and giving evidence.

Our final evidence-taking session on the bill at stage 1 will take place next Tuesday, when we will hear from the Scottish Further and Higher Education Funding Council and the Cabinet Secretary for Education and Lifelong Learning.

Meeting closed at 12:52.
Post-16 Education (Scotland) Bill

Skills Development Scotland: supplementary evidence

Further to our submission to the Committee at the beginning of its consideration of the Education Scotland Bill, we would like to take this opportunity to provide clarification of the issues raised throughout the Bill process to date with regard to the 16+ Learning Choices Data Hub (“the hub”).

We have been following the evidence sessions on the scrutiny of the Bill with interest and ahead of our appearance before the Committee on 16 February thought it helpful to focus on two main issues in this submission.

- Compatibility of IT systems
- Recording of SDS interventions

Compatibility of IT systems

SDS is working with a range of partners on pooling relevant data in the hub in order to support young people aged 16-24. Questions have been raised as to the compatibility of the data hub with partners’ existing IT systems. Organisations record and hold different data on young people and their participation at various points in time, generally based on the specific business needs of each organisation. Existing records held by different bodies across Scotland are therefore not currently compatible and partners who input information to the hub do not have the same systems and therefore cannot share data (all Local Authorities do not share the same IT systems for example) between them. The hub is the solution to the problem of partners’ systems being incompatible with each other.

It is widely acknowledged that there have previously been problems with voluntary data sharing activity, and as a result, questions as to whether the hub might serve to over-complicate the system rather than simplify it. SDS welcomes the data sharing provisions of the Bill. There has previously been no comprehensive framework for sharing appropriate data between organisations, to provide an integrated picture of the young person’s transition or journey through learning. It will enable SDS to engage with any young person dropping out or failing to complete their learning choice, with a view to re-engaging them and ensuring that young people benefit from a more personalised service. The end objective is to support more young people along a positive path into employment.

A Data Hub Reference Group already exists to provide oversight for data governance and coordinates the work around the hub; the first tranche of activity has included information sharing between schools and Local Authority Education Boards. The Reference Group has agreed what information these partners will input to the hub, and, importantly, their reporting requirements from the hub.

Local Authorities are regularly uploading information and, going forward, will do so on a fortnightly basis. No major issues have been reported with data quality. Reports are already being generated for Local Authorities and shared. These
include, for example, data on support being provided by SDS to individuals in schools.

Forty of Scotland’s Colleges have signed data sharing agreements (DSAs) with SDS and have begun to supply enrolment and withdrawal data to SDS on a monthly basis. We can indicate the likelihood of revisiting these DSAs post-regionalisation to ensure appropriate controls are in place over which data take precedent. The Reference Group is currently being refreshed to include all Colleges so that their further reporting requirements from the hub can be finalised.

SDS is currently working with its strategic IT partner, Atos, to identify and address any residual technical issues. All technical issues will be addressed as part of the normal business development and maintenance of the data hub.

Interventions

A specific question concerns how SDS will record interventions in school on each individual pupil’s file. Careers “interventions” are the term SDS specifically uses to express the record of an individual’s time spent with an SDS adviser. The aim of the 16+ Learning Choices data hub is to support young people from S3 onwards by providing the central mechanism in Scotland for bringing together and sharing the information available on young people and their learning choices. The focus is to ensure that data uploads by all schools take place regularly to assist in forward planning, targeting support and monitoring of those young people who were winter leavers or will be upcoming summer leavers. All local authorities and SDS Operations staff have access to data hub reports.

Further information

We will be happy to provide further information on these and other issues raised in our opening statement and in our detailed evidence.

Conclusion

The key factor for success is embedding data sharing in the core work that we do with partners to support young people, underpinned by a robust, legal governance and technical framework, which this Bill provides. SDS is committed to working closely with partners to ensure the data hub is a success and has approached the hub as a joint endeavour between data sharing partners, closely supported by the Scottish Government Youth Employability and Skills Division and Scotland’s Colleges. The hub has been created to ensure that our young people make the best possible use of the services available to them across Scotland. It is anticipated the hub will as of the beginning of the financial year 2013/14 operate as a normal component of business activity amongst the key partners involved in the delivery of learning and training opportunities for young people.

Skills Development Scotland
February 2013
Post -16 Education (Scotland) Bill

Skills Development Scotland: supplementary evidence

Follow up to evidence session on Post 16 Education (Scotland) Bill on 19 February

Please find a response to the Committee’s request for further information below.

**SDS staffing**

SDS has 5 staff (approx 3 FTE) in the Business Data Team to monitor and support the data hub, drawing on additional IT/IS support as required.

It may be helpful to further explain the key customer facing roles at SDS. All of our Operations staff in Career Management Skills (CMS) roles contribute to monitoring and supporting the young people identified as requiring support.

Careers Advisers can perform either Work Coach or Career Coach roles, or both, and in some areas SDS staff will be undertaking both work coaching and careers coaching depending on the specific needs of individuals and the demands of the local area (i.e. in rural areas where staff resource must be used more flexibly). Key workers at SDS also provide employability support to those individuals who need it most, in order to help them overcome barriers to employment. There are at present 464 Careers Advisers at SDS and 140 Key Workers at SDS.

**Typical Case Load for Careers Advisers with a work coaching role**

In schools, SDS offers a career coaching service and those identified as at risk of not going on to a positive destination after they leave school have continued SDS support through work coaching for at least the first six months after they leave school, or longer where required.

Careers Advisers in a work coaching role typically have a case load of 30 individuals over the course of a year. A young person benefitting from work coaching will typically have 8 interventions on average during the first six months after leaving school and it is important to note that the intensity of support will vary depending on the individual needs identified for the young person. Support may be weekly, or more than once a week if required (i.e. the young person may need more help if e.g. they have caring responsibilities or have been in custodial care). The Careers Adviser will regularly make contact with individual and support the employer or the young person’s learning provider, in order to ensure that the young person is able to sustain the opportunity.

**Developmental Costs of the hub**

The hub is neither a new IT system nor a new database. The starting point for data sharing between partners is SDS’s existing client management system. The hub acts as a conduit, through which agreed partner data is passed, matched with SDS records, and then held on SDS’s client management system. This enables up to date records (based on shared data) to be produced and shared with partners. The hub is therefore integrated into SDS’s normal business operations as part of our core service for young people.

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1 SDS’s system contains a comprehensive national record of school pupils in the senior phases (excluding those in private schools). As pupils move on from school, SDS records become less accurate, hence the role and value of the data hub in enabling up-to-date status information on the 16-24 year old cohort being brought together in one system.
Bearing this in mind, the costs of developing the hub have been part of SDS normal data management and CMS activity (this work having already been carried out). Further detail will be provided to the Committee in due course.

In terms of the additional allocation of £52,000 (as referenced in the Financial Memorandum) – this will be used to make small modifications to partners’ systems so that they can send reports to be uploaded into the hub. In financial year 2012/13 SDS have spent approximately £6k developing and refining technical solutions for sharing data with local authorities. SDS have reallocated remaining anticipated spend against financial years 2013/14 and 2014/15 to take in to account the timescales for incorporating partners within the data sharing community and legislation coming in to force. SDS remain satisfied that the overall figure of £52,000 is sufficient to deliver the limited software updates required to implement these modifications.

**Data transfer between partners: how the hub works and problems the hub is looking to address**

As described above, the hub is not a new or stand-alone system, but a mechanism for feeding agreed up-to-date information into SDS’s existing client management system, and reporting that combined updated information back out of the system to support service delivery.

Organisations who engage with and support young people record and hold different data on young people and their participation at various points in time, generally based on the specific business needs of each organisation. Existing information held by different bodies across Scotland on different systems are therefore not readily accessible outside the originating organisation. Multi-partner data sharing utilising the data hub is a solution which enables partners to share appropriate data with one another.

The data hub facilitates multi-partner data sharing by acting as a conduit that enables appropriate data to be shared between partners’ existing Customer Management (CM) Systems. All partners engage with young people as a core part of their purpose and consequently already maintain their own CM systems. Rather than setting up an additional system (or an additional data base) the hub is designed simply to be a conduit to allow data to move in a structured way between existing systems.

Diagram 1 shows the position regarding data flows for existing data-sharing partners. Agreed data from local authority education department systems, college student record systems, SAAS and DWP are uploaded into the data hub and then move through this conduit into SDS’ CM system. This system is the one in which SDS service delivery staff record their engagements with young people and so the SDS system becomes the repository for a combined data set. Combined data is passed back out through the hub to LAs and colleges.

In terms of how this works in practice, the system is designed to place a low IT requirement on partners. Partners export a file of the relevant data from their existing CM system and then upload this into the data hub by logging into a secure website. SDS then manage the moving of the data through the hub into the existing SDS CM system. When partners wish to access a combined data set, they log into the same secure website and access the data files.
The data shared between partners is not a complete set of everything on partners’ CM systems, as that would be inappropriate from considerations of a young person’s privacy. Instead a defined set of data is shared which has been agreed by partners as representing a sensible and proportionate level of information in order that the benefits of data sharing are achieved. The exact set of data to be shared is set out in each data sharing agreement between SDS and a partner. The shared dataset includes three main types of field. An outline of the data fields are outlined below, with examples of categories within each field:

1. Individual identifier fields (e.g. name, Scottish Candidate Number, school name)
2. Offer fields (e.g. current status, start date of status)
3. Flagging data fields (e.g. looked after status, young carer status)

The data sharing agreements are a key element in the governance and legal framework within which the multi-partner data sharing is undertaken.

A combined data set is used by staff who work with young people to help identify those who are not in positive destination and those who may be at risk of moving into this position, with a view to re-engaging them and ensuring that young people benefit from a more personalised service. The end objective is to support more young people along a positive path into employment. Having access to a robust accurate up-to-date data set supports staff in making professional judgements and engagement with a young person, by providing a more complete set of information, but in no way replaces the application of those skills and activities.

Diagram 2 shows the data flow from the perspective of a local authority education department.

As described above, multi-partner data sharing using the data hub is designed to achieve the benefits of more effective and efficient working for front line staff and improved service delivery for young people.

**Definition of individual who “is at risk of disengaging with learning or training”**

This is an individual between the ages of 16-24 who is either in school, college or training and may drop out of their current destination and fall into the “not in education, employment or training” category. Staff will be able to draw on the critical dataset including the flagging indicators to inform professional judgement on the best way forward and most appropriate service provision for the individual. Also, any person who has already disengaged will be more readily identifiable through multi-partner data sharing, facilitating engagement with the young person.

**Purpose of the hub - is SDS support proactive or reactive**

SDS support is both proactive and reactive depending on our current engagement with the young person. The hub is a source of information as part of SDS’s wider engagement programme with partners in the area of skills and training.

As an example, colleges regularly provide SDS with a list of those individuals who have dropped out of their learning choice. This information will be received into the data hub and so provided to the local SDS centre so that Careers Adviser can proactively contact the young person concerned in order to work with them on their options.
SDS keeps abreast of developments regarding cases of individuals who are already in college but are considered at risk from dropping out. Those at risk of disengaging will already have the continued support of a work coach for at least the first six months of learning (and longer where required). The work coach will regularly make contact with the individual and the college on how they are progressing and as such the coach would generally know, before the list comes into the hub or the centre, that the individual has dropped out and would be able to proactively contact them to discuss their options. The hub will allow this information to be more readily shared with other partners so that they can also assist the individual as appropriate.

**Clarification of whether support is to be provided by SDS or other partners**
Local partners meet regularly to discuss who is best placed to provide support to a young person. This discussion takes place at *Opportunity for All* meetings in schools or post school with Community Planning Partnership (CPP) partners. The support requirements for each identified young person at risk of disengaging are considered and the most suitable partner is identified to follow up with the young person. This is dependent on the needs of the individual at that particular time.

**Private, web-based and non-Scottish Training Providers**
The purpose of the hub is to share information between public partners to ensure that the best public sector service provision is made available to young people that need it most. There is no data sharing between SDS and private training providers and no provision for this in the Bill. SDS does, however, hold information on individuals undertaking training within programmes that we fund (such as Modern Apprenticeships). We will, therefore, draw on this information in creating up-to-date shared records of young people’s destinations.

**Volume of records held on the hub**
SDS is currently working on analysing and validating information related to the totality of records held and will provide further information once that work is completed.

*Alison More*
Lead Head, Strategy, Policy & Performance
Skills Development Scotland
Diagram 1

16+ Data Hub
Multi-partner Data Sharing
One-Way & Two-Way Data Flows

LA Ed. Dept. CM system → SDS
SAAS CM system

SDS 16+ Data Hub (conduit)

College CM system

DWP CM system → SDS CM system

Diagram 2

16+ Data Hub
How Local Authority Education Staff Would Use Data Sharing to Support Engagement with a Young Person

LA staff input data into LA Ed. Dept. CM system → data upload

Young Person → interaction

LA Staff use combined information for service delivery

combined information (in reports)

SDS 16+ Data hub

SDS staff input data into SDS CM system

SDS CM system
Summary

During the oral evidence given by the three Chairs of University Courts to the Education and Culture Committee on 19 February there was a specific question asked about the ratio of the highest to lowest paid member of staff. We did not have the information but agreed to provide it to the Committee. This information is given below.

We also had a discussion about the extent of consultation that has taken place in connection with obtaining evidence for the Code of Governance that is being prepared. There was some confusion over the extent of consultation so we clarify the position below.

Data on Principals’ pay

The Committee asked about the ratio between the highest paid member of staff in a university and the lowest paid.

Data\(^1\) for 2012 show that the ratio of the median for Scottish principals’ pay to that of the lowest point on the HE sector pay spine was 16.3 to 1.

The Hutton Review of Fair Pay in the Public Sector\(^2\), which reported in March 2011, was asked to consider the case for a fixed limit on pay dispersion in the public sector, and a ban on managers earning more than 20 times the pay of the lowest paid person in their organisation. This was not taken forward by the Hutton Review but the ratio shown above for universities would have fallen below this limit. Instead, Hutton recommended that the most appropriate metric for pay dispersion is the multiple of chief executive to median earnings, noting that this would ensure public service organisations are accountable for the relationship between the pay of their executives and the wider workforce. The ratio of the median for Scottish principals’ pay to the median for pay of all staff in the UK HE sector was 6.3 to 1.

It is also worthy of note that a principal may not always be the highest paid member of staff in an institution. Sector-wide data are not collected on this but the situation may arise in institutions with medical schools where some staff will receive pay reflecting their senior clinical role. This may set their pay above that of the principal.

Consultation process for the drafting of a new Scottish Code of Good Higher Education Governance

The Steering Group appointed by the Committee of Scottish Chairs to oversee the production of a new Scottish Code of Good Higher Education Governance appointed two external consultants to engage with a range of stakeholders across the sector and assist

\(^{1}\) Source: UCEA

\(^{2}\) [http://www.hm-treasury.gov.uk/d/hutton_fairpay_review.pdf](http://www.hm-treasury.gov.uk/d/hutton_fairpay_review.pdf)
the Steering Group in drafting a code. The consultants have spent significant time talking and listening to the widest possible range of stakeholders, as follows:

**Overview of the process**

- Meetings have been held with national officers of the relevant trade unions (UCU, EIS, STUC; an invitation has also been made to Unison).
- There have been meetings with Robin Parker, the President of NUS Scotland, and a further meeting with Robin has been scheduled.
- The consultants have visited all nineteen Scottish Higher Education Institutions, and have met staff and student representatives at each of these, except for students at Royal Conservatoire of Scotland where timetabling problems precluded a face-to-face discussion. They were given an opportunity to respond by phone or in writing.
- Overall, there have been 60 hours of meetings as part of the programme of institutional visits. There have been over 80 separate meetings during which the consultants met 366 people.
- In all but one case separate sessions with the consultants were given to students, to staff and to senior management. In this one case there were two separate meetings with a mix of students, staff and senior management.
- The consultants also met lay members of the Court / Board at all institutions.
- Details of this work, including the schedules and names of the participants in all the institutional meetings, have been made available and kept up-to-date on a public website: [http://www.scottishuniversitygovernance.ac.uk/](http://www.scottishuniversitygovernance.ac.uk/).

**Consultation with staff**

- Over the course of these institutional visits the consultants met 122 staff representatives, at least 43 of whom are recorded as representing a trade union.
- The programme of meetings in each institution provided for meetings with staff representatives. These usually lasted between 45 and 60 minutes, matching the time given to meetings with senior management and with lay members of Court respectively.
- At two institutions, Strathclyde and Glasgow, meetings with staff representatives totalled one hour but were split into two sessions of 30 minutes – one with trade unions' representatives and one with other staff representatives. Of the 19 institutions, only four have not indicated the presence of a designated trade union representative on their published meeting details (but this does not necessarily mean there was not a representative present).

**Consultation with students**

- Over the course of these institutional visits the consultants met 71 student representatives. These were usually representatives from student associations.
7 March 2013

Stewart Maxwell MSP
Convener
Education and Culture Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener

**College Sector Cash and Reserve Levels 2011-12**

As was mentioned in your evidence session with college principals on Tuesday 5 February 2013 on the Post 16 Education (Scotland) Bill, Colleges Scotland has been putting together an analysis of the financial situation of colleges, based on their fully audited 2011/12 accounts as at July year end.

We received a 100% return, with all the 41 colleges in Scotland providing their financial information, including the three FE colleges involved in the recent merger into SRUC.

This information has enabled us to provide an updated and complete sector profile in terms of cash available and the reserves position. We also asked colleges to provide information on any known spending plans against their cash reserves and an opportunity to provide background information on their financial position.

We have used this information to inform the key findings paper attached, which we hope will be of interest to the Committee. We have also included the detailed financial information. We have agreed with colleges to provide only the sector position, rather than details for any particular institution, but these individual accounts will be laid before the Scottish Parliament in due course.

Yours sincerely,

John Henderson
Chief Executive

Enc: College Sector Cash and Reserve Levels 2011-12 Paper
Colleges Cash and Reserve Levels 2011/12 – Key Findings
Thursday 7 March 2013

The Report of the Review of Further Education Governance in Scotland by Professor Russel Griggs is frequently quoted as suggesting available college reserve levels of around £200m. Recent analysis of the college sector July 2012 year end accounts has updated this position, and indicates that the sector is operating in a very tight cash position, with reserves far lower than previously stated – with most of these reserves being held with specific plans for future investment in the colleges estate.

Funds which colleges have to spend have to be understood in terms of both cash and reserves. Cash is the money in hand and in the bank that the college can access. This is expected to meet all the day to day costs of operations, as well as have some extra flexibility should there be any additional costs not known when budgeted – such as urgent repairs to buildings or equipment, to meet obligations on paying invoices on time, or to ensure there is enough to manage if there is unexpected loss of income, as almost 30% of income comes from non-government sources.

For 2011/12 colleges had £178m in cash, to cover £131m of short-term liabilities – leaving £47m. In responding to Colleges Scotland, members indicated that a further £5.1m is committed for spending in the future. The Scottish Funding Council (SFC) provides guidance that colleges should aim to have, as a minimum, the equivalent of two months cash available to cover expenditure. The £42m remaining would equate to roughly 19 days. These funds can be a cushion, and having that cushion is prudent and good practice.

Reserves, on the other hand, are not cash. They cannot be withdrawn like funds in a bank account. Some are expected to be used to fund certain future commitments, such as pensions, and some are restricted. Also, of the total reserves in colleges, £230m is showing the increased value of estates – to access that money would only be possible through colleges selling their buildings. This is commonly known as the revaluation reserve.

The remainder is just over £100m – which has been accumulated for different reasons: for long-term loan repayments, or to be put towards planned large projects such as new campus buildings or student accommodation. Reserves can only be accessed if a college plans to spend more money than it will make, and has cash available to do so.

Colleges told us that of that £108m reserves, £38m is earmarked for future spend on new facilities or other investment in their estates. That leaves around £70m. Two other colleges indicated they will spend reserves on meeting the costs of mergers, but were not able to specify the exact figure yet.

Further funds will likely go towards the nine mergers expected to take place over the next two years – involving 20 colleges. Some reserves have already been spent in mergers that have taken place, often matching central funding support. The cost of these future mergers is expected to be partly met by SFC and Scottish Government, who will contribute around £54m. Costs will exceed that, and will likely be met from remaining college reserves.

Audit Scotland, when reviewing college accounts from 2010/11, stated colleges were operating in very tight margins, and the accounts from 2011/12 show these margins are
going to be tighter still, with very little flexibility. Reserves are not a sustainable source of funding.

**Some facts:**
- 100% of colleges provided their financial information for 2011/12, 41 colleges in total (including the three land-based colleges now forming SRUC).
- Of these, 38 had positive reserves.
- Three had negative reserves. Taking account of pension liabilities, this number rises to 13.
- Only four colleges had reserves above £10m.
- The total value of the sector is just under £1bn, held mostly as land and buildings.
- The total reserve position is made up of revalued assets (£230m) and income and expenditure reserves (£108m).
- Deferred capital is (£627m) which has already been spent on assets, is released to offset depreciation.
- The sector had long-term loan and provision liabilities of over £160m.

Colleges Scotland
March 2013
College Sector Cash and Reserve Levels 2011/12

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<tr>
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<th>2010/11</th>
<th>2011/12</th>
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<tr>
<td><strong>College: Total Sector</strong></td>
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<td></td>
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<tr>
<td></td>
<td>£’000</td>
<td>£’000</td>
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<tr>
<td><strong>Cash at bank and in hand</strong></td>
<td></td>
<td></td>
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<td></td>
<td>190,477</td>
<td>177,739</td>
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A balance sheet will change daily. It is important to understand the commitments within an organisation and the timing of those commitments.

This cash balance of £178m is a decline on the previous year. This balance will be required to cover the current liabilities in the year of £131m (see below line re Total Current Liabilities). Some of the cash is in advance from SFC for estates development. This cash level represents approx 1-2 month of trading activity. Cash is required for working capital commitments; to contribute to merger expenditure; to prudently cover long-term commitments and future capital investments.

Total Current Assets 265,567 245,126

Total Current Liabilities 149,120 130,557

Net Current Assets 116,447 114,569

Total Assets - Current Liabilities 1,284,837 1,276,845

Net Assets (including pension) 1,052,130 997,418

Positive value of the college sector - just under £1billion. The bulk of the value is held as fixed assets (land and buildings).

Reserves

a) Income & Expenditure Account (excluding pension reserve) 208,565 219,746

Commitments for current capital projects, new campus developments and other estates developments e.g. student accommodation developments.
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<th>2022</th>
<th>2023</th>
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<tr>
<td><strong>b) Pension Reserve</strong></td>
<td>-67,439</td>
<td>-111,943</td>
</tr>
<tr>
<td><strong>c) Income &amp; Expenditure Account (including pension reserve)</strong></td>
<td>141,536</td>
<td>108,213</td>
</tr>
<tr>
<td><strong>d) Revaluation Reserve</strong></td>
<td>237,577</td>
<td>230,631</td>
</tr>
<tr>
<td><strong>e) Restricted Reserves</strong></td>
<td>17,408</td>
<td>18,238</td>
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<tr>
<td><strong>Total Reserves</strong></td>
<td><strong>396,521</strong></td>
<td><strong>357,082</strong></td>
</tr>
<tr>
<td><strong>Loans and Provisions</strong></td>
<td>-165,268</td>
<td>-167,484</td>
</tr>
<tr>
<td><strong>Deferred Capital and Endowments</strong></td>
<td>660,073</td>
<td>645,032</td>
</tr>
<tr>
<td><strong>Fixed Assets</strong></td>
<td>1,168,390</td>
<td>1,162,276</td>
</tr>
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This is an accounting calculation of the pension liability for defined benefit pension schemes. This does not take account of those colleges with defined contribution schemes, nor will it cover those colleges who have no formal pension scheme.

This is not cash. This is the cumulative operating position of the sector, after pension liabilities (valued under FRS17). These reserves have commitments of new campus developments and other estates developments against them. Such reserves will also be used to address a back-log of estates maintenance in some cases. To access reserves, the organisation will be required to operate in a deficit position i.e. spend more than is earned. Furthermore, cash is required for expenditure. Banks may not wish to lend cash to organisations who are operating in a deficit position.

This is purely an accounting adjustment wherein an asset, usually a building, has been revalued by an external advisor and the college is required to recognise any increase or decrease in value in its balance sheet. Therefore, this is a theoretical value which cannot be realised unless such assets are sold. The decrease is due to a revaluation.

There are specific restrictions against these reserves, meaning they must be released for the stated purpose e.g. estates or the environmental research institute (ERI). Some restrictions apply to estates build already underway.
Dear John

POST-16 EDUCATION (SCOTLAND) BILL
CHARITY ISSUES

You will no doubt be aware of the discussion at the Education and Culture Committee on 26 February 2012\(^1\) when the Cabinet Secretary for Education and Lifelong Learning gave evidence to the Committee on the Post-16 Education (Scotland) Bill. One of the matters discussed was any impact of the Bill on colleges as charities (which I refer to as “charity test”) and (a separate point) their board members as charity trustees (which I refer to as “charity trustees duties”)\(^2\) [OR columns 2074-2076]. Reference was made to correspondence from you as well as to your evidence given to the Committee. Mr Russell concluded by saying that “It is good to address the matter and we will look at the detail if Mr Henderson has an issue that we are unaware of” [OR 2076].

As you know, subsequent to that discussion, the Committee wrote to the Office of Scottish Charity Regulator (OSCR). OSCR’s reply to the Committee was copied to both Colleges Scotland and Scottish Government.

Summary of college regionalisation plans

College regionalisation plans involve, among other things, Ministerial appointment of the chairs of regional colleges in single-college regions and the extension of the grounds on which Ministers could remove board members of incorporated colleges. In regions with more than one college, new regional strategic bodies would have powers to direct colleges in their region. In those multi-college regions (other than in the Highlands and Islands) regional strategic bodies could in some circumstances transfer staff and property of incorporated colleges without the consent of the incorporated college.

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Charitable status

In its evidence, OSCR has confirmed that the Bill will not affect the charitable status of colleges which become either regional colleges or colleges within a region.

To meet the charity test in the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) a body must (a) operate for one or more charitable purposes\(^2\) and (b) provide public benefit. However, a body is excluded from meeting the test if its constitution permits the Scottish Ministers to direct or control its activities. Ministers have the power to disapply this exclusion. The Charity Test (Specified Bodies) (Scotland) Order 2008 makes provision to disapply the Ministerial aspect of the charity test in relation to incorporated colleges. The Bill does not affect this Order and the Order will remain in place after the Bill is enacted. Amendments would be made to it to ensure that it is up to date following college mergers.

A body is also excluded from meeting the charity test if its constitution permits it to distribute or apply its property for a purpose which is not a charitable purpose. The provision of the Bill which empowers regional strategic bodies to require colleges to transfer staff and property is framed with a view to avoiding any risk that colleges will be excluded from meeting the charity test on this basis; property transferred must be used for the purposes of the advancement of education (a charitable purpose).

Charity trustee duties

While section 66(1) of the 2005 Act requires college board members, as charity trustees, generally to act in the interests of their college, section 66(3) of the 2005 Act provides that a charity trustee’s duty to act in the interests of their charity is “without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity”.

In its evidence, OSCR advise that charity trustees “might feel themselves to be in a complex and conflicted position” if a regional strategic body were to issue a direction that the trustees consider was not in the college’s best interest. We agree that college board members may find themselves in a conflicted position. However, it seems to us that is not the only potential scenario. College board members may find themselves in a situation where they agree that an action is in the best interests of the region as a whole, but consider a particular matter to be against the interests of the college itself. Without a direction, they would be obliged under charity law to put the interests of the college first.

Put plainly, whether college board members feel conflicted or not does not affect their legal position. Complying with such a direction would be a legal requirement. Following such a direction would therefore not compromise their role as charity trustees. OSCR acknowledge this – “compliance with applicable legislation is a duty on trustees under the 2005 Act.” OSCR has acknowledged in its evidence that the scenario it perceives might give rise to the conflict “may not be particularly likely”. OSCR also usefully mention that consultation with a college (and others) is required before a direction can be issued which might avoid the scenario arising. The same considerations apply to the transfer of staff and property without consent. Again, consultation is also required before a transfer requirement is made.

\(^2\) In its evidence, OSCR confirm that it is likely to find the proposed new functions of regional colleges as charitable purposes.
Remaining concerns

In drafting the Bill, we have had the charity matters firmly in mind. We know that Ministerial control is not an issue, given the exemption order that is - and will remain - in place. There is specific provision in the Bill to ensure that any transfers are for the advancement of education (a charitable purpose). And we have sought to provide a mechanism in multi-college regions to ensure that college board members can continue to discharge their duties as charity trustees.

We hope that OSCR’s evidence and this letter assures you that the Bill is consistent with charity legislation. However, I should welcome the opportunity to provide any further clarification if there are issues of charity law that you consider we have not fully addressed. If you have any specific concerns that either colleges would not be able to continue to be charities or college board members would not be able to discharge their role as charity trustees, please let me know.

I am copying this letter to the clerk of the Education and Culture Committee and to Martin Tyson of OSCR.

Yours sincerely

COL BAIRD
Post-16 Education (Scotland) Bill: Stage 1

10:03

The Convener: The next item is our final oral evidence session on the Post-16 Education (Scotland) Bill. Before we take evidence from the Cabinet Secretary for Education and Lifelong Learning, I welcome to the committee Mark Batho, who is chief executive of the Scottish Further and Higher Education Funding Council. Thank you very much for coming this morning. We will go straight to questions, if that is all right.

Liz Smith (Mid Scotland and Fife) (Con): With reference to policies on university governance, tuition fees and access, will you give your view on why you think a legislative approach would be better for delivery of education, rather than the conditions that are already in existence when the funding council makes its grants?

Mark Batho (Scottish Further and Higher Education Funding Council): Clarity is the order of the day. We have reflected on this in the funding council. Following the “Putting Learners at the Centre—Delivering our Ambitions for Post-16 Education” report, there has been a change in the policy environment for post-16 education.

From our perspective, it is not unhelpful to have greater clarity on the issues that Liz Smith has mentioned being set out in legislation. That way everyone knows more clearly where they are. For example, at the moment our duty in terms of provision is to secure coherent provision—and that is it. A bit of underpinning in legislation of what that might look like is helpful to the funding council and, potentially, to others.

Liz Smith: You make the point that you think there will be greater clarity as a result of the legislation. Could you be more specific about where the bill will deliver on the intentions because of that clarity? For example, what specific things in the bill will deliver widened access and lead to better governance?

Mark Batho: I will not go into the nitty-gritty of the specific provision on widening access because I understand that the Government is looking at the detail of some of the wording.

It is intended that there will be clear agreements between the funding council and institutions on their widening access ambitions, and that there will ultimately be an obligation on those institutions to abide by them. Setting out that intention in legislation gives extra force to what already exists—namely, the outcome agreements that we are developing at the moment, which are not referred to in statute. Outcome agreements just
happen; they are agreements. The underpinning legislation’s inclusion of an obligation to fulfil what is in the widening access agreement—as it will be termed—is helpful.

On governance, what the relevant section in the bill says is simply about agreement on the “principles of governance”. The funding council will not tell universities how to run themselves; it is about the underpinning of principles. There is no real statutory reference to that, at the moment.

The funding council has a direct interest in there being well-governed institutions because we are distributing £1.6 billion of public money and we need to be sure that it is being used effectively and efficiently. The statutory underpinning makes clearer the obligation of institutions to be well governed and well managed, which contributes to greater accountability for use of that resource. It will ensure that in all the institutions there is real compliance with the obligations that come with public funding.

**Liz Smith:** In the first part of your answer you said that you do not want to comment on specific details because the Government is still considering the matter. Is it your understanding that, although the intentions of the bill are reasonably clear, the detail of how some of it would be put into practice is not clear?

**Mark Batho:** I did not quite say that. My point is that the Cabinet Secretary for Education and Lifelong Learning has indicated that he will examine the wording in a number of places to ensure that the intention that he has expressed is articulated in the right legal language. I am not sure where some of those discussions have reached because I am not directly in that loop.

There is clarity—for example, with the widening access section of the bill—on what the Government wants, but I understand that the cabinet secretary is considering whether the wording is exactly right. He will, if required, lodge amendments to make sure that any doubt about the wording is resolved. That is not my specific responsibility. My responsibility is to take the legislation as we ultimately find it and to implement it.

**Liz Smith:** At last week’s committee meeting, Alastair Sim from Universities Scotland said that his belief is that many people in the sector feel that the policy intentions have come adrift from some of the detail. It is not for me to ask you about that, and it would not be right for you to answer on whether you think that is correct, but do you acknowledge that there is concern about that?

**Mark Batho:** I have read the evidence that others have given. I am not concerned; I can see clearly the direction of policy and it is a direction with which the funding council feels comfortable.

**Liz Smith:** If you are prepared to say that, why do you think that Universities Scotland has made that comment?

**Mark Batho:** I do not want to enter into Universities Scotland’s mind on that and I cannot remember the specific issue that it was talking about. It was something to do with whether the bill provides for agreement or enforcement. That is for Universities Scotland to articulate.

**Liz Smith:** The Universities Scotland comment was in the context of my next question. Is there concern about the degree of responsible autonomy—that is the key phrase—in the sector? Do you feel—from any part of the bill—that ministers’ oversight is increasing and that the funding council’s role will, as a result, be more to be at the Government’s bidding and to carry out its instructions, than to have responsible autonomy? I think that was Mr Sim’s point.

**Mark Batho:** I do not see that shift in the bill. The starting point is ministers’ clear articulation of their respect for the autonomy of the institutions, and their acknowledgement that autonomy delivers the best results, according to international comparisons. The funding council has not read the bill as being something that will intrude on that autonomy in ways that could adversely affect it. If the Government wanted to intrude on autonomy and take a more significant role in running universities, the bill would be a slightly odd approach to take—in particular the governance and widening access sections.

I am conscious that in the rest of the bill the Government is taking a more significant role—for example, in appointment of chairs of regional strategic bodies and of other regional colleges. That is a matter of process. Will the institutions be less autonomous because of the route by which their chairs have been appointed? That is a matter of judgment. Some people who have given evidence have formed one view, but I would form another.

**Liz Smith:** To be clear, I say that the Educational Institute of Scotland has raised that concern and has made the point that it feels that good governance would be more at the discretion of ministers than of the institutions. Is that something that concerns you?

**Mark Batho:** There is a general interest in there being good governance by whatever route. Chairs of colleges and regional bodies being appointed by an acknowledged public appointments process is an entirely legitimate route for such appointments in institutions that typically receive about 70 per cent of their funding from the public purse.

**Liz Smith:** That point is valid. The institutions are taking a substantial amount of public money
and good governance is crucial. However, many people in the college sector are making the point that good governance would be decided more by the Government, and potentially by the funding council as it is involved in that process, than by the institutions. Do you accept those comments that the committee has heard? They have been substantial.

Mark Batho: The Government and the funding council have a legitimate interest in scrutinising governance of institutions. That is different from doing the governance of institutions.

Liz Smith: Does that include the powers to remove the whole board?

Mark Batho: My understanding is that those powers already exist in the Further and Higher Education (Scotland) Act 1992.

Liz Smith: The powers will be slightly extended.

Mark Batho: I am getting beyond my specific area.

Liz Smith: There are powers, but I think that you will find that they are to be extended. Does that concern you?

Mark Batho: If an institution that is in receipt of tens of millions of pounds of public money is failing in its responsibilities, it is not unreasonable for there to be accountability for that. The ultimate sanction—which has never been used—of removal of a board that is persistently failing to fulfil its duties and responsibilities seems to me to be a not unreasonable sanction. There are many steps along the way, which is why the process has never been carried through since the 1992 act was passed.

10:15

Neil Findlay (Lothian) (Lab): Throughout the evidence that we have heard during our scrutiny of the bill, concern after concern has been raised about different elements of it. What concerns do you have about the bill?

Mark Batho: The specifics that we have been talking to the Scottish Government about have been very much linked to our responsibilities. We want to ensure that there are clear lines of accountability for the resource that we distribute. Ultimately, I am the accountable officer for all the £1.6 billion that is accountable to the Scottish Parliament; therefore, it is important that the line of accountability is clear down to where that resource ends up.

For most of the college sector—I am talking about the college sector—that is going to be very clear anyway, because in most areas there will be a single regional college. There will also be clarity in the Highlands and Islands because the single University of the Highlands and Islands will ultimately be responsible for all the resource.

The two areas that will be multicollege regions are, at the moment, Lanarkshire and Glasgow. In continuing discussions with the Scottish Government, we have raised what is essentially a technical point. It is not about policy; it is a question of ensuring in the legislation that the resource moves from the funding council to the regional strategic body to be distributed to the assigned colleges.

I will give you an example. If something were to go wrong in one of the assigned colleges for which I was accountable financially, there ought to be clarity around the funding council’s capacity to resolve the difficulties or the issues in that particular assigned college. There are a number of ways of addressing that, either through legislation or administratively. Potentially, someone in the regional strategic body could be an accountable officer as well.

A number of different approaches are being discussed at the moment. I would not say that those are concerns; they are things to be got right. That is the main area of focus.

We must also ensure that there is clarity about who does what, particularly in relation to quality and the securing of coherent provision within a region. Who is responsible, between the funding council and the regional strategic body? Such questions are, again, potentially resolvable by administrative means or through amendment of statute, and discussions are continuing. They are technical issues, but it is important that there is clarity about them.

Neil Findlay: I have heard you use the word “clarity” six times this morning. That is six times more than anybody has used that word in relation to the bill in all the evidence that we have heard previously. Nobody has said that the bill provides clarity on anything.

You said that you do not really have any concerns, despite the weight of evidence that we have received, which you say you have read. You say that the funding council has only minor technical concerns about governance and all the rest of it, and that you will comment only on the narrow parts that relate to your organisation. Is that right?

Mark Batho: I think that that is right—yes.

Neil Findlay: Okay. The von Prondzynski review recommended that the funding council commission the drafting of the governance code. Why did that not happen?

Mark Batho: I do not know how we have arrived at the process that has been agreed, but it has been—
Neil Findlay: You are the chair of the funding council. Your organisation was tasked with commissioning the code and did not do it. Why did that not happen?

Mark Batho: I think that there was discussion between Universities Scotland and the Government around an approach to doing that. It was agreed that, just as the committee of university chairs has, on a UK basis, drafted the existing guidance, so the opportunity should be given to the chairs of the Scottish higher education institutions to draft a Scottish code, which is what is happening at the moment. We are entirely comfortable with that.

Neil Findlay: Is that what you think happened, or is that what happened?

Mark Batho: I am sorry. I will not be definitive because I do not have a clear picture in my mind.

Neil Findlay: Your organisation was asked to commission a review. Did the Government speak to you about that?

Mark Batho: We were not asked. The von Prondzynski review was a recommendation to Government—

Neil Findlay: Let us be absolutely clear. Was there no discussion between the funding council and the Government of the funding council commissioning that review?

Mark Batho: There was not, to my recollection.

Neil Findlay: Thank you. Does that concern you in any way?

Mark Batho: Our concern is about ensuring that there is proper governance. I come back to the fundamental point that there must be proper accountability for the resource that goes out to institutions. We deal closely with Universities Scotland and the Government at all times. I have no doubt that, as the university chairs produce their recommendations on governance, the funding council will be involved in the discussions about what they have produced, as will the Scottish Government, and that we will input to any areas that we think need to be improved, added to or whatever.

Neil Findlay: Have you been involved so far?

Mark Batho: No—because the university chairs are pursuing the matter at the moment. They are the people who have been tasked with pulling together the guidance.

Neil Findlay: They told us last week that they are consulting, although other people say that they are not consulting. To date, have they consulted you?

Mark Batho: We have not had a formal meeting with that review group yet, but its work is continuing.

Neil Findlay: Are you concerned about the lack of parliamentary scrutiny of the code of governance?

Mark Batho: I am not concerned, although if Parliament is concerned, I accept that entirely. We have not yet seen the code, and we need to see what it looks like. It is not for me to comment on whether Parliament should have a role in that.

Neil Findlay: Thank you.

Colin Beattie (Midlothian North and Musselburgh) (SNP): My question follows on from what Mr Findlay just said. When the code of conduct is produced, who will sign it off?

Mark Batho: As things stand, it will be a voluntary code that the autonomous institutions will sign up to. If the section in the bill that talks about governance comes into effect, the Government could ask for a review of specific aspects of the principles that underpin the governance of universities. At that point, the Government would plainly have an interest in all the issues involved.

As things stand, the sign-off of the voluntary code will be by the institutions themselves. We have a financial memorandum that has been agreed with both sectors—colleges and universities—and under its terms we require good governance. Underpinning that is the question of whether the institutions comply with the existing code.

The direct answer to the question is that the universities will sign off a voluntary code. We will look at that code and if, from our perspective, it delivers what the existing code covers and we are satisfied that it provides good governance, our job will be to ensure on a regular basis that institutions comply with it.

Colin Beattie: Okay. In his written evidence, Professor Russel Griggs stated:

“In the report we said we were not convinced that those who set targets or monitor Colleges were equipped to create and manage an outcome system well and I still have concerns in this area.”

Can you comment on that?

Mark Batho: I read that comment last night. We have been moving quickly on outcome agreements for the academic year 2012-13, which we are still in. Because of how the policy development unfolded, we started the process only about a year ago. We have already been doing the outcome agreements for the academic year 2013-14 in order to get them in place in time for universities and colleges to have the
appropriate planning assumptions in front of them well before the start of the academic year. It has therefore been quite a fast learning process.

As Russel Griggs acknowledges, we have been learning in the process, but we have also been obliged to move quite fast to get some hard edge to the outcome agreements in fairly quick order. That has meant that, because outcomes by their nature tend to be long-term, we have to agree some intermediate measures. Sometimes those measures are inputs—asking what a university is doing to achieve a particular objective on, for example, knowledge exchange—and sometimes they are outputs: what do the first results show? To an extent, therefore, we are getting to a level of granularity and having to concentrate on that detail in the early stages of outcome agreements.

In our guidance letter, the cabinet secretary made it clear that he sees outcome agreements being a rolling process covering a number of years. In other words, he envisages that we will move much more to the monitoring of the development of outcome agreements—the clean water out of Russel Griggs’s pipe, in fact. That is very much the funding council’s direction of travel.

Colin Beattie: To what extent have the outcome agreements that you have been producing been the subject of negotiation on both sides? Has there been good negotiation?

Mark Batho: Absolutely. They have been negotiated in every case. We have reorganised our own staffing structures to ensure that people are assigned to particular regions for colleges and to groups of universities, which have been conducting what I would term as negotiation.

The negotiations have not always been easy. Some of them have been quite tough, and some institutions are more or less happy depending on how the negotiations have gone. Where there is unhappiness, we seek to resolve that. For example, this Friday I am going out to an institution—I will not name it—where there is some unhappiness about the way the process has gone in order to see what underpins that unhappiness and whether we can do things to resolve it in a pragmatic way.

The Convener: Two other members want to come in, but Liz Smith can ask a quick question first.

Liz Smith: It is just to clarify something. When we spoke with university chairs last week, it was clear that they were not making the decision about the new code of governance but that they were setting up the steering group and that there would be a consultation process. Mr Batho, can I clarify that you said that the funding council, the Government and the universities would all be involved in the process, once the draft code of governance appears in April? Is that correct?

Mark Batho: I would expect that to be the case and that others would be involved, including the National Union of Students and probably the trade union side. I am not being definitive and I am not making up a process, but—

Liz Smith: But that is your understanding.

Mark Batho: Yes.

Liz Smith: Thank you.

Neil Bibby (West Scotland) (Lab): Mr Batho, you said that the code would be voluntary and that universities could sign up to it if they wanted to. Are you sure about that? I got a different impression.

Mark Batho: I meant that there is no compulsory code of guidance or statutory obligation that everybody must abide by.

My point was that we require good governance in the funding council as a condition of our grant, through our financial memorandum. There is an existing code in place and, when there is a new code, we would, to all intents and purposes, require that all institutions are signed up to it. It is not voluntary; in other words, it is not a case of “I don’t think I’ll sign up to this code—I’ll go and do something else.” Once the code is in place, we will expect all institutions that we fund to abide by the terms of the code. If they do not, we will require them to explain why.

10:30

Neil Bibby: I am sorry but how is it voluntary if you require them to sign up to the code?

Mark Batho: I am saying that it is not a statutory code. That is my point. However, if a code has been agreed by the universities as the method of governance by which they will operate and if we as a funding council, having scrutinised that, agree that the code is acceptable for our purposes, we will expect as a condition of grant that the universities will comply with the code. That is how the system operates at the moment.

Neil Bibby: Why do you need legislation if it is going to be a voluntary code?

Mark Batho: I hesitate to use the word clarity again since there is a word count on it, but nevertheless it is helpful that there should be continuing scrutiny of the code. Nothing is for ever when it comes to governance, particularly in a rapidly changing environment. It is therefore useful that, if at some point in future there are those who perceive that there is a weakness in the way in which governance is operating, there should be an
opportunity to look again at some of the principles and to take action accordingly.

**Neil Findlay:** Alan Simpson at the University of Stirling said:

“We believe that the principles of good governance should be developed in a collegial manner with the sector, through discussions.”—[Official Report, Education and Culture Committee, 19 February 2013; c 2013.]

However, the bill says that the Scottish ministers will have the power to impose certain things. Is that news to you?

**Mark Batho:** Section 2 of the bill states:

“The Scottish Ministers may ... impose a condition that the Council must, when making a payment to a higher education institution ... require the institution to comply with”—

the—

“principles of governance or management”.

That is where the imposition comes in: the bill states that the ministers may “impose a condition” that, when we make payment, we are ensuring that the institutions comply.

**Neil Findlay:** Is it not part of the problem with the bill that you take one slant on it and the universities say something else? There is clearly confusion over what the heck is going on here. Let me be charitable, as I always am, and say that there are different interpretations.

**Mark Batho:** It is a statement of fact that different interpretations have been presented to the committee.

**The Convener:** Is there a difference between the way that governance operates under the current code and the way that you envisage that it would operate under the new code?

**Mark Batho:** Not significantly, no.

**The Convener:** Is the way in which the process works effectively the same?

**Mark Batho:** There is a code at the moment that, as a funding council, we expect universities to comply with, in effect as a condition of grant.

**The Convener:** I think that that is reasonably clear.

**Neil Findlay:** So this is clarity.

**The Convener:** I think that it is, Neil.

**George Adam (Paisley) (SNP):** Good morning. One of the biggest challenges of the bill, and an exciting part of the bill, relates to widening access. There has been some discussion of that in the committee.

University principals are effectively saying, “There’s nothing to see here”, as are the chairs of court. The NUS says that it would take 40 years to reach the level of access that we need universities to be at. Within the past 10 years, there has been only a 1 per cent change in the number of people going to university from lower socioeconomic backgrounds. How will the bill widen access? Is improvement expected?

**Mark Batho:** The bill makes a clear statement that universities will be expected to improve their performance in widening access.

You are right that progress has been very slow this year. Different people will offer different reasons for that, but the fact is that progress has been very slow and that, across the piece, the performance of institutions in Scotland is not as good as it is in other parts of the UK.

The ministers are responding to that by saying that, from a policy perspective, they want to increase pressure on universities to improve the position. That has partly come about for the coming academic year when, in response to the guidance from the Government, we are creating additional places for widening access. We have put that guidance out to institutions and will monitor the situation carefully to make sure that the places are filled and that there is no displacement activity in the filling of them. In other words, there should be an increase in widening access as a result of the extra investment.

**George Adam:** That was going to be my next question. Much has been said about the fact that students will be displaced. What is the way forward with using the bill to deal with potential displacement?

**Mark Batho:** Fundamentally, we need more students from areas of deprivation to come to university than have done so in the past. At a certain level within the funding council, we can monitor where students come from and where they go. If there was evidence of displacement within, for example, Glasgow—I use Glasgow because it is a major conurbation that has a number of institutions—we would be getting in among the numbers with the individual institutions and asking them questions. We want more people from the more deprived parts of Glasgow to go to university when they have the capacity to thrive in a university environment.

**George Adam:** I have seen some of the representations from the institutions, and I agree that they could do with a wee bit of a demographic shake-up.

Retention is another big issue. It is not just about making sure that someone gets access; it is about making sure that institutions retain them. The University of the West of Scotland at Paisley has succeeded in getting the level of people coming from lower socioeconomic backgrounds up
to 20 per cent, but retention is still a challenge. How will that go in the future?

Mark Batho: It absolutely must be a part of the widening access programme. Retention will be an integral part of the outcome agreements that we will agree with the universities. It is simply not acceptable for individual students to be pulled into university to find themselves without adequate support.

Widening access and retention are two sides of the same coin as far as the funding council is concerned and, as we go through the monitoring process for the outcome agreement, we will look at the issues very carefully.

George Adam: There is some extra money in the budget for new places, is there not? What is the amount?

Mark Batho: I am sorry but I do not have the figure in my head. We have put in about 700 new places for 2013-14 for widening access and just over 1,000 for articulation. Articulation means moving into the second or third year of a degree programme when the student has a higher national certificate or higher national diploma. In itself, that is a widening access measure because it is a strong entry route into university for people from non-typical backgrounds, if I can put it that way.

George Adam: That is the route that my daughter might take so I am aware of it.

Mark Batho: There has been very strong demand from the universities for articulation places. I am sorry that I do not have the figure in my head for the extra resource that we are putting into that, but I can write to the committee with the details.

Neil Bibby: Why do you believe that the legislation is necessary to ensure widening access? For example, could the Scottish funding council not use a compliance clause or a condition of grant in its current funding arrangements?

Mark Batho: We could do that, but putting the issue in legislation gives it an extra sense of force. The legislation will give a clear and strong signal that the Government and Parliament have not a short-term commitment but a long-term commitment to widening access. The legislation will give an extra sense of commitment by the Government. That is how I would describe it.

In addition, the kinds of methods that we have been describing so far have not really worked in increasing access from more deprived parts of Scotland to a level that either the Government or the funding council wishes to see. Although the legislation is to some extent only a signal, it will nevertheless be a signal with some teeth. The funding council will be able to use the fact that there is a statutory provision behind the widening access agreements to give extra force to our enforcement, if you like, of the figures that universities are agreeing.

Neil Bibby: Following any legislation, will you use a condition of grant to enforce widening access in universities?

Mark Batho: If that is required.

Neil Bibby: So you will do what you already could do just now.

Have you had discussions about the actual levels of increase that you intend to achieve through the widening access agenda? How many extra people do you anticipate will go to university following the legislation?

Mark Batho: We have not got into figures. There has been a long-term programme of seeking to widen access through the widening access hubs that have operated between universities and colleges. However, I am not in a position to name a target right now—and in any case I think that it will be a moving target.

There will be a range of different interventions, including those articulation places, which I hope will raise the game as we move through the process of increasing the number of places. Of course, those places will continue to increase year on year over a four-year period throughout the four years of the degree. In other words, this is a significant ramping up of the widening access places in universities.

As we ramp up the numbers coming from the widening access articulation, our hope and expectation is that universities will ensure that they do not fall short of their commitments by improving their own practices, in both how they reach out to students and—this comes back to George Adam’s point—how they retain them. That will itself create a circumstance in which universities will get better at widening access, which is fundamentally what needs to happen.

Liz Smith: Mr Batho, is it your understanding that there is likely to be a national target for widening access, or will there just be targets in each of the outcome agreements with the different universities?

Mark Batho: My expectation is that we will continue to negotiate on the basis of the universities’ targets for their performance.

Liz Smith: So, it is specifically a university target.

We have had it put to us—in particular, by the four principals who attended the committee—that the method that is used to define those from poorer backgrounds is perhaps a little too narrow and is not sufficient when it comes to all the things
that you should be considering. Would you accept that as a fair assumption?

10:45

Mark Batho: Using the Scottish index of multiple deprivation areas 20 and 40 is a good start. However, that perhaps does not capture significant pockets of deprivation in rural communities and in other places. That is one of the significant points that the university principals have been making to us, too.

We get a good start using the SIMD 20 and 40 data, because there are strong correlations in operation, but everybody acknowledges that, if we can get a more sophisticated methodology that—putting it slightly crudely—does not let universities off the hook but which delivers the objective that people from a deprived background, wherever they are from in Scotland, have the same opportunity to go to university, that is of course a goal worth pursuing.

Liz Smith: I entirely agree, and everybody agrees that that we have to do more—there is no question about that.

In their evidence, the principals of the University of Edinburgh, the University of Strathclyde, the University of Stirling and the Glasgow School of Art all said that, by widening their approach to the measure, they were already improving the facility for students from poorer backgrounds to attend their institutions—never mind having legislation. If that can be achieved using the rigorous process that you have referred to, under the outcome agreements as they stand, why do we need the extra legislation?

Mark Batho: I return to the point that I was making earlier. Fundamentally, there is extra capacity for us to engage in effective negotiations with institutions if our approach is backed up by statutory provision to which we can refer. We can negotiate better results in widening access through our outcome agreement negotiations if there is an appropriate section in the bill than we can if there is not.

Neil Findlay: Two distinct and separate funding models are emerging for college regionalisation. A number of witnesses have raised concerns about regional boards and whether that additional level of bureaucracy is required. There are issues around confusion over funding, what role is whose and so on. Would you care to comment on that?

Mark Batho: Given that the focus is on putting learners at the centre and on moving to the general regionalisation policy that we are now pursuing, and that the objective is for college education to be planned and delivered on a regional basis, which makes sense both economically and for students, there must be some means in every region of taking a strategic overview of the requirements under the legislation and of the economic demands. There must also be a regional place where discussions with stakeholders such as businesses can take place. In the two areas where there will not be a single regional college—Glasgow and Lanarkshire—there must be a place where that can be focused on.

One of the concerns about the existing structure of colleges was that—for very good reasons, and with a lot of good effect, but nevertheless with some downsides, too—they have found it quite difficult to stretch their horizons to that regional level. They were concentrating very much on their local market. If there is going to be a regional approach in Glasgow and Lanarkshire, there must be some capacity to think regionally that does not constantly refer back to the smaller boundaries of the individual colleges. The concept of having a regional strategic body is therefore the right one.

A lot of discussion still has to take place about how big that body should be and how much resource it should consume, and the Government has signalled that it does not want huge new layers of bureaucracy that would consume resources that would otherwise go into front-line education services. As we move through the process, the trick will be to establish a relatively uncostly administration at regional level that has the capacity to think regionally and distribute provision across regional colleges in a way that works for students and businesses in the area. It is not an easy ask, but it is the next task.

Neil Findlay: Do you think that things have become a bit messy and confused? That is certainly what almost everyone who has given evidence has told us.

Mark Batho: Aside from those two areas, I think that across most of the country there is much more cl—[Interruption.] I am sorry—I nearly used that word. I really must stop doing so. [Laughter.]

Neair Findlay: It is good to hear that word—we need to have it in this committee.

Mark Batho: There will be a much more focused delivery of college education in the regions.

There is a risk in Lanarkshire and Glasgow that it could get messy, but there is also an opportunity to ensure that it does not. We need to strike the right balance between the assigned colleges—there are three in Glasgow, with a slightly moving feast in Lanarkshire—to ensure that we do not have an intrusive and costly bureaucracy but that we have a system that nevertheless gives businesses in Glasgow and Lanarkshire a real
point of focus to allow them to discuss the needs of both areas.

Neil Findlay: At the moment, we are seeing in Edinburgh College the impact of regionalisation on local access with the closure of the construction section in Midlothian. A number of us have raised concerns about local access and provision. Do you share the same concerns as we move towards this model?

Mark Batho: I would not say that I have concerns; I think that we need to watch and manage the issue very carefully. We have always said that with certain non-advanced further education the capacity—or indeed the willingness—of some students to travel very significant distances is limited. That must be managed in a regional model but whether that happens through the provision of minibus services, as has been discussed in Edinburgh, or through provision in non-advanced centres to begin with and an increasing expectation that people will travel as they move through their learning and reach more advanced levels is for the regional college to sort out. However, in our outcome agreements with the colleges, we will make it clear that we expect access to provision to be a part of the overall regionalisation.

Neil Findlay: Do you accept that in the specific example that I highlighted access for people in Midlothian and East Lothian is likely to be reduced?

Mark Batho: Unless it is managed properly.

Neil Bibby: You said earlier that you had technical concerns about the relationships between assigned colleges and regional strategic bodies.

Mark Batho: Yes.

Neil Bibby: And you have just said that there is a risk that it could get messy in Glasgow and Lanarkshire. What would happen if there were a dispute between an assigned college and a regional strategic body? Who would step in to decide who was right and who was wrong if things were to get messy?

Mark Batho: The regional strategic body’s role is to plan provision on a regional basis; it has that authority. The nature of the powers that it will have under the bill is such that, in Glasgow and Lanarkshire, they will in a way replace the powers of the funding council. The answer to your question, therefore, is that the regional strategic body will have that authority—that is how it will work.

By the way, I do not think that I was saying that it could get messy. I was saying that there is a potential for it to become messy, and work needs to be done now to ensure that that does not happen. Messiness is not an absolute result of what is proposed in the bill—it does not have to be.

Neil Bibby: You have said that there could be, in effect, mini Scottish funding councils in Glasgow and Lanarkshire. In terms of the ministerial powers over mismanagement that you referred to earlier, if there was a dispute between an assigned college and a regional strategic body, would that be your responsibility or the Government’s?

Mark Batho: That comes back to my point about accountability. If something had gone wrong in, say, one of the assigned colleges in Lanarkshire—if there had been some mismanagement—it would be the responsibility of the regional strategic body to resolve that. That is where the authority will lie.

Clare Adamson (Central Scotland) (SNP): You spoke at length about accountability, especially with regard to the £1.6 billion that you are responsible for. Are you confident that the regionalisation model improves accountability?

Mark Batho: In the areas of the country that have regional colleges, the lines of accountability will be much the same, but there will be fewer colleges. That simplifies things and improves accountability.

In the two areas in which there will be regional strategic bodies and assigned colleges, there is the opportunity to ensure that the accountability remains at least as clear as it is at the moment, although there is a risk that, if the approach were not got right, that accountability could be blurred. Others have given that evidence. The job is to ensure that that accountability is delivered through this model.

Clare Adamson: How will the funding council engage with the further education strategic forum, and what will that mean for the regions?

Mark Batho: My understanding is that the nature of the FE strategic forum is still up for discussion. Who will be on the forum and how it will operate is still being discussed by the Government. Until I see the nature of the beast, I do not think that I can answer your question.

Joan McAlpine (South Scotland) (SNP): I understand that the bill enshrines your ability to review further and higher education. However, university principals have expressed some concern about the possible impact of reviews on their ability to determine course provision. How do you respond to those concerns?

Mark Batho: We already review provision, because we are required to secure coherent provision. That means that we consider whether the right provision is in the right place, at a national level. There is nothing in the bill that says...
that we would be doing anything other than that. It seems to me to be an entirely reasonable thing to do, particularly given that public resources are always limited, to ensure that the provision across our university and college system is the best that it can be for the resource that is put in. That has to be an obligation.

11:00

This is not about the funding council going in and closing medieval French at the University of Edinburgh. It is about engaging in discussion with the universities, as we did a while back on modern languages, to ensure that there is good provision in our universities for the good of students and of Scotland, that there is not undue duplication and that, if a university decided to close, for example, its Japanese department, Scotland would not lose out as a result. We want to have a system in place that means that there is a constant overview. Universities move in and out of courses all the time. They close departments and open departments according to demand. We therefore need to have an overview that enables us to see the overall picture and make recommendations—to the universities, apart from anything else—if concerns emerge.

Joan McAlpine: You seem to be saying that you already have that ability and have used it, in the case of modern languages, and that the bill will tidy up the situation. Is that accurate?

Mark Batho: The bill goes beyond the words, "securing the coherent provision", which are not particularly clear to the average reader. It articulates the strategic role in the overall management of provision across Scotland in a way that is helpful.

Joan McAlpine: “Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education” says that work by the funding council shows that "there is too much duplication and unnecessary competition within colleges and regional universities".

How damaging has that been?

Mark Batho: It is never desirable to have wasteful competition but, in times of plenty, it has not been too damaging. Do not get me wrong: I am not saying that we should have one university that delivers medieval French and no other. Competition is good and helpful, not least because the offerings in various institutions in any given subject—whether it is medieval French or engineering—are a bit different, as each tackles different aspects of it. There is not a black-and-white approach to the issue. Nevertheless, there have been examples—particularly in the college system, in which colleges are quite close to one another—of institutions competing for students for exactly the same course, which is not the best use of money.

As the overall fiscal circumstances have tightened—universities have had a reasonable settlement over the past three years, but money is still not growing on trees—it makes sense to try to identify such situations and work with the providers to determine whether that is the best way of doing things.

Joan McAlpine: In terms of the outcomes for students, how damaging is that competition between institutions for students?

The Convener: I ask you to be brief, Mr Batho.

Mark Batho: I would hope that it has not been damaging, as our quality mechanisms ensure that, even if there is competition, it must deliver quality for the individual student.

The Convener: I thank you for coming to give evidence on the bill.

11:03

Meeting suspended.

11:07

On resuming—

The Convener: I welcome Michael Russell, the Cabinet Secretary for Education and Lifelong Learning, and the Scottish Government officials Michael Cross, deputy director, colleges and adult learning division; Tracey Slaven, deputy director, higher education and learner support division; Gavin Gray, team leader with the bill team; and Ailsa Heine, senior principal legal officer with the legal services directorate. Good morning to you all. I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The bill is an ambitious one that has at its heart the aim of making the system better for the people who matter most: our learners. It has been designed to support the key objectives of our post-16 reforms, improve the life chances of our young people, support Scotland’s economic ambitions and create a more sustainable and secure system. It will do that by putting in place a new structure that will help to make colleges more responsive to the needs of learners and employers. It will support our ambitions to widen access to higher education and to deliver opportunities for all. It will ensure that we can have confidence that our significant investment in post-16 education of more than £2.5 billion a year delivers the best possible outcomes.

The evidence that has been presented to the committee so far appears to reflect that. The
evidence sessions that I have seen have focused on the overarching policy goals that the bill seeks to deliver. I expect that members might want to pursue similar lines of inquiry this morning. I have been pleased that the evidence so far has been supportive of the principles of the bill. The clear message is that we have identified the right solutions to improve governance, widen access and make a better system for learners.

There is a great deal of common ground on the bill, but I do not for a moment suggest that there is complete consensus on every provision. Were that so, the bill would be an extremely unusual piece of proposed legislation. I have been and am listening carefully to all that is said in the committee’s considerations, and in my discussions with universities, colleges, staff, students and others. I will continue to take full account of all interests and perspectives on how the bill could be improved—all proposed legislation can be improved during the legislative process.

Where there are differences and disagreements, they largely centre on the interpretation of how certain provisions will work in practice, rather than on the fundamental principles that are at the heart of the bill. Indeed, even the strongest critics of particular provisions often agree whole-heartedly with the goals that those provisions seek to achieve. I put on record my commitment to work with partners, including the committee, on any differences and suggestions for improvement to produce the best possible piece of legislation that will deliver real benefits for learners. I am clear that partnership has got us this far. We have been through an extensive period of consultation and we have discussed the issues that are involved in the bill all over the place. Therefore, it is right that the bill should be a product of continuing partnership.

I hope that that brief statement has been helpful. I am passionate about Scottish learners and about learning in Scotland. I believe that the bill will deliver real benefits in that regard. I have put forward a clear case for reform, and the bill is an essential part of the process. I welcome the scrutiny of the bill, because it is critical that we work together to make it as strong as it can be. I am happy to answer questions from members.

The Convener: Thank you. As you will imagine, we have a lot to get through, so we will move straight to questions from members.

Liz Smith: Cabinet secretary, notwithstanding the fact that you are right that the general direction of the bill is not in doubt, have you been surprised by the level of concern about many of the technical aspects of the bill and one or two substantive points?

Michael Russell: No. I have been heartened by the evidence that the committee has received because, where there are concerns, we need to address them. Many of the concerns have been addressed and I am happy to address those that remain. No doubt, we will touch on some of them. Liz Smith has taken a special interest in governance issues so, for example, we can look at the issue of responsible autonomy and ensure that we have the wording of the provisions exactly right. We are engaged in what I think is a positive process, and I will be positive about it.

Liz Smith: How do you respond to the point that Alastair Sim made last week that the principles of the bill have come adrift from the detail of it?

Michael Russell: I disagree with that statement from Alastair Sim. He is here in the public gallery, and I am happy to have a debate and discussion with him. I meet him often. I disagree with him on that, because I think that the principles are entirely clear and that they are expressed in the bill. As I understand it, Universities Scotland would like the bill to be amended in various areas. That can be discussed during stage 2. However, the principles of the bill are very clear indeed, and they have been supported by Universities Scotland and by the principals of the universities in evidence to the committee.

Liz Smith: How do you respond to the feeling of the college and university sectors that, although they agree with the general direction, it is not necessary to legislate?

Michael Russell: I disagree. I have often been on the member’s side of the table, in opposition, and said that we do not need legislation. However, actually, I think that there is a need for legislation for a variety of reasons, which are outlined in the bill. This morning, I was looking at Ferdinand von Prondzynski’s “Report of the Review of Higher Education Governance in Scotland”, and I was struck by the quote with which it opens from Sir William Hamilton, who said in 1835:

“a University is a trust confided by the State to certain hands for the common interest of the nation.”

He went on to say:

“a University may, and ought, by the State to be from time to time corrected, reformed or recast, ... looking towards an improved accomplishment of its essential ends.”

That is precisely what we are trying to achieve, almost 200 years later. We are getting “an improved accomplishment” of the ends of further education. There will always be a debate about how we do that, but I think that, in principle, the bill is correct and that the provisions are the ones that will help. However, provisions in a bill are never cast absolutely perfectly or in stone, so let us have
a debate about how we change those provisions, if they need to change.

Liz Smith: An important point, which von Prondzynski echoes in his paper, is that some of the timings around the bill are difficult. Not least of the difficulties is that the committee is being asked to decide whether to pursue legislation on the governance code, yet the new code does not exist and, as we understand it, will not be produced until April. We do not have that piece of information, which therefore makes our judgment rather difficult. Professor von Prondzynski referred to that in his paper.

Michael Russell: Where does he refer to that in his paper?

Liz Smith: It is in paragraph 4 of the paper that he provided to the committee during the weekend.

Michael Russell: I have not seen that. Can I have sight of it? It would be useful.

The Convener: We can get you a copy, cabinet secretary.

Michael Russell: I would be happy to address the point. The code is not part of the bill. It is referred to in the final recommendation in von Prondzynski’s report.

The Convener: We received the paper in response to a request for further written information from Professor Russel Griggs and Professor von Prondzynski.

11:15

Michael Russell: It would be very useful to see that.

When the code is made available—it is not mentioned in the bill—I will be happy for the committee to discuss it. That is entirely appropriate. In the past, there have been occasions when such a document has been made available to the committee at stage 2, and I understand that that is what will happen here. If I read the committee’s report correctly, the convener has given a commitment that evidence will be taken on the code at that stage. That seems entirely appropriate. Indeed, because the code is based on von Prondzynski’s principles and is referred to in the report, we look forward to seeing how those principles work out. However, until the new code is produced, the existing code will continue in operation.

Liz Smith: With respect, we are having to make our decision without seeing the new code and on the understanding that another bill will be produced in 18 months’ to two years’ time. What is the second piece of legislation intended to do?

Michael Russell: Von Prondzynski’s report contains some deep recommendations. The report was agreed unanimously, with the exception of two recommendations that are both to do with the position of university chairs. The report is backed by the university chairs as well as everybody else. It contains a number of recommendations that it will require a considerable amount of time and work to implement: one concerns the role of the Privy Council and the other concerns the underpinning statute. Those recommendations could not be implemented very quickly. However, there was wide agreement across the sector—I have read that agreement—that we should endeavour to move forward without further delay on the things that do not require that legislation.

That is why we are acting as we are on a number of the recommendations, including on the code. The report states:

“the Scottish Funding Council should commission the drafting of a Code of Good Governance for higher education institutions.”

That did not happen, because the university chairs of court volunteered to do the work on that. We accepted that initiative and they have done that work, which will be made available.

I quote the bill on the matter—it is important that we always go back to the legislation. Section 2, which deals with the code, states:

“The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance or management”—we can return to that word in a minute—“which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.”

I have indicated that the best way in which we can do that is to follow von Prondzynski’s independent report and to have the code in place. The code is in the process of development and will be provided, but it is not referred to in the bill. There is an existing code of good practice in governance, which the evidence that you received said will continue to exist. I think that that is satisfactory in which to proceed. I do not imagine that the chairs of court will be dreadfully subversive in the matter; I think that we will get a code that the committee will, I am glad to say, consider and take evidence on. That is entirely in keeping with the scrutiny that should take place.

Liz Smith: Cabinet secretary, this is quite a serious issue.

Michael Russell: I am treating it seriously.

Liz Smith: It is not about any party line on the bill; it is to do with the process. I appreciate that, for some reason, you do not seem to have the von
Prondzynski paper that we have, but in it he raises some concerns about some of the timescales. Our job is to scrutinise specific pieces of legislation, which may or may not be important in the final outcome, and our difficulty is that we are being asked to do that when we have concern about a code of governance that is being produced at a later date—beyond the intended start of stage 2—and when there is a second bill to come, whose intention we are not entirely clear about.

Michael Russell: You do not have to be entirely clear about the intention of the second bill, because it is not the bill whose general principles you are considering at this time. You are considering the general principles of the current bill, which are very clear on the issue of governance. I have quoted it and I will quote it again. It states clearly what is going to take place if the bill is passed.

I think that the code is the best way to move forward as a sort of bridging position between the bill and the recommendation that Ferdinand von Prondzynski’s committee made on “a statute for Scotland’s higher education sector setting out the key principles ... and serving as the legal basis”.

I have said that the code will come to you and the committee has said that it will take evidence on it. I do not think that I can say fairer than that. That is where it is—that is what is going to take place—and I do not think that that delays you for a moment in considering the principles of the bill. The bill’s principles are quite clear on the matter.

Liz Smith: This will be my final question on this point. This morning, we heard from Mark Batho, who was consistently asked by committee members about what will be different, post-legislation, from what happens now. In other words, what specific parts of the bill will deliver the better outcome for learners that you spoke about in your opening remarks? What are the specific governance issues that will improve the situation?

Michael Russell: You need to go back to Ferdinand von Prondzynski’s report and look at the role of governance, particularly the four characteristics of governance that he lays out, which are:

“effective stewardship of the university to secure its sustainability over the medium and long term; safeguarding the mission of the university and the services it provides for the public benefit; securing the proper and effective use of public and other funds; and ensuring stakeholder participation and accounting to the wider society for institutional performance.”

Those four characteristics will be enhanced by a variety of provisions in the bill, and that is our intention.

Liz Smith: Forgive me, but what is it that will actually make the improvement? Where is the evidence that the governance of universities is not as good it should be and that the bill will deliver an improvement?

Michael Russell: The widening access outcomes of governance are not as good as they should be. In last week’s evidence-taking session, Neil Findlay read out a list of the chairs of the courts and indicated perhaps that that was not as representative a group as it could be. I think that he is right. The bill will address a range of such issues and make positive changes. The general principles of those are entirely clear.

Liz Smith: This morning, Mr Batho said that the outcome agreements for widening access are already working well and that they are rigorous. He said that the funding council has had lots of discussions with universities and that he is satisfied that they are working well.

Michael Russell: Absolutely. In my view, the presence of the intention to legislate has accelerated the widening access process. However, that is not solely my point; both the National Union of Students Scotland and the University and College Union Scotland have made exactly that point. We have had inadequate progress over a period and we are getting better progress as a result of the outcome agreements because we have said that we will place in legislation the need for widening access. We have made that commitment and we are honouring it, and the process is accelerating. I do not think that that process would have progressed in the way that it has done had we not shown that clear intention. In my view, that is a justification for what we are doing.

The Convener: Clare Adamson has a brief supplementary, which I presume is on this point.

Clare Adamson: Yes, it is. Last week we took evidence on the process of the code of conduct consultation. Some concern was raised about the lack of opportunity for student and staff representation and the lack of such representation on the committee conducting the consultation. Do you share those concerns?

Michael Russell: Yes, I have shared those concerns since the beginning of the process. On two separate occasions, I have drawn to the chairs’ attention the need for more intensive consultation with students and staff. I have no lack of confidence—indeed, I have great confidence—in Robert Smith and the other members, including the former Lord Advocate, but I regret that the chairs did not take my advice to cast the net more widely at the beginning of the process.

I am sure that the work that is being done and its intensity will produce a good result, but, yes, I would have liked to have seen more such representation. I operate and have operated in
such a way as to ensure the widest involvement of staff and students, and I will go on doing so in all parts of this.  

**Neil Findlay:** What will the second bill contain?  

**Michael Russell:** If you go back to von Prondzynski’s recommendations, you will see what the intentions are. This is not a surprise; I have spoken about it on a number of occasions. Von Prondzynski is very clear in a range of recommendations. Some of them can be implemented without legislation, some can be implemented in this bill and those remaining will require further legislation, which will take much longer.

The first recommendation—item 2.2 in the list of recommendations at annex A—is on the Privy Council’s role, which is a difficult issue to resolve at this stage. It will be much clearer after independence, but it requires to be sorted.

Item 2.3 is on a new statute. The underpinning legislation has worked well. Ferdinand von Prondzynski’s evidence about and experience in Ireland have been great; such legislation works extremely well there.

A range of things will require us to move on, but we are making a considerable step towards that in the bill. The bill is therefore worth supporting, even on those terms.

**Neil Findlay:** I admit that I was surprised that you did not get von Prondzynski’s second paper for the committee. As you do not have it, I will read you a section from it. It says:

> “The controversy surrounding this provision in the Bill may in part be related to the fact that the Chairs’ code has not yet been finalized or published. In these circumstances, it is not yet clear what particular principles of good governance might be enforced by the legislation ... There are potentially two ways of dealing with this situation. One is to suggest that the timing of the provision is wrong, and that it should be addressed (if at all) when the legislation promised for higher education is published a year or two from now.”

That sums up the questions that the committee is asking. Are you concerned that the architect of the reforms is posing such a question at this late stage?

**Michael Russell:** No—that does not concern me at all. Ferdinand von Prondzynski is right to pose the question and I am right to answer it in the way that I am. The bill does not refer to the code. There is an existing code. The provision emphasises the need for good governance, which can involve the existing code or be improved by the better code. That code will come to and be discussed with the committee, which will take evidence on it. Given that, I do not see the problem, to be frank.

**Neil Findlay:** Will the code be voluntary?

**Michael Russell:** No—well, the bill says:

> “The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.”

In a sense, all codes are advisory, because we expect them to be followed, but there is a financial sanction in the provision, which is important to good governance.

I have indicated what the principles of good governance are. It is important that the bill provides a sanction, which we felt was required and which the universities have seen as something that we wanted to do. I am comfortable with that.

**Colin Beattie:** We have heard conflicting evidence about whether college principals should be on boards. Some people are comfortable with them not being on boards, others have been indifferent and others have been strongly in favour. What is your opinion?

**Michael Russell:** Russel Griggs has been clear about the subject and has been misquoted a bit. He thought that the question should be up to the board, and that is my opinion. I am interested in the diverse opinions—the EIS argued against the idea and principals argued strongly in favour of it. The matter should be up to boards, which is essentially what the bill suggests.

**Colin Beattie:** At the moment, principals have the right to attend and speak at board meetings, but they seem to be excluded from becoming board members.

**Michael Russell:** No—the bill gives the right flexibility in the circumstances. Because there are diverse opinions, it would be wrong to say 100 per cent no or 100 per cent yes. Boards will make their decisions and should be allowed to do so.

The general approach has been to free up the composition of boards. The previous legislation was pretty prescriptive about who could and could not be board members. The only disqualification in the bill is that MSPs, members of the House of Lords, MPs and other elected people cannot chair a regional board—that is about it.

**Joan McAlpine:** The issue of university principals’ salaries featured highly in last week’s evidence session. Robin Parker of the NUS said:

> “more than £4 million is spent each year on university principals’ salaries.”—[Official Report, Education and Culture Committee, 19 February 2013; c 1979.]

How will the changes in governance that the bill introduces address concerns about inflated salaries for principals?
11:30

**Michael Russell:** Professor von Prondzynski's report has some recommendations on this issue, some of which can be—and I am sure will be—in the code. Again, that section was unanimously agreed by the committee, so it appears to have the support of the chairs of court. I back Professor von Prondzynski's interesting comments on the issue. First, he does not think that there should be continuing increases. Secondly, he says that any payments must be transparent and that the bonus culture should be abolished. In addition, he says that remuneration committees should include staff and student members, and that that again should be a transparent process. I have been on record as saying that I do not agree with a lot of the decisions that have been made. What Professor von Prondzynski has given us is a means by which we can ensure that those difficulties are not met in the future.

**Neil Bibby:** In his latest written evidence to the committee, on the proposed code of governance, Professor von Prondzynski says:

“The other possibility would be to allow this matter to be handled outside of any legislative framework. It could be addressed by the Cabinet Secretary, writing in his usual guidance to the Funding Council, asking the SFC to make it a condition of grant that principles of good governance are applied, on a 'comply or explain' basis.”

What is your response to that?

**Michael Russell:** Section 2 addresses how we should proceed on that. It allows the funding council to have discretion over the code, but it also provides a sanction. I think that that is the right way to proceed. If there are 19 different institutions that are all working on the code, there will always be flexibility, as there should be. Section 2 does what we need to do at this stage, which is why I believe it is the right way to move ahead.

**The Convener:** We have spent a reasonable amount of time on university governance. I want to move on to section 3, which covers widening access.

**George Adam:** Cabinet secretary, you said earlier that the bill is ambitious. Widening access is one of the very ambitious parts of the bill.

You mentioned that the bill will improve the life chances of our young people. When the committee heard evidence from university principals, they said that there was nothing to see here—that everything was okay and they were going to get there eventually in widening access. However, there has been improvement of only around 1 per cent over 10 years. The NUS also gave evidence that it could be about 40 years before we get anywhere near where we need to be. Do you agree that that is why we should have legislation to try to move things forward?

**Michael Russell:** When I started out in this position, I was agnostic on the question of legislation and access. There had been a lot of voluntary codes and voluntary activity, but it seemed to me that progress had been far too slow. I do not think that anybody at this table would disagree that the progress was unsatisfactory. I became more and more convinced that we needed a legislative underpinning for this issue. Since we said that we want to provide that, we have begun to see progress. That speaks for itself.

In those circumstances, it is necessary to ensure that there is legislation. We are taking a carrot-and-stick approach. On the other side of the issue, you could say that the 1,700 additional places that we established—1,000 for articulation and 700 for wider access—have been a substantial contribution at a cost of around £10 million. We should continue down that route, but the legislation is important and I agree with the NUS on that.

**George Adam:** The potential for displacement of students has been mentioned at various points in our discussions. The retention of students is important. In Paisley, the University of the West of Scotland has quite a high proportion of people from a lower economic background. How will the bill address retention and ensure that there is not displacement?

**Michael Russell:** On the issue of retention, we want to ensure that those who get the opportunity and get into the system profit from it—that they finish the course and come out of the system with the degree that they sought. We must do everything that we can to support that.

Some of the work that the University of Glasgow has done to help young people prepare for going to university has been very positive. Young people who have that preparation are more likely—sometimes more likely than other students—to finish the course. That is great. We must do more of that and we will look to do that.

On the issue of displacement, adding places is an important element of ensuring that there are more opportunities. We have perhaps not talked enough about the 1,700 additional places. We have been very careful to ensure that the number of places available for students is retained and increased. That is an important part of our offering.

At the end of the day, decisions on whom to admit to university are a matter for the universities. There is no other way that we should do that. However, widening the context by ensuring, for example, that the concept of rich attainment, which exists in other parts of education, is understood will be very positive. I do not think that that will have a negative effect at all.
Neil Findlay: What practical advantages will be gained by legislating on widening access?

Michael Russell: I think that we have seen an increased focus, and sanctions will be available. I hope that sanctions do not need to be used, but there will be a sanction if any higher education institution is not prepared to treat this issue as seriously as it should and to show evidence that it has done so. The widening access agreement that sits alongside and within the concept of the outcome agreement but has distinct force will mean that this becomes something that must be delivered. Everything that we have had up until now has been aspirational but has not always been delivered.

Neil Findlay: What I am trying to get at is this: what practical things will happen as a result of the bill that will help widening access?

Michael Russell: More young people who would otherwise not get to university will get there—

Neil Findlay: Let me try again. Within institutions, what practical things will be done to ensure that more young people go to university and complete their course? What are the actual things that they will do?

Michael Russell: You would need to go and look at the work of each university—

Neil Findlay: Could you give us some examples?

Michael Russell: I have talked about this a lot, but I am happy to refer again to the widening access programme of the University of Glasgow. That scheme works with people in individual schools where the pupils are less likely to go to university. Over a number of years, that scheme provides those young people with intensive coaching and lays on summer schools for them. There is a guarantee that if, for example, someone misses one grade by one point, they may still be able to get in. That helps young people who might not otherwise have thought of going to university.

Let me give you a specific example of someone whom I talked to when I visited that scheme last year—the example is still in my mind. The young person whom I spoke to had wanted to go into medicine but came from a background in which there was no expectation of going to university or of studying medicine. The biggest challenge for that young person, who was in the scheme from fourth year onwards, was preparing the personal statement and preparing for the aptitude test. On both those things, the young person was helped by the University of Glasgow and by others who had been through the same experience—among other things, the scheme is peer taught. That scheme has been very successful indeed.

Last year, I shared a platform with two students from the University of St Andrews—which I know is not always associated with this activity—one of whom was a student from Kirkcaldy high who was the first member of her family ever to go to university. She had been encouraged by the University of St Andrews, which goes out to the Fife schools to encourage pupils to take part in a programme that provides them with the expectation that they will go to that university.

I think that there is good practice in every university and we need to encourage more of it. Those individual programmes are the things that will make the difference.

Neil Findlay: Given the desire to increase the numbers of students coming from low-income backgrounds—no member of this committee would move away from that principle, and many of us have campaigned for it for some years—is there a thought as to what those numbers would be? What is the aim or goal? Is there a percentage figure?

Michael Russell: The aim is at least to meet the percentage population share—perhaps 20 per cent—that would come from the lower socioeconomic communities. Actually, I would go further than that because, like you, I have campaigned for this for a long time and I believe that such a change is long overdue. Therefore, I do not think that there should be any limit to that. I think that we should be inspiring young people and older people to aim as high as they can.

The universities need to focus on the issue, but I accept the point, which is sometimes made in defence of those universities that have done less well, that there is also a wider responsibility. By debating and discussing the issue and setting it out in a legislative provision, I think that we are saying more widely that the whole of society needs to help us to achieve this. Schools have a role to play in working with young people so that they aim as high as they can. Closing the attainment gap in Scotland will also contribute. To use a phrase from Avis Glaze that I have quoted to this committee before, “Poverty is not destiny”, so we need to ensure that more work is done on this. All those things will contribute to making a difference.

Liz Smith: Could I ask for clarification on that? Earlier today, we discussed targets and Mr Batho rightly said that the targets would be set, as we have discussed, within an individual university. You have just related the target to the relevant size of population, so do you mean that the aspiration for universities will relate to the intake from their region?

Michael Russell: No. Universities are only partially regional. We must have the idea of what
we will achieve across the piece, but there are individual targets—Mr Batho is right—and the bill indicates that. We are talking about individual agreements with universities.

**Liz Smith:** Just to be absolutely clear, are you saying that the expectation is that the numbers—from whichever measure is used—for those from low-income backgrounds will reflect the national Scottish deprivation level?

**Michael Russell:** I hope so, yes.

**Liz Smith:** So there is a national target.

**Michael Russell:** I cannot imagine that this is a point of difference. I am indicating that that is what people want to happen in higher education across Scotland. The bill makes it clear that the agreements will be with individual institutions, which will have different targets and methods. That is how it should be. Something would be wrong if we tried to do this in a one-size-fits-all way.

**Liz Smith:** Earlier, you said on the record that the Government would be able to enforce the changes through the outcome agreements that will come through legislation. Are you saying that you expect an overall target to be set?

**Michael Russell:** No. I am saying that there is a target that we should all have in our minds but, as the bill and Mark Batho say, there will be individual agreements with each university. That is the correct position. However, I do not believe that anyone in this room will rest easy until we have righted the wrong.

**Liz Smith:** I am sorry to be pedantic but, if you are going to ask universities to have a specific target, what will happen if they do not meet it? Will you take national action?

**Michael Russell:** I am absolutely certain that you have read section 3 of the bill. Proposed new section 9B(2) of the Further and Higher Education (Scotland) Act 2005 says:

> “A ‘widening access agreement’ is an agreement under which a higher education institution is to take actions specified by the Council for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).”

That reflects the individual nature of the agreement and the national concern. That is the right way to put it and it is why it is put in that way in the bill.

**Neil Bibby:** Retention is a big issue in ensuring the participation of people from more deprived backgrounds. Do you intend to support measures to improve retention? For example, the centre for excellence for looked-after children in Scotland told the committee that success requires well-planned practical, emotional and financial support and the commitment of skilled staff, and that universities might need to train staff in the difficulties facing some students.

**Michael Russell:** Yes, and we already do.

**Neil Bibby:** The bill team provided information on the cost to universities of widening access that highlighted the additional support to students through loans et cetera, and it said that lengthy discussions have taken place with the sector. However, Universities Scotland said that it had not been consulted on the assumption that costs would be minimal. Do you know whether further discussions have taken place between the bill team and Universities Scotland?

11:45

**Michael Russell:** Yes. Discussions are taking place all the time. Considerable sums of money are going into widening access already. I have indicated to you that the funding council spends considerable sums on widening access.

**Tracey Slaven (Scottish Government):** Of the £28 million to £29 million that the SFC spends annually on widening access, £20 million goes directly to retention activities.

**Michael Russell:** The 1,700 extra places, which are really important as a response to continue to move the process forward, should be taken into account. The intention is there, the policy is there.
and the resource is there, and we want to put the legislation in place. That is an earnest of very good faith indeed on the matter.

Neil Bibby: Given that the bill is a major piece of legislation, do you not feel that the discussions with universities should have happened earlier?

Michael Russell: There are discussions about a range of things, which will continue. It would be right to say that that is not a surprise; the surprise might be that we discuss so much, as we try to have a partnership with all parts of the sector.

Neil Bibby: On giving young people from deprived backgrounds the opportunity to go to university, will you consider or are you considering giving more funding to areas with high levels of deprivation to help with the school education that is provided in such areas?

Michael Russell: We are trying to ensure that the education system leads to equity, but we know that there is more to do. I am happy to discuss with you what we are doing on that, to respond to questions on that and to look at what more we can do. Everybody knows, for example, that the highest-performing education systems in the world, such as the Finnish one, have the lowest level of division in that equity. In other words, the expectation of outcomes for pupils is in a much narrower band. In Scotland, like many countries—the rest of the UK has this problem, too—that band is narrowing, but it is still too wide. I therefore do not dispute for a moment that more needs to be done, but I think that you and I would agree that that should be an educational priority across the board.

The Convener: If you do not mind, cabinet secretary, we will move on to section 4 of the bill, which is on the fee cap.

Colin Beattie: The NUS and one or two others have raised a specific problem in connection with the tuition fee cap, which rotates around the fact that a Scottish degree course is usually a year longer than an English one. If fees were, say, £9,000 a year, the fee in England would be £27,000 and the fee in Scotland would be £36,000. The NUS has argued that there should be a price for a degree as opposed to one for the length of time that a degree takes. What is your view on that?

Michael Russell: I do not want a price for a degree. We are in this difficult position because of decisions that have been made elsewhere. What is taking place is an unfortunate but necessary evil because of decisions that have been made elsewhere. If the UK Government would like to pay for its students, I would be very happy that it did that. However, it does not want to do that.

In those circumstances, I am simply trying to ensure that the system in Scotland is as fair as it can be. However, the decision is for the universities and it is right that that is so. There are a number of ways in which the situation can be ameliorated. For example, quite often students from south of the border can go directly into second year in a Scottish degree, if they have a particular range of qualifications. In addition, some universities discount and charge for only three years. However, I do not think that getting into that area is where we want to be.

We want to have as fair a situation as we can. Regrettably, we are in the current position. I do not believe in the monetarisation of higher education, so I came to a voluntary agreement with the principals. There was a clear understanding that we would put that voluntary agreement into legislation at the first available opportunity, which is what we are doing.

Colin Beattie: It is probably worth noting that there is no indication of a drop-off in students from south of the border because of the differential.

Michael Russell: I think that the position is highly undesirable. When we consider the situation of students from Northern Ireland, for example, from where there has been a traditional flow, that flow is continuing. It is immensely regrettable that the particular decision was made, but it is not one that I made.

Colin Beattie: In its evidence to us, Universities Scotland expressed concern about what it thinks is an anomaly in the bill that could lead to Wales-domiciled students being charged a maximum fee of £3,465, which apparently relates to a level that the Welsh Assembly has set.

Michael Russell: Universities Scotland raised that with us. We do not believe that that anomaly exists. We will have further discussions, but that is my advice. I have to say that I do not believe that that anomaly exists.

Neil Bibby: Have you considered creating a Scottish office for fair access, which would be similar to the one in England, to regulate the information that is available to students on bursaries and the arrangements that universities put in place? That issue was raised by a number of witnesses.

Michael Russell: I have heard the suggestion from the NUS. We should remember that the Office for Fair Access in Grants South of the Border really exists as a redistributive financial mechanism for a system that I think is wrong. It essentially exists to try to undo some of the unjustness of the policy that is being operated south of the border.

In Scotland, universities have been and are being sensitive to the issue. Their bursary
provision for students from the rest of the UK has increased substantially and I see no reason to interfere in that, because the universities are very conscious of the issue. They have also publicly criticised the situation south of the border.

The Convener: The chair of Universities Scotland told the committee in evidence that a fee cap is unnecessary as no institution would wish to set higher fees than the maximum level that applies in England. I presume that you read that evidence. What is your view on the chair’s take on the issue, which is that a cap is not necessary?

Michael Russell: That runs contrary to the agreement that I had with the university principals, which I think that Tim O’Shea was clear about when he gave evidence. There was an agreement that something needed to be in statute, that we needed to declare clearly what we thought should happen and that, until we could do so, a voluntary agreement would be put in place. I have no criticism of the principals at all, as they have done what was discussed. However, there was always an agreement that this should be set in statute, and it needs to be, just in case anybody thinks that there is another way of doing it. I think that I speak for not all of Scotland, but certainly most of Scotland, in saying that the other approach is not the right way to do higher education and we do not want it to spread.

The Convener: We move on to questions on college regionalisation.

Neil Findlay: In going through the bill, we have had a number of people before the committee, and I will give you a wee selection of quotes and a flavour of what they have said. On the regional strategic bodies, Susan Walsh of Cardonald College said that

“clarity is still required on how the assigned college boards will work with the regional strategic boards”

and that

“If the question about who is responsible was answered, it would help us to understand what people want”.—[Official Report, Education and Culture Committee, 5 February 2013; c 1914, 1921.]

Colleges Scotland stated:

“There does not appear to be any precedent for this model”.

Edinburgh College stated:

“We have concerns over the proposed structure of a Regional college board of management and in particular the intention to remove the legal requirement for a Principal to be a board member.”

John Henderson said:

“On the lines of accountability and the psychology, there is a risk of divided loyalties if a principal of an assigned college is appointed and their pay and conditions are determined by a body that is not their employer ... there will clearly be tensions in relationships in a two-tier system”.—[Official Report, Education and Culture Committee, 19 February 2013; c 1972, 1973.]

Susan Walsh said:

“The Post-16 Education (Scotland) Bill could be improved to provide greater clarity.”

Mandy Exley said:

“We are concerned about accountability and autonomy”.—[Official Report, Education and Culture Committee, 5 February 2013; c 1936, 1915.]

It simply goes on and on. Are you concerned that so many of the witnesses have raised issues about the complexity that we now have in college governance and financing?

Michael Russell: I would want to—but I am not going to—go through the same evidence and point out all the positive things that were said. I think that many positive things were said. If there is a need to amend the bill and Mr Findlay lodges amendments that clarify any provision, of course we will look at them seriously, but I am clear in my mind about what the structure is and how it should operate. It is quite a simple structure, to tell you the truth. It is a structure that has a regional component wherever you are in Scotland.

There is a special set of circumstances in the University of the Highlands and Islands. I would be happy to talk about how that came about, because I do not think that the committee has had full evidence on that and there is some interesting information about what the colleges have sought. Then there is a regional model that operates as a single regional college. The two—not three—exceptions are multiple college areas. The direction of travel is towards single colleges, but moving in that direction will take as long as it takes. In those circumstances, the structure seems clear to me.

There are issues within that—Mr Beattie asked about principals on boards—that we can and should debate. We should debate the appointment of the principal by the regional structure, because there are arguments on both sides. That is the purpose of stage 2 of a bill—we take the general principles and make any changes that need to be made to how they are expressed.

I read the evidence. I spent a lot of time in colleges speaking to staff, students, college principals and boards. I was struck by something that Paul Sherrington, the principal of Banff and Buchan College, said. His biggest concern—I think that he was asked specifically what his biggest concern was—was about funding cuts, when those would end and whether there would be a straightforward level playing field. He said that before the budget, and we have addressed that concern.
I am glad that Colleges Scotland is also very pleased that the concern has been addressed. You have quoted it and I will, too. In those circumstances, we have a workable situation, which we can, of course, improve. I welcome thoughts for improvement.

Neil Findlay: Problems remain, including those relating to the complexity of governance to finances—the Finance Committee has raised seven main points—to ministerial power versus autonomy, to human resources, to the appointment of principals, to the data-sharing concerns that we heard about last week, to complexity of funding, to charitable status and to local access. In addition, no mention has been made of collective bargaining on conditions. All those issues are unclear.

Michael Russell: No, they are not. You can ask questions about all those areas.

Neil Findlay: Excuse me, but I am not finished. The EIS—which, incidentally, supports the principle of regionalisation—sums up the situation well:

“If it’s the Government’s wish to create a nationally incoherent FE structure with a myriad of different ... separate regulations for each, then this bill is ... it.”

If one of the main supporters of the principle of regionalisation is saying that, the bill is in trouble.

Michael Russell: No, it is not. I entirely disagree. The EIS has claimed to support the bill, but I do not think that it has yet said anything that would help us to improve the bill. If it wants to do that, I would welcome that debate.

If the committee asks questions about each of the issues that you referred to, I will address them. For example, I am sure that our legal adviser would be prepared to say precisely what the situation is on charitable status. There is no threat to charitable status. Each of the issues is a legitimate point for discussion—I welcome that discussion. The fact that issues are raised does not necessarily make them totally true. If there are real concerns, we can address them. We can propose amendments. Members have the right to do that, too, if they think that things need to be changed. That is the process that we are in.

Neil Findlay: Why would you not wait until the coming bill is introduced and take longer in an attempt to get it right?

Michael Russell: What coming bill?

Neil Findlay: The higher education bill. Why can we not bring together the two bills in a single bill that gets it all correct?

Michael Russell: We have never considered pausing on regionalisation, because it requires to be completed in order to provide a better service to learners. That is what we are doing; we are focusing—

Neil Findlay: Regionalisation is taking place without legislation.

Michael Russell: Structures are being put in place that require legislation to be completed; otherwise, we could not complete the process. We would be going off at half-cock if we stopped now. We must finish the job and that job is clear.

All the points that you have raised are legitimate, and we are happy to address them all. We have mentioned how we can address and resolve the appointment of principals, the question of charitable status is clear and we will address all the other points. When there are genuine concerns—I read the evidence that you referred to—we will address them, too. I spent a lot of time talking to staff, students, principals and college chairs and boards, and we are working our way through the issues constructively.

The Convener: Given that Ailsa Heine, who is a senior principal legal officer, is present, I ask her to give her views on charitable status.

12:00

Ailsa Heine (Scottish Government): Our view is that the bill does not affect or jeopardise colleges’ charitable status. The colleges that are already charities should continue to be able to meet the charity test in the Charities and Trustee Investment (Scotland) Act 2005.

The Convener: If things are so clear, why has concern been expressed about the issue?

Ailsa Heine: We are not entirely clear why such concerns have been raised. The bill contains provisions requiring certain property to be transferred and says that transfers can be made only to a body with the purpose of the advancement of education, which is a charitable purpose. That safeguards the body and allows it to continue to meet the charity test.

Michael Russell: Whenever concerns have been expressed, we have tried to answer them clearly and openly, in the way in which Ailsa Heine has just answered your question, and we will go on doing so. The process is complex, but we are trying to make it as clear as possible; indeed, the bill makes it clear how things will work. We are happy to address any of the issues that Mr Findlay has raised.

Liz Smith: On the question of charitable status, I accept what has been said about the majority of colleges. However, with regard to Glasgow and Lanarkshire are you absolutely confident that charitable status would be maintained if there were a transfer of assets and the Government...
became involved in the process? Indeed, I understand that John Henderson has written to the Office of the Scottish Charity Regulator, seeking that guarantee.

**Michael Russell:** Before I answer that question, I want to be clear about what it means. Given that I am not aware of any Government involvement in the process of transferring assets from anyone to anyone, it is a very hypothetical question. I am not trying to be difficult about this—if there is a specific movement of assets that I have not seen, I am happy to look at it—but as far as I am aware there has been no involvement by Government in any transfer of assets.

**Liz Smith:** John Henderson very clearly said that he had written to OSCR to seek clarification on the issue and, one would hope, to have some confidence that there is no threat to charitable status, given that, as he put on record, the value of such status is


per annum. That said, because of the different nature of the structures that will apply in Glasgow and Lanarkshire, there is more scope for Government involvement. As you know, this is an issue that makes an appearance at the beginning of the charity legislation.

**Michael Russell:** There is no difference in Government involvement. We will need to bottom this out because we are quoting John Henderson at second hand, but I have to say that there is no Government involvement of that nature; there is no question of it happening; and I do not believe the issue will arise. The legal answer is clear, but to be helpful to the member I am happy to address the issue with John Henderson and to come back to her and the committee with a response. However, we need to know his specific point because I have not seen it.

**Liz Smith:** I do not think that it is just John Henderson, cabinet secretary. Others are looking at the situation with assigned colleges. If in such cases the Government is responsible for oversight of the appointment and membership of the board, Government involvement will increase and could—

I am not saying that it will—impinge on charitable status.

**Michael Russell:** I am happy to address the issue because I want to be helpful, but there is no such increase in Government involvement. The bill has been designed in that way and there is no threat to charitable status. That is the legal position.

**The Convener:** I do not want to get bogged down in the charitable status issue—you have made clear your view, cabinet secretary—but, for the sake of clarity, I point out that Mr Henderson said:

"When oversight is changed between a funding body—be it the Government or a funding council—and a charity, there is a risk that the independence of the charitable trustees will be affected and OSCR will take the view that that would move it out of the charitable status camp."—[Official Report, Education and Culture Committee, 19 February 2013; c 1973-4.]

**Ailsa Heine:** I think that part of the problem is that two issues—the duties of the charitable trustees and the organisation’s charitable status—might have been slightly confused.

**The Convener:** If you could provide any further clarification, I would be grateful.

**Michael Russell:** I want to ensure that there has been an understanding of Ailsa Heine’s point. We are confident that there is no threat to charitable status. However, it is good to address the matter and we will look at the detail if Mr Henderson has an issue that we are unaware of.

**Joan McAlpine:** Last week the committee took evidence from Ian McKay, the regional lead in Edinburgh. I was struck by his experience as a senior EIS official during the reorganisation of the further education sector under the Conservative Government in the early 1990s. He described the reorganisation of that regional model as an “atomisation” of the system and concluded by saying:

“Pooling us back into regions and giving us a better opportunity for scale and strategic advance will give what has tended to be the Cinderella sector of further education a better chance at the races.”—[Official Report, Education and Culture Committee, 19 February 2013; c 2025-6.]

He seemed to suggest that the bill was based on a “Back To The Future” principle. What are your views on that?

**Michael Russell:** Ian McKay has a lot of experience in the sector—he taught in further education, worked in it, was a trade union official and now chairs the Edinburgh College board—and he speaks a lot of sense. I was struck by the evidence from his principal, Mandy Exley, about the economies and advantages of scale that she is seeing. I think that Ian McKay reflected the strong need for a regional focus, which is clear and has been welcomed by everyone, and the fact that we are creating bodies of scale.

I have also been struck by the way in which university principals are addressing the issue of involvement with the college sector. We are seeing a real joining up of approach because we have colleges of scale. Linda McKay, who is the principal of Forth Valley College, has not given evidence to the committee, but I had an extremely interesting conversion with her on the subject some weeks ago. She has experience of a
previous set of mergers. She talked about the way in which the college now operates as a college of scale and as part of the educational infrastructure in central Scotland, which is highly impressive.

I think that it is right to draw attention to that wider view, which is locally based—it is based in the campuses—about creating bodies of scale that serve the locality. I think that that approach is positive and that we are seeing the benefits of it. Mandy Exley, in particular, indicated how those benefits are already flowing through in Edinburgh College. To be fair, the City of Glasgow College, after its experience of merger, would indicate that it has also seen the effectiveness of that approach.

Joan McAlpine: Thank you very much.

Issues have been raised about the costs of the regionalisation process. I understand that colleges have £200 million of reserves. Will you explain why the present structure has resulted in that situation arising, at a time when capital expansion has been so unprecedented in the further education sector?

Michael Russell: The reserves situation is complex, and it can be a touchy issue for colleagues. I read the evidence of the principals—of Mandy Exley, in particular—about how the reserves that she had were working capital, which she felt that she needed. I have heard that from other college principals. It is fair to say that some reserves relate to capital expansion plans. From time to time, colleges have been able to fund part of their capital expansion from reserves. For example, the money for Aberdeen College’s project to refurbish its building in Aberdeen is coming almost entirely from college reserves, much of which have been built up by the college’s trading subsidiary. There are quite legitimate reasons for that.

However, there are concerns that sometimes colleges have established reserves out of public funding. We want to ensure that that money is ploughed back into the system. Russel Griggs made a series of recommendations that have been under consideration. We are seeing a growing willingness by colleges to invest their reserves in the process of change, and I encourage them to do so.

Joan McAlpine: I understand from the evidence that we have received that some colleges can build up reserves more easily than others because they can earn quite a bit of money from particular courses, whereas colleges that operate solely with challenged or disadvantaged students might find that more difficult to do. Will the move to regionalisation help to establish a more level playing field in that respect?

Michael Russell: I hope so, and I hope that the discussion that we are having about reserves, which we have been having for some time, will encourage colleges to give greater thought to the issue. Not all the reserves in question are cash reserves, but there is no point in sitting on a pile of cash in a sector in which we need to spend money to encourage educational activity. I hope that the colleges will recognise that, within the confines of having to work capital and of having to prepare for capital investment, which are complex issues.

However, I certainly do not think that any increase in the level of reserves would be justified. I think that there is a strong justification for using reserves for the process of change. When it comes to the transition funding that we have been able to put up for change in the college sector, there has been strong pressure for colleges to participate by putting forward money if they have reserves.

Joan McAlpine: Thank you very much.

Neil Bibby: Neil Findlay raised a number of my concerns earlier. I will ask about the relationship between assigned colleges and regional strategic bodies. There are concerns about assigned colleges being treated equally, maintaining their autonomy and not being overlooked by the regional strategic bodies. How will you ensure that those concerns are addressed?

Michael Russell: The assigned colleges will be working within a structure, which will be funded by the SFC and will be subject to an outcome agreement. It is absolutely clear in my mind that the outcome agreement is the vehicle by which delivery is made. It is likely to work very well indeed within the structure that we have. The regional strategic body will be key, but we know that because regionalism is key. I cannot see a problem.

Neil Bibby: There are concerns about regional strategic bodies controlling assigned colleges rather than enabling them. How will you ensure that that is not the case?

Michael Russell: The bill is clear about the functions of the regional strategic bodies. I expect them to exercise those functions within the law and to underpin that by working together with good will. I do not anticipate that that problem will arise.

Neil Bibby: We touched earlier on the Griggs review recommendation on the Scottish Government’s further education strategic forum. Will you reconfirm the status of that?

Michael Russell: I have given the regional leads responsibility for bringing forward proposals. We had a very good discussion last week in the regional leads meeting. I meet the regional leads
about every six weeks to discuss how we are taking that forward. I anticipate that the further education forum will meet before the summer recess.

Neil Bibby: If the strategic forum is to drive forward the college sector in future, should it not have been established before now and been involved before this process?

Michael Russell: No. It is a sensible suggestion from Russel Griggs that we should do this. We are doing it. It will have its effect. It will work with the new structure as it goes into place.

Neil Bibby: You do not think that it should be driving the bill or this agenda.

Michael Russell: No, I do not. It is quite clear what the forum’s function is—Russel Griggs defines it—and it operates after the process of regionalisation is established by law.

Neil Findlay: Colleges have to adopt the regional model. Why do universities not have to do the same?

Michael Russell: They are very different bodies. They operate in different ways and have different responsibilities. We have 19 higher education institutions in Scotland and 41 colleges. It seems to me that your answer is there.

Neil Findlay: If the principle is right, why would you not apply it to both?

Michael Russell: They are entirely different organisations, operating in different ways. There are only 19 HE institutions. At the end of this process, we will have 13 regional structures. That seems to be about right. I made a commitment that I would not force any college or university into merger. You would not expect me to break that commitment.

George Adam: We have spoken about the regionalisation of colleges, but we have not spoken about the educational attainment that it offers young people. I know that you are perfectly aware that there is a real world outside these doors. You recently visited my local college, Reid Kerr College, which is quite keen on the challenges of regionalisation and everything that it offers. Do you agree that, like everything else on the higher education side of the bill, the positive ambitions for college regionalisation are job focus, local focus and the focus on what our young people can achieve?

Michael Russell: Absolutely. Regionalisation offers great opportunities, which are not just regional. Regionalisation enhances the ability of colleges to deliver locally and ensures that there is broader provision in the area. I visit colleges regularly and make a point of meeting staff, students, management boards and everybody that I can meet. I can see lots of opportunities arising.

I return to the idea of colleges of scale. What colleges are able to do for the widest range of people is extremely important. We want to ensure that that happens. It is not just about 16 to 19-year-olds; colleges have a strong older clientele. It is about ensuring that colleges are working with as wide a community as possible and are focused on employability.

The commission that Ian Wood will chair will look at that in a different way. It will look at the young workforce and how it can take things forward. The combination of the reform that we have gone through and the work that Ian Wood is doing with his colleagues will be very powerful indeed. The work that Angela Constance has done in her first year in office has been tremendous in pushing this issue forward, particularly on youth employment issues and opportunities for all. Those are all significant and joined-up things that are taking place.

12:15

George Adam: Part of that is how things have moved on while we have been discussing the bill. As you have already said, £61 million over two years has been made available. You mentioned earlier that you have been in discussion with all the partner organisations. On 6 February, when the money was announced, John Henderson, the chief executive of Colleges Scotland said

“Today’s budget announcement is warmly welcomed by Colleges Scotland and our members.

This additional funding will help to give colleges stability over the next two years while they work to successfully complete the reform process.

As the sector’s representative, we have highlighted its economic importance to the Scottish Government and we are pleased that its value has been recognised by Ministers.”

Is that not another example of working with partner organisations?

Michael Russell: Absolutely. I was very pleased by John Henderson’s reaction and have heard the same across the college sector. I never wanted a perpetual revolution. I want to ensure that we get to the stage at which the reforms are able to bed in and find a secure footing. That was my aim, and it has been hard indeed in the current financial circumstances. I am pleased that we now have clarity that when we get to the £522 million college budget in 2013-14, we will be able to base planning and work on that figure.

I am also pleased that the transitions that are taking place—such as to the new funding model, which is well under way—will be positive for the sector. That will be the case not just for the sector;
that security exists for every single individual student. The process has been difficult, but it needed to take place to enhance the employment prospects of young people in Scotland and to enhance the vital services that colleges deliver across the board; more than 20 per cent of higher education is delivered in colleges.

We have been able to achieve all that, and the bill will put it all finally into place.

The Convener: I am very aware of the time and that we still want to cover a number of areas. I would be grateful if members would ask brief questions and, cabinet secretary, brief answers would also be helpful. Joan McAlpine will move us on with questions about the review of fundable further and higher education.

Joan McAlpine: Earlier, Mr Batho spoke about the review of fundable further and higher education and the concerns that university principals raised about the possible impact of the review on their institutions’ ability to determine course provision. What is your view of those concerns?

Michael Russell: I do not believe that there will be any impact on course provision. Indeed, I am somewhat surprised by some of the debate surrounding the issue. We are suggesting a sensible and proportionate approach to ensuring that we have a clear view of what further and higher education contributes to Scotland.

Convener, if I may, I will take a moment to explain that, because I think that it is important. Some of the spats that have taken place around the changes in further and higher education have been highly individualised such as, for example, the arguments that took place about the Abertay and Dundee colleges merger and the difficulties that that caused. There were also arguments about the provision of colleges. We therefore said that it would be better, from time to time, to take a systematic and structured view of a sector on which we spend about £1.6 billion a year, if we take further and higher education together with Skills Development Scotland.

Michael Cross (Scottish Government): The figure is beyond that.

Michael Russell: Yes, it is beyond that. We need to look at that from time to time, and the mechanism for that should be the funding council, although it would need to draw in additional help from the sector. We need a clear set of criteria for how we should do that, the time to do it and what is being looked at, and then a set of recommendations for public debate and discussion, not just for the minister. There should be public debate and discussion and parliamentary scrutiny. All that strikes me as eminently reasonable. I am happy to debate and discuss the issue and, if there are ways in which it can be expressed more clearly or it can meet the universities’ anxieties, I am happy to look at them. However, it seems to me that we are improving the way in which we take an overview of education in Scotland, and that is surely to be welcomed.

Joan McAlpine: Mr Batho raised an interesting example of when the Scottish funding council intervened as a result of concerns about modern languages provision in Scotland. He seemed to be saying that the Scottish funding council already has the ability to review, when necessary. Is the bill a way of tying different forms of ability to review together, rather than doing anything radically new?

Michael Russell: The bill adds something to what already exists. The issue around Slavonic languages, which I think is what Mark Batho was mainly referring to, is an interesting one—it is still going on. That is not about an individual university delivering or not delivering; the question is a wider one for the whole of Scottish society—the people who fund higher education—about what provision they would expect to find somewhere in Scotland. There are some things that are not available in Scotland at present that perhaps should be available.

If we carried out reviews within a wider context from time to time—we do not want to do it every 10 minutes—we would probably get a more rational view of what should be provided, and I hope that that might avoid the type of passionate debate that took place around Slavonic languages, for instance, or people marching in the streets—as happened—because something was not being provided in one place and they felt that it should be. The proposed measures are positive, and they have real potential to help us decide how we invest in further and higher education, rather than doing anything else. If there are things in the provisions that need changed, or if there are words in them that need to be made clearer, we can do that, and I am happy to listen to people’s points about that, but there seems to have been a reaction against what I think is a logical and helpful proposal.

Joan McAlpine: I should have corrected myself and said Slavonic languages—thanks for doing that, cabinet secretary.

Michael Russell: That is okay.

The Convener: We move on to the subject of data sharing, which has caused us some concern. I am sure that you are aware of some of the discussions on the matter.

Clare Adamson: The evidence that we heard last week seemed to indicate a confused understanding of what data sharing would be for
and what would be delivered from it. Can you clarify the objectives of data sharing?

Michael Russell: They are simple—although I share your concern, having read the evidence. The proposal is for a modest enabling provision that allows something to happen. In particular, it allows the quality of data to improve. It is not just about giving or accessing the data; it is about ensuring that they are of sufficient quality to be meaningful. There have been problems with that. As the committee has heard me say in the past, the quality of the data was not high enough.

The proposed measure is not some all-singing, all-dancing massive new initiative. My concern, following discussions with a whole range of people, is that the quality of the data that should allow us to understand what is happening in the sector has been patchy, and we need to improve that. That is why the provision is in the bill, and that is what the bill is about. It has been carefully and narrowly drafted in that regard, and I do not want there to be any expansion of that drafting. That is what I would wish to take place.

Clare Adamson: I want to ask about the role of Skills Development Scotland in making interventions once data sharing is in place. Do you envisage an increased role for Skills Development Scotland in intervening when it sees a problem?

Michael Russell: Somebody needs to be able to flag up an issue when it arises. I followed the exchange between the convener and Skills Development Scotland with interest. There is an issue around how people would know what was taking place. A careful reading of data by somebody who is experienced in reading data would probably lead to some conclusions. We need to establish that role somewhere, and such people exist in Skills Development Scotland. Indeed, that is what many people in Skills Development Scotland do. They have that role—it is a collaborative role, not an overarching one, and I would expect them to fulfil it in the terms that I have outlined.

Joan McAlpine: I have a supplementary point about that. The Open University has highlighted its concerns about the quality of the data in higher education statistics. In particular, it is keen to get more data about its own student body, including part-time and mature students. As I understand it, the bill does not really address those concerns. Will they be addressed at some point in the future?

Michael Russell: That is an issue for the Open University, but probably not for any other part of higher education. I would not be unsympathetic if a proposal was made to help with that, but our proposals specifically address a particular issue that we know exists and provide a means of solving it. In relation to any suggestions from the Open University, I would want to know that we could address the matter and solve it in a clear, rational and not too elaborate manner. The other difficulty that would probably arise with the Open University is that, if we were to cover its students in Scotland, I am unsure about what would happen elsewhere in these islands. However, if anyone wants to ask specifically about that, we can consider the issue.

The Convener: I am pleased with that response. Last week, I was less than convinced by the responses that we received from SDS witnesses. There was a lack of clarity. As I said last week, I felt that what was being provided seemed to be rather oversold. However, just for confirmation, are you telling us that this is a rather simple data-sharing exercise and that the data hub—if that is the correct title—should gather data that already exists, and do nothing more than that?

Michael Russell: This is about identifying and supporting; it is not about creating data empires. It will not do that. It is very clear that we are talking about access and quality. That is what we want to deliver.

With regard to such questions, it is always important to go back to the bill. The bill is entirely clear about the issue. It is not overambitious. Somebody asked about the financial memorandum. It is modest because what is being talked about is modest. We need to keep that at the forefront of our minds. I am quite sure that SDS will read the Official Report of this discussion and will understand your view and my view on the matter.

The Convener: We now move on to deal with the financial memorandum and, in particular, the Finance Committee's evidence.

Liz Smith: You have made available the 1,700 additional places, and that provision is properly funded and so on. If it were to be continued beyond this budgetary period—so you would be providing more places for universities—what would the funding mechanism for that be?

Michael Russell: That would obviously be subject to the spending review, but it is within the existing expenditure figures, which carry forward. We anticipate that they will carry forward.

Liz Smith: The issue that you referred to—displacement—would apply only if there were no additional places. Within this spending review, those places are available, which means that that problem does not arise. There is a question about the bill, in terms of how much money will be available for widening access given that there is no additional money in the financial memorandum. Is that a genuine concern for the universities?
Michael Russell: If it is a concern, it is one that everyone across Scotland shares in every part of life, because we do not know what will happen south of the border. As long as we are still tied into that system, we will not be able to say what will happen south of the border on the spending review.

That said, it is fair to say that you and I have a different view of the affordability of higher education. We are not going to resolve that today. My view is that the provision will continue to be funded in a way that meets our policy objectives, and I accept the point that we should want to continue with at least the same number of places and that we should, presumably, want to increase them.

Liz Smith: Our political views aside, there is a genuine concern. You have specifically stated your intention to widen access quite considerably, and the bill is designed to do that, but the financial memorandum does not have any additional money for that. A paper was given to the Finance Committee that contained figures—albeit slightly out-of-date ones—about the additional cost that students from poorer backgrounds impose on universities due to the fact that they need more student support and so on. There is a concern about that, if access is widened further in future.

Michael Russell: I have to say that the figures were not slightly out of date: they were 2002 figures, and were for England only.

Liz Smith: I acknowledge that the figures were out of date, but there is a concern that those students cost more.

Michael Russell: We have shown our intentions in what we are spending presently through the funding council with regard to the additional places, and we will continue to go on funding that in a way that will achieve our policy objectives. We may disagree on the fine-tuning of the figures, but I think that we can agree that that is our intention.

Liz Smith: Can you confirm that that additional spending will come from the public purse?

Michael Russell: You are asking me to say what will be in the spending review, which I cannot do. I can say that the policy intention is clear and that it will be followed through by the Government. I cannot go any further than that, but that should be enough.

Liz Smith: Okay, thank you.

12:30

Neil Bibby: Can you confirm what the set-up costs will be for the University of the Highlands and Islands to become the regional strategic body in that area and why those costs were not included in the financial memorandum?

Michael Russell: Michael Cross will answer that.

Michael Cross: We are still discussing with the University of the Highlands and Islands, through the funding council, what the right level of set-up or establishment costs should be. We do not know the outcome to those discussions yet.

Neil Bibby: When do you expect to know?

Michael Cross: It is not necessarily imminent, but we will know within a matter of weeks.

Neil Bibby: The financial memorandum also states that the costs for the three regional boards—I understand that there are now going to be two—for 2015-16 are estimated to be up to £560,000 each, giving an annual total of £1.68 million. Now that Aberdeenshire is not involved, there will be two regional strategic bodies rather than three. I take it that the aggregate total has changed, or will change, for that financial year?

Michael Cross: The cost falls by one third.

Neil Bibby: That is fine—I just wanted to confirm that.

The Scottish Government has said that the process of regionalisation will bring savings of around £50 million. Given that we are hearing that there will be staffing costs, accommodation costs, licence fees and audit fees, plus payments to chairs and possibly members of regional strategic boards, have you revisited the estimate of the £560,000 cost in the financial memorandum for each regional strategic board?

Michael Cross: No. We worked out that estimate in liaison with Scotland’s Colleges—now Colleges Scotland. We took the advice—as I have explained to the committee previously—of a senior HR professional from the sector who works within my division, and that led us to those figures.

Neil Bibby: Has anything been spent to date on the setting up of the regional strategic boards? If so, how much has been spent?

Michael Cross: Some modest support is in place at the moment from the Scottish funding council to the regional leads, but as yet we have not constructed regional strategic bodies of any sort.

Neil Bibby: What is that modest support?

Michael Cross: I do not know the answer to that.

Neil Bibby: As regards on-going costs for the regional strategic bodies, the sum of £110,000 has been mentioned. Do you feel that that is
somewhat light, and can you tell us what it
comprises?

Michael Cross: Sorry, I cannot find the right
piece of paper—Gavin Gray will look for it.

I have a feeling that we wrote to the committee
disaggregating the costs that we set out in the
financial memorandum on college regionalisation.

The Convener: I do not think that you wrote to
us. Perhaps you wrote to the Finance Committee.

Michael Cross: Oh, I beg your pardon.

Michael Russell: We can provide you with the
information that we provided to the Finance
Committee—that would be the best thing to do.

The Convener: That would be helpful, but if Mr
Cross is able to answer the question, that would
also be helpful.

Michael Cross: I can answer—I am grateful to
Gavin Gray for finding me the right piece of paper.

We are confident that the £110,000 figure
remains a reasonable one. We do not think that it
is light. It comprises computing equipment,
consumables, travel expenses for board members
and for officials, accommodation costs, rent, staff-
related costs, non-salary costs, the costs of
recruiting board members, and other professional
and audit services.

Neil Bibby: A point has been raised about what
the process would be if a regional board was
wound up—about what would happen and
whether its liabilities and assets would transfer to
merged or associated colleges. Is there a view on
that?

Ailsa Heine: There would be a transfer. If a
regional board was wound up because there was
a regional college, there would probably be a
transfer to the regional college that was formed.

Michael Russell: I think that winding up is most
likely to occur if there is a move to a single
regional college, which would obviously involve a
transfer. I cannot imagine that there would be a
disaggregation—the bill would not permit it.

Neil Findlay: I have two final points. Last year,
we saw a slight disagreement, shall we say,
between you and the chair of a college. At the time
you expressed the view that if you had the powers
to remove that person, you would have done so.
Within the bill, you will gain further powers. What
do you say to the charge that people are levelling
that this is a centralising bill whose purpose is to
give ministers more powers?

Michael Russell: I say that that is not true. That
is not what is taking place. There is a range of
circumstances in which powers over
mismanagement would apply, which are 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 ... 

(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 exercise any of their
other functions properly; or

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

(b) a relevant funding body 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.”

Each of those seems to me to be an utterly
reasonable circumstance under which the
provisions could apply. What is more, such action
would require an order that would have to be
subject to parliamentary scrutiny and could be
subject to judicial review. These are circumstances
of the sort that Opposition spokespeople frequently urge ministers to
intervene on. I therefore think that the provisions
are utterly reasonable and are the right things to
be in the bill, which will lead to better management
and governance.

Neil Findlay: Prondzynski’s report mentions
increasing the number of women in college courts.
Will there be steps in the bill or the code of
governance to move that process forward
significantly?

Michael Russell: I read the piece on the issue
in The Herald this morning, and I also read your
question, in which you listed the chairs of court. I
think that there is now considerable room for
improvement on the matter. I will consider whether
an amendment should be lodged at stage 2 to
take that a step further. I know that the suggestion
is that there should be a proportion or percentage
of women, and I will actively consider that.

Neil Findlay: Would you care to elaborate? Are
you minded to move in that direction and to
legislate on it?

Michael Russell: I am minded to consider the
issue seriously. I think that the situation is stark
and that it is alarming that we are still in it. I am
treating the issue very seriously indeed. I do not
want to give a commitment on it today, because I
am only thinking about it at the moment. However,
I take it very seriously indeed and I think that you
are right to raise it. We will see where our
consideration leads us.
Neil Findlay: I have a final point, which is about collective bargaining in FE. What is the situation?

Michael Russell: The regional leads are taking that forward with my support and there remains an absolute commitment to make it happen. The question of how it is made to happen during the merger process is actively being discussed. I have urged the regional leads to enter into the earliest possible discussions with the trade unions to ensure that they make progress on the issue, and I hope that they will do so—in fact, they will do so.

Neil Findlay: Just to pursue that slightly, why are the regional leads taking the lead on the issue? I thought there was going to be national collective bargaining.

Michael Russell: There is. Together, the regional leads represent all the regions involved. Their successors in office will be the people who will take responsibility for each area. In those circumstances, the regional leads are the right people to be involved. However, they have my backing in the process, about which there should be negotiation. The question is not whether to do it—in my view, that is settled—but how it is done: how we go from where we are to national terms and conditions. We need to make that move, and I hope that we can find the best way to do it over the quickest time.

Neil Findlay: Is there a timescale?

Michael Russell: I want it to be done, but I do not know what the timescale is. I would like it to be done and it needs to be done. It is part of the commitment that I have entered into, and I want it to happen.

Neil Findlay: Thank you.

The Convener: If I may, cabinet secretary, I will ask one final question. The Subordinate Legislation Committee has quite rightly reported to this committee its view on the bill’s delegated powers. You will be pleased to hear that I am not going to go through them all.

Michael Russell: I have read them.

The Convener: Can you give us a broad overview of your reaction to the Subordinate Legislation Committee’s view? It believes that the bill as drafted provides insufficient scrutiny of many of the powers and it recommends moving from negative to affirmative—or sometimes even super-affirmative—procedure for them.

Michael Russell: There is one issue on which we agree with the Subordinate Legislation Committee, and the rest are under active consideration. I am happy to come back to the Education and Culture Committee when we get to the stage of saying what we propose to do on the issues. However, we take the issues seriously and are looking at them carefully. I do not agree with some of the Subordinate Legislation Committee’s views on the powers, but we have already indicated those with which we agree.

The Convener: I am sure that the good work of both the Finance Committee and the Subordinate Legislation Committee will form part of our stage 1 report, along with all the other evidence that we have received.

I thank the cabinet secretary—

Michael Russell: Can I say something first? Obviously, if points on which you would like answers have not been dealt with the day before the committee reports, we are of course willing to provide that information.

The Convener: The committee will discuss that under the next agenda item. I am sure that if there are such points, we will write to you about them. I thank you and your officials for coming here this morning.

We now move into private session.

12:41

Meeting continued in private until 13:28.
ANNEXE C: OTHER WRITTEN EVIDENCE

Adam Smith College
Alex Stobart
Angus Council Community Planning Partnership
Asset Skills
Association of Teachers and Lecturers and Association of Managers in Education
British Medical Association Scotland
Capability Scotland
Centre for Excellence for Looked After Children in Scotland
Children in Scotland
City of Glasgow College
Edinburgh University Students' Association
ENABLE Scotland
Falkirk Council
Families Outside
General Council Business Committee Convenors of the ancient universities of Scotland
Glasgow City Council - Education Services
Glasgow Colleges Strategic Partnership
Glasgow University Students' Representative Council
Highland Council
Inclusion Scotland
Information Commissioner's Office
Lews Castle College
North Highland College
Orkney Islands Council
Perth College
Robert Templeton
Royal Society of Chemistry
Royal Society of Edinburgh
Scottish Children's Services Coalition
Scottish Council for Development and Industry
Scottish Council of Independent Schools
Scottish Social Services Council
Scottish Trade Union Congress
Scottish Youth Parliament
Secretary to the Board Network
Sense Scotland
The Open University in Scotland
The Prince's Trust Scotland
University of Highland and Islands
Wajahat Nassar
West Dunbartonshire Council
West Highland College UHI
West Lothian College Board
Young Scot
Supplementary evidence received

Professor Ferdinand von Prondzynski
Professor Russel Griggs OBE
Office of the Scottish Charity Regulator - Position on charitable status of FE institutions
Office of the Scottish Charity Regulator - Position on charitable status of HE institutions
National Deaf Children's Society Scotland
Introduction

The Board of Governors of Adam Smith College (the Board) generally supports the reform programme as it applies to Further Education in general and Colleges in particular. It is believed that the overall approach of a closer alignment with the labour market and the needs of employers is the right approach. However, the Board does have reservations about the degree of emphasis on the 16-24 age group without a clear statement of intent regarding support for work with learners in older age groups who may be further from the job market or who require support to improve skill levels to meet the ever changing needs of employers.

The Board is also concerned that whilst the emphasis in legislation is on national priorities and the implementation of national policies and programmes, there must be a balance between national and local priorities. Local connections and local identity must not be lost. Further Education provision must be responsive to local needs amongst learners, communities, employers and partner organisations. It is also important that College and Regional Boards remain active in local communities through partnership working and as such Boards need to retain their local identity and autonomy. This issue is reflected in our comments below.

Terms and Conditions of Higher Education Funding

The Board would not wish to comment in detail on the provisions in the Bill which relate solely to higher education institutions. From a College perspective it is to be hoped that, in promoting wider access, which is a commendable aspiration, full use is made of articulation agreements between Universities and Colleges. In some circumstances improving wider access can be better achieved by colleges and universities working together rather than higher education institutions working alone.

On a more general point, there is a clear- and growing - disparity between the funding of further and higher education. If the reform programme is to deliver the type of system which is more responsive to the needs of learners and employers and is more closely aligned to the job market, there needs to be a better balance of funding across a more integrated further and higher education system.

College Re-organisation and Regional Bodies

The Board is supportive of the general direction of the changes set out in the Draft Bill. The move to regional arrangements is welcomed and the Board is currently actively engaged in the process of merger with Carnegie College to form the basis of a new Fife
Regional College. The timeframe for this process is challenging and there is a danger that the focus on the mechanics of merger will deflect the Boards from the opportunity to create a completely new College which is more than the sum of the two institutions.

Both Boards are aware of this risk however and are committed to creating a new college which will see new opportunities and significant advantages for learners, staff, communities, employers and partners. Nonetheless it has to be recognised that the full merger process and the creation of a truly new educational establishment in Fife will take considerably longer than the initial merger timetable. This lengthier process requires to be factored in when considering potential costs and financial savings projected to come from the merger process. Considerable investment is likely to be needed to bring about significant savings in the longer term and to see the transformation in teaching and learning envisaged in the reform programme. Whilst savings may be achieved in the longer term, the Board believes that these will not be sufficient on their own to fund the levels of investment needed to see the kind of further education we all want to see for our communities and learners.

The Board welcomes the general duty of the new regional colleges as set out in the Draft Bill with its clear focus on high quality educational provision as the core functions of the new colleges. The Board also welcomes the emphasis given to collaborative working in exercising its functions. It is believed that the legislation should make an explicit reference to the role of colleges in the Community Planning Framework. Playing a full part in this framework will ensure that the Outcome Agreements being developed by all colleges will be properly aligned both with national policies and, critically, the Single Outcome Agreements in place at a regional level.

The Board also supports the approach taken in the draft Bill to regional college boards. It believes that the opportunity should be taken to re-title boards as "College Boards" to clearly indicate the function of these bodies in terms of 'governance' rather than 'management' which is properly the function of the principal and staff of the college. The scale and membership of the Board - particularly as regards staff and student membership- is particularly welcome. It is noted that the Draft Bill proposes that Ministers should have transitional powers to appoint chairs and approve the appointment of board members to regional colleges. It is to be hoped that such powers, if included in the final legislation, should be used judiciously recognising that new regional colleges are likely to have put in place new governance arrangements. Imposing additional changes during a transition period would appear to be counter-productive.

One proposal which we would oppose is regarding that of remuneration. The Board believes that all board members - including the chair - should continue to work on a voluntary basis. The proposal to remunerate the chair is potentially divisive in terms of board operation and there is no evidence that suggests that a remunerated chair will provide better leadership - and a better college. Boards depend on full commitment from all members to participate on the board itself, at committees, and in other board duties - to pay one member of the board- albeit one who may require to commit more time than
other board members- would not seem to us to assist the operation of the board - nor
make sense in times of financial restriction.

On the same theme of the need for financial probity, the above comment would apply to
the chairs of regional strategic boards. There is a danger that additional layers of
governance and oversight could become increasingly complex and costly, thereby
reducing resources available to learner services. It is to be hoped that resources
committed to these bodies are closely monitored and limited to avoid potential
duplication of effort and cost.

The Board hopes that the Education and Culture Committee can debate the need for
Board Chairs of the Regional Colleges to be appointed by Ministers rather than the
Boards themselves (albeit perhaps for subsequent approval by Ministers). As noted, it is
believed that it is vital that boards reflect local identity and local economic/social needs.
Boards also need to demonstrate coherence and common purpose. Having the Chair of
the Board chosen by Board members themselves, operating at a regional level would
reinforce these local connections and help maintain the required balance between
national and local priorities.

**Review of Fundable Bodies**

The additional powers proposed to be given to the Scottish Funding Council are noted.
We would reiterate our point on the need for balance between national policy and local
responsiveness. It is noted that whilst colleges are required to provide information in
any review carried out by the SFC (reporting to Ministers), there is no provision for
these colleges to be consulted in this process. We believe that the Bill should contain
such a provision to ensure that local circumstances are taken into account.

**Data Sharing**

We welcome the introduction of this duty to try to minimise the disengagement from
education, training or employment amongst young people and that appropriate support
can be planned and put in place. However there is a need to ensure that the needs and
rights of young people are protected in carrying out this duty. It is therefore suggested
that a duty is put on all post-16 education institutions that they ensure that all young
people are advised of the existence of data sharing procedures, what information is
being shared, and why it is being shared. All young people involved should be able to
see their files.
Education and Culture Committee  
Post-16 Education (Scotland) Bill  
Alex Stobart

This Bill is currently going through the Scottish Parliament. This submission is in relation to the Parliament Bill at stage 1, and in particular the Data Architecture comments in the Policy Memorandum.

The Annex below gives a flavour of the Legislation

http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-pm.pdf

In my view, the Policy as written for Data Architecture displays almost all of the over-centralising characteristics of previously failed UK and Scottish Government IT structures. The desire to centralize, control, monitor and check is of great appeal to public servants with targets to meet. This is what happened at Stafford Hospital, and at the ERI in NHS Lothian. It does not empower patients, learners or citizens if they are over-controlled by a group of Organisations trying to track and monitor them.

There is a real risk that Young Learners will be alienated even more from the System. The Policy Memorandum for Data set out by the Scottish Government. Organisations will fail to deliver an environment that supports young learners.

Controlling, monitoring and checking are the hallmarks of failing and repressive Systems. In other areas, the Scottish Government is championing Self Management and Personalisation e.g. Health. The proposed Policy does not sit well with an independence-seeking country wishing to set itself apart for positive aspects of Education.

Data should be volunteered by the young learners because they want to do it, and they should not be tracked and monitored as if they were suspected young offenders. This will mean both Colleges and Learners start off on the wrong foot. It will cause mistrust.

Centralisation of IT normally leads to failure of the operating environment e.g. NHS for IT Program in England. Centralisation has consistently not delivered citizens, Communities or Minister's desired outcomes. The Data Architecture and Policy Memorandum offers no role to the individual learner, or their parents, carers and teachers. This is totally at odds with Curriculum for Excellence, where school age children are asked to be e.g. Responsible Citizens. This change of Values by the Education system between schools and post 16 Education seems at odds with thinking in policy elsewhere.
The participation of Skills Development Scotland in the Draft Policy is to lead a monitoring, tracking and checking function. This is not consistent with Curriculum for Excellence, Opportunities for All, Education Scotland, Community Learning & Development and other projects. These seek to encourage positives such as aspiration, ambition, responsibility and a self-empowering role for the Learner. In this Data Architecture and Policy, the Learner is treated as someone to be checked on and monitored by the Public Sector.

The Bill goes against the ambition, aspiration, co-design, co-production and other person-centred characteristics of policies such as Self Directed Support or Community Empowerment. It confers no real responsibilities on young citizens or their support network. There is no chance for learners, families and carers to be involved in building their own personal education record. The System alienates the young learner in its treatment of them.

Just as in Health, policy makers around the world are now looking at how individuals can create, and curate, their own digital records of achievement. The individual can then share that achievement with others as they wish.

Such overly Organisation-centric structures as suggested by the Policy Memorandum, completely dis-empower the role of the learner, and I note there are plenty of sticks, with no carrots in sight. This is surprising given personalisation, self management, prevention and self directed support in other polices e.g. Health and Social Care.

In order for the citizen to be empowered, personal data must be shared by the individual, under their choice and control. The individual is then the point of integration, and has a chance to play a role. In exchange for trust, young learners will aim higher, collaborate to a greater extent and acquire confidence.

The behaviours of the Centralised Education System as written in this Policy will not serve the young learner well. The young learner knows their Identity better than any Centralised System – the young learner will be happier to share updates, changes of address and other elements if it is done by them, not tracked by the System.

Also, Governments that serve those who struggle routinely undervalue the degree to which the capacity, ability and determination of these people contribute to their ability to overcome their struggles. People are deeply resourceful and adaptable. To get progressively better at solving the problems we face, as individuals or communities, we have to have some control in solving our problems. We must have a say in what path we’ll take to emerge better off on the other side of a struggle. To be clear, I’m not advocating that we take this approach to its extremes – like inappropriately pushing victims of disasters or crimes to “take control” in uncontrollable situations. What I am saying is that Government need to build their strategies and operations very differently – optimized to leverage the capacity and resourcefulness of the people we serve. From article here
Essentially, the Data Architecture and Policy reads as if it is admitting that the existing system and systems have failed learners for a generation, so it tries to build higher walls and thicker bars to track people. The assertion is that more state, central control will help young learners; I'm not sure there is any evidence this works. In Prisons, Criminal Justice and other areas, the moves are towards prevention and early intervention.

The Policy also appears to contravene data protection law on more than one occasion, by asserting that personal data can be shared. The Education Committee should ask the Information Commissioner to review the legality of the Data Policy.

eCare in Scotland tried to build this same, failed architecture. They did this for 12 years and wasted approximately £ 100 million before it was finally cancelled. The Customer First program has spent > £ 40 million for its outcomes. The Skills Development Scotland Hub centralises and tries to control Organisations, and has spent £ xx million (figure unknown). The Education Data Policy designs share almost all of the same faults of eCare – centralization; restrictions of control and choice so people are alienated; do not place trust in people; no role for the individual learner to take responsibility.

On the other side of the coin, the Scottish Government’s ‘Identity Management and Privacy Principles’ document Version 1.0, published in December 2010, was a most welcome development, and in Section 4 it did caution about the risks to privacy from creating centralised databases of personal information. See: www.scotland.gov.uk/Publications/2010/12/PrivacyPrinciples

The Scottish Government published also in late 2010 the document ‘Biometric identification systems in schools: guidance for education authorities, learning establishments and schools’. This was a well informed publication, emphasizing among other things the need for caution and the key importance of parental and pupil consent. So again it is a world away from the latest proposals. See: http://www.scotland.gov.uk/Publications/2010/11/11112141/0

Para 49 is symptomatic - the only apparent determinant ( according to the author ) of a Learner's success is the State Apparatus of Delivery. No recognition of the individual, the learner, their teacher, family, friends, Community, Carers or other support mechanisms.

Contrast this with Education Scotland's recent bulletin in December 2012, which appears to come from a different part of the Education System operation that thinks more openly and inclusively.

**From strategic guidance to better outcomes**

**CLD Strategic Guidance - Key Messages**

The guidance provides a clear statement that the purpose of CLD is to empower people, individually and collectively, to make positive changes in their lives and in their communities through learning and sets out the focus for CLD within the national Performance Framework as -

- Improved life chances for people of all ages, through learning, personal development and active citizenship; and
- Stronger, more resilient supportive, influential and inclusive communities;

The strategic guidance forms part of the Scottish Government’s programme of public service reform. In particular the guidance is closely linked with key aspects of the current review of Community Planning arrangements in Scotland, and the development of the Community Empowerment and Regeneration Bill.

All three make clear that it is imperative that public services build on the assets and potential of individuals, families and communities, and the strategic guidance emphasises that CLD should be delivered as a consistent, central element of public services.

In Summary, the Data Policy captured in the Memorandum paragraphs below is a repeat of previous costly errors; is not empowering Young Learners; will not be likely to work; may be in breach of Data Protection Act; and offers no role to individuals as Learners that encourages behaviours that will help them succeed in life.

Extract of Policy Memorandum (my bold highlights)

Data sharing (Section 37) “This approach, when fully implemented, will ensure local authorities and their partners systematically identify young people who have disengaged from learning or who are most likely to do so; tailor learning and wider provision to meet individual needs; and, provide focused and ongoing support, including careers advice, to ensure they make progress.” Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

Opportunities for All is the Scottish Government’s commitment to an offer of a place in learning or training for every 16 to 19 year old who is not currently in employment, education or training. It builds on, and adds impetus to, existing activity driven through 16+ Learning Choices and wider youth employment activity.

It is important that all young people who disengage, or who may be at risk of disengaging, from learning or training can be identified so that appropriate support can be provided back into learning, training or employment. This is required to plan and deliver services across the post-16 learning system, including those which support delivery of Opportunities for All. It requires a robust identification, tracking and monitoring system to allow the Scottish Government and its partners to plan and support the transitions that young people make through the post-16 learning
environment. Data collection and sharing across the 16 to 24 age group will also support comprehensive evaluation of the impact of provision and support across the post-16 learning system.

How this data sharing will work in practice can be separated into two facets. Firstly the data practice and secondly how this practice will support policy delivery (it is intended to set this out in greater detail within secondary legislation).

For data sharing to take place records must first be created for all young people. This is normally for each child when they are first enrolled for mainstream education. These records form the base data set which tells us how many young people there are in mainstream education in Scotland (The Pupil Census). Data which is relevant to the young person’s learning is added to their records as they progress through mainstream education. This data will include type of school, school leaving date and may include whether a young person has an additional support need. When the young person reaches the senior phase of Curriculum for Excellence an agreed selection of fields within their record is shared with Skills Development Scotland (SDS). This enables a post-16 record to be created that can track a young person’s learning and training with a number of different providers on leaving school. SDS maintain this record, updating it appropriately with data received through face to face meetings with the young person and data shared with SDS by partners.

When a provider of learning or training enrolls a young person they will share a record with SDS of that young person’s enrolment along with other agreed fields. When SDS receives this record it is able to update the record that it holds to reflect the young person’s current learning or training status. This allows SDS front line careers staff to know that they need not contact this young person to ask if they require help to find learning or training. Likewise when a young person leaves a training or learning provider, the provider notifies SDS to that effect.

The founding record for a young person in Scotland comes from their enrolment in government funded mainstream education and not their health record. This means that someone who comes into Scotland after compulsory schooling age of 16 and does not apply for a mainstream school place before the age of 18 will not have a record created in this manner. If the young person engages with SDS they will have a record created. If the young person enrolls directly with a provider of learning or training their data will be shared with SDS and an existing record would be updated.

SDS will maintain a young person’s record whilst they are receiving data and/or are in direct contact with the young person. After this time, the young person’s record will be archived and retained in line with agreed standard data practice timescales. This approach has been taken as SDS provides all age services and an individual may wish to contact SDS again later in life. This process will enable SDS to provide more tailored support based upon knowledge of the individuals prior participation in learning and training.
Elements of this data-sharing approach are already in place, with SDS acting as a data hub, and many bodies having concluded data sharing agreements with SDS covering young people’s transitions through the learning system. However, if we are to ensure that every young person receives the support to which they are entitled when they need it most, all relevant partners need to share data. Our expectation is therefore that all of those responsible for providing learning and training to 16 to 24 year olds must participate in data sharing with SDS. The proposed legislative measures are framed to this end.

Through the data hub, those involved in planning and delivering learning and training to 16 to 24 year olds, including those required to share data, can monitor their performance and ensure that the best services are provided for young people.
Introduction

Angus Council welcomes the opportunity to respond to the call for written evidence on aspects of the above Bill. Taken together, Further (FE) and Higher (HE) Education provide the first post-school destination for more than two thirds of all leavers in Angus. Clearly changes to FE and HE funding may potentially impact on many Angus school leavers as well as the work of the Angus school-college partnership. As lead partner, Angus Council also has overall responsibility for effective management and delivery of Opportunities for All.

General Comments

Angus Council endorses the commitment to make post-16 education more focused on the needs of learners and employers. The imperative of ensuring Scotland’s FE and HE institutions are efficient, effective and fit for purpose, particularly in the current challenging economic context, is recognised. So too is the need to widen participation and improve equity of access to HE.

University governance

Drafting and introduction of a Scottish Code of Conduct is welcomed

Widening Access

The principle of widening access to HE and setting aspirational but realistic targets to increase the proportion of students from less affluent backgrounds is welcomed.

Tuition Fees Cap

The absence of fees for Scottish students is and should remain a welcome and positive aspect of the Scottish education system. Capping fees for those attending from other parts of the UK at a level equivalent to that elsewhere in the UK creates equity and neither favours or disadvantages potential students from out with Scotland.

It is important, particularly in the current economic climate, that access to a university place should not be or become dependent on ability to pay. Any restriction on access to HE for Scottish students not paying higher fees would be highly regrettable.
College Regionalisation

In principle, larger more diverse and efficient colleges are a positive development. However, in practice, recent changes to college funding for school-college partnerships have already restricted the range and volume of provision available to young people. It would be unwelcome if college regionalisation compounded this by diverting time, energy and money from core functions.

Similarly, there is an increasing need for schools and colleges to work in partnership to deliver the Senior phase of CfE. Such partnerships can broaden the range of opportunities and progression pathways available to the increasing number of young people staying on at school beyond the first statutory leaving date.

Better articulation between FE and HE is welcomed and should provide better recognition of prior learning and clearer progression from FE to the appropriate stage/level in HE.

Angus Council has enjoyed a very positive partnership with Angus College. This has allowed for effective joint planning and a welcome responsiveness to local circumstances. It would be regrettable if regionalisation made colleges less locally responsive / accountable. The creation of larger colleges operating across more than one Local Authority area will place new challenges and demands on these institutions in being as effective a contributor while sitting sit on more than one Community Planning Partnership with the potential for more diverse, if not conflicting, priorities and aspirations.

Review of Fundable Higher and Further Education

No comment

Data Sharing

The universal expectation to share data on all learning and training providers is welcomed.

It is agreed that improved data sharing arrangements, most notably for young people moving from one post-school destination to another, are needed as part of OfA. This is particularly crucial if a young person is moving from a positive to negative destination to ensure timely engagement and support.

At present, there are challenges in ensuring that the data retained in the 16+ national data hub is accurate and up-to-date. This would need to be addressed

This arrangement would not improve matters for young people who enter a negative destination and choose not engage with SDS or those leaving employment.
Any commitment to data sharing needs to be comprehensive and embrace all sectors equitably. There may also be resource implications if the full range of partners is to be fully engaged in efficient data sharing.

There are some ethical concerns around data sharing that will need to be addressed. There is a clear linkage across from the post 16 learning sector to the benefits arena, where participation in learning activity can be compelled, with benefit removal where people opt not to comply. There are clear implications for choice and the quality of learning here.

There would also be a clear need for definition around what constitutes learning and therefore the scope of any duty. There will be young people who voluntarily participate at the more informal end of the learning spectrum, where data sharing may not be appropriate or practical; some definition or quantification may be required.
Education and Culture Committee
Post-16 Education (Scotland) Bill

Asset Skills

Many thanks for the opportunity to submit written evidence to the Education and Culture Committee’s considerations of the Post-16 Education (Scotland) Bill.

Asset Skills is the Sector Skills Council for facilities management, housing, property, cleaning and support services and parking. Our role is to support employers within the sector to be more productive by facilitating access to relevant training and qualifications that support their business needs.

This submission of written evidence is concerned solely with the effective involvement of employers in the decision-making processes relating to the provision of post-16 education.

The Bill is very clear in its objectives that post-16 education must be more responsive to the needs of employers and better aligned to labour market demand, but it is not clear how employers will influence decision-making within the Scottish Funding Council nor the newly formed regional strategic bodies and regional colleges themselves.

In terms of both regional colleges and regional strategic bodies, the Bill requires consultation ‘where it considers it appropriate to do so’, with, sixth in the list of bodies to be consulted, ‘any representative of employers in the locality’.

Asset Skills considers that these proposals will not deliver the Bill’s intentions to provide education that is more responsive to the needs of employers.

Employers should be demonstrably at the heart of decision-making related to post-16 education at all levels, the Funding Council, regional strategic bodies and regional colleges themselves. They should be listed first and statutorily on the list of bodies to be consulted.

Nor is effective employer consultation conducted with ‘any representative of employers’. Asset Skills, and its sister SSC’s for other sectors, are employer-led bodies with well-developed employer links throughout Scotland. SSC’s would be the appropriate body that colleges and similar bodies should have to consult with in relation to the planning of future 16-plus education provision. Asset Skills, in common with other SSC’s, has extensive Labour Market Information resources that would inform, underpin and support the decision-making of education bodies. It is a missed opportunity to ignore those resources that already exist and are on offer in this regard.

We are also concerned that the Bill provides no statutory requirement for the representation of the employer voice on the boards of regional colleges or strategic bodies, this being reserved for the college staff and student populations. This is despite the quotation in the Bill’s Policy Memorandum from the Scottish Government’s own
Putting Learners at the Centre (February 2012), 'key considerations included the need for student representation on boards,...the need to ensure employer representation and creating rigorous accountability'.

Finally, whilst this Bill avows to ‘make post-16 education more responsive to the needs of learners and employers’ (Policy Memorandum), it is silent on the issue of Modern Apprenticeship funding which is allocated by Skills Development Scotland. MA funding is extremely important to Scotland’s employers, within Asset Skills’ sector as elsewhere, much of which is channelled through the college system. How MA funding decisions are made is less than fully transparent. Employers’ involvement in these essential decisions is unclear. Whilst seeking to create a post-16 education system more responsive to the needs of the employer and the labour market, this Bill as currently presented represents a missed opportunity not to strengthen the employer voice in MA funding decisions also.

Asset Skills welcomes the intent of the Post-16 Education (Scotland) Bill. In order to be effective, we believe that the employer voice must be given far more prominence and robustness in its provisions.

We would welcome the opportunity to discuss these opinions in more detail with the members of the Education and Culture Committee.

Tim Pogson
Asset Skills Scotland
ATL is the union for education professionals across the UK. Active in the maintained, independent and post-16 sectors, we use our members’ experiences to influence education policy, and we work with government and employers to defend pay, conditions and career development. From early years to HE, teachers to support staff, lecturers to leaders, we support and represent our members throughout their career.

AMiE is the leadership section of ATL representing leaders and managers in schools and colleges throughout the UK. Our membership embraces academic and business leaders and managers at several levels in schools and colleges including curriculum leaders, HR managers and college principals.

ATL is affiliated to the Trades Union Congress (TUC), Irish Congress of Trade Unions (ICTU), European Trade Union Committee for Education (ETUCE) and Education International (EI). ATL is not affiliated to any political party and seeks to work constructively with all the main political parties.

Introduction

We welcome the opportunity to respond to the Education and Culture Committee’s call for written evidence on the Post-16 Education (Scotland) Bill. The level of recent debate in the Parliament concerning the college sector and in particular the regionalisation agenda does not do justice to the seriousness of the issue and the impact of the ongoing changes on students and staff alike. We sincerely hope that the Education Committee’s call for written evidence can bring about a more mature debate worthy of the importance of the issue.

It is understandable that the Scottish Government wishes to ensure that the public money allocated to the sector is used most effectively and efficiently in achieving national priorities. We have long articulated the need for a system which avoids duplication, respects institutional autonomy but is strengthened by democratic accountability for the use of public funds. We remain to be convinced however that the Bill meets those criteria.

Widening Access

The Scottish Government’s commitment to widening access to post-16 education for students from deprived areas particularly for those attending university should be welcomed. The challenge is in translating honourable intentions into reality and as such the Bill does not detail how this will be done.
The provisions of the Bill relating to widening access agreements are not dissimilar to current funding arrangements with the Scottish Funding Council (SFC) and in of themselves are straightforward and outwardly appear fit for purpose. The success in widening access will depend upon the outcome agreements which have been negotiated with the individual institutions and at time of writing are not in the public domain.

**Tuition Fees Cap**

ATL/AMiE is committed to ensuring that access to university is based on ability and not the ability to pay. We remain opposed to tuition fees and regret that the increases in tuition fees by the UK government has led to the Scottish Government introducing a system of fees for students from elsewhere in the UK.

We acknowledge that the Bill introduces a cap ensuring that tuition fees cannot be higher in Scotland than elsewhere in the UK; never the less a market system now operates where it did not before.

**College regionalisation**

The pace of change since the Scottish Government launched its consultation paper ‘Putting Learners at the Centre’ in December 2011 has been considerable. This Bill is to some extent the legislative underpinning of the reform of the sector. It is rare for such radical reform to occur ahead of the legislation and begs the question what would happen if, in the unlikely event, the Parliament makes fundamental changes to the Bill which impact on already merged colleges?

The Cabinet Secretary has repeatedly said there is a consensus¹ towards the reform and regionalisation agenda; and indeed references the recent college mergers and the ongoing discussions about future mergers as examples of that consensus. We agree with the Cabinet Secretary that there is a consensus however our perspective differs on how it has been reached. We do not believe that it has come about because of a collective desire for wholesale change in the sector; instead it has been brought about via the financial levers through the Scottish Funding Council. To a lesser extent the change has also occurred because of an understanding of the political arithmetic within the Scottish Parliament that will deliver the changes the Scottish Government wishes to see.

We note the estimations of savings of £50million per annum by 2015-16 from mergers and federations contained within the policy memorandum². We have directly expressed our concern to the Cabinet Secretary at a fringe meeting at the SNP Conference in Perth in October about the job losses in the sector which have to occur to meet these efficiency savings. It is difficult not to be sceptical about official projection of efficiency savings when £15million was allocated to the Transformation Change Fund to support

¹ [http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-pm.pdf)
² [http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd-pm.pdf)
the merger agenda across the sector and the cost of merging the three Edinburgh colleges is projected at £17 million pounds alone\(^3\).

The Bill places the power of appointment and removal of Board members with the Minister which gives us concerns about the centralising nature of the Bill. Without wishing to inject a political partisan divide amongst the Committee the recent dispute between the Cabinet Secretary and a now former College Board Chair highlights an important question. If the provisions within the Bill had been in force at the time of the dispute would the Cabinet Secretary have been able to remove the member from his position? If the answer is yes then the Bill places too much power in the hands of the Minister, regardless of political hue.

**Review of fundable further and higher education**

We have reservations about the provisions within the Bill relating to potential future reviews of post-16 education in Scotland. Maintaining an open perspective on what provision will be right for the country in ten or twenty years time is only right and proper. We are concerned with centralising nature of the provisions which increase the Minister’s current powers. These powers leave open the possibility for a future Minister, of any political party, to decide what provision is appropriate. The various decrees from Michael Gove, Secretary of State for Education, relating to what should and should not be taught in schools in England and who can and cannot teach should act as a warning sign about the dangers of centralising Ministerial powers.

**Conclusion**

We believe it is incumbent upon the Education and Culture Committee to hold the Scottish Government to account for the radical changes which are occurring in the sector, and to ensure the promised benefits arising from the changes truly do put the learner at the centre. We have a number of questions for the Committee’s consideration:

- What will happen where an institution fails to meet measures contained within its widening access outcome agreement for reasons out with its control?
- How far could the reform agenda have been pursued via the Scottish Funding Council without requiring the merger agenda? What obstacles were in place and to what extent could they have been overcome by means other than the path pursued by the Scottish Government?
- What work has been undertaken to verify the robustness of the estimations of future efficiencies from the merger agenda?
- From where did the Scottish Government draw its evidence to support its regionalisation agenda?
- What guarantees can be given to ensure that the power to remove members from boards will only be used when mismanagement occurs rather than when there is a difference of opinion in the required strategic direction?

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The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors from all branches of practice and medical students. Representing both medical academics and medical students, we have an acute interest in Scotland’s higher education sector and welcome the opportunity to comment on the legislative framework that has been outlined in the Post-16 Education (Scotland) Bill.

Our key principles in relation to the Bill are:
- As far as possible the medical profession should be reflective of the diverse population that it serves.
- Access to higher education should be based on academic merit and not an individual’s ability to pay.
- Scotland’s internationally renowned excellence in teaching and research must be maintained and enhanced to enable the sector to continue to compete in a global market.

**WIDENING ACCESS**

BMA Scotland supports the principle of widening access to, and participation in, higher education. In particular, we believe in the policy objective of seeking to ensure as far as possible that the medical profession is reflective of the diverse population that it serves. Entry to medical school should be based on aptitude rather than socio-economic background. If higher education becomes more expensive it risks access becoming even less equitable and medicine even less representative. Finance can be viewed as a significant influencing factor when deciding to embark on a medical degree. Medical undergraduate courses are 5-6 years long and therefore the expenses accumulated and cost of studying for this longer than average duration means that many medical students accumulate significant levels of debt. Additionally because medicine is a full-time course there are fewer opportunities to supplement medical student income through part time work. Finally, there are additional financial costs associated with studying medicine, including travel to clinical placements and electives, appropriate clothing for ward rounds, expensive reference books, stethoscopes and vaccinations.

We have therefore welcomed, as part of the Post 16 Reform programme, the changes that were introduced in August of 2012 to the student support package in Scotland. In particular that all students, irrespective of circumstances, will be eligible for a student loan of £4,500 a year and that, for the first time, 5th year medical students are no longer at a financial disadvantage and will benefit from the main undergraduate support arrangements for the duration of their study. Furthermore, we welcome the simplification of the student support system as we had considered that the preceding complexity and
lack of information available to prospective students could have deterred those from lower socio-economic backgrounds from applying to study medicine.

We are aware that there are a range of local widening access schemes in place at medical schools in Scotland. However, we have always believed that more needs to be done in a structured and cohesive way with a nationally co-ordinated approach and welcome the new requirement that Scottish Ministers may, under Section 3 of this Bill, “impose terms and conditions for the purposes of enabling, encouraging or increasing participation in fundable higher education by persons belonging to any socio-economic group which they reasonably consider to be under-represented in such education.”

Widening access is a responsibility shared between parents, schools, government, Skills Development Scotland, colleges and universities. We do not believe that introducing financial penalties for universities (conditional on achievement), as set out in Section 3 (new section 9B(2), is appropriate and, whilst we appreciate that the content of the Bill is already necessarily broad, we would welcome further detail and clarity within subsequent Regulations and Guidance on what is envisaged in terms of these financial penalties. We consider that where progress against agreed benchmarks is not sufficient, greater central support for initiatives, rather than financial penalties could prove more effective in achieving improvements.

We are concerned at the potential detrimental effect that implementing financial penalties could have on universities and therefore medical schools in terms of research and teaching. Despite having only 0.1% of the world’s population, Scottish research contributes 1.8% of the world’s citations, and is ranked first in the world in terms of research impact per GDP. We are ranked first of 27 comparator countries and regions for research impact in relation to GDP.

Medical schools in Scotland are central to this research environment and must therefore be able to retain and continue to develop their strong research base and international reputation as centres of research excellence. We appreciate the detail in the explanatory notes that stipulates that as each university’s circumstances would be different, it is not possible at this point to specify the likely re-prioritisation of activities associated with this change and the associated costs, but they are expected to be marginal. However, we would welcome clarification in the Regulations or Guidance as to the extent of possible financial penalties in order to be able to give detailed comments. Therefore whilst we support widening access we seek reassurance that medical schools in Scotland continue to be appropriately funded in order to continue to function as centres of excellence in terms of both teaching and research. We would also expect that there will be detail in Guidance supporting this legislation that will consider the effort a university has made towards satisfying a widening access agreement in the event that they have not met their target, recognising that there could be limits on what can be achieved.

As stated previously, work to improve and widen access is labour intensive and demanding on available resource. We are concerned that the Scottish Government is requiring universities to do more but has not committed to increase central funding for this work. To be effective, widening access initiatives require long term support and should be extended so that students have a better understanding of the path into medicine and aspirations are raised at a much earlier point in a child’s education. This should be done in a structured and cohesive way with a nationally co-ordinated approach to ensure all schools are covered. We are very supportive of mentor/buddy schemes which allow prospective students to speak to current students about their experience of the medical degree course as this can also help break down barriers to entering higher education and choosing to study medicine.

We have previously highlighted that we would welcome the introduction of criteria other than solely academic achievement for entry to medical school. Such criteria or testing must be evidence-based, and open to audit and long-term evaluation, and should include a comprehensive equality impact assessment. We are supportive of admissions taking account of contextual information such as attending a low academic achieving school or experiencing family problems, so long as this is done in a transparent, explicitly stated manner defined in advance of the admissions period.

GOVERNANCE AND GOOD PRACTICE

BMA Scotland supports the requirement in the Bill under Section 2 that institutions will be required to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice. It is reassuring to note from the explanatory notes that, ”as good practice in governance is already expected to be a core part of the activities of universities and the measures contained within the Bill effectively codify the activity required, the net financial impact is expected to be nil”.

Again, it will be useful to comment on the detailed draft Regulations on these requirements when they are published and more clarity is available.

FEE CAP

BMA Scotland is supportive of the provisions in Section 4 of the Bill which give Scottish Ministers the power to set an upper limit on the level of annual tuition fees bodies can charge UK students. We recognise the importance of regulatory control over fee levels; however we would hope that in allowing ministers to set a tuition fee cap, any change in fees would be subject to affirmative parliamentary process (as detailed in the Further and Higher Education (Scotland) Act 2005) in order to ensure transparency and consultation.

We are disappointed to note that whilst there is provision for an upper limit on the level of higher education tuition fees that can be charged, there is no legislative provision for enhanced bursary support for students who are resident in the UK. BMA Scotland represents all medical students studying in Scotland, a significant number of whom are English, Welsh and Northern Irish domiciled (RUK). RUK students have a strong
perception of unfairness at being treated differently to Scottish and EU domiciled students. Medical students will be amongst the hardest hit by the sharp rise in fees arising from their longer course. We have welcomed the recognition, by a number of universities in Scotland, that there is a need to provide bursary support for RUK students and have been actively considering new arrangements but it is unclear how these arrangements compare to those available at English universities. It is our view that Scottish Government should consider setting out a principle in this Bill and subsequent regulations to support the introduction of bursary/fee waiver arrangements in place for RUK students studying at all Scottish universities, so that some of the significant sums of money being paid by RUK students is reinvested back into protecting access for those from low income households.

The lack of clarity on enhanced bursaries in place at Scottish Universities for RUK students will be hugely damaging for widening access to medicine. Scotland’s higher education sector has a strong reputation for excellence and it is vital that it is able to continue to attract the brightest and best students, not simply those who can afford the high tuition costs. It is also important to consider that around 30% of medical students in Scotland are from the rest of the UK and many will work for NHS Scotland after graduation. Without any national stipulations or oversight for support of RUK students, there is a risk of long-term reputational damage to the sector, with the possibility that these students may perceive themselves being “cash cows”, used in order to aid the funding of the sector.

We are concerned that for 2012-2013, the number of RUK students applying to study medicine in Scotland dropped by 10%2. The market based mechanisms being introduced in England to create more competition between universities (including the creation of a price-based "flexible margin" of places, unrestricted recruitment of "high achieving" students, and opening up the market to new providers of higher education), will necessitate universities in Scotland doing more to continue to attract the best students. This may also become increasingly important if there is a shift over future years in RUK students choosing to study closer to home in order to reduce their costs.

In conclusion, whilst we are supportive of widening access we would be cautious about introducing financial penalties to universities and welcome further detail in the Regulations to follow. We support the regulation of tuition fees in Scotland for RUK students but are deeply concerned about the fact there is no corresponding legislative provision for enhanced bursary support. As noted throughout this submission, the BMA would welcome a commitment by the Government to engage with stakeholders, such as ourselves, in the drafting and implementation of regulations.

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2 UCAS statistics 2012-13
Summary

- Capability Scotland is an independent provider of specialist school education for children and young people with additional and complex needs. We offer a proven alternative to mainstream placements, providing an unrivalled depth of expertise in education, care, therapy and technology.

- Capability Scotland fully supports the Scottish Government’s objective of making post-16 education more responsive to the needs of learners. In particular, it is essential to ensure that the needs of disabled learners are given full consideration. Obstacles to further and higher education for disabled young people include a lack of suitable courses, a lack of support and personal care, inadequate transport and the physical inaccessibility of learning environments. We would urge the Education and Culture Committee to consider how this Bill can be modified to ensure universities and colleges remove these barriers.

- Ensuring equal access to tertiary education is not only essential in order to improve outcomes for young disabled people in Scotland; it is also a legal duty. Under Article 24(5) of the UN Convention on the Rights of Disabled Persons the Scottish Government must, “ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.”

Our Response

Good Governance

Capability Scotland is in favour of the creation of a power to make payment conditional on compliance with principles of good governance. We hope that this provision will be left sufficiently wide so as to allow equality and non-discrimination policies to be taken into account when determining the quality of governance. Compliance with human rights standards should also be considered. Given the under-representation of disabled people at further and higher education institutions we believe that this should be expressly specified in Regulations introduced under the Bill and in subsequent guidance.

Widening Access

Capability Scotland is fully supportive of the Scottish Government having the power to require increased participation by people belonging to under-represented socio-
economic groups. This has particular significance for disabled people in Scotland given that pupils in more deprived areas of Scotland are more likely to be identified as having additional support needs and also less likely to be able to access targeted support\(^1\).

We also believe that, given the under-representation of disabled people within Higher and Further education institutions, there is a need for universities and colleges to encourage participation from other groups within society. As with under-represented socio-economic groups, colleges might also be required to meet terms and conditions for the purpose of enabling, encouraging or increasing participation from disabled students. This might include the following actions:

- **Providing facilities which are accessible to disabled students**
  Many of the students that attend Capability Scotland’s schools subsequently have difficulty accessing college due to a lack of facilities available within the college. The Principal Teacher at Capability Scotland’s Corseford School noted that, “On several courses that we have looked into recently, there are few spaces available for wheelchair users or those that may require adapted equipment. In addition, some colleges offer courses for students with Additional Support Needs on the second or third floor of a building, and this can be difficult for a wheelchair user to access, even with lift provision available.”

- **Working with disabled pupils to develop courses**
  The majority of the students who have left Capability Scotland schools in recent years have experienced difficulties finding an appropriate course due to the academic level they are working at. In many cases courses available locally are aimed at achieving Access 3 Level and above. These courses are geared towards getting students into employment, which is not always an option for students with complex needs. The Policy Memorandum to the Bill acknowledges the focus of ‘aligning learning to labour market demand’, but colleges should also consider the contribution disabled young people may make outside of an economic framework, and tailor their post-16 offers towards a staged progression through courses that may or may not result in employment. There is clearly a need for colleges to engage with disabled students to consider how courses can be designed to meet their needs.

- **Working to maximise availability of care, support and transport**
  The lack of support available to disabled students is one of the main barriers to accessing college. Many students with complex needs may require a member of support staff to assist in manoeuvring them, assist with eating and drinking or assist with personal care. In the vast majority of cases, colleges do not provide this support. This can be extremely difficulty for the many students who do not have finances or funding available to employ a support worker. Many are unable to attend college as a result. Transportation is also an issue for many learners when they

\(^1\) Equality and Human Right Commission, 2010, Disability, Skills and Employment: A review of recent statistics and literature on policy and initiatives
leave school as they may be unable to access public transport or may not have a mobility car to get them to college. This is likely to become increasingly problematic as fewer disabled people over the age of 16 will qualify for disability benefits when Personal Independence Payment replaces Disability Living Allowance from April 2013.

**College Regionalisation**

Capability Scotland supports college regionalisation where it is necessary to improve co-ordination and reduce duplication in the provision of courses. We do, however, have some concerns that without thorough engagement and an in-depth equality impact assessment, this policy could have a negative impact on disabled students.

Our main concern is that ‘rationalisation’ will result in the courses most suitable for disabled students being reduced or discontinued. Teachers at Capability Scotland’s schools feel that there has been increasing priority placed on courses designed to prepare students for some form of work, whether that be work experience or paid employment. While this will clearly be beneficial to some, these courses are often not suitable for students with more profound and/or complex disabilities. There is therefore a concern that where reductions in courses occur, it will be the more vocational, employment-focused courses which remain, while provision is reduced for students with more complex needs. This may lead to disabled students missing out on personal development and social opportunities that can come from education within a college environment.

We are also concerned that a reduction in the number of colleges could result in an increase in the distance that students would need to travel to access their local college. This could create serious difficulties for those disabled students who require assistance with transportation. According to the Principle Teacher at Capability Scotland’s Corseford School, this could make college completely impractical for many, particularly those who “have to be woken, showered, dressed, perhaps be fed via PEG [Percutaneous Endoscopic Gastrostomy], which would then mean having to wait an allocated period of time to settle before they can then travel. This would mean students would have to be woken very early if there is a distance to travel. This might just be too difficult to co-ordinate.”

Furthermore, with the current financial pressures on social work, funding for transportation to college is becoming increasingly limited, and even if a student is able to self-travel, the potential distances involved with the regionalisation of colleges could mean that further education is no longer an option for some disabled students, particularly those in rural areas.

**Data Sharing**

Capability Scotland supports the Scottish Government’s objective of optimising data sharing between schools, colleges and Skills Development Scotland (SDS). Information
such as leaving dates and additional support needs is useful in that it alerts SDS to who will be leaving school and their individual needs.

However, it is essential that the legislation does not encroach on the ability of educational institutions to communicate directly with each other and share information about students. Currently, staff at Capability Scotland’s schools work directly with SDS in identifying potential suitable college placements for school leavers. However, they also liaise directly with colleges to ensure that the institution has a full and in-depth understanding of each student’s requirements. In many cases the level of understanding required to identify the courses and facilities that would suit the student cannot be attained without direct contact and discussion. The Principal Teacher at Capability Scotland’s Corseford School noted that:

“SDS will not have as much knowledge or expertise as those who work with the students on a regular basis, and who are aware of the resources, equipment and techniques for teaching that may be required. Communication with SDS alone could result in the college not having an accurate basis of knowledge of the individual student and therefore unaware of the realistic provision required.”.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Centre for Excellence for Looked after Children in Scotland (CELCIS)

(Joint submission with Who Cares? (Scotland) and Robert Gordon University)

Overview

We welcome the opportunity to respond to the Education and Culture Committee’s call for written evidence on the Post-16 Education (Scotland) Bill. Following the Committee’s Inquiry into the Education attainment of looked after children (May 2012), members will already be aware of the educational disadvantages facing many young people who have care experiences.

There has been a strong policy drive to improve the educational outcomes for looked after children and young people in mainstream and alternative school settings; however, there has been less focus on the educational outcomes for looked after young people in post 16 education. We would welcome the establishment of designated posts within all further and higher education institutions which focus on early engagement with looked after young people (i.e. a pre-16 strategy for post school education is required) and provide the dedicated support required by care leavers to succeed in post school learning environments. We would also reinforce the need to protect those staff who support looked after young people and care leavers in education – given that non-academic posts can be particularly vulnerable to funding cuts.

The low educational attainment of looked after young people in Scotland remains a significant cause for concern. Only a small proportion of looked after children progress to higher education compared to their peers. As highlighted in Scottish Government statistical bulletin\(^1\):

- **Sixty-four per cent** of looked after children who left school during 2010/11 were in a positive destination at the time of the initial destination survey, compared with **89 per cent** of all 2010/11 school leavers;
- Six months later, **only fifty-five per cent of looked after children were in a positive destination** in the follow up survey, compared to 87% of all school leavers in 2010/11;
- The average tariff score for looked after children who left school during 2010/11 was 79, compared to 385 for all school leavers;
- **Looked after children leave school younger.** 88 per cent of looked after children who left school during 2010/11 were aged 16 years or under when they left school, compared to only 34 per cent of all school leavers being of this age when leaving school;

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2% of looked children were in higher education compared to 34% of all school leavers in 2010/2011; 22% of looked after children were in further education comparable to 25% of all school leavers in the follow up destination survey.

Policy and Practice Developments

There have been national policy developments to improve outcomes for this group of young people. 16+ Learning Choices Policy and Practice Framework is the commitment to offer every young person a place in education, training or employment until the age of 19 and grew out of work on improving outcomes for those young people not in education, employment or training.

The Scottish Government’s More Choices, More Chances strategy is aimed at young people at risk of negative destinations. Specifically relevant for care leavers is the commitment to clear Post-16 pathway planning; ensuring learning is financially viable and providing vulnerable young people with the right support to sustain learning. The Strategy also outlines a joint commitment to action between central and local government, employers, learning providers and support agencies to develop the service infrastructure required to meet the needs of vulnerable young people.

The Buttle UK Quality Mark is awarded to further and higher education providers who demonstrate their commitment to young people in and leaving care. The Buttle Trust Quality Mark has only been taken up by 8 of the 19 higher education institutions in Scotland, demonstrating that there is still some way to go in achieving a more consistent response to the needs of care leavers. We would strongly urge consideration of the Buttle Mark being a requisite for all higher education and further education establishments in Scotland.

There has been some progress in this area, but not enough. In 2010, HMie reported that: ‘A few colleges are proactively responding to the call to improve services for looked after young people and care leavers and are targeting provision and resources to better meet their needs and circumstances. Dumfries and Galloway, Dundee, Coatbridge and John Wheatley colleges are making a strong contribution to addressing the needs of these learners.’

Comments on Current Provisions in the proposed Bill

Widening access

We strongly endorse the stated commitment to widening access to further and higher education for young people who may experience disadvantage. Young people in care, and care leavers, are an under-represented group. Opportunities to continue education with practical, emotional and financial support which is well planned and easily

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accessible are paramount. This requires a commitment to employing and retaining appropriately skilled staff who have a valued and designated role within educational settings. An ‘open door’ policy encouraging young people to return to education (at least until the age of 25) should also be actively developed.

Looked after children who have aspirations to attain higher education opportunities face many barriers to entering which, in many cases, is a direct result of their care background. Sustaining education at all levels is a difficult task for looked after children who are facing complex issues and multiple care placements in various locations, throughout their formative and development years. Therefore, actions to facilitate looked after children’s increased involvement in further/higher education is, in our view, needed. We would recommend that socio-economic groups are defined as part of this Bill, and specifically include young people with care backgrounds. There may also be a need for these proposals to consider developing associated guidance on how best to help higher education institutions in both recruiting and supporting the inclusion of young people with care backgrounds. There are many widening access projects which are currently in place from Universities and Colleges – and it would be beneficial to reflect on how (and if in fact they do) currently engage with looked after children.

Tuition fees cap

As a corporate parent, full financial responsibility must be taken to ensure equitable access to further and higher education and consideration should be given to whether this should be a duty placed on the local authorities. There are specific issues facing young people with care experiences that must also be addressed:

- 52 weeks a year accommodation options and planning to ensure that young people do not have the anxiety of where they will live over summer holidays or when a course ends; one of the key reasons cited for college ‘drop-out’ for care leavers is in relation to security and stability of living accommodation.

- Additional financial support for computers, textbooks, equipment and any other materials required for any course (which a parent may reasonably be expected to provide);

- Practical support with transport (e.g. Free travel card) to ensure young people can attend the educational or training course of their choice (without being disadvantaged by financial or logistical barriers);

- Consideration of training and development opportunities that can be provided (for example, summer internships or supporting involvement in volunteering opportunities) to enhance the full learning experiences associated with further and higher education.

College regionalisation

We strongly urge new regional strategic bodies to demonstrate their commitment to providing equitable access and support to young people in care and leaving care. We would be keen to see these colleges have a designated officer to support this group of
young people. We would also be keen for all colleges to be awarded the Buttle Mark as a sign of their commitment to this group.

Review of Fundable Further and Higher Education

We welcome the SFC’s role in reviewing the provision of fundable further and higher education to ensure that learning is being provided by post-16 education bodies in a coherent manner.

We welcome greater recognition of the allocation of funds to support the most disadvantaged young people to fully participate in further and higher education.

Data sharing

We welcome the appropriate and proportionate sharing of data (with consent) by relevant bodies to Skills Development Scotland on young people between the ages of 16 and 24. This will allow them to identify those who are moving through the learning system who have disengaged with, or may be at risk of, disengaging with, learning or training. We require further clarification on how this data will be analysed and applied to improve outcomes for disadvantaged young people.

We would urge the Committee to engage with the Higher Education Statistical Agency (Scotland) (HESA) to encourage them to collate and analyse data in relation to care leavers who have registered for courses. At present, student’s registering are not required to declare if they have been looked after yet this would be an obvious locus through which to gather this information. This question is currently asked within the UCAS form but is not mandatory. Access to this information through HESA would allow us to gain a better grasp of the number of young people coming into higher education straight from school and, more significantly, those who access higher education later on in life. We would, however, caution against over-surveillance of this group relative to their non-looked after peers.

Effective local data sharing protocols between local authorities and further education establishments do exist and can assist in more appropriate and individualised approaches to supporting young people. An example of this would be between South Ayrshire Council and Ayr College agreed via a local care leavers group.

About CELCIS

CELCIS is the Centre for Excellence for Looked after Children in Scotland based at the University of Strathclyde. Together with partners, we are working to improve the lives of all looked after children in Scotland. Established in 2011, CELCIS has been committed to further improving the outcomes and opportunities for looked after children through a collaborative and facilitative approach that is focused on having the maximum positive impact on their lives.

Robert Gordon University is a CELCIS funded partner and a member of the CELCIS Partnership Group.
Who Cares? Scotland is an independent advocacy service for looked after young people and care leavers. They are a CELCIS funded partner and a member of the CELCIS Partnership Group.

Thank you for the opportunity to provide written evidence. We welcome any further discussions to inform this work.
In the case of young people and young adults with enduring and complex additional support needs, it is essential that transition planning is started within the statutory timescales, at the latest, in order to identify and secure the right provision, whether this involves staying on at school, entering further or higher education or participating in other programmes. It is essential that there is open and frank discussion between training and education providers and young people and their families about the type and availability of support.

Enquire, the Scottish advice service for additional support for learning, hears from families about the reluctance of providers to specify the type of support that will be available, as they are not aware of the funding and resource allocation in an adequate timeframe to support the transition duties in the additional support for learning legislation. This creates a stressful and disorganised transition from school, thus beginning the next stage of the young person’s learning journey in a detrimental way.

Some young people stay on in special school education beyond their 18th birthday after which point they no longer have rights under the ASL Act, and therefore cannot refer a failure to carry out transition planning to the ASNT. In some cases the young person has remained in school education because no suitable post school learning opportunity has been identified. School, carers and social work staff may lack the knowledge required to identify opportunities and information may not have been shared with or sought from voluntary sector providers.

Parents and carers report that FE college support services can be reluctant to discuss a student’s support needs with their parent on the grounds that they do not have time to do this, college is not school and discussion should be with the student. This causes anxiety for parents particularly when transition planning has not been satisfactory and parents are left to follow up post school options. A more understanding approach to parental involvement by colleges would be helpful.

The majority of the calls the Enquire helpline receives about post 16 education concern a pupil’s right to stay on at school after their 16th birthday, where the school has suggested the pupil should leave. It also hears of situations where the local authority advises, midway through the school session, that a young person’s special school placement will end on their 18th birthday, when it had been previously agreed that the young person should remain at school until the end of the school year. Once again, this is not in line with the objectives of the transition duties embedded in the additional support for learning legislation.
Supporting young parents

Supporting 16-19 year old mothers, and fathers, is important to ensuring post-16 learning is available for all. The availability of affordable flexible, high quality, consistent early childhood education and care would support young mothers and fathers continuation or re-entry into education or training, increasing their employment opportunities and decreasing the likelihood of their child growing up in poverty.

While appropriate childcare places and funding might be available locally to suit re-entry into education and training (and if not, this should be a priority) other barriers might prevent young parents making use of them. Young parents might not be familiar with the options available and lack trust in formal services. While ensuring the options are available is very important, information and support should be in place from the antenatal period onwards to familiarise young mothers and fathers with these options. Building positive relationships with institutions and childcare providers such as childminders or nurseries in advance would make it easier for new, young parents, to make more informed decisions about when and how to return to learning or employment. Teenage parenthood is often a catalyst for young people to change their lives and being aware of their new responsibility invest in their life-long employability. Making it easy for them to take up new opportunities that they might have rejected before parenthood will bring benefits for their young child throughout life.

Children in Scotland is the national umbrella agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents more than 400 members, including most of Scottish local authorities, all major voluntary, statutory and private children’s agencies, professional organisations, as well as many other smaller community groups and children’s services. It is linked with similar agencies in other parts of the UK and Europe.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland’s largest independent education mediation service.
Overview

The City of Glasgow College is supportive of the Government’s Reform agenda for the College sector and has in fact pioneered some of this reform as evidenced by our successful delivery of a complex 3-way merger yielding both educational and efficiency gains, our Ministerial and Parliamentary briefings, our merger support centre and the excellent progress made in the procurement through the new NPD model of our two site campus.

However, whilst we endorse much of the proposed Post-16 Education (Scotland) Bill, we wish to highlight serious misgivings about three issues, which we believe if left unaddressed will ultimately undermine the practical impact of this legislation.

As Scotland’s largest College, responsible for one in ten of all college learners, we would welcome the opportunity to discuss these concerns with the Education and Culture Committee.

The Disparity of a Large College with a Small Board

The Bill’s proposal to half the size of our current Board, to in effect make it less representative, to remove much of its local incorporated autonomy and to relegate the Principal & Chief Executive to the sidelines, runs counter to effective accountability and good governance.

Whilst we recognise that Boards shouldn’t be unnecessarily big – with multiple co-optees and observers – we are also acutely aware, as a College of significant scale, with a pivotal role in the economic development of Scotland, that there are real risks in making College Boards too small. This is a critical and unique issue for us in the Glasgow Region, where we are likely to have three large Colleges with small Boards, as distinct from the vast majority of other colleges, which will be governed by Regional Board’s of 12-18 members.

Removing every second member of our current Board would compromise the committee structure of our new college, which we deliberately established to ensure good governance. This will weaken its capacity to govern a college with the biggest expenditure, the largest estates development, with a 25 year NPD contractual commitment, one of the largest workforces (983 FTE), the biggest financial turnover of (£57.4M) and the most diverse student cohort (31,000 students from 135 different nationalities) in the sector.
We would recommend that, in multi college regions, the regional strategic body be given delegated authority to determine, and keep under review, the size of their constituent college boards, within wider parameters than those currently proposed.

**Trans-Regional Learning**

Secondly, whilst the draft legislation may define the various regions, their respective strategic bodies, boards and administration, it seems to make no provision for metropolitan colleges that already transcend regions with curricula of national and international importance such as Maritime and Food & Hospitality.

The Bill is silent on the metropolitan pull effect, of the larger urban colleges, which are well served by a comprehensive public transport network. More than 50% of our students come from outside of Glasgow.

**Need for Review**

Thirdly, given the weight of expectation and transformational change ahead for the college sector, we recommend that the proposed legislation guard against being too prescriptive or inflexible as new developments will emerge. Again, delegated authority could be granted to Regional Boards to negate the need for multiple legislative amendments. We would remind the committee that the college sector has an excellent track record for embracing change both positively and pragmatically.

**In Conclusion**

The City of Glasgow College supports regionalisation and the drive for improvements and efficiencies across the sector, to deliver better outcomes for learners and the economy as a whole.

Over the next few years, with considerable change taking place across the sector, a level of stability will be crucial for colleges. The depth and breadth of experience and also skills of our board members will still be essential for an organisation of our complexity, given that we will be larger than most regional colleges.

The Bill cannot adopt a 'one size fits all' solution – different approaches must be taken to deal with issues specific to certain colleges or regions, including trans-regional and trans-national issues.

City of Glasgow College is fully committed to delivering the benefits and maximising the opportunities of regionalisation and to ensuring that learners remain at the centre of everything that we do. We need a strong and knowledgeable board to ensure that we can achieve the Government’s ambitions, which we whole heartedly support.
Introduction

Edinburgh University Students’ Association (EUSA) welcomes much of what is included in the Post-16 Education (Scotland) Bill. We particularly look forward to progression with the provisions relating to widening access and university governance. However, EUSA would like to see included in the bill regulations for international student tuition fees and further provisions to ensure that students from the rest of the UK are not discouraged from studying in Scotland as a result of increased tuition fees. EUSA calls for:

RUK students
- A lower cap on the maximum fee that institutions can charge students from the rest of the UK (RUK).
- A provision to ensure that institutions put a percentage of the income from RUK fees back into bursaries for students.

International students
- Fixed fees for international students - annual tuition fees that are fixed at the same rate for the duration of a student’s course.

RUK students

EUSA believes that education should be free and that RUK students should not be charged tuition fees. If the Scottish Government continues to allow institutions to charge these students fees then we believe that the bill should set a fee level which institutions cannot vary. Failing that we think that the bill should set a lower cap on RUK tuition fees to ensure that at the very least these students do not pay more than the average total that they would pay for a three year degree in England.

As the bill currently stands RUK students studying for a four year degree in some universities in Scotland will pay £36,000 - the most expensive in the whole of the UK and one of the most expensive in Europe. We recognise that RUK fees have increased in response to actions by the Westminster Government but surely this goes beyond what is necessary and may even discourage potential RUK students from studying in Scotland.

As well as fixing a lower cap EUSA would like the bill to require institutions to put a percentage of the income from RUK fees back into bursaries for students. The University of Edinburgh has promised to put 54% of the fee income towards bursaries, meaning that the poorest students will receive £7,000 financial support per year. This will help to mitigate the impact of increased fees on RUK students and help to ensure
that the University can still attract the brightest of students regardless of background. Requiring all institutions to do this would help to further efforts to improve widening access and complement outcome agreements.

**International student fees**

EUSA believes that the bill should include regulations for international student tuition fees. Tuition fees for international students are currently unregulated and this has led to variable fees across institutions and across courses. These fees often increase each year of study without students being aware that this will happen making it difficult for students and their families to plan financially for their studies.

EUSA would ideally like to see a cap on international student tuition fees and for institutions to apply a fixed fee across each year of study so that fees do not unexpectedly increase. At the very least we would like international student tuition fees to increase with inflation rates and no higher, and for students to know well in advance of the start of their studies what each year will cost them. Fixed fees would enable students and their families to budget better in advance for their studies in Scotland helping to prevent unexpected financial problems when they are here.

We know that unexpected fee increases create considerable pressure on international students and their families. International student tuition fees are already considerably higher than fees for other students so increasing fees yearly without notice makes it even harder for these students. On top of that stricter visa rules introduced by the Westminster Government are creating further barriers for international students studying in the UK. Unfair fee policy could damage Scotland’s reputation globally and discourage international students from studying in Scotland. The Scottish Government should show that rather than placing barriers in their way it wants to welcome talented international students to our universities.

James McAsh
EUSA President
Education and Culture Committee

Post-16 Education (Scotland) Bill

ENABLE Scotland

Introduction

ENABLE Scotland is the largest voluntary organisation in Scotland of and for children and adults who have learning disabilities and their families. We have a strong voluntary network with around 4000 members in 46 local branches as well as 500 national members throughout Scotland. Around a third of our members have a learning disability. ENABLE Scotland campaigns to improve the lives of people who have learning disabilities and their families and carers.

ENABLE Scotland operates a range of initiatives which support young people with learning disabilities to work, campaign and participate in community life. These include a number of training and employment projects including government funded programmes such as Workstep, Work Preparation and Get Ready for Work and Supported Employment programmes in Glasgow, Edinburgh, Renfrewshire and Inverclyde. We also have active partnerships with schools and further education colleges which support young people to gain work experience and make successful transitions.

In addition we support young people to develop self-advocacy skills and to be consulted about policy developments at a local and national level that affect their lives. We believe that young people should have the opportunity to lead ordinary lives, to develop friendships and natural networks of support. To facilitate this in local communities we have developed a number of ENABLElink projects across Scotland which support young people to access leisure and social opportunities and build capacity in their communities to include young people with learning disabilities on an on-going basis.

This response is based on our experience of delivering transition programmes for young people who have learning disabilities in schools across 11 Local Authority areas in Scotland, and our work in partnership with the Further Education sector.

Responses to Consultation Questions

ENABLE Scotland has shown that with support for transition, Further Education can be an effective way for people with learning disabilities to progress into employment. In 2009 we launched the Transitions to Employment project with five partner colleges, in order to mitigate the 'revolving door' that impacted upon many students with learning disabilities. As colleges were unable to access or deliver effective transition, students with learning disabilities accessed college for several academic terms and became over-reliant on the support they got there.
Our Transition to Employment programme, now in its fourth year, has been hugely successful and with the New College Learning Programme launched by Skills Development Scotland in 2012, we were able to share our learning with two new colleges in Fife and Glasgow.

We broadly support the Scottish Government changes in further education, believing that programmes focussed on employability outcomes and transition will enable colleges to focus their resources more effectively to support more people into work. We would, however, like to reiterate our stance that colleges are community resources and consideration should be given to actively include people with learning disabilities within these programmes.

With regard the Post-16 Education (Scotland) Bill, we would like to proffer the following comments. We have limited our comments to those aspects of the bill that will have a direct impact on the people we support in the Further Education sector:

10. Regional strategic bodies: functions

23D (1) Regional Strategic Bodies should make provision for colleges to provide fundable further and higher education to people with learning disabilities. The changes to the funding structure may mean that a considerable number of people may lose their place at college. In particular a lack of travel support may prevent people from attending the college course of their choice. Colleges that are reducing the number of places available should be required to produce a report on the impact this will have on students who have disabilities.

23E (2) The monitoring and assessment of performance and quality should recognise work experience that is vocationally focussed and delivered in a real working environment outwith the college, and should measure defined outputs in terms of employment gained and employment sustained. There are sophisticated systems already in place for training providers and others to track leaver destinations from their programmes. There is no reason why colleges cannot carry out a similar process that will demonstrate if their provision is achieving its intended objectives.

23J (1) Regional Strategic Bodies should be encouraged to collaborate with local specialist providers in order to exercise its functions with regard to student support and employability. Consideration should be given to specific funding that allows colleges to successfully partner and remunerate external training partners in order to fulfil the best outcome for the student. Experience tells us that funding that is intended to improve the employment prospects of students is too often used in ways that are inappropriate and do not achieve this. Colleges who wish to retain the employability function ‘in-house’ should be required to demonstrate their past experience of achieving job outcomes for their students and the results that their intended approach is likely to produce.
11. Regional Boards: constitution

23M (4) Regional Strategic Bodies should actively seek to engage students from disadvantaged groups to be nominated and appointed as student members on strategic boards. Organisations such as ENABLE Scotland can support this.

Conclusion
We are hopeful that the changes proposed in the Bill will enable more people who have learning disabilities to prepare for a life that includes real participation and economic activity in their local community. In particular the changes to the Further Education sector represent an opportunity to change the current offer for people who have learning disabilities and to arrive at a model of provision which allows people to use the skills and talents they possess to achieve a life of paid work. We are keen to work with partners in government and the education sector to make this a reality for everyone who wants to work.
Introduction

Falkirk Council in responding to the consultation is in general terms broadly supportive of the proposed Post 16 Education Bill as introduced to the Scottish Parliament on 27 November 2012 and are is pleased that much of our response to the consultation on the pre legislative paper published in September 2011, “Putting Learners at the Centre,” is reflected the Bill and the wider post 16 reform programme.

We welcome the opportunity to comment further as we are keen to ensure that the aim of making post 16 education more responsive to the needs of learners and employers remains on track and makes a positive contribution to economic recovery. We are encouraged by the focus on ensuring more positive outcomes for learners to improve their life chances, widening access to enhance employability of those most distant from the labour market and help them move closer to a job.

Falkirk Council encourages Scottish Government through the Bill and the reform programme to continue to support better alignment of post 16 learning and employability services by recognising the pivotal and enabling role of local authorities in supporting the Governments Economic Strategy. We welcome the opportunity to improve outcomes, increase transparency, reduce bureaucracy and generate increased value for money and provide some specific responses to the six elements provided for within the Bill.

Detailed Response

University Governance - to allow Ministers, when providing funding to the SFC to impose conditions relating to the need for higher education institutions to adhere to good practice in governance.

Falkirk Council welcomes good practice in governance and funding and supports the recommendation that the, “Scottish Funding Council should draft a Code of Good Governance for Higher Education Institutions.” We note that approximately 21% of Higher Education takes place within Colleges and therefore have further comments on good governance within our response to college regionalisation.

Widening Access - to allow Ministers, when providing funding to the SFC, to impose conditions relating to the need for higher education institutions to adhere to good practice in governance.
Falkirk Council supports the aim of improving participation in higher education for under-represented socio-economic groups and welcomes the inclusion of widening access targets within University Outcome Agreements.

Falkirk Council acknowledges the need for additional activities to raise aspiration and mobility such as the provision of summer schools, more targeted career information, advice and guidance. We also recognise the need to promote University as a positive route to employment and skills development within the under-represented groups.

Falkirk Council would wish to highlight to Scottish Government that some geographical areas such as Falkirk need to explore and establish more innovative and multi-articulation agreements with colleges and universities on subject specific basis as diversity, mobility and aspiration may be limited if the appropriate higher education programmes and provision is delivered in Edinburgh, Glasgow or beyond.

We would encourage Scottish Government to ensure full consideration of learning styles and methodology is included in establishing targets and plans to widen access as many traineeship including the new higher level apprenticeships facilitate participation in Higher Education and support more diverse and non-traditional learner journeys.

Falkirk Council welcomes the changes to HE student support, increasing the minimum student income for the poorest students, should remove/lessen the perceived barriers many of our young people face and go some way to addressing the statistic which show that “only 11% of students attending university in 2010-11 came from the 20% most deprived areas.” We also highlight the impending consequences of Welfare Reform which may impact on the options and choices available to some students.

Tuition fees cap - to allow Ministers to set an upper limit on the level of higher education tuition fees which post-16 education bodies can charge UK students and certain others who are not entitled to be charged tuition fees at the level set by the Scottish Government; and When providing funding to the SFC, to impose conditions with a view to ensuring that post16 education bodies adhere to such an upper limit

Falkirk Council is generally supportive of the proposals to cap tuition fees

College regionalisation - To provide for two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college regions; to establish new regional strategic bodies for colleges in multi-college regions to support a regional approach to the planning and funding of college provision and to introduce Ministerial powers to remove chairs and other members of incorporated colleges and regional board for reasons of failure (in addition to mismanagement).

Falkirk Council concludes that good governance for Regional Colleges is aligned with the connectivity with the Local Authority and Community Planning Partnership. We would therefore encourage Scottish Government in the confirming the general duties
and functions of Regional colleges to make specific provision for the inclusion of a Local Authority appointment on the Board of Management.

Falkirk Council would request that the Regional College Agreement outcomes related to the Community Planning Partnership and Strategic Community Plan for the Local Authority area are represented within the revised Single Outcome Agreements. The shared Statement of Ambition makes clear the commitment of the Scottish Government, COSLA and representatives of Community Planning Partnerships to retain and develop Community Planning and SOAs as the heart of an outcomes-based approach to public services in Scotland.

Review of fundable further and higher education - to allow the SFC to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner.

Falkirk Council would wish to see the review of fundable further and higher education as part of the Strategic Skills Pipeline mapping process which is being utilised to support a seamless and progressive learner journey to facilitating a better alignment of public sector resources and improved outcomes. This process also enables the identification of gaps and avoids duplication. In meeting the aim of making post 16 Education more responsive to the needs of learners and employers contributing to economic recovery. It would seem appropriate to forge closer links with the Local Employability Framework/Youth Employment Action Plans to have a clearer picture at various levels on evidence of need, demands and outcomes.

Data sharing - to allow Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with SDS on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of, disengaging with, learning or training.

Falkirk Council supports legislative measures framed in the bill which support the expectation that “all those providing learning and training to 16-24 year olds must participate in data sharing” should improve/increase the data available for schools to review and evaluate the support provided for young people prior to transition from school to the post-16 learning system.

Falkirk Council would encourage appropriate resourcing of data collection, management and reporting to support robust tracking and monitoring systems. We would ask Scottish Government to explore the value in extending the legal duty to include Local Authorities to avoid duplication of effort, especially as the Local Authority may be entering a range of local agreements with learning providers as well as providing other interventions to vulnerable groups.

Falkirk Council notes that welfare reform and the potential consequences for those who have disengaged or at risk of disengaging will make the identification and work with the
most vulnerable learners increasingly important and the role of the availability of this information will become critical.

**Conclusion**

Falkirk Council is happy to discuss further any of the observations and comments submitted as part of this consultation response as we are keen to ensure our post 16 learning system that enables our young people to attain, sustain and progress in quality well paid employment and make an effective contribution the economy and our local community.
Families Outside

Families Outside is a national charity that works on behalf of families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through development of policy and practice, training, and face-to-face support. The imprisonment of women has a particularly powerful impact on their children and families, and we commend any efforts to examine the use of imprisonment for women and alternatives to this.

We are grateful for the opportunity to respond to the Education and Culture Committee’s call for evidence on the Post-16 Education (Scotland) Bill, as the recommendations have significant implications for the children and families we support. Specifically we would like to highlight the needs of a particularly vulnerable group of young people, namely those whose close relatives are imprisoned and those who themselves have spent time, or are currently, in young offenders’ institutions. We are happy to elaborate on any of these should the Committee require additional information.

In response to the Bill, we would like to comment on two areas in particular:

- **Widening access:** to allow Ministers, when providing funding to the Scottish Funding Council, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups.

Young people whose parents are in prison are extremely vulnerable and yet often overlooked. The shame and stigma they experience can become barriers to learning\(^1\), and it is a challenge for them to reach their potential within the school system. In addition, many young people affected by imprisonment have a fear and mistrust of authority and are more likely to withdraw and disengage from support\(^2\). A study by Pugh & Lansky\(^3\) demonstrated that families affected by imprisonment are often reluctant to access support from outside agencies, and this can make them hard to reach. To this end, partnership working is essential, and Families Outside would urge that a

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systematic and cohesive multi-agency approach is at the heart of the aforementioned conditions relating to access for under-represented socio-economic groups.

With these issues in mind, we would suggest that:

- The Committee takes the needs of this particularly difficult to reach group of young people into consideration when establishing conditions for the purposes of enabling, encouraging, and increasing participation in higher education, in order to ensure that the very people who need such support are able to access it. If organisations like Families Outside are informed of the financial support available, this will widen the potential access and give young people further opportunity to engage in educational opportunities; and

- Parental imprisonment in itself is recognised as a potential barrier to learning and, therefore, that young people affected in this way are deemed eligible for funding for post-16 educational opportunities.

- **Data Sharing:** to allow ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of disengaging with, learning or training.

Parental imprisonment is a highly sensitive issue, and careful consideration must therefore be given to the sharing of information. Young people affected are entitled to confidentiality and can be wary of divulging information, particularly if they are unsure how that information might be used. For Skills Development Scotland staff to work effectively, and sensitively, with young people affected by imprisonment, training is essential. An understanding of the trauma and stigma experienced by these young people will ensure that they are supported in an appropriate and helpful way and will increase the likelihood of young people engaging in educational opportunities.

With these issues in mind, we would suggest that:

- The Committee considers training for Skills Development Scotland staff on issues of imprisonment and the affects of this on young people, particularly as they move on from school. Families Outside is able to offer appropriate training and would welcome the Committee’s support in this; and

- The Committee raises awareness of the need for sensitive and appropriate information sharing that seeks to empower and support young people, rather than reinforce the belief that many vulnerable young people have, namely that they are powerless to change their situation.

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In addition to young people whose parents are in prison, we would also like to highlight to the Committee those young people in Young Offenders’ Institutions (YOIs). Often with low levels of literacy and a negative experience of school, this group of young people is also highly vulnerable and can be difficult to engage in educational opportunities, both during their time in custody as well as post-release. Partnership working between colleges and YOIs is essential, particularly when linking young people back into the community, and organisations like Families Outside, Circle, The Wise Group (via Routes Out Of Prison), Moving On, Positive Prison, and Apex Scotland can have a useful role to play in facilitating opportunities for collaborative work.

In summary, Families Outside welcomes the aims of the Bill, which seeks to widen access to post-16 education for vulnerable young people and looks at how information sharing might increase engagement in learning and training. We would urge the Committee to consider at all stages the needs of young people affected by imprisonment in order that the provisions improve the outcomes for one of society’s most under-represented groups.

Prof Nancy Loucks  
Chief Executive  
Families Outside
Background

This paper contains a summary submission by the Convenors of the Business Committees of the General Councils (GC) of the four ancient universities of Scotland: Aberdeen; Edinburgh; Glasgow; St Andrews.

The four GCs are corporate bodies of ancient universities; they comprise graduates and senior academics and are presided over by the Chancellor of the university. A GC is one of the bodies in the tripartite ancient university governance structure in Scotland, established by Universities (Scotland) Acts. The other bodies are the University Court and the Academic Senate. Across the four ancient universities, the GCs comprise over 300,000 graduates (worldwide) and academic staff members.

In each ancient university, a Standing GC Committee called the Business Committee (BC) acts on behalf of GCs in representational matters within its powers. BCs comprise Assessors and Members elected by the members of the GCs.

The business of each GC is to take into consideration all questions affecting the well-being and prosperity of each university, and to make representations as appropriate. This submission is made under these terms of reference by GC BC Convenors.

Response to the Post-16 Education (Scotland) Bill

The terms of the Bill and submissions from the Chairs of Court of Scottish Higher Education Institutions and Universities Scotland have been reviewed. The Convenors have considerable sympathy with much that is in the submissions prepared by these bodies but are concerned particularly about Sections 2, 3 and 14 of the Bill and their impact on ancient university autonomy. They are unanimously of the view that:

- The Bill will negatively affect the autonomy - and endanger the reputation - of the ancient universities in their contribution to the excellence of Scotland’s academic standards and knowledge transfer at international levels. From the perspective of the graduate GC Members throughout the world, this autonomy has over many years proved successful in maintaining the necessary culture that is a vital part of Scotland’s future success. This culture will not be sustained by the proposed Bill sections.

- In the ancient universities, appropriate control of public resource is also an important part of this culture. However, the BC Members believe that there are many and sufficient checks on how ancient universities spend taxpayer and other stakeholder monies.
The Business Committee Convenors of the General Councils ask for the opportunity to submit oral evidence.

Submitted on behalf of the Business Committee Convenors of the General Councils of the ancient universities of Scotland:

**Colin Duncan**
Convenor, General Council Business Committee, University of Aberdeen

**Charles Swainson**
Convenor, General Council Business Committee, University of Edinburgh

**George Tait**
Convenor, General Council Business Committee, University of Glasgow

**Martyn Strachan**
Convenor, General Council Business Committee, University of St Andrews
Education and Culture Committee

Post-16 Education (Scotland) Bill

Glasgow City Council – Education Services

This submission from Glasgow City Council Education Services (GCC Ed) covers three specific areas of the Post-16 Education Bill; namely:

- Section 3: Widening Access to Higher Education;
- Section 11: Regional Boards – Constitution; and
- Section 15: Duty to Provide Information to Skills Development Scotland

Section 3: Widening Access to Higher Education
GCC Ed Services considers that the proposed legislation represents both a pragmatic and principled means to widen access and increase opportunities for disadvantaged groups to access higher education in Scotland.

We welcome and are fully supportive of this element of the proposed legislation.

Section 11: Regional Boards – Constitution
GCC Education Services considers it vital that Regional Board membership requirements are extended to include Education Authorities.

Local Authorities have the lead responsibility for the implementation and consolidation of both Opportunities for All and 16+ Learning Choices initiatives. A key element of this role is in aligning the needs and aspirations of our young people as they leave school and post school learning provision. Colleges provide, by some distance, the most popular progression post-school progression route for young Glaswegians (around 50% of Glasgow school leavers progress directly into College for either FE or HE courses) and as such an effective interface between school and college is one of the key success factors for the Local Authority meeting its Opps for All requirements. A requirement for local education authorities to have a seat on RSBs would ensure that all aspects of college planning and policy development are aligned with Local Authority priorities and school delivery. This would bring added rigour to college planning processes.

It is considered that the proposed legislation in its current form is insufficiently directive around Board membership and presents significant risk to the long terms coherence of school and college curricular planning and transitional support arrangements.

Section 15: Duty to Provide Information to Skills Development Scotland
We broadly welcome the introduction of the information duty set out in Section 15 and consider that this reflects and underpins the good practice already in place as part of 16+ Learning Choices implementation in Glasgow.
It is crucial that any secondary legislation following on from the initial bill is widely circulated in draft form for consultation at Local Authority level – and with a long enough lead in time to allow a comprehensive response.

Martin Collins – 16+ Learning Choices Development Manager
On behalf of Maureen McKenna – Executive Director; Education Services, Glasgow City Council
Introduction

This paper presents the views of Glasgow’s Colleges in respect of the potential impact of the Post-16 Education (Scotland) Bill 2013. It is written as a supplement to the evidence provided by Colleges Scotland and in a context of being fully supportive of the regionalisation objective to provide a high quality, coherent and sustainable college sector.

Glasgow Region

The Glasgow Region will be one of only two multi-college Regions outwith the University of the Highlands and Islands, and therefore we are keen to ensure that the legislative framework of this Bill supports the aspirations held by both the Regional Lead and the Chairs of the existing constituent colleges to build a college sector which supports the development of the citizens of Glasgow and beyond to generate new wealth for our city, the wider metropolitan region and our nation whilst crucially supporting social mobility and enhancing lifelong learning.

The guiding principle of this paper is that the Regional Colleges, Regional Boards and the assigned Colleges should retain autonomy in as many areas of leadership, corporate governance, strategy and planning as possible. Regionalisation should recognise the differences between regions in relation to demographics, economics, social and community need, and employment strengths, and autonomy would allow appropriate responses to be developed and implemented, working in harmony with local authorities and other key partners, thus recognising the importance and strength of developing diversity.

Post-16 Education (Scotland) Bill 2013

Composition and functions

We are concerned that there may be unintended consequences in making amendments to legislation in one area without due consideration of other areas e.g. there seems to be inherent tensions between existing Employability, Corporate, Charities legislation and the proposal outlined in the Bill.

What is the legal position of Incorporated colleges in relation to Corporate Governance and the proposed legislation specifically in relation to the power of the Regional Board to move assets/people/liabilities, the power to appoint certain Board members and the ability to remove Board members and the power to plan and insist on strategic issues
where these could be argued by the body corporate of the assigned Colleges to be to the detriment of that body which they are charged to support and ensure its sustainability?

How can an incorporated assigned college meet its legal responsibilities if the Regional Board is appointing its members?

For stability it seems prudent and equitable that the Chair of each assigned College is a member of the regional Board. Similarly if a College Board appoints the Principal as a Board Member then it would be helpful if this was mirrored in sister assigned Colleges.

7-10 members of an assigned College Board seems too few to populate required Committees. Is there an option to co-opt additional members?

How will the teaching and support staff Regional Board appointments process work with a single representative when there are multiple assigned Colleges and multiple Unions recognised by individual College Recognition and Procedures Agreements?

How will 2 student representatives be elected from multiple assigned Colleges?

There is no reference to assigned Colleges being required to provide “coherent, high quality provision”.

Regional Colleges appear not to have a duty to promote SCQF.

Assigned colleges cannot have the Principal as chair however the restrictions which apply to Regional Boards in relation to MSPs. MPs etc do not appear to apply to assigned colleges.

The proposal to have no finite tenure is contrary to good practice in the Code of Corporate Governance 2011 which suggests a maximum of 7 years in total.

Good practice in Governance states that all Board Members must act in the best interests of the corporation and not as representatives or in their own interest. They must be treated equitably therefore there is no reason to include a separate entry on the removal of the Principal if a Board Member.

The rights of those accepting transferred staff are included however the rights of those being transferred does not seem equally well-represented.

**Role of SFC and SDS**

It appears that all duties fall on colleges without any respective duties falling on other organisations e.g. SDS.

Can SFC directly fund an assigned College e.g. specific strategic funds?
It appears that SFC will not have direction over colleges in multi-college regions as SFC will no longer directly fund them. This requires the multi college regional to have in place an appropriate structure to interface with SFC. Regional operational posts do not commence until 2014-15 requiring some form of transitional arrangements for 2013-14.

Legislation suggestions 31 March year end. Is this purely a technical accounting date or will the funding model move to an April to March year with all of the planning cycle shifting to 31 March?

Performance and monitoring

Is it reasonable and practicable to expect Colleges to monitor the “impact that education has on the well-being of the students and former students”, especially in difficult financial circumstances where funding should be committed to front line delivery of teaching.

Where two students stand for election to a Regional Board they shall both be deemed appointed to the Board. This means simply having two candidates will result in one less place available for other Board Members and two student members being in place and only one staff member.

Six months consecutive non-attendance seems rather a long period of before action is taken to remove a Board Member.

If Regional Boards take over the functions of SFC will they also receive commensurate funding?

It would be useful if the sector had clarity on Financial Year End under both existing and proposed legislation.

Bill Guidance

We also noted that the Scottish Government Overview of College Regionalisation Plans does not accurately reflect the Bill and this has the potential to cause additional confusion e.g. in the section on Accountability it refers to members of regional boards and chairs being “personally accountable”. This does not appear in the draft legislation and therefore requires detailed explanation as existing Board members are not personally accountable for actions carried as Board Members where they have exercised reasonable judgement and acted in good faith. Does this mean they could face personal liability in legal cases or be held accountable for poor financial decision-making?
Education and Culture Committee

Post-16 Education (Scotland) Bill

Glasgow University Students’ Representative Council

Section 2 – Higher education institutions: good governance

We have serious concerns about the wording of this proposal. While good management must be encouraged, we feel that processes are already underway to improve management as a result of the Von Prondzynski Governance Review. Requiring an institution to comply with principles of good management that “appear to Scottish ministers to constitute good practice” is vague, and could vary significantly depending on which government is in power. The autonomy of universities has contributed to the excellence of higher education in Scotland, and the working environment of universities in Scotland may be impacted if staff feel their jobs may be under threat based on the whim of a Scottish Minister.

There is also the potential to disenfranchise students with this proposal. Students sit at top level committees at universities across Scotland, and are able to affect the decisions made. The same cannot necessarily be said about Ministerial meetings and the Scottish Cabinet, and so decisions from ministers could go against the wishes of students.

Section 3, 9B (2) & (3) - Widening access to fundable higher education

While we do welcome action being taken to ensure widening access at our higher education institutions in Scotland, there is little mention in the proposals about working with the higher education institutions to create the widening access agreement. Currently it is implied that only Ministers will need to specify what is in the “agreement”. Without involving the higher education institutions in creating the agreement, student representatives would also have little chance to make input into the WP agreements.

Section 4, (3b) – Fee cap: students liable for higher education fees

We do not believe these proposals go far enough. We do welcome the acknowledgement that fees should not go higher than fees elsewhere in the United Kingdom, however we would strongly recommend that the cap be set so that the total fees a student pays over their course of studies is not higher than the total fees paid at universities in the United Kingdom. As Scotland mostly has four year degrees, the fees should take this into account. We would therefore like to see a total cap of fees set to £27,000.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Highland Council

University Governance: to allow Ministers when providing funding to the SFC to impose conditions relating to the need for higher education institutions to adhere to good practice in governance.

The Highland Council supports this proposal and believes it will lead to the development of a more consistent, transparent, accountable model of governance.

Widening Access: to allow Ministers, when providing funding to the SFC, to impose at the level set conditions relating to access to higher education institutions for under-represented socio-economic groups.

The Highland Council supports this proposal to improve opportunities for all but agrees with Universities Scotland that the pool of potential applicants from Scotland’s most deprived areas must be grown before there will be any significant improvement in widening access. To that end, the Council is committed to:

- tackling social, health and educational inequalities in the early years of children’s lives; and
- improving core literacy and numeracy skills from pre-school to the senior phase of Curriculum for Excellence.

The Council requests that, in addition to the use of Scottish Index of Multiple Deprivation (SIMD), that steps are taken to recognise the challenges of rural deprivation for potential students in large geographical areas such as Highland.

The Council also recommends that a comprehensive study of the reasons for the relatively high dropout from university courses at the end of the first year (9.4%) is carried out in order to help schools to prepare university applicants for their studies.

Tuition Fees Cap: to allow Ministers:

- to set an upper limit on the level of higher education tuition fees which post-16 education bodies can charge UK students and certain others who are not entitled to be charged tuition fees at the level set by Scottish Government; and
- when providing funding to the SFC, to impose conditions with a view to ensuring that post-16 education bodies adhere to such an upper limit.

The Highland Council agrees with this proposal and notes the intention in Section 4 (3) (b) to cap the fees for students from England, Wales and Northern Ireland at the same maximum level as charged by institutions in the rest of the UK.
College Regionalisation

- to provide for two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college or multi-college regions;
- to establish new regional strategic bodies for colleges in multi-college regions to support a regional approach to the planning and funding of college provision; and
- to introduce Ministerial powers to remove chairs and other members of incorporated colleges and regional boards for reasons of failure (in addition to mismanagement)

The Highland Council welcomes the proposal to establish new regional strategic bodies and commends the progress already made by Inverness College, North Highland College and West Highland College to work more closely for the benefit of students in the Highland area.

Review of Fundable Further and Higher Education - to allow the SFC to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner.

Taken with the proposal 4, The Highland Council welcomes plans to provide coherent provision between further / higher education and looks forward to working with the University of the Highlands and Islands and the associated colleges to this end. The result should be improved provision for school leavers and for lifelong learning.

Data Sharing – to allow Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland (SDS) on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of disengaging with, learning or training.

The Highland Council agrees with the need to ensure data is shared but recommends that the capacity of SDS to meet the career advice needs and coaching support for young people is kept under constant review.
Inclusion Scotland is a network of disability led organisations, individual disabled people and other organisations that support the principles of the Social Model of Disability. Our main aim is to draw attention to the physical, social, economic, cultural and attitudinal barriers that affect disabled people’s everyday lives and exclude us from participating in the mainstream of society. Our role is to enable meaningful communication and consultation between disabled people in Scotland and policy makers at local and national government levels. We want to reverse, through civil dialogue, partnerships, capacity building, education, persuasion, training and advocacy, the current social exclusion experienced by disabled people.

Introduction

We are generally pleased to see that widening access is a priority of the bill and of the SFC. Our evidence below examines the links between socio-economic deprivation and disability; showing that disabled young people (and their families) are a key disadvantaged group to consider in the legislation generally and also within the general principle of widening access in particular. We also look at other access issues in relation to post-16 education and the experiences of young disabled people, including some already previously identified by the Scottish Government, by the Education and Culture Committee, and in other reports, that encompass the various barriers to further and higher education that young disabled people face.

In response to the report of National Review of Services for Disabled Children an Action Plan was developed by Scottish Government. Its objectives were that (i) mainstream services should offer equal access to everyone, (ii) the costs of inclusion should be an integral part of service planning, and (iii) meeting an identified need for stronger capacity building in mainstream organisations so that they could welcome and include disabled children. Overall we give support to the implementation of these recommendations through the post-16 education bill for young disabled people.

Disability and poverty

Disabled young people are less likely to go on to higher education due to a variety of barriers. But disabled people are far more likely to experience poverty, and the number

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1 February 2011 http://www.scotland.gov.uk/Publications/2011/02/25151901/0
2 During its enquiry into Access to further and higher education for disabled school leavers during 2006.
3 The most detailed of which is Stalker, K and L Moscardini (April 2012), on behalf of Scotland’s Commissioner for Children and Young People, ‘Critical Review and Analysis of Research and Policy related to Disabled Children and Young People’.
affected is going to grow with the introduction of benefit changes under welfare reform this year.

Leonard Cheshire research shows that disabled people have about 25% extra costs compared to non-disabled people. Less than 50% of disabled people are in paid employment compared to 80% of non-disabled people, and disabled people are twice as likely to be poor than non-disabled people. In addition, around half of disabled children have one or more parent who is also disabled, further compounding their likelihood to be living in poverty.

Changes to disability benefits include abolishing DLA in favour of PIP, with a cut of 20% to the total budget. To qualify for PIP, most disabled people of working age will need to attend an assessment. Changes to the regulations introduced after consultation mean that even fewer people are likely to qualify for this benefit. Disabled people are eligible to be tested for the new benefit any time after their 16th birthday.

Inclusion Scotland have estimated that disabled people in Scotland will lose over £1 billion in benefits due to cuts to various benefits they are likely to receive (DLA/PIP, ESA, housing benefit, etc.).

At present, Child Tax Credit and Income Support contain an additional element for families with a disabled child. The basic payment for a disabled child, whether made through Child Tax Credit or Income Support, is £53.62 per week (2011/12 rates), based on receipt of Disability Living Allowance (DLA) for the child at any rate. An additional £21.63 is payable to families in receipt of DLA at the highest rate of the care component for day and night care.

However when Universal Credit replaces Child Tax Credit and Income Support the lower rate payment for a disabled child will be around £26.75 a week and the higher rate, around £77 a week, depending on their current DLA rate. This means that, for over 50% of disabled children, the additional payment will be cut roughly in half. There will be transitional protection for existing claimants but if they are new claimants or there is a change in circumstances families with disabled children will face an annual loss of income of nearly £1400.

Because 50% of disabled children also live with a disabled parent many disabled parents will be affected by the reforms in their own right (see above for some estimates of the cumulative impact). These cuts in the benefits payable to disabled children and adults therefore have profound implications for disabled children’s inclusion in wider society as the remaining available income is likely to be spent on basic necessities such as food, heat and clothing rather than on activities which promote social inclusion.

Recommendation: The Scottish Government should prioritise tackling the social and economic disadvantage facing disabled children within its poverty and social inclusion policy development.
Transition planning

The transition from childhood to adulthood is of enormous significance to all children but for far too many disabled children it often seems to signify the end of state support of their inclusion in mainstream society and the beginning of a life without purpose or employment. For parents of young disabled people in Scotland, recent experiences of their children moving from children’s to adult services have been “unanimously negative.” Clearly this is not in line with the GIRFEC framework and as such, in our response to the Children and Young People Bill consultation, we recommended an extension of the single point of contact (named person) from 18 to 24, in order to ensure that young people are not ‘lost’ during or just after transition.


Our analysis found that young disabled people had consistently poorer outcomes than their non-disabled peers -

- the worklessness (“unemployed and looking for work” plus “unemployed and not looking for work”) rate for disabled school leavers group was 50% higher than for non-disabled school leavers (21% as compared to around 14%).

- Disabled school leavers were also much less likely to be in higher education – just 14.4% had attained and maintained status as university students as compared to 33.6% of non-disabled school leavers.

- The other disparity was amongst the proportions in Further Education. There were almost twice as many disabled school leavers in FE as non-disabled (44.7% compared to 23.6%). This initially looks like a positive outcome but previous research has shown that young disabled people are more likely to remain in FE longer than non-disabled students and yet attain far less by way of educational outcomes. Therefore instead of FE being a positive outcome for disabled school leavers it is much more likely that it simply masks even higher levels of deferred worklessness amongst that group.

- National figures collected on NEET suggest that a young disabled person is twice as likely to be NEET at age 16 as a non-disabled peer and three times as likely to be NEET at age 19.

There have been a number of significant Scottish Government initiatives in recent years which have taken into account this high prevalence of young disabled people amongst those who are most likely to be NEET (Not in Employment, Education or Training). These include the “More Choices, More Chances” strategy (2006), “Partnership Matters” (2009), the “Post-16 Learning Choices Initiative” (2010) and the Modern

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5 Outlined in pp 13-14 of Stalker and Moscardin’s Critical Review (referenced above).
Apprenticeships programme (2011-12). Inclusion Scotland particularly welcomes the Scottish Government’s guarantee of a minimum income of £7000 pa for all learners in Post 16 education as this is most likely to benefit young disabled people who are more likely to come from poorer homes.

However it is of concern that a Scottish Government push to increase FE Colleges provision of accredited courses has perversely disadvantaged learning disabled students. Part-time courses offered by FE Colleges for this group were cut by over a third in 2011. The Scottish Consortium for Learning Disability has called for evidence that these cuts to courses were subjected to Equality Impact Assessments.

**Recommendation:** That young disabled people are better supported through their transition from children to adults with clear targets set for better forward planning for transitions (which has inclusive living and the needs & views of young disabled people at its centre), better educational outcomes and more young disabled people in employment. Much of this can and should be addressed in the Children and Young people’s Bill.

**Recommendation:** Recognition within the post-16 education bill that widening access should include access to courses of real value for learning or employment being offered that link in with real opportunities for that young person.

**Learning Environment** If colleges are to widen access there needs to be thought given to college environment and how this, for instance, may impact on young people with conditions such as Autism and how they will manage in over stimulating confusing environments. Such consideration doesn’t only extend to the actual physicality of the buildings but also to timetabling of classes and the experience of free unstructured time in between classes for individuals who find it hard to manage these situations.

In terms of **college regionalisation**, it is important to make sure when widening access to potentially more disabled individuals (due to increase in understanding of the difficulty faced by some socio-economic situations) that a ghettoed from of college provision doesn't happen. All colleges should offer a range of courses even if they are different campuses for the same college. It would be disheartening to see a specialist college created for disability, as although a residential college has been previously identified as a lack, this would prevent integration to the fe/he environment and the kind of mainstreaming for inclusion that the Scottish Government has specified in its action plan.

**Dr Pauline Nolan,**  
**Policy and engagement officer**
Education and Culture Committee
Post-16 Education (Scotland) Bill

Information Commissioner’s Office

The (UK) Information Commissioner’s Office (ICO) regulates, inter alia, the Data Protection Act 1998 (the Act) and, in this capacity, is keen to provide a written submission to the Education & Culture Committee in the course of its Stage 1 consideration of the above Bill. Given that S15 of the Bill (Duty to provide information to Skills Development Scotland) relates to the processing of personal data and thus explicitly concerns issues of data protection, it is disappointing that the ICO was not contacted directly for its view on the matter.

The ICO’s Scotland office was first contacted by the Scottish Government in 2008 to discuss the data protection implications of its proposals for the university sector to share relevant data with the then Careers Scotland, for the purposes of supporting young people in higher education. Specifically, Careers Scotland was seeking data on non-attendees and those known to have dropped out, with a view to pursuing further employment, education or training options. The ICO’s Scotland office facilitated a meeting between representatives from the Scottish Higher Education Information Practitioners Group, Careers Scotland and Scottish Government to try to identify and address specific areas of concern from each of the groups. As well as practical issues such as format, timing and transmission, data protection concerns were raised as to fairness and the legal basis required for processing. In conversation with the Scottish Government team it had been suggested by the ICO that consideration be given to introducing a legal obligation to share the data as this would provide a firm legal basis and all higher education institutions had current fair processing notices informing students that their data would be disclosed where a legal obligation exists. It is interesting that, at that time, there was no appetite to go down this route and the proposal has been debated regularly ever since.

The ICO’s Scotland office has worked closely with Careers Scotland’s successor, Skills Development Scotland (SDS), in providing data protection advice to SDS and Scottish schools in similar data sharing activity. The crux of this activity is often finding appropriate conditions for processing, thereby, ensuring the legal basis for sharing. The Act requires that at least one condition for processing from Schedule 2 is met prior to processing personal data and at least one from Schedule 2 and one from Schedule 3 are met prior to processing sensitive personal data. The first condition in both Schedules is obtaining the consent of the individual to whom the data relate but the remainder provide for processing without consent or even in the face of outright objection. One such condition within each of the Schedules is where the processing is ‘necessary for the exercise of any functions conferred on any person by or under an enactment’ and, as paragraph 110 of the Explanatory Notes to the Bill indicates, the provisions of the Bill might therefore provide a legal basis for the sharing or using of data under the Act.
Given that legislation was mooted by this office when first contacted in 2008, the ICO is pleased to support the provisions of S15 as a means by which the sharing of such information can be done in compliance with the Act. Those provisions will also address the fairness and legal basis concerns expressed by the university sector at that time. Other issues of format, timing and transmission can be addressed through further guidance and the ICO would be pleased to be involved with the content of such guidance, especially where any privacy dimensions exist. Moreover, should the Committee deem it appropriate, I would be happy to expand on this written submission via verbal evidence.

Dr Ken Macdonald
Assistant Commissioner for Scotland & Northern Ireland
Lews Castle College

Lews Castle College UHI is an incorporated College under the terms of the 1992 Act. The College is also one of the 13 partners of the University of the Highlands and Island. Lews Castle College UHI is already a tertiary institution providing education and learning opportunities across the full range of the SCQF framework.

The Board of Management of Lews Castle College UHI supports the purpose Bill and the pursuit of better governance, wider access, coherent provision and effective delivery of further and higher education. The College is committed to these principles. The Board of management also welcomes the view that the Highlands and islands are distinctive and therefore require a solution which takes account of the unique characteristics which reflect the needs and aspirations of the communities of the Highlands and Islands.

While welcoming the recognition of the uniqueness of the Highlands and Islands we do not believe that the bill gives sufficient weight to the uniqueness of the solution required. Identifying UHI as the regional delivery body for Further Education is too simplistic a statement and requires more detailed consideration to ensure that the arrangements put in place do indeed deliver more effective delivery. UHI has been successful in achieving University status as a result of the activities of a partnership of autonomous bodies working together to deliver the required outcomes. While there are opportunities to achieve efficiencies in the partnership the proposals will diminish the autonomy of the Further Education in the Highlands and Islands and of the Academic Partner Colleges.

We feel that the proposals of the Working Group led by Dr Michael Foxley better reflected the needs of the area and that these have not been fully taken account of in the Bill as drafted.

The University of the Highlands is a partnership, a partnership of equals working together to deliver education in the Highlands and Islands. It works because the partners have a voice and can influence the direction of the partnership in delivering to the area as a whole. The Highlands and Islands ‘region’ consists of many differing communities and economic regions. The Colleges in the area have relationships with 8 Community Planning partnerships which are best developed at the Community level at which they operate. A more centralised structure could damage the good relationships which already exist with partners and some more consideration should be given to how this might be addressed. The governance issue for the Highlands and Islands area is less about strategic control than about ensuring that the sum of all the parts that make up the region, as identified in the Bill, is more than the simple aggregation of those parts. UHI has been established through such a partnership and its future success would benefit from development of this partnership of equals concept. The Bill takes
this development so far in recognising the unique opportunity offered by the Highlands and Islands but it oversimplifies the next step by assuming that a reconstituted UHI will, of itself without its autonomous partners, be sufficient to take the development to its next level.

Iain Macmillan
Principal and Chief Executive
Education and Culture Committee

Post-16 Education (Scotland) Bill

North Highland College

Introduction

The Bill is structured so as to introduce regionalisation of further education provision in Scotland taking into account three basic types of arrangement.

a) Regional Colleges
b) Regional Strategic Bodies – Regional Boards
c) Regional Strategic Bodies – UHI (University of the Highlands and Islands)

Our comments relate to the arrangements proposed for the Highlands and Islands region. We will refer to the impact on the University of the Highlands and Islands, the impact on regional delivery of further education and the impact on assigned colleges.

North Highland College is a tertiary education body. It is established in law as a college of further education and through partnership arrangements with the University Court of UHI delivers higher education. It provides education with a focus on the geographic area of East Ross-shire, Sutherland and Caithness.

Our concern in giving evidence to the Committee on the above Bill is to support Parliament in creating a framework which will most usefully support post-16 education. Whatever the outcome, we will work with that positively.

Broadly we support the regionalisation agenda. We support joint planning, shared services development, and the possibility of enhancing value from directing resource. We also support the agenda of developing integrated tertiary education.

The University of the Highlands and Islands

UHI recently obtained university title. It also received a year ago a report from Capita Consulting on its governance. This report suggested significant problems required resolution. Symptoms of that requirement were a) a lack of trust between the 13 academic delivery partners of UHI and UHI itself, b) a sense that the Court which has 28 members and a significant number of observers with full contributing role was not functional, and c) a progressive shift of resources from teaching to executive office.

UHI is a single entity, the University Court which forms the membership of a company limited by guarantee. It works through a partnership arrangement with 13 academic delivery partners.
In practice, 7 of the 13 partners have had representation on the Court as legal members at any one time. Of the 13 partners 9 are colleges of further education. At any given time 5 colleges of further education and 2 specialist partners might be represented on the Court, with the remainder able to contribute as observers.

The Court has agreed to reduce its size subject to required approvals and reduce membership from FE college partners to 1 at any one time.

This decision comes as the Bill has proposed making the UHI Court the regional strategic body for FE. At a time when this would lead to approximately two thirds of its business by funded value being FE, it is reducing the voice and contribution of experience in FE in its consideration of its affairs dramatically.

We consider that to bring together considerable re-arrangement of governance of FE through regionalisation with considerable re-arrangement of the internal governance of UHI by making UHI the RSB is a major error in timing which will divert energy and resource toward structure and away from delivery.

At a meeting of representatives of the FE colleges in the UHI area 9 months ago it was agreed by seven of the nine colleges that closer integration with UHI of the kind described in the Bill was proper but should be delayed until UHI restructuring was complete – a timescale of 5 years was envisaged.

Regional delivery of further education in the HI region

The Bill as it stands seeks to get the benefits of joint strategic planning from regionalisation while allowing for the fact that the unique and difficult geography of the UHI area minimises possibilities of economy of scale from collaboration on delivery while it raises different priorities for the areas served by each college.

The Bill proposes a regional strategic body (RSB) for FE for the region to be UHI. We have described above our serious concern with that proposal. But we do propose there should be such a body as a regional board for FE in the HI region as in Lanarkshire, Aberdeenshire and Glasgow.

The Bill mitigates the power of the RSB to direct staff and other resource around a region by requiring in the HI region assigned college consent to such proposals. This is right in our region.

We would ask for consideration that rather than UHI as RSB, we have a regional board, but with the restriction on asset movement retained as the nature of the area continues to justify that.

We are concerned that an increasing and significant proportion of finance will be top-sliced to pay for the planning and monitoring and financial control functions of the RSB. We have the lesson of the executive office in UHI before us and as it stands only UHI
would control those decisions. As the college administrations will be retained perforce, there is significant risk of losing funds from teaching.

The impact of the Bill on assigned colleges

In areas with an RSB the Bill is heavily weighted toward command and control. The Bill proposes that the RSB appoints the principal, board members and chair of each assigned college. It proposes that the RSB give the assigned college its policy direction and requires compliance with any direction. (Except some assigned colleges will not be required to comply if they are not bodies corporate under the 1992 Act – a recipe for confusion and disagreement and difficult to understand). It allocates funding and requires reporting and monitoring. It is clear that the assigned colleges (1992 bodies corporate) are under company law wholly owned subsidiary undertakings.

But subsidiary undertakings are usually separately corporate so that their own boards can control their activities without risk to the parent body – they should still be able to employ their own staff and control their own activities. We would ask if advice has been taken on the risk here to piercing the corporate veil? The public and third party contractors are entitled to know with whom they are actually dealing?

The employment of a principal by a college but appointment by the RSB violates normal employment relationships – the employer should appoint and if necessary discipline and dismiss; the Bill is weak here – was advice taken on whether this complies with employment law and best employment practice?

Assigned colleges will mostly have final salary pension schemes. Crystallisation of debt with implications for many millions of pounds of college funds will occur if there is a significant change in the legal status of the corporate body which is in the scheme; will changing an independent fundable body corporate under the 1992 Act into a wholly owned subsidiary of a university risk crystallisation of pension debt? Has this been examined and cleared by the pensions regulator?

The Bill proposes reducing the size of boards of assigned colleges from a current maximum of 16 to one of 10, with only between 4 and 6 independent members. We consider this misguided. All of the working groups and committees which support governance, such as audit and risk management, finance and estates, learning and teaching, remuneration, human resources, etc will have to be manned as before; if a body corporate is still a body corporate then all of the governance and compliance needs to be done as before. If we barely cover requirement with 16, how shall we meet the need with 10? We are dealing with volunteers not paid board members. We cannot depend on staff and student members to ensure disinterested governance?

Conclusions

- For the HI region the timing for UHI control of FE is wrong as potential disruption is maximised and costs maximised
• If there is value in retaining independent college structures, the values of independence must be retained; to have independent structures which are entirely under control is trying to have your cake and eat it at the same time; it is not sensible.

• All assigned colleges must be treated in the same way in each region; if one college depending on history can say yes, and its neighbour no to RSB direction, is this what the Scottish Parliament wants in a modern Scotland?

• We recommend retaining independent appointment of chair, board members and principal by the assigned college boards

• We recommend a regional board of a federal kind for HI region

• We recommend removing prescriptive powers from the regional body other than strategic planning, resource allocation and monitoring and placing dependence on financial relationships and partnership relationships
Orkney Islands Council on behalf of Orkney College UHI

Orkney College broadly welcomes the post-16 Education (Scotland) Bill (‘the Bill’) and the aims contained within it. We are fully supportive of the aims of the Bill to ensure that there is a regional approach to planning college provision. We believe this will improve collaboration to ensure provision is delivered efficiently and tailored to the local needs of the region. In addition we support the aim to improve accountability and ensure that outcomes are delivered which provide the best opportunities for our learners.

Orkney College is a subcommittee of the Council and its statutory genesis lies in the Local Government Scotland Act 1973, and therefore these provisions in the main do not affect Orkney College. We welcome that this non-incorporated status continues and that there is no intention to alter the governance arrangements of Orkney College. That said, Orkney College, together with its academic partners, already operates within a regional context as part of the University of the Highlands and Islands.

We previously welcomed Dr Foxley’s proposals contained within the report of the Working Group on the future structure and function of the University of the Highlands and Islands. In these proposals there would be an FE Regional Board on which Orkney College would have representation. We are disappointed that there is no provision in the Bill to allow for delegation of powers held by the Strategic Regional body to the FE Regional Body. We are concerned as Orkney College is only likely to have representation on the FE Regional Body rather than the Regional Strategic Body. Orkney College is a provider of education and training for its local community and requires to be responsive to local needs. There is concern that having a FE regional body without powers for the strategic planning and funding of further education will result in funding decisions that are detrimental to our local needs.

In addition, there will be costs for the establishment and running of the regional bodies and we are concerned as to the funding mechanisms to deliver them. Orkney College strives to ensure that funding is maximised to benefit learners and any top-slicing of existing budgets to fund these bodies will not be welcomed.

**Steven Heddle**  
Convener

**Janice Annal**  
Chair of Education, Leisure & Housing Committee and Chair of Orkney College Management Council
Introduction

The University of the Highlands and Islands (UHI), comprised of 13 academic partners and the university, is in the vanguard of regionalisation, bringing together incorporated and non incorporated colleges and research institutions to work together strategically in the planning and delivery of cohesive tertiary education that meets the needs of local and regional stakeholders. Perth College, as an academic partner in the University of the Highlands and Islands, already operates within a regional context in the Highlands and Islands region. Perth College therefore welcomes the Post-16 Education (Scotland) Bill (the Bill) and is broadly supportive of its content.

There are areas in the Bill that concern Perth College in enabling the College and UHI to fulfil its potential in creating a new kind of university that is genuinely tertiary in nature.

These are:
1. The creation of a ‘Regional Strategic Body’ as distinct from the FE Regional Board;
2. The appointment of the FE Regional Board Chair;
3. The appointment and oversight of the College Principal;
4. Ensuring efficient learner journeys and the right education in the right place;
5. The responsibility and accountability of the different bodies;
6. The size of the Board;
7. The costs of implementation.

Background

The Cabinet Secretary convened a Working Group, chaired by Dr Michael Foxley, with a remit, inter alia, to specifically address the structure, remit and powers of the new FE Committee and the roles and responsibilities of the UHI Court, the FE Committee, the Boards of Academic Partners and the relationship of these bodies with each other.

The Working Group reported on 1 October 2012 and the Cabinet Secretary confirmed he was ‘broadly content’ with the proposals (letter 8 Oct 2012). The Board of Perth College endorsed the Working Group’s report as a useful roadmap for progress in the implementation of regionalisation.

The ‘Regional Strategic Body’ as distinct from the FE Regional Board

The Bill creates Regional Strategic Bodies and lists UHI as a Regional Strategic Body. The Regional Strategic Body is separate to the Regional Board. The Regional Strategic
Body has a number of duties, including but not limited to, administration of funds, performance monitoring and strategic planning.

The UHI Working Group report agreed that UHI would have an FE Regional Board, which would be a committee of UHI Court and would have ‘delegated power to plan and allocate funding for further education in the region’. The Bill would remove those powers from the FE Regional Board and place them with UHI as the Regional Strategic Body.

The thrust of the UHI Working Group report was to build trust and confidence through a transitional journey for the University and the Cabinet Secretary recognised that the ‘Working Group’s report provides a solid base for UHI to move forward with a renewed sense of cohesion and collaboration’. (letter 8 Oct 2012). An important plank in building trust and confidence was the creation of an FE Regional Board with responsibility for the administration of funds, performance monitoring and strategic planning.

It is recognised that the post 16 Bill has been developed for a range of different regions. The Highlands and Islands has a unique delivery model, creating a challenge to fit it alongside the other regions in any legislation. However, the creation and naming of UHI as a Regional Strategic Body could have unintended consequences in undermining the work of the UHI Working Group that established an operating model for regional FE provision that had broad buy-in, allowing time for the necessary changes in UHI’s operating model in line with the recommendations of Capita, the independent consultants funded by SFC to develop a new operating model for UHI.

The appointment of the Regional Board Chair

The current bill does not include the appointment of the FE Regional Board Chair for the Highlands and Islands as an independent appointment.

The UHI Working Group proceeded on the premise that there would be an independent Chair appointed to lead FE in the Highlands and Islands region, mirroring the other regions. This view was supported by the appointment of an FE regional lead (Dr Michael Foxley), in tandem with the 12 other FE regions.

The appointment of an independent chair was intended to safeguard and separate FE provision from the University, at least for the period that the University reconstituted itself consequent to the SFC funded Capita report.

There was broad sign up to the UHI Working Group report and to deviate from its principles could be detrimental to the building of trust across the partnership at this key stage in the University and Colleges development.

The appointment and oversight of the College Principal

Under the terms of the current Bill, Perth College will remain the employer for all staff, including the College Principal. We welcome this. For any new Principal appointment,
Perth College’s understanding is that the Regional Strategic Body (ie UHI) will be responsible for the appointment of the College Principal on such terms and conditions as they think fit. This has both financial and employment law consequences.

Financially, the remuneration set by the Regional Strategic Body will have to be paid by the College. There is no mechanism to hold the Regional Strategic Body to account to provide sufficient funds to meet any remuneration, including pension provision, they may impose on the College. The ongoing pension burden of staff is a live issue for the College. This financial year, Perth College had an additional charge of £166K against the income and expenditure account as a result of an actuarial revaluation of early retirement pension benefits given to staff in the mid to late 1990’s (all such additional pension benefits would now require Board approval). This £166K was an expense, in a challenging financial year, diverting funds from activity to enhance the student experience. There is a potential for a ruinous financial legacy to be imposed on a College, to the detriment of learners, with no mechanisms to manage or mitigate that risk.

There are employment law issues in terms of the responsibility for continuing employment, reward and dismissal. For example, a Regional Strategic Body could be satisfied with a Principal’s performance to the extent of awarding a bonus, whilst the College, as employer, was instituting disciplinary action for a serious contractual breach. This could lead to lengthy and expensive contractual disputes, played out in the public domain that would be damaging for the sector as a whole.

**Ensuring efficient learner journeys and the right education in the right place**

The proposed bill amends the Further and Higher Education (Scotland) Act 1992. It retains section 12 of that Act, whereby a Board of Management shall have a duty of managing and conducting their college. This is welcomed by Perth College.

Perth College is both a university and a college provider of education and training for its local communities. It is vital we retain the autonomy to work with Community Planning Partners in Perth and Kinross and Tayside to create life opportunities by aligning non-advanced learning and skills with jobs and growth in the local area. Perth College must maintain its direct connection with employers to ensure the shortest possible lines of communication between need and delivery.

The creation of a ‘Regional Strategic Body’ threatens to remove the autonomy necessary to ensure efficient and flexible learner journeys. The unique geography of the Highlands and Islands region requires institutional autonomy to be maintained to meet highly diverse local stakeholder needs. Perth College, whilst fully committed to UHI, also has a rich and diverse hinterland outwith the University. The 9000 strong student body in Perth College largely come from within a 30 mile radius of the institution and Tayside region is a clear option for travel to Perth. Perth College needs to be able to continue to build and develop its links with partners in our locality of Perth and Kinross and in the neighbouring Tayside, Fife and Forth Valley regions.
In 2011/12, 46% of Perth College’s total income was not Scottish Funding Council Income. Perth College needs to retain this income for investment to continue to meet locally specific needs, including a commercial focus at local level to deliver local benefits. The necessity for College approval of any transfer of staff, property etc by or to the Regional Strategic Body is noted and welcomed.

The responsibility and accountability of the different bodies

Perth College Board currently has a clear understanding of its accountability for all matters concerning the college as an employer, including ensuring the health and safety of its staff and students and meeting its equality duties. Under the Bill, it is clear the Board remains responsible for the above matters but it is less clear where accountability lies.

As an example, with the creation of a Regional Strategic Body, it is not clear which body would be accountable for a catastrophic health and safety failure on the College campus. Currently, the Board is clear it is the accountable body and has worked, with the support of a Board level health and safety champion, to raise the profile of health and safety across the institution and manage and mitigate risks as far as possible. As the Regional Strategic Body has the power to direct Colleges, it is not clear which body would be accountable if an incident was as a result of following the Regional Strategic Body’s directive.

Given the unique geography of the Highlands and Islands region, it is recommended that institutional autonomy and accountability be maintained to secure the wellbeing of all Perth College’s students and staff.

The size of the Board

The UHI Working Group recommended a reduction in the size of Boards of Management to 12 members. Perth College Board supported this recommendation and continues to recommend an optimum Board size of 8 – 12 members. This would enable the Board to continue with the current level of staff members (one from support and one from teaching). The Board considers the staff voice to be of critical importance and that support and academic staff bring different but equally valuable knowledge and experience of the College to bear on decision making.

It is recognised that the reduction in Board size is linked to the creation of a Regional Board. For Colleges in the Highlands and Islands region, many of the responsibilities of the FE Regional Board were previously SFC responsibilities and therefore do not remove any college level responsibilities. The Board will retain the same level of responsibility (if not accountability, to be clarified) as previously.
The costs of implementation

The creation of a ‘Regional Strategic Body’ in addition to a Regional Board/Committee creates unnecessary bureaucratic layers. There will be a cost associated with the creation of regional bodies that could lead to a reduction in the funding available for the students. In UHI there are concerns, as documented in the Capita report, that purely administrative bodies create additional and hard to control costs. The priority is to ensure FE funding goes where it is needed, directly through the FE Regional Board to the delivery arm. As the delivery body, Colleges are closest to the student and have ownership of the need to ensure the maximum level of funds are available to impact and improve on the learner journey.

Recommendations

There is not a separate ‘Regional Strategic Body’ in the Highlands and Islands region. Administration of funds, performance monitoring and strategic planning for FE should be the responsibility of the FE Regional Board/Committee.

The FE Regional Board Chair is appointed by an independent appointment process.

The College Principal continues to be appointed and terms and conditions set by the College Board of Management.

The Boards of Management of Colleges in the Highlands and Islands region retain responsibility and accountability for conducting the business of the College.

College Boards of Management in the Highlands and Islands region comprise 8-12 members.

Summary

Many of the areas in the Bill that may present a challenge to other regions, such as the duty to collaborate with other post 16 providers, are already hardwired into Perth College’s strategy, structure and operation.

We fully support the aims of Putting Learners at the Centre. The above areas of concern are therefore highlighted in a genuine desire that regionalisation should fulfil its potential in the Highlands and Islands region and enable us to continue to meet the needs of learners in our locality of Perth and Kinross and the Highlands and Islands region.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Robert Templeton

The Scottish Agricultural College (SAC) is a practical example of what happens when Colleges merge without a well thought out strategy. The Committee should regard it as a template of all that can go wrong. There has been a preponderance of "bankers and business types" on the SAC Board. Practical farmers were ignored.

There is a bill to create what is a seemingly new concept in Scottish education where colleges are wrapped together for better direction of courses to avoid duplication.

I would encourage members to take a close look at the provision of Higher rural education in Scotland over the last 16 years.

Back in 1996, the Scottish Agricultural College (SAC) was born out of the West, East and North Colleges of Agriculture merging. My understanding this was to provide a way to save the East of Scotland College from closure due to lack of numbers.

In 1999 Mailland Mackie was appointed SAC chairman.

In 2002, SAC proposed to close 550 acre Auchincruive, Ayr which handled 50% of SAC students. 160 acre Craibstone, Aberdeen and King's Buildings Edinburgh to be retained. This caused a furore in SW Scotland leading to a debate led by Adam Ingram MSP 25/3/02 in the Scottish Parliament. By now the SAC had appointed Professor Bill McKelvey as Chief Executive.

Sent to think again, SAC became even more radical and sought to close both farm campuses at Craibstone, Aberdeen and Auchincruive, Ayr and build a new 1200 student facility at the King's Buildings in Central Edinburgh. This was mooted as the cheapest cost option. SAC chose to overlook that it would cost 1200 students anywhere between £2500 and £3000 per year in Edinburgh living costs and which would lead to £3m to £4m extra cost to Scottish Agriculture.

This idea united the whole of Scottish farming and led to another debate in the Scottish Parliament on 25/5/03.

Ian Ivory a financier of Ivory and Stewart took over the role of SAC Chairman in 2003.
Deloitte Touche were appointed to come up with answers. At this point, I would give the figures for Edinburgh students as

<table>
<thead>
<tr>
<th>Year</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>173</td>
</tr>
<tr>
<td>2002</td>
<td>156</td>
</tr>
<tr>
<td>2003</td>
<td>126</td>
</tr>
</tbody>
</table>

By comparison in 2003, Auchincruive, Ayr had 376 students and Craibstone, Aberdeen had 213 students. The SAC Board should have been able to see a trend.

Agriculture Minister Ross Finnie MSP made a generous offer of £5m if SAC would refurbish at Auchincruive, Ayr. This was rebuffed by SAC.

By 2006 SAC, which is a private company, followed the route favoured by many companies worldwide. Build houses. This policy led to 40 acres out of Craibstone, Aberdeen’s 160 acres designated for housing. SAC aimed to raise £40m at £1m per acre. Auchincruive, Ayr had a lesser number of houses. 20 acres at £800k to raise £16m. The golf course, business park, hotel and equestrian centre were to bring in a further £14m. The Anglian Water Group (AWG) were brought in as facilitators. They were to receive 20% of £30m equal to £6m. AWG got nothing if the deal failed.

At about this time SAC and Barony College agreed that only Barony would approach the Scottish Funding Council for funding for their new Barony dairy unit. This was because SAC would soon be awash in cash.

Lord Lindsay, a merchant banker, was appointed SAC Chairman in October 2007.

2007 saw the SAC at its zenith. SAC/AWG stated in a press release that it was planning a £150m Auchincruive development with 150 expensive £400k to £500k houses, business park, five star hotel, and championship golf course to rival Troon and Turnberry and an equestrian centre. SAC/AWG stated this would create 2000 jobs and be worth £80m annually to the Ayrshire economy.

This SAC plan was very hard for a campaigner like myself to disavow with so much academic (SAC) and business experience (AWG) behind it. However the housing collapse led by the subprime mortgage scandal ruined all the SAC/AWG plans.

In 2009, the SAC produced a Masterplan. Within this document Savills gave an independent asset review which stated land values in 2010 continuing as far as 2016 were only 20% of 2007 values. This meant that by April 2010, SAC/AWG could only expect £160k per acre at Auchincruive, Ayr. On April 8, 2010 SAC stated they now needed 40 acres of houses @ £400k per acre to raise the original sum £16m. This puts the SAC at odds with the figures in its own SAC Masterplan.

Despite having earlier stated in 2005/6 that SAC and Barony agreed only Barony would apply to the Scottish Funding Council for regeneration, SAC was forced to follow suit.
were successful in receiving £6m from SFC with £3m coming from SAC as a result of their building plans. Not one house has been built yet.

The sum of £9m allows the SAC to have 10 classrooms at the joint SAC University of the West of Scotland campus in Ayr.

If ever a monument to “joined up” academic planning stupidity was to be erected, the Craigie Campus, Ayr should be its home. No one but an academic would train nurses and farmers at the same facility. Squeaky clean meets E Coli heaven. This week (7 January 2013) the annual health warning to pregnant women was issued by the Chief Medical Officer, Sir Harry Burns. This warns women not to come into contact with lambing ewes or even the clothes of anyone doing the work for fear of risks to their own unborn child.

Penrith, England is to see the reopening of the 250 cow dairy unit at Newton Rigg leading to the site offering Higher Education courses on a farm site. The cost of refurbishing is put at £2.4m. This will offer direct competition to SAC. There is a suspicion that rural Scotland was short-changed by spending £9m at Craigie Campus. The value placed by Ayrshire farmers to upgrading Auchincruive was around £5m to recreate a world beating facility in a rural setting with all the sounds and smells absent from a town location.

2012 saw the SAC which many in Ayrshire deem to be a failure due to its unwillingness to listen to the local Ayrshire farming community, merge with the FE Colleges of Oatridge, Barony and Elmwood. This was aided by £5m from the Scottish Government to what is essentially a private company which can now do as it pleases with the assets generously handed over. SRUC is the new name.

If the Committee is in any doubt as to what this means they have only to look at the conduct of the SAC Board after it became responsible for the combined assets of the North, East and West Colleges in 1996.

What lessons can be learned from the conduct of the SAC. The SAC Board has long been considered a self perpetuating oligarchy
One SAC Board member is a former Chairman of a secretive health Board heavily criticised recently on TV by a former psychiatric nurse.

On 19 January 2011, the then SAC chief executive to told all 30 South Ayrshire Council Planning Committee members at a public planning meeting they were to disregard the testimony of the person nominated by the Ayrshire National Farmers Union to speak in opposition to SAC plans to ruin Auchincruive.

On the day, the Ayrshire NFU farmer representative was not allowed to rebut the unwarranted attack on his integrity. The SAC Chairman later did admit the SAC Chief Executive was in error and apologised publicly to the Ayrshire farmer in the press.

The SAC borne out of the merger of the old North, East and West Colleges started out in 1996 with a utopian ideal. No one College was to dominate the others. The original headquarters was situated in Perth. This was soon sold for £3.5m and the HQ activities centred on Edinburgh. To this day there has been a democratic deficit.

The power to remove staff is an emotive issue. Can it be right for example that the SAC principal in Ayr is a poultry professor instead of a “cow” or “grass” man? I do not doubt his qualities, I do doubt if he is the right man for the job. The food and drink industry is worth in excess of £7b to Scotland. The dairy industry is the financial powerhouse of SW Scotland.

It all points to the inability of the current SAC Board to understand the needs of SW farmers.

Now that the SAC has absorbed the FE colleges of Barony, Oatridge and Elmwood the question has to be asked “Where is their direction of travel?" It is not a good omen when the well-respected head of the Barony College has departed since the appointment of another veterinarian as SAC chief executive. (2012)

Finally the Committee should invite the NFU Scotland President Nigel Miller to tell why it was necessary for him to write to the Cabinet Secretary Richard Lochhead in August 2011. "It is a sad fact that our Scottish system, which was once world leading, is
probably no longer the best”. He also calls for a need to examine how we make the most of our existing sites.

Conclusions based on my knowledge of SAC and the need to avoid the pitfalls that has led to Scotland falling behind in Higher Rural education provision:

- Merging colleges is going to favour the college with the admin centre.
- Colleges that do not have the principal on the premises need to have a strong responsible character on site that staff and students can relate to.
- Conversely, too many strong personalities may lead to friction and the appointment at the satellites of “Yes men or women” by the top man or woman.
Education and Culture Committee
Post-16 Education (Scotland) Bill
Royal Society of Chemistry

Introduction

The Royal Society of Chemistry (RSC) is the largest organisation representing the chemical sciences in Europe. It has over 47000 members internationally, most of whom are based in the UK, several thousand from within Scotland. The membership includes people involved in education at schools, colleges and universities, and a large representation of members in industry.

The RSC engages regularly on policy matters with the Scottish Parliament and the UK Government as well as the devolved administrations in Wales and Northern Ireland. This engagement includes organising the annual Science and the Parliament in Edinburgh and helping to support the work of the Cross Party Group on Science and Technology.

The RSC is a registered charity and also has a Royal Charter that governs its activities “to serve the public interest”. Including predecessor organisations the RSC has a history going back to 1841. In its contact with Government and its agencies the RSC is required to do so in a manner that is consistent with the public interest. It conducts such engagement in an open manner and all submissions to Government or Parliamentary consultations are made publicly available. The RSC seeks to advise policy makers in matters relating to the chemical sciences and how this can aid them in their decision making.

We welcome the opportunity to contribute to the consideration of the Post-16 Education (Scotland) Bill that will shortly be undertaken by the Education and Culture Committee.

The RSC would be willing to provide an appropriate witness should the Committee wish to request one to appear before it.

General comments

The RSC recognises that the Bill follows earlier Scottish Government publications, such as the Putting Learners at the Centre – Delivering our ambitions for Post-16 Education and the reviews of further and higher education governance. As such, the RSC is supportive of aspects of the proposals, though some parts of the current Bill give cause for concern. Consequently, we urge the Committee to explore the evidence in support of each of the main provisions before reporting to Parliament on the general principles of the Bill.
Main provisions

University Governance

Whilst the RSC supports the principle of universities adhering to good practice in governance we do not believe that a strong case has been made for there being a significant problem of governance in Scottish universities that requires the Scottish Parliament to legislate on the issue.

Whilst universities receive large parts of their finance through the Scottish Funding Council, they have developed as institutions independent of government. Moreover, individual university funding is obtained from a wider range of sources other than the Scottish Government (via the SFC). To varying levels universities in Scotland raise resources from bodies such as: the UK Research Councils; the European Union; fees from non-Scottish domiciled UK students; fees from international students; charities; bequeaths and endowments; resources generated through commercialisation; and from the private sector. In 2010/11 only 37% of the income of Scotland’s higher education institutions came from core public funding through the SFC.\(^1\)

It is also the case that all Scottish universities have signed the UK-wide governance code of practice that was developed by the Committee of University Chairs.

The RSC believes that the Scottish Government needs to explain the problem that they perceive needs to be solved before seeking to progress this provision of the Bill.

Widening access

The RSC recognises that there is considerable evidence of inequality in access to higher education across socio-economic groups and we welcome actions taken by the universities in partnership with the SFC to introduce measures to improve on access. However, we are also of the view that the whole issue is not one that will be solved simply by looking at admissions to universities.

Many of the issues that impact upon access to higher education involve earlier stages of the education system, as well as broader societal issues, many of which are responsibilities for the Scottish Government and local government to address. For example, enhancing outreach programmes that target schools with low levels of progression to higher education, and providing summer schools aimed at providing an insight into universities for pupils from non-traditional university backgrounds, are two measures that could be progressed. We encourage the Scottish Government and Parliament to examine these areas further in order to make a real step change in more equal access to higher education.

We also have concerns that for disciplines such as medicine, science and engineering some of the current reforms in the National Examination and Curriculum for Excellence may worsen the situation. For example, they could lead to a reduction in the numbers of school students presenting for science Highers in S5. The

\(^1\) Income and expenditure of Scotland's universities, Universities Scotland. http://www.universities-scotland.ac.uk/uploads/University%20incomeandexpenditure201011.pdf
narrower range of subjects that could be chosen may well restrict the numbers of students studying science in S4, which would consequently reduce the feedthrough to S5. This is an issue that has been raised by the Learned Societies Group on School Science Education, of which the RSC is a member, which has surveyed schools on their preparations for the new National Qualifications.

Tuition fees cap

In the context of the differential funding arrangements that currently apply in the four nations of the United Kingdom it would seem to be a reasonable measure for Scottish Ministers to be able to set a maximum tuition fee for undergraduate courses at Scottish universities that would apply to applicants from other parts of the UK.

The Education and Culture Committee may also wish to explore with Ministers what discussions have taken place with the administrations in Wales and Northern Ireland where different funding arrangements apply to students from those countries than those for undergraduates in England.

College regionalisation

The RSC can understand the rationale for college merger or regionalisation where it applies to large urban areas such as Glasgow or Edinburgh and, indeed, several mergers have already taken place in these cities.

We do, though have concerns about the possible impact of regionalisation where it applies to colleges that are many miles apart, such as in areas like the Highlands. Further education colleges generally provide a more localised education service than universities, with a larger proportion of their students coming from the locality in which the college is situated. Colleges also need to have a good understanding of the opportunities for employment that exist in their local economic area.

As well as the potential impact upon students, if some courses are no longer available in their area we would also encourage the Committee to explore with the Scottish Government how teaching staff in merged colleges would be affected, particularly in more rural areas. For example, would teaching staff be expected to work from multiple campuses, which could be some distance apart, or have to relocate to other colleges within a merged group? Some multi-campus teaching is already delivered at HE through videoconferencing; however, this approach to learning may be more difficult to achieve within FE.

The RSC also has concerns about the funding settlement that the further education sector received in this financial year and that proposed for next year. The chemical sciences and other scientific sectors require a supply of trained technicians as well as good graduates and we would be concerned if the funding settlement reduced the provision of college places for vocational learning in the sciences. Indeed, the RSC along with other professional bodies offers RSci (QCF Level 5) and RSciTech (QCF Level 3) registration to encourage vocational education and training routes into the profession.
In terms of the Scottish Government’s aspiration to enhance access to higher education for people from under-represented socio-economic backgrounds, we would like to highlight the opportunities for students with insufficient qualifications on leaving school through additional study at further education colleges.

**Review of fundable further and higher education**

It is reasonable for the SFC to work with further and higher education bodies with a view to encouraging coherence in education provision, in particular in developing better student pathways between further and higher education. However, we are concerned about the impact that the section of the Bill may have on the autonomy of further and higher education institutions. In particular, if there are to be further changes in the number of institutions through merger, these should only take place where the bodies themselves agree that this would enhance their ability to deliver better educational outcomes.
Summary

- There is an absence of an overarching strategy for a reformed post-16 education system. The plans for colleges are much more specific than those for universities. Strategy for the university sector appears to be emerging on an ad hoc basis as outcome agreements are negotiated and agreed.

- The Bill provides Scottish Ministers with significant powers to determine principles of governance or management in relation to universities. The inclusion of ‘management’ is notable. It is not clear as to how ‘management’ is to be defined and applied. Oversight of management effectiveness is one of the principal functions of each institution’s governing body and we see no justification for its inclusion in the present Bill.

- The fundamental right and need for universities to enjoy autonomy in their strategies and operations is not being sufficiently recognised. While they have to be accountable to funders for the outcomes due, the Bill seeks to change the balance in ways we feel will be damaging to the vitality of the university sector. Examples abound internationally whereby the efficiency of universities in reacting to opportunity and need are dramatically inhibited because of too direct an accountability to government.

- We strongly support measures to ensure that access to higher education is based on ability and potential, rather than other personal or financial circumstances. Widening access to higher education is a complex issue. We remain to be convinced that requiring universities to comply with terms and conditions imposed by Scottish Ministers for the purposes of widening access would add value. There is a risk this legislative provision over-simplifies wider access by failing to acknowledge the complex underlying causes of under-participation – many of which cannot be addressed by higher education institutions alone, but require collaboration across the full spectrum of Scottish education.

- Regionalisation, for most colleges, seems to be accepted as the best way forward to preserve services to learners in the context of reduced resources, and to further enhance services through a coherent approach to identifying and meeting regional priorities. We are concerned about the extent to which the college sector can implement this scale of change and fulfil the wide-ranging education, training and life-long learning roles expected of it in the face of the substantial funding reductions it is experiencing. The Scottish Government must
therefore ensure that the college sector is given sufficient resources to enable it to meet local and national needs.

- Given that the regional boards will receive and distribute funding for the region and plan college provision across the region, their relationship with the SFC must be clear. Care will need to be taken to minimise the potential for duplication and the creation of an additional costly layer of administration.

- With the consent of Scottish Ministers, the SFC may review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner. We are very concerned about the potential implications the proposals may have for institutional autonomy. It is one thing for the SFC to review fundable further and higher education provision with a view to making recommendations, it would be entirely another for Scottish Ministers or the SFC to dictate the types of programmes or courses to be provided by post-16 education bodies or that institutions should merge. It is the institutions themselves that are best placed to determine such matters depending upon their individual circumstances.

Background

Through its Education Committee, the Royal Society of Edinburgh (RSE), Scotland’s National Academy, identifies and promotes priorities for education in Scotland, and at all stages. The Education Committee comprises individuals with expertise and experience in and across the school, college and university sectors. We welcome the opportunity afforded by the Scottish Parliament’s Education and Culture Committee to comment on the provisions of the Post-16 Education (Scotland) Bill. We would be pleased to discuss further any of the comments made in our response with members of the Committee.

The changes being proposed for post-16 education in Scotland are the most extensive revamping of the structure, funding and governance of further and higher education in a generation. The pace at which proposals are emerging is quickening and it is crucial that arrangements will be made for on-going consultation. The aspirations of the Scottish Government were set out in Putting Learners at the Centre – Delivering our Ambitions for Post-16 Education, to which the RSE Education Committee responded¹. The proposals in the Post-16 Education (Scotland) Bill seek to implement that agenda. A number of other publications and consultations are relevant. Not least, the reviews carried out by Professor Griggs and Professor von Prondzynski into the governance of further and higher education institutions, respectively. The RSE also responded to these separate reviews.²

In our previous responses we drew attention to the following concerns which we do not feel have been sufficiently addressed in the Bill.

- The absence of an overarching strategy for a reformed post-16 education system.
- While institutions should be accountable for the funding which they receive, institutional autonomy for strategy and operation, particularly in the universities, is not sufficiently recognised.
- The absence of a rationale of how the legislative proposals will improve the existing arrangements for governance in the universities.

In December 2012 the SFC published its strategic plan\(^3\) 2012-2015. This sets out a programme of change and reform with a view to delivering the ambitions for post-16 education of the SFC and the Scottish Government. The plans for colleges are much more specific than those for universities. The SFC website reveals a recent reorganisation of the structure of the SFC with the establishment of a Group for ‘colleges and post-92 universities’ and a Group for ‘research intensives and SSIs’. This would appear to indicate a specific role for the post-92 universities within the framework of regionalisation but this is not made clear in the new strategy. Universities have prepared outcome agreements for the first time but they have done so without there being a clear framework. Strategy for the sector appears to be emerging on an *ad hoc* basis as outcome agreements are negotiated and agreed.

**Comments on the main provisions introduced by the Bill**

**University governance and management**

Section 2 of the Bill provides Scottish Ministers with significant powers and latitude to determine principles of governance or management, with the power to determine what constitutes good governance or management resting with Scottish Ministers, rather than the SFC. The inclusion of ‘management’ in addition to governance is also notable. The reason for its inclusion is not set out in the documentation accompanying the Bill. It is not clear as to how ‘management’ is to be defined and applied. Oversight of management effectiveness is one of the principal functions of each institution’s governing body and we see no justification for its inclusion in the present Bill.

The fundamental right and need for universities to enjoy autonomy in their strategies and operations is not being sufficiently recognised. Of course there has to be accountability to funders for the outcomes due, but the Bill seeks to change the balance in ways we feel will be damaging to the vitality of the university sector. Universities vary in the degree to which they are reliant on Government funding, with some institutions receiving only a minority of their funding from Government sources. Examples abound internationally whereby the efficiency of universities in reacting to opportunity and need are dramatically inhibited because of too direct an accountability to government.

\(^3\) [http://www.sfc.ac.uk/about_the_council/corporate_plan/about_strategies_corporate.aspx](http://www.sfc.ac.uk/about_the_council/corporate_plan/about_strategies_corporate.aspx)
Prior to any legislative proposals on university governance ever being introduced, it should have been set out whether, and where, there is an accountability and governance deficit for the Scottish universities. Fundamental questions remain as to why a review of HE governance was initiated and what public concern was it designed to address. As such, there has been no explanation of how the proposed changes will improve the existing arrangements for governance, and we are concerned that the proposals are in danger of putting at risk the significant gains which have been made.

The SFC has played an important two-way role in relation to the universities. On the one hand, it has been the mechanism for the annual transmission to the universities of a governmental view of priorities that it wishes to see reflected in university work, but in a way that goes with the grain of universities’ capability and function. On the other hand, it has been the route through which accountability for the use of public funds has been managed, although messages from Government appear to have triggered a more reactive response than those transmitted to it.

The Cabinet Secretary for Education and Lifelong Learning has asked the committee of the Scottish chairs of higher education institutions to lead a group to develop a new Scottish code of good higher education governance. While it would be reasonable to legislate to ensure that institutions pay due heed to the code, the legislation should not be the approach adopted by the existing UK-wide governance code of practice developed by the Committee of University Chairs (CUC), to which we understand all HEIs in Scotland voluntarily adhere.

**Widening access**

Section 3 of the Bill allows for Scottish Ministers to impose terms and conditions to increase participation by groups which are currently under represented. We strongly support measures to ensure that access to higher education is based on ability and potential, rather than other personal or financial circumstances. How to achieve this is not straightforward. Widening access to higher education is a complex issue. The SFC has had a long term programme of working with institutions on access and inclusion (Learning for All) and has, within the first year of working with institutions on outcome agreements, achieved further progress on wider access on a consensus basis, through strategic allocations of resources. We look forward to the continued development of this approach.

We remain to be convinced that direct intervention by Scottish Ministers to require compliance would add value. There is a risk that it would lead to a mechanistic approach rather than the development of creative responses to lowering barriers to participation. There is also a risk that this legislative provision over-simplifies wider

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4 Guide for Members of Higher Education Governing Bodies in the UK
http://www.hefce.ac.uk/pubs/year/2009/200914/
access by failing to acknowledge the complex underlying causes of under-participation – many of which cannot be addressed by higher education institutions alone, but require collaboration across the full spectrum of Scottish education. School education has a particularly important role to play in this regard.

**College regionalisation**

We recognise that college regionalisation is seen as a means of providing for greater collaboration between colleges and addressing duplication of provision and unnecessary competition in the sector. In turn, there is the potential to create larger, stronger, more influential institutions. Regionalisation, for most colleges, seems to be accepted as the best way forward to preserve services to learners throughout Scotland in the context of reduced resources, and to further enhance services through a coherent approach to identifying and meeting regional priorities. The Scottish Government and the SFC are working with colleges to implement the arrangements.

We are however concerned about the extent to which the college sector can implement this scale of change and fulfil the wide-ranging education, training and life-long learning roles expected of it in the face of the substantial funding reductions it is experiencing. In a recent report the David Hume Institute has shown that the sector is cost-efficient and crucial in economic and social terms. It also reaches parts of society that other elements of the education system find difficult to reach. The Scottish Government must therefore ensure that the college sector is given sufficient resources to enable it to meet local and national needs. This will help support the Government’s aim of sustainable economic growth for Scotland.

College mergers are expected to deliver circa £50 million in annual savings. Whilst this may be achievable in the longer term, mergers will incur significant upfront costs. Implementing mergers with the over-riding aim of saving money may put at risk the educational benefits of mergers.

The college regions are heterogeneous, with some mergers and some federations and some single college regions. They vary in size from very large (Glasgow will be a very large multi-college region combining the already merged City of Glasgow College and several other colleges) to small (West Lothian has one small college). They will have varying scope to achieve savings and provide services to learners. There is yet to be clarity about what students and employers may expect from the new landscape, apart from the promise of a more efficient system. It will be important to ensure the college regions are well connected with the fabric and infrastructure of the regions in which they operate.

**Governance arrangements**

It will be necessary to create a statutory basis for regional boards in multi-college regions and to determine the relationships between colleges, regional boards and the

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5 *Further Education, the Scottish Labour Market and the Wider Economy; The David Hume Institute; November 2012*
SFC. However, as currently drafted, the Bill appears to have taken some of the powers and duties of the SFC and applied these to regional boards, creating the potential for duplication, confusion or even conflict. Given that the regional boards will receive and distribute funding for the region and plan college provision across the region, their relationship with SFC must be clear. Care will need to be taken to minimise the potential for duplication and the creation of an additional costly layer of administration.

Bringing greater transparency and rigour to the appointment of chairs and members of regional college boards would build on the steps already taken by many colleges to open up board appointments through good recruitment and selection processes. The Bill clarifies Scottish Ministers role in appointing (and removing) chairs and members of regional boards. While board members should be accountable, in the case of removal, it will be important that the legislation provides appropriate safeguards to ensure confidence in the process. This should include a right of appeal.

Care will need to be taken to ensure that boards within multi-college regions operate efficiently and fairly e.g. the proposed reduction in size of college boards which are not a regional college suggests they have the potential to be less representative and less independent than existing boards.

The Bill makes provision to require regional boards and regional colleges to pay their chairs such remuneration as Scottish Ministers may in each case determine. This recommendation that chairs of boards should be remunerated is contentious, as has been demonstrated by the review of governance in universities, where this issue prompted a minority dissention. Much greater consideration of the implication of such a step is required in both sectors.

**Review of fundable further and higher education**

Under section 14 of the Bill and with the consent of Scottish Ministers, the SFC may review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner. The scope of matters that can be reviewed is broad, as set out in section 14(2). This includes provision to review the number of post-16 education bodies and the types of programmes of learning or courses, as well as reviewing funding and provision in particular areas.

We agree that institutions must deliver an appropriate level of accountability given the level of public funding which they receive. However, we are very concerned about the potential implications the proposals may have for institutional autonomy. It is one thing for the SFC to review fundable further and higher education provision with a view to making recommendations, it would be entirely another for Scottish Ministers or the SFC to dictate the types of programmes or courses to be provided by post-16 education bodies or that institutions should merge. It is the institutions themselves that are best placed to determine such matters depending upon their individual circumstances.
Additional Information and References

This Advice Paper has been prepared by the RSE Education Committee and signed off by the General Secretary.

In responding to this call for evidence the Society would like to draw attention to the following Royal Society of Edinburgh publications which are relevant to this subject:

- The Royal Society of Edinburgh’s submission to the Scottish Government, *Putting Learners at the Centre* (December 2011)
Scottish Children’s Services Coalition

Introduction:
The Scottish Children’s Services Coalition (SCSC) is a policy-focused collaboration between leading third sector and independent children’s services providers who deliver residential care and special education for children with complex needs (see later for members). They also provide independent advocacy, advice and representation for children and young people who are looked after in Scotland, campaign for positive changes in the care system and consult with children and young people to ensure their voices are heard by policy makers locally and nationally.

Members provide tailored support to children with complex needs from a diverse range of backgrounds and social circumstances. Many have social, emotional and behavioural difficulties, sometimes brought on by being a victim of neglect or abuse, and/or complex developmental disabilities, such as:

- **Autism Spectrum Disorders (ASD):** can include behavioural, medical and psychological interventions, counselling and psychotherapy, complementary therapies and dietary support, to name a few.
- **Aspergers Syndrome (AS):** Support may include communication-based interventions, behavioural therapy and dietary changes.
- **Attention deficit hyperactivity disorder (ADHD):** depending on the severity, the condition can be managed through a combination of medication and psychological, educational and social therapies.
- **Social, Emotional and Behavioural Difficulties (SEBD):** requires one to one counselling and support.

As highlighted above, children with complex needs often need dedicated, specialist care from the highest quality of providers who are attuned to their requirements and able to better equip these vulnerable individuals for the challenges of life.

Provisions of the Bill

**SCSC would like to take this opportunity to provide a specific response to the “Widening Access” provisions contained in the Bill.**

SCSC welcomes this aspect of the Bill which will allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher institutions for under-represented socio-economic groups.
(1) The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement of such description as the Scottish Ministers may specify.

SCSC welcomes this provision. However SCSC would, in this context, recommend that socio-economic groups are defined as part of this Bill, and specifically include children and young people with complex needs, including learning difficulties.

Children and young people with complex needs face additional barriers to entering higher education, and addressing the obstacles to entry through measures such as those outlined in the Bill, reinforced with greater encouragement and financial support, would be greatly welcomed.

There may also be a need for these proposals to consider developing associated guidance on how best to help higher education institutions in both recruiting and supporting the inclusion of young people with complex needs. There are many widening access projects which are currently in place from Universities and Colleges – and it would be beneficial to reflect on how (and if in fact they do) currently engage with looked after children. Awareness and support in accessing these opportunities will be needed as early as possible with those children with complex needs.

SCSC also recommends further education institutions also be included in addition to higher education institutions.

(2) A ‘widening access agreement’ is an agreement under which a higher education institution is to take actions specified by the Council for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).

As above, SCSC recommends that those children with complex needs are defined as a distinct socio-economic group should any ‘widening access agreement’ put in place with a higher education institution.

(3) For the purposes of this section, a socio-economic group is to be treated as under-represented in fundable higher education if participation in such education by persons in that group is disproportionately low.

As above.
**SCSC members**

**Falkland House School**
With over 25 years’ experience, Falkland House School is an all-through residential school based in Fife for boys from early primary to aged 18.

**Mindroom**
A Scottish charity dedicated to creating awareness of all kinds of learning difficulties. Mindroom also provide one-to-one support to families and offer help, advice and training to individuals and organisations who work with people with learning difficulties.

**Spark of Genius**
Spark of Genius provide education, residential care, employment services and software solutions at 17 sites across Scotland to enable young people who need a variety of support to achieve their potential.

**Who Cares? (Scotland)**
A third sector advocacy organisation supporting all of Scotland’s children and young people in care. Who Cares? Provide a voice by working directly with young people, listening to what they say and speaking out with them.

**Young Foundations**
Young Foundations provides a range of services for children and young people – with or without learning difficulties – through residential care, transition and fostering across the UK.
SCDI is an independent membership network that strengthens Scotland’s competitiveness by influencing Government policies to encourage sustainable economic prosperity. SCDI’s membership includes businesses, trade unions, local authorities, educational institutions, the voluntary sector and faith groups.

SCDI welcomes the opportunity to input into this vital debate on the future of education in Scotland. Skills development is a strategic priority for SCDI’s members and one of Scotland’s key economic priorities. The skills in our economy and the quality of our research are key components of our international reputation as an economy and a nation. Our universities and colleges are an international and social strength for Scotland, creating the skills required for future economic growth. Universities alone support hundreds of thousands of jobs and contribute more than £6billion to Scotland’s GVA.

SCDI believes that Scotland should be aspiring to build on its world-class performance in post-16 education, adopting international best practice in order to enable our people to develop the skills that our economy needs. As well as benchmarking our performance against our competitors, this should include creating and building upon partnerships with business. Clearly an important outcome will be maximising the benefits to the wider economy of the education sector, both through producing high quality graduates and college leavers and by commercialising the research expertise resource that is represented by our higher education institutions. The post-16 sector also has an important role to play in encouraging entrepreneurship among the student and graduate population as a whole.

Our economy relies on our universities and colleges. Delivering the right skills in the correct places at the appropriate time is essential for our businesses to compete and the research and innovation produced in our universities is of global economic significance to Scotland. The post-16 system must ensure that students gain the skills needed to make an immediate economic impact upon entering the workforce, that routes are available to enable work-based learning and up-skilling, and that research is commercialised to achieve its full economic potential. Scotland’s strong performance in education has not fed through effectively enough to productivity, a problem which should be addressed.

Education has a key role in re-skilling and up-skilling the existing workforce, which will be essential in improving skills utilisation and adapting to changing technologies for people of all ages. Part-time, flexible delivery is an effective way for people in
employment to engage with education. Both institutional funding and learner support need to be examined and adapted to ensure that they reflect the shift to increasingly flexible delivery and allow a wide uptake of part-time courses for students of all ages.

In the debate on higher education, the role of vocational education, which is critical to the provision of a highly skilled workforce in some of Scotland’s key sectors, is also of great importance. SCDI wants to see parity of esteem between vocational education and the academic route.

Another important benefit of education is a social and cultural one – a well-educated society is an inclusive one. These significant non-commercial benefits need to be considered in the discussion on post-16 learning.

SCDI Comments on the Post-16 Bill at Stage 1

SCDI’s comments will look first at colleges, then at universities before commenting on issues that affect both sectors.

Colleges

SCDI broadly welcomes moves towards the regionalisation of college provision and a needs-based funding model. We wish to ensure that all parts of Scotland, especially the most deprived areas, continue to receive a high level of college provision, matched to local employer demands.

Whilst facing budget reductions, SCDI is concerned that colleges do not have sufficient resource for the development of a regionalisation / merger agenda whilst continuing to offer high-quality education. Regionalisation can deliver long-term efficiencies, however this must not come at the expense of the quality of education delivered to learners over the short to medium term.

SCDI wish to ensure that college regions are sufficiently future-proofed, allowing provision for future college mergers to create new single college regional boards in certain areas. Likewise, mechanisms should exist for colleges to merge or form strategic partnerships with colleges in other regions where this makes sense from an economic or educational perspective.

SCDI is not clear how the mechanisms around the transferring of staff and assets between colleges in a particular college region will operate in practice. The Committee needs to give this consideration in its examination of the draft Bill.

SCDI is also concerned about the mechanisms for setting the remuneration, terms and conditions of principals as a joint arrangement between the regional board and the college. In line with common business practice, the college principal should be a full member of the board of their college in their role as chief executive of the organisation.
Maintenance of charitable status is very important for the college sector. The Committee should take steps to ensure that the provisions in the Post-16 Bill will allow for continued charitable status for colleges.

Universities

SCDI has a number of concerns about provisions in the Bill and their potential impact on the university sector, which has been successful over many years in bringing employment, funding, expertise and global standing to Scotland. In particular, SCDI is concerned that the Bill gives a future government wide powers over the governance, management and operation of universities that could be used to undermine the autonomy of Scotland’s universities.

University autonomy is an important concept which has allowed the continuing success of Scottish universities on the international stage, supported the development of strong partnerships with businesses, and been a driver for the development of the world-leading university sector Scotland can be proud of today. Over the coming years, changes in technology are likely to drive significant changes in the way university education is structured and delivered. SCDI welcomes the existing efforts by Scotland’s universities to better utilise technology and believe that governance arrangements must ensure universities can adapt quickly to develop new and leading modes of learning.

SCDI supports the development by the higher education sector of a governance code for Scottish universities and gave evidence in this respect to the Review of Higher Education Governance. Universities should be subject to a code which is amended from time to time by universities with agreement of the Scottish Funding Council. SCDI believes that the adoption of a governance code is a matter best left to the Conditions of Grant from SFC and does not require primary legislation to enact.

Any code of higher education governance must meet the needs and modes of operation of the full range of higher education institutions operating in Scotland, including small, specialist institutions and the Open University.

Scotland has a long and proud history of providing education to all who can benefit from it, irrespective of background or circumstances. Widening access should form a key part of university outcome agreements from SFC, ensuring the Funding Council takes a lead role in working with universities to develop widening access strategies. Autonomous institutions must remain able to choose the grades and other requirements of students entering courses. SCDI considers that this should not be subject to ministerial specifications on this level of detail.

SCDI has specific concerns around Section 14 of the Bill. We believe that decisions on the number of institutions, the structure of the university sector and the range of courses offered should be for autonomous universities to determine within the existing role of SFC to ensure coherent provision. Universities should continue to engage with employers to ensure provision and skills development meets employer needs.
Cross-sector issues

An issue that could impact on both sectors is that of data collection and sharing. SCDI supports the principle of data collection and sharing; across the world, public and private sector organisations are using data in more open and smarter ways to ensure effective decision-making.

SCDI understands that present arrangements for data collection in universities are deemed adequate, however the Committee should seek clarification on this.

Data collection and sharing in the college sector is currently at a less advanced stage than in universities, and the range of students and modes of study are also more complex. The full costs of developing such a system need to be considered carefully by the Committee.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Scottish Council of Independent Schools

The independent sector

SCIS represents approximately 31,400 pupils, 3,500 teachers and 3,000 support staff in over 70 member schools in Scotland\(^1\). Our schools are independent, including day and boarding, junior, senior and ‘all through’, mainstream, special needs and specialist. All are registered with the Scottish Government’s Registrar of Independent Schools, Education Scotland and, where appropriate, the Care Inspectorate and Office of the Scottish Charity Regulator.

Independent schools in Scotland form an important part of the educational framework – both in terms of mainstream schools and special needs provision. This is particularly evident in the post-16 phase where personal choices on access to qualifications, careful guidance on post-school options and preparation for the rigour and independence of tertiary education, the workplace and adult life are paramount.

We would be happy to discuss with the Committee any of the issues raised and identify appropriate witnesses from the sector.

Leaver destinations

Scottish Government figures no longer include the leaver destinations of independent school pupils (SCIS has recently started its own accumulation of this data). However, the most recent figures, from 2008-9, showed:

- 95% of independent school leavers entered recognised destinations
- 90% of independent school leavers entered full time further or higher education
  - of which 83% entered higher education and 7% further education
- 3% of independent school leavers immediately entered employment
- 2% of independent school leavers were undertaking voluntary work or gap years.

University governance

It is not our place to suggest any form of governance for independent academic institutions such as universities. They, like independent schools, are autonomous bodies with similar obligations as registered charities – although they rely heavily on central government funding. As such, and given the independent school sector’s experience of governance, we would be wary of any further Ministerial control or

\(^1\) [http://www.scis.org.uk/facts-and-statistics/pupil-numbers/]
direction in relation to imposing conditions on universities beyond their current obligations.

**Widening access to post-16 learning**

For many years, independent schools have been committed to widening access to their own provision of education, a process with its roots in the founding purposes of many of the schools and which has been supplemented since 2005 by the specific requirements of the Charities and Trustee Investment (Scotland) Act directed towards charities that levy fees or charges\(^2\).

**Access for under-represented socio-economic groups**

When considering conditions to be placed upon higher education institutions in relation to widening access, consideration should be given to similar moves that have already taken place at school age. Independent schools have been working for years on moving from a traditional academic scholarship model to the provision of means-tested bursaries to off-set fees\(^3\). Given that this move is also a condition of the Act as passed by the Scottish Parliament, it would be an unforeseen and counter-productive measure if any decisions on widened access were at the expense of independent school pupils who may have been from more disadvantaged backgrounds and were in receipt of such financial assistance.

As such, while contextual data should be used to widen the access to higher education institutions of under-represented groups, this should be in the form of *additionally* funded places – as has been suggested, rather than by depriving other Scottish-educated school pupils who meet admission requirements.

**Equality of access to information**

An important issue in widening access is ensuring that young people have access to up to date and relevant information. In the lead up to university applications, personal statement workshops and interview skills workshops are standard procedure in independent schools, to ensure that pupils are as well prepared and well informed as possible about the application process. Provision should be made so that all schools or colleges are able to provide an equal standard of pre-application preparation for their pupils, or for universities to send out staff to all secondary schools and colleges to provide these sorts of workshops. Summer schools and study days, which allow school pupils from under-represented socio-economic backgrounds to visit universities and receive this sort of information, can also meet this need.

**Demystification**

Demystification of higher education is important in encouraging young people from under-represented socio-economic backgrounds to apply, and to stay on their course once they get a place. This can be achieved through offering students the chance to experience what university is like before they apply. Opportunities such as mentoring

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schemes between university students and school pupils, meetings with students and academics, summer schools and study days can all help.

**Attainment levels**
Young people need to know as soon as possible what their post-16 education options are, and what they need to do to achieve these. Pupils taking their Standard Grades (or National 5) should know that these grades will be looked at when they are applying for University, or for college courses, work or training. Pupils who do not begin considering university until after they have taken their Standard Grade exams will not have the opportunity to maximise their success at this level. It is important that exams taken at this level are not just seen as necessary to get on to Highers and Advanced Highers (or A-levels or equivalent), but as important in their own right. Pupils also need to be encouraged to think reasonably early about what they actually want to do at post-16 level, so that they do not get to that point and then realise they have not taken the right subjects, or have not achieved the grades they need. Lack of information and understanding of these things are all barriers which prevent people from under-represented backgrounds from getting into higher education. School staff have a role to play in fostering and supporting pupils’ aspirations (Plewis, 1997).

**Post-16 education and training for more vulnerable young people**
There is much that can be learned from the experience of independent special needs schools in Scotland. Dealing with a wide range of behavioural, social and emotional needs, as well as physical, there are many examples of small schools which succeed in working with pupils from a substantially disadvantaged background. Often cases where serious and applied early intervention could have made a profound difference, small focused centres of excellence are able to bring pupils back to the mainstream of education and working life – often leaving with impressive results on the SCQF scale. The work of the Doran Review into Additional Support Needs in Scotland should be factored into the results of this Bill to ensure that learning journeys for all of Scotland’s children are as open and as fruitful as possible.

John Edward
Director
Education and Culture Committee

Post-16 Education (Scotland) Bill

Scottish Social Services Council

The Scottish Social Services Council (SSSC) is the statutory Non-Departmental Public Body responsible for registering people who work in social services in Scotland, regulating their education, learning and development and generating workforce information for the sector, including the publication of Official Statistics. The SSSC is also one of the partners of Skills for Care and Development, the Sector Skills Council for the social service workforce in the UK.

We have approximately 195,000 workers in the social service workforce in Scotland, over 40 per cent of whom are employed by the private sector. The SSSC’s role is to raise standards of practice in social services, to strengthen and support the workforce and to increase the protection of people who use the services. Our vision is a competent, confident workforce, capable of delivering high quality services that has the confidence of the public, those who use services, and their carers. We welcome the opportunity to provide evidence on the Bill and related issues of post-16 education.

Overview

We have focused our specific comments on the Bill to those areas of most direct relevance to our interests and where we have experience and knowledge.

The Bill’s proposals for reforming post-16 education are welcome, in particular the focus on widening access, on putting the learner at the centre, on taking a more strategic approach and on aligning learning to the needs of employers and the economy. It is fundamentally important to Scotland’s future economic prosperity that employers are closely involved in the skills and vocational education system, in liaison with relevant public sector institutions.

We agree that it is important to equip the next generation with the key competences, experience and skills needed for employment. However, we do not believe this should be limited to young people under the age of 24. There are significant benefits in supporting older adult learners to improve their skills and develop their career – it improves performance, quality of services and creates vacancies at all levels, which provide positive destinations and career progression for young people. The social service workforce has many people who come to work in areas of this sector later in their careers (e.g. in care homes) having previously worked elsewhere. It is important to recognise that many of these older individuals will also require access to learning and development.

We welcome the proposals for enhanced consultation and collaboration, particularly as set out in the Bill sections on college regionalisation. However, there is no mention in any of the provisions about the role of the Sector Skills Councils. Sector Skills Councils are UK bodies tasked with representing the skills needs of employers in their given
sectors. They also play an important role in developing and maintaining National Occupational Standards, which can form the basis of national qualifications, such as Scottish Vocational Qualifications (SVQs). We suggest that for both performance monitoring and for decisions about fundable further and higher education, that their views should be sought. Similarly, we see nothing in the Bill about regulatory bodies and the similar role they might take in informing strategic planning in colleges.

We would like to see greater emphasis on the Scottish Credit and Qualification Framework (SCQF) and on real opportunities for students to use formal and informal learning effectively. We believe that there needs to be a better understanding of what constitutes higher education and that there should be a clear recognition of the place of SVQs within that.

Finally, on funding, we believe that this should take account of the SVQ system and if it is to be truly fair, the Scottish Funding Council should consider funding based on SCQF levels rather than necessarily on types of learning and development. We also recommend there should be funding for part-time as well as full-time learning opportunities, particularly for part-time learning, development and qualifications where employers show there is an industry need.

University Governance (Section 2)

The SSSC welcomes the provisions to improve governance and continues to endorse the recommendations made by the Alliance of Sector Skills Councils to the Scottish Government’s September 2011 consultation “Putting Learners at the Centre”. In particular that:

- employer interests are properly represented in the governance structures of higher education institutions;
- Sector Skills Councils are closely involved in the preparation of future best practice guidance on higher education governance so that the needs of employers are properly reflected in that guidance; and
- employers are more closely involved in the process of designing, developing and reviewing college and university qualifications.

Widening Access (Section 3)

We note the Bill views widening access in terms of under-represented socio-economic groups. We support this but we also support the notion of widening access to higher education more generally, particularly to returning and older workers. The SSSC would be happy to be cited as an example of excellence for the work it has undertaken with the work-based vocational degree in Childhood Practice. This degree builds on previous SVQ learning and articulates directly into university with credit.

It is our view that the SSSC has developed excellent resources and material in our sector to increase use of Recognition of Prior Learning (RPL) and we fully support the commitment to the development of excellent practice across the board in RPL. There still appear to be barriers in colleges and universities to the use of RPL and we would support the Scottish Government in removing those barriers.
As mentioned in the overview, the SSSC has considerable experience of the SCQF and of developing resources and materials. We would be happy to share this knowledge with other sectors. The SCQF is effective and contributes to flexible learner journeys in our sector. We believe better use could be made of the SCQF in defining what higher education is and in improving articulation from college to university. That said, before any legislation to introduce a statutory framework guaranteeing articulation from college to university could be finalised, we recommend there should first be a review of the current system to assess the extent to which measures could be introduced to streamline articulation within current existing frameworks.

There is also a need to increase awareness of the different ways of accessing university courses/qualifications to school students. The SSSC would want to be involved and could provide examples from our sector.

**Tuition Fees Cap (Section 4)**

The SSSC has no specific comments about the cap on tuition fees. However, we have some comments on funding more generally, which we believe are relevant. In particular, we believe it is important to ensure there is funding support for part-time study, particularly where this addresses the needs of both learners and employers. Learners need clear and simple information on what financial support is available to them at the point they select their learning and development. There are currently too many varied options and streamlining would make sense.

We know many employers in our sector are investing in their workforces. However, this is becoming increasingly difficult in the current economic climate and costs of learning and development can be passed on in charges to the service user. We note the number of part-time students enrolled at UK universities continues to decline and we urge further consideration of ways of reducing barriers to access to part-time education.

**College Regionalisation (Sections 5 - 13)**

Although the Bill mentions a range of potential consultees and partners in the provisions on strategic planning, we note there has been no explicit connection made with the strategic planning role held by Sector Skills Councils and the role they could play in planning provision by colleges across Scotland. We believe Sector Skills Councils can provide useful expertise as well as a national employer perspective, which could be increasingly important in a regionalised further education sector.

It would seem appropriate to build on specialist provision where it currently exists rather than relocate or recreate specialisms in other regions. In addition, the real challenge in addressing the issue of national specialisms relates more to funding than location. While we are supportive of the improved strategic planning implicit in the proposals, we are concerned that in practice it may lead to reduced choice and availability in certain instances.

We also continue to have the concern that the net result of the regionalisation proposals could be a two-tier system in which the cities are resource-rich and provide higher-level programmes, but where regions are left to provide less attractive, lower-level provisions.
with fewer resources. Account should be taken of the key role played by further education in offering an alternative route for young people into higher education. For a significant minority of young people, further education provision is a necessary step to enable them to flourish in higher education. Reducing further education capacity may make it harder for employers and employees to access courses and assessors.

We also believe it is important to guard against the new regional colleges and regional strategic bodies becoming overly insular — notwithstanding the emphasis in the Bill on serving the region, there is nevertheless a need for the regional bodies to consider the wider environment and the needs of employers.

**Review of fundable further and higher education** (Section 14)

The SSSC is very supportive of the proposals to give the Scottish Funding Council a key role in reviewing provision, which should deliver consistency and quality. We suggest that Sector Skills Councils should have a role in such reviews.

The social service workforce with approximately 195,000 workers is a significant one in terms of the social and economic benefit it brings to Scotland. It is a sector that has many points of entry and through the SSSC work in ensuring a qualified workforce, it is a sector that continually develops its workforce and is committed to true lifelong learning. We recognise the needs of 16-24 year olds are important, but we emphasise the benefits of also supporting older learners.

The SSSC is now a producer of Official Statistics (namely, the annual Workforce Data Report) and therefore we aim to ensure we provide high quality labour market intelligence. We would welcome the opportunity to extend this expertise into regional labour market intelligence. In addition, we are looking at ways we can work more closely with employers in the use of this intelligence and to ensure that their ‘front-line’ experience informs how we produce and share that intelligence. We also hold data on learning and development (eg the uptake of SVQs), which could usefully inform reviews and we would be happy to offer our input into any future reviews under this legislation. We believe that sectoral labour market intelligence and performance indicators could be used more systematically to measure the extent to which specific courses of study can be linked to eventual employment outcomes.

**Data sharing** (Section 15)

The SSSC supports the proposals for data sharing. We would find it helpful if the Scottish Government would share any relevant information with workforce regulators and professional bodies.

**Conclusion**

We believe that higher and further education should be made progressively more flexible, providing greater opportunity for part-time study, work-based learning and up-skilling and re-skilling of the existing workforce.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Scottish Trade Union Congress (STUC)

The STUC is Scotland’s trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 632,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black/minority ethnic members, LGBT members, and members with a disability, as well as, retired and unemployed workers.

The STUC welcomes the opportunity to give evidence to the Education and Culture Committee on the Post-16 Education (Scotland) Bill.

Introduction

The STUC has long been concerned about the governance in both the Further Education (FE) and Higher Education (HE) sectors in Scotland. We were therefore pleased to take part in the Governance Reviews in each of these sectors and supported the findings of both the Griggs and the Von Prondzynski reviews.

The STUC therefore welcomes this Bill’s general aim to improve transparency of governance structures in FE. However, we are concerned that these significant changes are being made in the sector at a time of severe cuts to funding and we are worried that this reorganisation places further pressure on stretched budgets, ultimately to the detriment of staff and students and the quality of education provided in the sector. The STUC believes that the first priority for further education in Scotland should be the provision of good quality education for students, and therefore the changes in this Bill should not be attempted without additional funding for this sector.

The STUC does, however, support much of Bill and we particularly welcome the requirements to consult with trade unions that have been included throughout. We also welcome the provisions in the Bill to widen access to universities and the inclusion of a legal requirement for universities to meet standards on governance. However, we have some concerns over the powers that are being transferred to the Cabinet Secretary, and while some Ministerial scrutiny is necessary, the proper checks and balances to this power should also be included to ensure a well functioning education sector in the longer term.
Higher Education

We welcome the provision in the Bill to make good governance a legal responsibility. However, a code of governance is presently being developed in Scotland but will not be finalised in time to be considered during the passage of the Bill. The STUC is concerned about this disconnect and is unclear how the work on the code of governance fits with this Bill or indeed the wider implementation of the Von Prondzynski review.

Further, the code is being developed in a manner that is contrary to principles of good governance and contrary to the Cabinet Secretary’s Parliamentary statement on 28 June 2012, with representatives of both staff and students being excluded from the steering group. While trade unions have been involved in giving evidence to this review, we are concerned that there is no transparency within the process and it is difficult to understand how our evidence is being used. We are also concerned that there will not be an opportunity to give feedback on a draft code, as is normal practice. Primarily, however, we are unclear why this review repeats many of the questions and issues considered as part of the Von Prondzynski review, which was conducted in a more transparent way with representatives from the whole sector involved. Equally the code of governance seems a much narrower piece of work which does not consider legislative change, despite the existence of this Bill and the proposal to have a subsequent Bill focused on Higher Education.

Essentially the STUC is concerned that the work on the code of good governance appears out of step with the rest of the work in this sector in terms of timings, but equally in terms of approach and we feel time would be better spent looking at the implementation of the Von Prondzynski review, rather than focusing on a narrowly defined project by the Chairs of Court that has little connection to the principles of good governance in its own approach.

Widening Access and Tuition Fees

The STUC welcomes the commitment to widening access across Scottish Universities and welcomes the emphasis on this within the Bill. It must be recognised that widening access agreements will in practice be included in the outcome agreements between the funding council and institutions. We have concerns over how these will be agreed and there has to date been a lack of consultation with staff and students. We therefore recommend that the legislation includes a responsibility to consult with staff and students in this section in line with wording elsewhere in the Bill. Further, the main outcome should not just be the admission of students from diverse backgrounds but an increase in graduates from diverse backgrounds that then go on to find employment.

The STUC continues to support the policy of no tuition fees for Scottish domiciled students. We would, however, recommend that this Bill provides clarity for rest of UK students on what they will pay if attending a Scottish University, which should not be more than they would pay at their home institution and should be adjusted to take into
account the fact that Scottish degrees are often longer than degrees in other parts of the UK.

**College Regionalisation**

The STUC is concerned that College regionalisation is happening at a time of severe budget cuts within the sector and that cost cutting has become the primary aim of any reorganisation, rather than educational benefit. Colleges have already cut over 1300 jobs, courses, including a range of vocational courses, are being cut and education is being provided in a less flexible way, with part time provision being cut back and flexible patterns of learning becoming less available across the sector as a whole. Thousands of people were unable to find a college place this year with waiting lists reported to be around 21,000 across Scotland. Currently there is no way to be certain how accurate this figure is, as some students will be applying for courses at more than one college and current data collection methods do not allow for accurate data to be collated. The provisions of this Bill, however, should improve this situation and it is imperative that accurate and honest data is presented for the FE sector which allows the true impact of these reforms and the ongoing budget cuts to be understood.

The Government in the policy memorandum that goes along with the Bill state that the regionalisation agenda is expected to provide savings of around £50m per year by 2015/16. The STUC is concerned however, that savings are expected to be achieved through sharing services. This approach to service delivery still has many advocates despite the lack of evidence of it either bringing improvements or making any savings of the type needed to deal with the current spending cuts. We therefore recommend caution around the level of savings proposed as no evidence is provided as to how these savings will be achieved and experience of these types of projects in other sectors suggests they are unlikely to be forthcoming.

The STUC hopes, however that the changes proposed in the Bill will provide more coherence in the sector, more transparency with regard to outcomes for students and more rigorous and effective governance across the sector.

We do, however, have some specific changes that we would like to see in the legislation.

Firstly it is important that article 23L which deals with the transfer of staff and property between assigned colleges by the regional strategic body includes a reference to the TUPE rights of staff within the colleges. It is not useful to have a clause within Scottish legislation which ignores or is silent on the employment rights that exist for staff, particularly when setting out a power that so manifestly interacts with these rights. There is clear precedent for this in other legislation passed by the Scottish Parliament. For example The Water Industry (Scotland) Act 2002 sets out:
23 Transfer of staff

The Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I.1981/1794) apply to the transfer of functions by section 21, whether or not they would so apply apart from this section. This example provides a useful precedent and the inclusion of a similar clause in this Bill would make the situation for staff, colleges and the regional board much clearer going forward.

We are also concerned that the Bill makes provision to transfer staff between regions. The STUC is concerned that this provision is inappropriate given the distances involved in such a transfer and therefore should be removed.

In addition we would also like to see the following issues being dealt with:

- The STUC supports the recommendation by Von Prondzynski that trade union representatives should be on HEI governing bodies and believes that this should be extended to the FE sector’s regional and non-regional college boards.
- The STUC does not believe that Ministers should have the right to remove and bar student or staff members from boards, since they are elected not appointed. The Bill should be amended to reflect this.
- Before varying the rules for the election of student and staff members, the board should have to consult trade unions and student representatives. The Bill should be amended to take account of this.
- Consideration should also be given to the remaining provisions of the 1992 Act and the 2005 Act to ensure that consistency of approach is maintained across the legislation applying in this sector. This is particularly useful with regard to provisions around consultation of trade unions and student representatives.

Conclusion

The Post-16 Education (Scotland) Bill is primarily about reorganising the FE sector. However it should not be seen as a tool in a cost cutting agenda or a method of achieving large savings across the sector. Ultimately if the Government want to see a well functioning further education sector they must be prepared to fund it.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Scottish Youth Parliament

Introduction and Context of Evidence

The Scottish Youth Parliament welcomes the opportunity to comment on the proposed Post-16 Education Bill. As an organisation representing young people aged 14-25 from all parts of Scotland, these proposals are likely to have a substantial impact on the lives of our Members (MSYPs) and those of the young people they represent. We would welcome the opportunity to provide further information about any of our evidence listed below or consult further with our MSYPs during the course of the Committee's consideration of the Bill.

Our evidence is drawn from extensive consultation with young people on areas contained within the Bill and other issues closely related to post-16 education over the last two years. These are drawn from our 2011-16 youth manifesto ‘Change the Picture’; extensive engagement with our membership to inform our response to the Scottish Government’s ‘Putting Learners at the Centre’ consultation and the outcomes of debates and votes at our National Sittings.

Statements from the ‘Change the Picture’ youth manifesto

SYP’s youth manifesto, ‘Change the Picture’ is based on 42,804 consultation responses from young people. The following relevant statements are contained in it, and attracted majority support from young people. More information can be found at http://www.syp.org.uk/our-manifesto-W21page-82-

“The success of Scotland’s students must not be compromised by financial worries. Immediate action needs to be taken to ensure students don't face poverty and hardship in pursuit of their education.” 84% agreed, 6% disagreed, 10% were ‘not sure’.

“All young people should have the chance to participate in work experience.” 92% agreed, 4% disagreed, 4% were ‘not sure’.

“Tuition should remain free in further and higher education. Top-up fees are not an option for a society which puts ability to learn above ability to pay.” 85% agreed, 6% disagreed, 9% were ‘not sure’.
Debates at National Sittings

The SYP holds three National Sittings each year, where our full membership gathers to debate and vote on policy statements. The following recent motions were passed by our membership:

“Private further and higher education institutions should not have a place in Scotland.” October 2012

“Scottish universities which have drastically increased their tuition fees for students from the Rest of the United Kingdom to unprecedented levels should be criticised for their poor judgement.” March 2012

“SYP calls for the Scottish Government to invest in education and fund a £7,000 minimum income for the poorest HE students and create a new entitlement to student support for FE students.” October 2011

Recommendations from ‘Putting Learners at the Centre’ response

To inform our response to the consultation, SYP held a series of debates, votes and focus groups with our full membership at our October 2011 Sitting. Our full response can be found at: http://www.syp.org.uk/img/consultations/Putting%20Learners%20at%20the%20Centre_SYP%20Response.pdf, within which we made the following recommendations:

Creating a Learner Journey

Good quality careers advice should available to young people at every stage on their learner journey. Efforts should be undertaken to ensure consistency of provision in all parts of Scotland.

Increased promotion of Skills Development Scotland’s website and other careers advice resources.

The proposals for a post-qualification application system (PQA) as part of UCAS reform have the potential to add significant stress and disruption to young people at a critical point in their lives. A PQA should not be pursued.

Widening Access to Post-16 Learning

There should be an emphasis on the long-term development of young people as part of the labour market, emphasising the provision and availability of apprenticeships and placements which will equip young people with important skills and experience on which to build careers.
The Opportunities for All guarantee of a place in education and training appropriate to their needs and circumstances for all 16-19 year olds in Scotland has the potential to make a real difference for young people and should be welcomed.

Youth workers and careers services should be supported and resourced to actively track and focus promotion of Opportunities for All to 16-19 year olds most in need of support.

New approaches should be pursued to engage young people through formal and non-formal education routes. These might include summer school programmes leading to SQA qualifications, and working to tailor learning around young people’s interests.

There should be more choice in courses available pre-16 to inform choices post-16. This should include an increased provision of vocational courses to open to all learners, regardless of perceived academic ability.

The Opportunities for All guarantee should remain focussed on 16-19 year olds, as 20-24 year olds have distinct support needs.

Individual tailored packages of support should be available for 20-24 year olds who are not in education, employment and training to reflect their age and social circumstances.

Funding for youth projects and groups should be a priority for local authorities.

The Scottish Government should seek out and consider examples of good CLD and youth work practice, with a view to rolling these out across the country.

Learner-centred youth work has a vital role to play in the development of a Post-16 education strategy that delivers for all Scotland’s young people.

The Scottish Government should be required by law to make sure as many young people from poor backgrounds are able to go to university as those from well-off backgrounds.

Universities who do not meet Widening Access Outcome Agreements should face penalties, including fines.

A legal duty on universities to take into account the schools that applicants attend should be pursued.

**Skills and Jobs**

Learners should be encouraged to attend college for part of their studies, either to study courses not offered at their school alongside their Highers, or to learn practical skills by studying a vocational course, studying only core subjects at school.
The possibility of young people being allowed to study vocational courses or go to a trade apprenticeship from age 14, returning to school to take part in Maths and English courses only, should be given consideration.

The Scottish Government should work with colleges and universities to encourage them to provide courses which match demand for vocational skills locally.

The Post-16 education strategy should not be used as a substitute for jobs. The Scottish Government should take all action to ensure that appropriate jobs for young people are created to meet demand, working in conjunction with the UK Government where necessary.

Teaching job-specific skills is one of the biggest priorities of education, but not the only one. A balance must be struck between teaching vocational skills and allowing young people to develop and decide for themselves what opportunities they wish to pursue.

All young people should have the chance to participate in work experience.

A focus on work experience placements being of good quality and lasting longer than one week is very important for them to be of meaningful value to learners.

Examples of learners undertaking work experience placements in lieu of a subject for a school year should be considered for a wider roll-out.

The role of committed work experience co-ordinators in schools should be developed.

**Student Support and Funding**

Universities should be required to use some of the income received from fees from students from the rest of the UK to provide additional targeted bursary support to students from poorer backgrounds.

Further research should be undertaken into the basic financial support needs of learners, particularly FE students and post-16 school pupils, to inform an entitlement to support. In particular attention should be paid to travel costs and the viability of current travel expense schemes.

Learner support should remain means-tested, but research should be undertaken into the actual level of parental contributions to learner support, with appropriate adjustments made to the system based on the outcomes of this.

Consideration should be given to regulating EMA spending, with a view to reimbursing genuine living and travel costs incurred in the course of learning.
Formal partnership agreements between student unions and universities should be created, guaranteeing student representation and setting out what students and universities should expect for each other.

The Educational Maintenance Allowance or similar type of funding should be available to young people who engage in Community Learning and Development, subject to particular conditions.

These conditions could include specific agreed outcomes being met, including level of involvement and time committed to engaging with CLD programmes.

The funding should be focussed on learners from the poorest backgrounds, with means-testing or an appropriate equivalent system being used.

**Joined Up College and University Structure**

The Scottish Government considers carefully the impact of any move to a regional college structure of disruption to learning and increased travel times and costs incurred by learners.

All steps are taken that any regional structure does not reduce flexibility of learning by reducing the local options that are practical for learners to study at.

A regional college structure should not be seen simply as a cost-saving measure. Any money saved through mergers and regional working should be directly reinvested in education.

Moves towards a regional structure should be delayed until the legitimate concerns of learners, as outlined above have been satisfactorily addressed.

Proposals to encourage universities to work closer in partnership and in some cases merging are more appealing to learners than a regional college structure, although there are a number of drawbacks that make it less than ideal.

Encourage closer partnerships between colleges and universities have the potential to be more mutually beneficial to learners and institutions.

Examining formal partnership structures between colleges and universities in the same local area would be preferable than regional colleges or university mergers.
Introduction

The Secretary to the Board Network is a forum for the development of Secretaries and Clerks to Boards of Management of colleges in Scotland and also promotes good governance practice in the college sector. The Board Secretary provides advice and expertise on developments in governance both inside and outside the sector to enable Boards to function effectively. Board Secretaries therefore have a sound general understanding of what constitutes good practice in governance.

To complement the written evidence from Colleges Scotland and individual Colleges on the general principles of the Post 16 Education (Scotland) Bill (the Bill), the Board Secretary Network has developed scenarios around some key aspects of the legislation, particularly in relation to the relationship of the proposed new ‘Regional Strategic Bodies’ with College Boards in multi College regions.

The idea for developing scenarios arose from a helpful and informative session with Col Baird, at which around 20 Board Secretaries were present. These scenarios are intended to contextualise some potential consequences of the Bill in order to inform the development of the legislation. It is hoped that they will provide the Committee with useful illustrations of some potential governance issues.

The scenarios relate to the following areas:

1. The appointment of the Principal in a multi College Region
2. College Board size in a multi College Region
3. Accountability in a multi College Region
4. Commercial income generation in a multi College Region
5. The removal of the statutory bar on Councillors chairing College Boards

Scenarios

1. The appointment of the Principal in a multi College Region

For multi college regions, the Bill creates ‘Regional Strategic Bodies’ which will be responsible for the appointment and terms and conditions of the Principal of the Colleges in region. The Colleges in the Region will be the Principal's employer.

Scenario: The Regional Strategic Body for Region A (which encompasses Colleges A, B & C) is delighted with the Principal of College A’s performance. He has focused on the directives given to him by the Regional Strategic Body and a substantial pay increase for the Principal is approved. The Board of College A is directed to implement this pay increase. However, the Board of College A is not as satisfied with the Principal’s performance, indeed the Board believes the Principal has prioritised fulfilling the Strategic Regional Body’s directives to the detriment of leaners in the
College A’s locality and that, in their view, College A’s finances are not secure and sustainable. On that basis, College A’s Chair implements disciplinary procedure against the Principal for mismanagement of the College. The Principal engages a legal team to fight this disciplinary action and a lengthy contractual dispute ensues, with the College arguing that as employer they are entitled to manage their staff member and the Principal contending that they were appointed by the Regional Strategic Body and therefore the College, despite being their employer, has no mandate. This attracts much adverse publicity to the sector and diverts essential funds from learners.

2. **College Board size in a multi College Region**

For multi college regions, College Boards would be reduced in size, from 10-16 members to 7-10 members. Given that there will be one staff Board member and one Student Board member, this potentially means that just 5 – 8 external individuals will be undertaking all the Board work.

**Scenario:** The Chair of College D has real concerns and is considering her position. New Regional directives have significantly reframed College D’s 2015-16 financial strategy. Strategic planning in regard to the Estate is on hold, as capital allocations are being re-considered in the light of a major new build at College E (another College in the multi college region).

Two Board members from the Finance and Estates Committee suddenly resign, stating their role is now impossible, given the number of meetings and lack of clarity regarding their responsibilities. Now, she is hearing that no Board members are prepared to work on the Finance and Estates Committee. Recruitment for new Board members has failed to attract the calibre of individuals expected for public service in Scotland.

There is too much to do, and too few skilled individuals to support the College leadership staff. How can she be confident that appropriate governance scrutiny, let alone leadership and direction, is being given to the College D’s plans for the following year?

3. **Accountability in a multi College Region**

**Scenario:** In the construction department of College D, a student traps his hand in a machine, resulting in permanent damage. Subsequent investigation by the Health and Safety Executive identifies that the student may not have been adequately supervised to operate the machine as the lecturer had another class to cover at that time. A prosecution under the Health and Safety at Work Act is a real risk. The Board of College D’s defence is that the lack of supervision was as a result of funding decisions by the Strategic Regional Body, which is responsible for planning and estate decisions and therefore for the safety of staff and students on the estate. The Regional Strategic Body is therefore accountable and should be held liable for any breach of safe working practices. The Regional Strategic Body contends that Board College D is the responsible for managing and conducting the College and therefore accountable under the Health and Safety at Work Act. This attracts much adverse publicity to the sector and diverts essential funds from learners.
4. Commercial Income generation in a multi College Region

**Scenario:** The Board of P College has close business links in the local community and representatives attend CPP, Chamber of Commerce and local employer events. When a need for short course provision is identified, P College has a good reputation for working with employers to meet that demand and has generated commercial income through that route, allowing investment in P College to further benefit P learners and the locality. The Regional Strategic Body of P,Q & R Colleges decides on a new campus development at R College, which has historically struggled to be financially stable and has a previous history of an unmanaged deficit. The funding of this diverts resource from P College. Board members of P College resign in protest, stating that resources generated by the people of P are being wasted. P College has an aging campus that requires upgrade, but cannot invest in essential repair as a result of a new campus build at R, funded by P’s income. The Local Authority joins the fight, demanding that the needs of P’s learners are met. Commercial income through P College dries up as a result of the reputational damage and consequently there is less resource available in the region as a whole to meet learner needs.

5. The removal of the statutory bar on Councillors Chairing College Boards

**Scenario:** Councillor from Local Authority B chairs the Regional Strategic Body for B&C Colleges. Changes to the curriculum are proposed that will necessitate resource from C College being redeployed at B College. The Board of C College raises concerns that the Chair has a conflict of interest and is trying to promote B College’s interests at the expense of C College and its locality, in line with his mandate to represent the B area’s constituents. Further, the Chair is a Councillor of the White Party and the White Party manifesto has recommendations regarding Colleges that the Board of C College contends prevent him from considering the matter independently. The Board Secretary is concerned there could be a perception that the Chair is not able to demonstrate independence and objectivity in decision making in line with the Code of Conduct for members of Public Bodies. The Board Secretary therefore advises that the Chair should declare an interest and step aside from these discussions. Curriculum development is a major strategic area that dominates the agenda for the Regional Strategic Body over the next 12 months, with the Chair unable to provide leadership through this period as a result of a potential outside interest.
Introduction
Sense Scotland is a leader in the field of communication and innovative support services for people who are marginalised because of challenging behaviour, health care issues and the complexity of their support needs. The organisation offers a range of services for children, young people and adults whose complex support needs are caused by deafblindness or sensory impairment, physical, learning or communication difficulties. Our services are designed to provide continuity across age groups and we work closely with families and colleagues from health, education, social work and housing.

We welcome the opportunity to comment on the proposed Post-16 Bill. Our comments are to do with the lack of provision made in the bill for young people with complex support needs - an area that we would hope to have seen covered by proposals on widening access and on data sharing.

Widening access
The bill’s proposals on widening access are designed to improve opportunities for under-represented socio-economic groups to attend higher education institutions. Widening access should also be considered within the context of Further Education (FE) - more specifically including measures to improve provision for young people with complex support needs leaving school.

For some years, this has been regarded as a problem to be addressed by improving transition planning, through joint inter-agency working, single child’s plan arrangements, better data sharing and other matters of process. While changes in working practices are welcome and will help, they do not address what young people with complex support needs will do with their lives once they leave school.

Sense Scotland continues to receive referrals for young people who will be leaving school at 16, not because they are ‘ready to move on’, but because the school is not able to continue to support them.

Since the late 1990s there has been a progressive dilution of provision for young people with complex support needs leaving school. In part, this has been caused both by extending the definition for complex support needs and by financial cuts:
Extending the definition of complex support needs. The original remit for the Beattie Committee\(^1\) was to improve post-school provision for 1\% of school leavers, those young people considered to have complex support needs (CSN). During the lifetime of the Committee that remit soon became 20\%, to include those not in employment, education or training (or NEET, later to become More Choices more Chances). More recently, the Doran Review\(^2\) was set up to address concerns on education and care arrangements for children and young people with complex support needs, including transition arrangements. One recommendation was to consider provision for the 16-24 year olds who faced fewer and fewer post-school opportunities. The Scottish Government responded positively but, in doing so, once again extended the scope of CSN to include looked after children, among others. Scottish Government’s response also included a commitment to address provision for CSN within the forthcoming Children & Young People’s Bill. We are concerned that that bill will focus on inter-agency arrangements, concentrating on process rather than improving provision post-school. It would be helpful if the Post-16 Bill could include, under widening access, positive proposals for changes to improve the lives of young people with complex support needs.

Financial cuts. The financial cake has been cut into ever smaller pieces to cover a wider range of needs - and compounding this effect has been the impact of budget cuts resulting in a reduction in the size of that financial cake. Irrespective of the reason for the cuts imposed – relating to budgets available to, and allocated by, local authorities and colleges, and delivered through, for example, changes to eligibility criteria and resource allocation arrangements? – the net result is that young people with complex support needs leaving school have fewer opportunities to live the lives they would want to lead. Post-school provision is one area which could do a lot to improve life chances.

In our response to the Scottish Government consultation on reforming post-16 education *Putting learners at the centre* we expressed frustration that so few of the consultation questions were of direct relevance to the people we support and their families. Where funding cuts of £75m took place in the FE sector these were partly compensated for by a later £15m injection; however none of that compensation applied to the people we support. This is despite Scottish Government itself having acknowledged the problems of securing appropriate provision for young people with complex support needs\(^3\).

\(^{3}\) Further Education and Complex Needs: Views of Children and Young People. www.scotland.gov.uk/Publications/2006/03/03103843/0
The draft Bill is an opportunity to include, under widening access (in FE), measures such as:

- Extending current pathways to allow opportunities for third sector organisations to provide integrated arrangements for young people with complex support needs. Pathways should offer integrated support, and planning finalised before the young person leaves school. It would cover transport, care and accommodation together with learning opportunities.

- Courses that have meaning in the lives of young people with complex support needs. Too often college courses are not designed around their needs, and/or in many cases they are not allowed to attend courses that are of interest them, often on the basis of spurious grounds of ‘health and safety’.

- A requirement on Skills Development Scotland (SDS) that they show how they have improved the life chances for young people with complex support needs.

- Encouraging participation of third sector organisations through Education funding routes, to provide accredited learning opportunities, resulting in awards for the learners. For example, through its Training and Learning Centre Sense Scotland adapts and delivers awards within the recognised ASDAN scheme – enabling young people with complex support needs to continue the learning begun in schools, and to further develop portfolios of evidence. At present these service users are not funded through Education to take up these opportunities, even though recent evidence shows that learning disabled people have been disproportionately disadvantaged by the reduction in FE college places.

Data sharing

Where data is shared about people it is reasonable for them to expect some advantage to come out of that process. Where the state is the one engaging in data sharing, as it would be in this case, it is imperative that data sharing has positive outcomes for them. At present it is difficult to see what is ‘in it’ for young people with complex support needs to have data shared about their post-school experiences. By including specific commitments to improve their life chances the draft Bill would go some way to assuaging the fear of young people’s families and carers that data sharing is not an exercise in sponsored state surveillance, but an initiative to track improvements in provision.

We would urge the government to take the opportunity of developing the Post-16 Bill to include specific measures on provision for young people with complex support needs. These could be included as elements of widening access and of data sharing.

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4 Putting learners at the centre refers to implementing 16+ Learning Choices “for our most vulnerable young people” but consideration given to young people with complex support needs is minimal.

Equality Impact Assessment

Finally, we note that no Equality Impact Assessment has been included for consideration although both Financial and Policy Memoranda are provided.
The Open University is the leading provider of flexible learning in Scotland and with its open access policy, plays a unique role in society. The OU in Scotland is open to people, places, methods and ideas, and promotes educational opportunity and social justice by providing high quality university education to all who wish to realise their ambitions and fulfil their potential.

The OU in Scotland currently offers more than 500 modules to 16,000 students and has been ranked first for overall satisfaction by the National Student Survey for the past six years.

The Open University in Scotland welcomes the opportunity to submit evidence to the Education and Culture Committee on the Post-16 Education Bill and would be happy to expand on any of the points below.

Governance

The Open University was created in 1969 by a Royal Charter, which lays down its governance arrangements. The Open University strives to be an exemplar of good governance in the HE sector and is actively engaging with the current exercise, being undertaken by the Committee of Scottish Chairs, to draft a Scottish Code of Good Practice for Governance for Scottish higher education. We fully support the policy memorandum of embedding this new code as a standard of good practice but do not believe there is a case for legislation in this area.

Under the Further and Higher Education Act (Scotland) 1992, The Open University in Scotland is a ‘designated institution’ and, since that time, has received its teaching grant from The Scottish Funding Council (SFC). However, as The Open University delivers higher education across all four nations of the UK, it currently reports to four different governments and three different funding councils. Given these distinctive arrangements, The Open University in Scotland fully supports Universities Scotland’s position that guidance on governance - ideally drawn up by the Committee of Scottish Chairs – rests with the Scottish Funding Council and should be founded on a ‘comply or explain’ basis. Such an arrangement would allow The Open University to meet any new requirements and thereby, continue to deliver higher education in Scotland as well as the rest of the UK.

In addition, The OU in Scotland supports Universities Scotland’s position that the reference to ‘management’ in Section 2 of the bill is inappropriate and should be removed to ensure that the governing body of any HEI can oversee and be held fully accountable for the operation of its institution.
Widening access

Widening access to HE is at the core of The Open University in Scotland’s mission and we have doubled the number of students living on low incomes\(^1\) coming to the OU over the last ten years (from 2,500 to 5,000). While The Open University supports the view of Universities Scotland that legislation in this area is unnecessary, we would like to make a number of points related to this aspect of the bill:

Accessible higher education

The bill refers to access agreements, which aim to increase participation in HE from ‘persons belonging to socio-economic groups which are under-represented’. The Open University in Scotland would suggest that in order to encourage greater access to HE there is a need to look beyond measuring the progress of broad socio-economic groups and to consider the availability of different modes of provision across the sector. For example, part-time and/or distance learning is the only viable way for many students in work (particularly shift work), students with caring commitments, students in rural areas or students with disabilities to access HE.

Use of Wider Access indicators

The wider access agreements for HEIs referred to in the bill will need to be underpinned by an agreed set of indicators to measure progress. The evidence suggests that while location-based indicators such as SIMD20 may provide a helpful indicator in densely populated areas, they fail in rural and semi-rural communities where there are a limited number of MD20 data zones. Given the large number of OU students in rural areas, data from The Open University in Scotland illustrate this point well: in 2010/11, there were 5,000 OU students in Scotland in low household incomes, yet in the same period only 2,000 students were classed as living in SIMD20 areas.

The Open University in Scotland therefore supports a basket of indicators to measure progress on widening access and would recommend that further steps are taken to provide a full picture of student population in Scotland (see point on data collection).

Scottish Government policy

The Open University fully supports the Scottish Government’s commitment to increase the number of students from non-traditional backgrounds. However, it would be helpful to have greater policy direction in this area. For example, it is not clear whether the Scottish Government’s overall aim is to increase the proportion of under-represented groups entering the HE sector as a whole, or to increase access to more selective universities.

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\(^1\) Households in receipt of benefits or with an annual income below £16,500
The OU in Scotland has made significant strides in widening access, particularly for students in communities with limited experience of university, and we believe our supportive and flexible model could be built on to increase access to more selective universities. Evidence suggests that students from non-traditional backgrounds are less likely to apply and/or take up offers from selective universities. If the government wishes to widen access to these universities, the OU could support this aim, by offering the first year of a degree to students from under-represented groups, before encouraging them to articulate into the second or third year of a degree course at a more selective university. Moreover, The OU could start such a scheme in schools with low progression routes to higher education, building on our Young Applicants in Schools Scheme that currently delivers OU modules to 570 S6 pupils in over 100 schools across Scotland.

Parity of Esteem

The Open University in Scotland notes that while there is provision in the bill to encourage the HE sector to work towards a student population that more broadly reflects the population as a whole, there is no similar provision for the college sector.

Placing an onus on one sector to broaden the background of its students, but not the other, undermines the Scottish Government’s policy of supporting parity of esteem, by suggesting one sector offers greater value to the student than the other. Moreover, in a capped system, higher education would be more accessible for students from non-traditional backgrounds if students from higher socio-economic groups were encouraged to apply for courses in the college sector.

College regionalisation

As The Open University in Scotland works closely with many of Scotland’s colleges, we have a particular interest in the college sector and would like to raise a number of specific points in relation to college regionalisation.

Articulation

The Open University in Scotland currently has articulation agreements with 24 of Scotland’s colleges which we will be working to maintain as the college sector reorganises. Articulation is actively supported by The OU in Scotland with a range of different models and in 2010/11, over 900 new OU undergraduates in Scotland (14%) entered with an HN or equivalent qualification.

In 2012/13, The OU in Scotland aims to increase the number of students progressing from colleges to OU degrees by 5% on 2010/11 levels. However, we are concerned about the possible impact of the increasing focus on full-time provision at colleges on articulation, given that over a third of students on HN courses in 2009/10, were studying on a part-time basis. If there are now fewer HN courses offered on a part-time basis, a significant number of students in Scotland may be deterred from accessing higher education.

* Data requested from SFC shows that 18,767 students in Scotland’s colleges were studying part-time at an advanced level compared to 29,886 studying at full-time intensity.
anecdotal evidence suggests), there may be less opportunities for students from non-traditional backgrounds to enter university via this route.

**Collaboration**

The Open University in Scotland welcomes the provision in the bill that regional strategic bodies, as well as regional colleges, should seek to collaborate with any ‘post-16 education body…… which provides fundable FE or fundable HE in the locality of the regional college’. In relation to this aspect of the bill, it is worth highlighting that The Open University, through its open supported learning model, provides HE across Scotland and has students in every postal district, with its participation rates highest in rural local authorities, such as the Highlands and Islands where our student headcount is over 60 per 10,000 adults.

The Open University in Scotland would welcome the opportunity to work in partnership with other education providers to offer students a wider range of courses without duplicating effort. As well as its partnerships with 24 colleges, The Open University also collaborates with Scottish HEIs to avoid duplication, as well as undertaking collaborative research.

A distinctive aspect of OU modules is that they are developed by a team of experts in the field, which makes their content comprehensive and balanced i.e. not based on the expertise of one particular academic. As such, our modules lend themselves well to complementing existing courses delivered by other education providers.

To further support students who want to study modules from more than one HEI, institutional funding and student support arrangements should be reviewed so collaboration rather than competition is genuinely encouraged between HEIs.

**Review of further and higher education**

The Open University in Scotland shares Universities Scotland’s concern that Section 14 of the bill is unnecessary. However, we would like to make two points in relation to the provisions contained in this section which would allow SFC to undertake reviews of fundable higher education:

**Types of provision**

We note that the bill allows the SFC to review, ‘the types of programmes of learning or courses of education provided by post-16 education bodies’; we would anticipate that this includes reviewing mode of provision, to ensure part-time and distance learning is adequately supported so those groups highlighted above (in work, in rural areas or with caring responsibilities) can access HE courses.

**Funding arrangements**

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3 Section 10 (1) 23C
4 Section 14 A (2) (c)
The bill specifies that when undertaking a review, the SFC should also consider ‘the efficiency or effectiveness of the arrangements for the funding or provision of fundable further education or fundable higher education’\(^5\). It is worth noting here that The Open University in Scotland is the only Scottish HEI to be funded on an output basis i.e. our teaching grant is based on student completions, not on student enrolments. We believe there should be a level playing field in terms of the basis on which the teaching grant is allocated so that all HEIs have access to the same opportunities and are subject to the same challenges.

Data sharing

The Open University in Scotland would welcome greater clarification on the provision in the bill around providing information to Skills Development Scotland, particularly whether this requirement extends to higher education institutions.

If the provision is intended to include HE students, we would be concerned that it only requires data to be gathered on ‘young person[s] aged over 15 and under 25’\(^6\). As there are currently nearly 98,000 students aged 25 and over in the HE sector\(^7\) in Scotland we would wish to ensure that data are collected on all students regardless of their age.

The Open University in Scotland would further like to highlight that although the HE sector collates and provides a significant amount of data to HESA, data on mature and part-time students is patchy, leading to an incomplete picture of our student body. By HESA’s own admission, ‘For part-time students, the information available is often not as comprehensive as that for full-time students, [in] particular, information on NS-SEC and school type is not available’\(^8\).

The OU in Scotland appreciates that there are particular challenges around collecting data on part-time and mature students, but to ensure a comprehensive profile of our student body, it would be helpful if the sector was required to take steps to consider how it could collate better data on mature and part-time students.

Funding for part-time students: ILA200 and PT Fee Grant

The Open University in Scotland is delighted with the Scottish Government’s recent announcement to extend the Part-Time Fee Grant from 2013/14. However, we believe the Part-Time Fee Grant needs to be further refined in light of recent changes to the eligibility criteria for ILA200, which have left a group of HE students on low incomes, studying less than 30 credits and in another form of education, ineligible for any form of fee support.

\(^5\) Section 14 A (2) (d)  
\(^6\) Section 15 (4)  
\(^7\) HESA statistics  
\(^8\) www.Scotland.gov.uk/publications/2011/03/25132517/2
By lowering the credit threshold of the PT Fee Grant from 30 credits to 10 credits the issue would be resolved. As this change would not require primary legislation, we would hope it could be implemented for 2014/15 to minimise the number of part-time students on low incomes who are no longer eligible for support towards their fees.

While The Open University very much welcomes the extension of the Part-Time Fee Grant, it is worth highlighting that the changes will result in a significantly higher volume of applications for SAAS to process, as the PT Fee Waiver scheme, which has been absorbed under the PT Fee Grant, was previously administered by SFC and HEIs. To ensure all applicants receive their fees in time to start courses in the academic year 2013/14, adequate staff resource must be made available at SAAS to enable them to process all Part Time Fee Grant applications.

**Promoting a diverse sector**

As a general comment, The Open University in Scotland would urge that the legislation encourages a diverse higher education sector which caters for a range of different learners. For many students - particularly those in remote parts of Scotland, those with caring commitments and/or in employment - part-time, distance learning is the only viable way to access higher education and as such needs to be supported alongside full-time, campus based provision.
Education and Culture Committee

Post-16 Education (Scotland) Bill

The Prince’s Trust Scotland

Key Messages:

The Prince’s Trust Scotland supports the Scottish Government’s efforts to review and reform post-16 education provision and is happy to share knowledge to assist effective strategic implementation.

The reform agenda must be aligned to improving outcomes for Scotland’s hardest-to-reach young people, in particular those not in education, employment or training.

That means that new regional structures for college governance must retain a focus on effective local delivery of services.

Regional college structures must be underpinned by input from partners in the third sector and business communities and appropriate outcome agreements that deliver locally-targeted interventions.

Further consideration should be given to requirements over the composition of regional college boards so that the views of partners in the third sector and business communities are reflected in regional strategies.

We welcome the Scottish Government’s proposals on data-sharing provided they succeed in improving the tracking of young peoples’ progress and outcomes.

The Prince’s Trust Scotland’s post-16 offering

The Prince’s Trust Scotland supports disadvantaged young people aged 16-25 at every stage of their journey towards education, training, employment and self-employment. In 2011/12 we supported over 5,000 disadvantaged young people in Scotland and 76% of these went on to positive destinations.

From early engagement programmes and personal development opportunities to vocational training courses and business start-up support, we offer a comprehensive and flexible development journey for young people. By focusing our activity on three key areas – Outreach, Assessment & Outcomes; Education & Training and Employment & Enterprise – our core programmes are strategically linked with each of the four stages of the strategic skills pipeline. This ensures that we can help young people to find the right support at the right time, and make positive journeys toward sustainable outcomes.

Our core programmes provide employability support to unemployed young people and have an additional focus on improving soft skills, such as confidence, self-awareness,
self-esteem and communication, to ensure young people are fully equipped to achieve and sustain positive outcomes.

We are focussed on a collaborative approach to youth unemployment that harnesses the strengths of partnerships with the public sector (including FE colleges), the private sector, third sector colleagues and volunteers in supporting young people in turning their lives around.

**Collaboration with the FE Sector**

Further Education Colleges provide some of the personal development and vocational training content of our core programmes. We also encourage young people to continue their vocational training there, since the Colleges provide them with the chance to gain the nationally recognised qualification and accreditations that are valued by employers.

Our most effective current collaborations with the FE sector include ‘Team’, a 12-week, community-based programme of personal development and employability training run in partnership with FE colleges, designed to motivate young people and help them to think about their futures and ‘Get Into’, a 5/6 week, demand-led vocational training programmes run in partnership with colleges and local employers.

By uniting with The Prince’s Scottish Youth Business Trust, the newly named Youth Business Scotland programme has allowed The Prince’s Trust Scotland to significantly enhance its enterprise offering in Scotland. We have ambitions to grow our partnership working with the FE sector to encourage more of Scotland’s hardest to reach young people to consider self-employment as a viable route out of unemployment.

**The experience of Scotland’s hardest-to-reach young people**

The Scottish Parliament’s Finance Committee report into its inquiry on Improving Employability highlighted the challenges that Scotland faces in engaging with young people not in education, employment or training (NEET)\(^1\). The committee noted that Scotland’s proportion of NEETs is amongst the highest in the OECD and that figure has remained static since 1996. Meanwhile, the cost of educational underachievement to the Scottish economy is in the region of £1 billion each year\(^2\).

To tackle these problems effectively it is crucial that we offer targeted support to those young people who are the hardest to reach in society. The Prince’s Trust Scotland’s experience has demonstrated that the young people who are furthest from the labour market are those with multiple presenting social and economic needs such as long-term job-seekers, young parents, care leavers and ex-offenders. In addition, there is a significant cohort of young people who are ‘job ready’, but lack vocational skills.

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2. The Prince’s Trust, (Jan 2013), The Prince’s Trust Youth Index
In a recent survey of 16-25 year-olds across the UK, The Prince’s Trust Youth Index revealed that 33 per cent of young people in Scotland report feeling down or depressed “always” or “often” but that the proportion among young NEETs is significantly higher.[2] These figures underline our experience that NEETs have the tendency to fall into negative spirals of low self-esteem that make it increasingly more difficult for them to break patterns of long term unemployment and take advantage of employment and training opportunities on offer.

Because of their chaotic lifestyles, multiple support needs and social exclusion, these young people struggle to engage in more structured programmes and require longer term, intensive engagement that is tailored to their specific needs. They also require support to break down fundamental barriers before they can move forward with their lives and into positive destinations.

**Local needs & strategic intervention**

In recent years The Prince’s Trust Scotland has acknowledged the importance of tailoring the support we deliver to schools and colleges throughout Scotland to underpin effective learning transitions, particularly from secondary to further education, as part of Senior Phase models under the Curriculum for Excellence (CfE). That process has been assisted by a significant restructuring of our operations throughout Scotland to put young people – and their individual journey within the current pipeline of CfE activity – at the heart of what we do.

In our view, the post-16 education reform agenda will only succeed if the underlying structures put in place by legislation succeed in accommodating new structures that take into account differing abilities, learning styles and life circumstances of young people. Our experience suggests that in addition to providing formal learning and training, it is often necessary for education providers to adopt an informal approach, tailored to personal needs and which provides young people with the space and attention they need to develop confidence as well as a sense of ownership over their work and own development.

The Trust’s xl programme provides evidence of this. The xl programme is designed to help Scotland’s hardest-to-reach young people re-engage with education and make transitions into more positive destinations. The intervention, which targets young people who are underachieving at school, at risk of exclusion, are truanting or are already outside the education system, is now available to participants aged 13-19.

This gives schools and non-mainstream education centres a number of options when delivering the Senior Phase of the CfE and the success of the xl approach is evidenced in strong outcomes for participants when they reach further education. The results of the most recently published School Leavers Destination Report showed that, on average, 92% of those who completed an xl programme moved into a positive destination. (School Leavers Destination Report, Skills Development Scotland, December 2010).
4.5. Of those, 84% went into education or training, 13% into employment/self-employment and 5% went on to do voluntary work. Overall, 88% felt that the xl programme had improved their chances of getting a job; 88% felt more positive about their future; and 82% are more likely to consider further education or training.

Our recommendation therefore is that the root and branch reform of post-16 education provision must go hand-in-hand with consideration of initiatives like the xl programme that improve post-16 outcomes by engaging effectively with the hardest-to-reach young people in Scotland.

**College Reform: Planning regionally, delivering locally**

The Prince’s Trust Scotland acknowledges the significant role in improving services that strategic planning at a regional level can deliver.

However, we would stress that proposals under the government’s post-16 reform legislation must be focussed on effective *local* delivery if they are to sustain and improve outcomes for children and young people.

We know that in Scotland today, educational attainment is all-too-often determined and therefore limited by young people’s background. Our experience demonstrates the need to target interventions and resources carefully so that the most marginalised young people can make positive and sustainable progress. Those interventions must focus on the journeys of individual learners and on ensuring that the educational resources targeted toward them are not wasted.

Currently, The Prince’s Trust Scotland’s focus on localism involves aligning to the needs of young people in some of Scotland’s most deprived areas, by developing close working links with Community Planning Partnerships, while aligning our activities to local employability action plans and local employability partnerships. Our provision of courses also maps to each stage of the national strategic skills pipeline and local employability pipelines.

That provision must be outcomes-focussed. We work closely with local authorities and other service providers across Scotland to ensure that the interventions we provide are aligned to the priorities detailed in Single Outcome Agreements.

We appreciate that in order to continue offering effective interventions across each of the 13 college regions proposed by government, we must adapt working practices appropriately. We are currently in the process of developing regional territory plans to ensure that the Prince’s Trust Scotland’s curriculum and portfolio of courses is mapped to wider college provision in each of the proposed regions.
Focus on outcomes

We welcome efforts to ensure a focus on outcomes for young people within the legislation. We recognise the need to be responsive to the needs of employers in developing and delivering our programmes so that young people are, where possible, developing skills and experience that are suitable for the labour market as it stands today in their communities. The commitment and direct involvement of local employers is central to the success of our programmes and the achievement of outcomes for our young people.

Role for the Third Sector

We would therefore recommend that the legislation must ensure that the establishment of strategic bodies for colleges in multi-college regions must ensure that local needs are met. The primary tool for this will be the drafting on regional outcome agreements, designed to ensure that all partners gear service delivery to pre-agreed outcomes.

However, those agreements must be refined by agreement with all partners – including those in the third sector and the business community – and tailored to local needs, together with the differing abilities, learning styles and life circumstances of young people.

For that reason, we would suggest that further consideration with is given to the means by which regional strategic boards are required to listen to the views of key partners, particularly in the third sector and business communities. We would recommend that this issue could be addressed by adjustment of the legislation to ensure that the national strategic forum and regional boards include members from the third sector and business communities, where possible.

Data-sharing

The Prince’s Trust Scotland welcomes provisions contained within the bill to improve data-sharing between agencies.

It is essential that where possible, we track the progress of young people to ensure that he programmes and courses are outcomes-focused and can be targeted at those who need them most.

The Prince’s Trust already participates in data-sharing arrangements with partner agencies in Scotland and will be happy to work with the Scottish Government to consult on expanded arrangements that are workable for SDS and third sector bodies alike.
Introduction

The University of the Highlands and Islands welcomes the thrust of the draft bill; we endorse the importance of regionalising Further Education. We support the arrangements set out for the Highlands and Islands as they map Further Education onto the same region as the Higher Education which the University is tasked to provide. We fully endorse the comments made by Universities Scotland on the draft bill.

Higher Education Institutions: Good Governance : Para 2, 9A

UHI is fully committed to high standards of corporate governance, wider access and coherence of academic provision. Each of these is fundamental to the mission and purpose of UHI.

UHI accepts the principle that the Government should seek appropriate returns from universities for the investment of public funds in their work. UHI is however committed to the concept of University autonomy. We believe that it produces academic excellence in both teaching and research, and those universities in Scotland within this system have served the nation well. We also believe that it complements the commitment of Government to academic freedom as a cornerstone of a democratic society. The tradition of the democratic intellect is in our view both excellent and preserved by the autonomous framework.

We support the voluntary code for good governance currently being produced and are actively involved in consultation. We are anxious to ensure that the code recognises the importance of flexibility to accommodate non-traditional institutional structures like ours, and ensure that we can work within the code and opt out of specific provisions if justified. For both reputational reasons, and ensuring that the code is of an excellent standard, we believe that it should be dynamic and benchmarked against best practice within education and beyond.

We have however concerns around Part 1 Section 2, 9A. We believe that the definition of what constitutes good governance or good management practices in a democratic society should not be set by ministers alone. We support the view of Universities Scotland that this would be more consistent with responsible autonomy, with existing charity legislation, and with the long-established principle that universities should not be subject to political direction. Significantly, the Von Prondzynski review of higher education governance recommended a role for the Scottish Funding Council (SFC), rather than Ministers, in relation to introducing a new Scottish code of governance.
The existing statute (2005 Act) already gives the SFC power to request Ministers to remove an institution from the list of those eligible for public funding if it does not meet acceptable standards, inter alia, of governance and management. Ministers cannot, however, remove an institution from that list unless the SFC have so requested and can only do so after consultation. This existing provision strikes a balance between accountability for public funds and preserving the autonomy of institutions against political interference. It safeguards the public purse against bad governance and management; but does so in a way that maintains the role of the SFC as a buffer between Ministers and individual institutions.

The new provision upsets that balance. It empowers Ministers, not the SFC, to decide what is good practice governance and management; it allows them to do so subjectively - 'what appears to be'; it empowers them to require the SFC to impose some unspecified financial adjustment to funding if an institution - which ex hypothesi is not badly run - does not comply with Ministers' notions of good practice. This would, if legislated, represent a considerable weakening of the notion of university autonomy.

We also believe that the reference to 'management' is inappropriate and should be removed. Governing bodies are responsible for ensuring that the institution is managed in a way which successfully implements the institution’s mission and strategy. The senior managers of the institution are accountable to the governing body for achieving this. These responsibilities are fundamental to good governance and would be undermined if Ministers (or SFC) assumed responsibility for determining how universities should be managed.

Widening Access to Higher Education

UHI is committed to widening access. As a university with the highest proportion of mature and part-time learners in the Scottish university system, we believe in the importance of making educational opportunities available to students precluded both by social class and geography. In the case of the Highlands and Islands, we work hard to ensure that modern technology is used to overcome geography as a barrier to accessing educational opportunity. We do not believe that there is any necessity to legislate access targets. We are happy with the arrangement whereby targets are negotiated with SFC as part of a single outcome agreement.

We are anxious that targets are not expressed exclusively in terms of social class, but also recognise that the provision of university education within communities in the Highlands and Islands to obviate people having to work away from home, and the provision of a flexible model to allow people access education without ceasing part-time employment or conflicting with social commitments eg looking after elderly parents, are also important ways of widening access in a community like the Highlands and Islands.

Fee Cap

We have no comments to make on this issue.
Review of Fundable Further and Higher Education : Para 14

We endorse the importance of regional coherence and the recognition of regional universities with defined geographies. We believe that UHI should be recognised as the “regional university” for Highlands and Islands. We would be concerned if the effect of the bill was to give SFC new powers to decide what universities can teach. This would be inconsistent with autonomy and we believe would not serve the country as well as the existing system. (See below “University Autonomy”). We have some further concerns around the consultative requirements laid on regional strategic bodies in relation to coherence and we develop these concerns under “Further & Higher Education” below.

Data Sharing

We have no comments to make on this section.

University Autonomy

In many of our comments we have asserted the necessity to protect university autonomy. We endorse Universities Scotland’s regard for the principle of ‘responsible autonomy’, i.e. that universities and other HEIs are responsible for delivering public benefit in return for public investment, but are best able to succeed in this and in their wider missions when they are operating within a framework of clear institutional autonomy.

We believe that international evidence suggests that the university sectors which enjoy robust autonomy are best able to make a successful contribution to the economic and social wellbeing of their nations. We note that the trend across Europe is now towards increased university autonomy as a means of generating success, and European Commission policy is an affirmation of responsible autonomy.

We believe that the bill should be checked to take cognisance of the fact that in UHI the regional strategic body is the University Court and therefore the need to preserve its autonomy has to override the less autonomous arrangements in place for regional bodies which are not Courts of universities.

Other Regional Strategic Bodies : Part 2

We welcome the additional responsibilities and powers for the Court and Principal of UHI providing a regional perspective on further education as proposed in the Bill. This will ensure that post 16 education across the Highlands and Islands is planned, delivered and funded in as integrated a manner as possible. This will be of major benefit to students and employers who will be able to see a seamless progression route from leaving school through to degree and post graduate qualification as appropriate. The proposals will make delivery more effective. The proposals ensure maximum
efficiencies through shared provision of curriculum and support services whilst retaining and enhancing local access.

We endorse the powers given to UHI as the Strategic Regional Body and believe that these powers are essential for the University both to deliver the objectives of regionalisation and to protect the autonomy of the University Court. We can imagine that there may be some concern on the part of some Colleges that the exercise of such powers requires checks and balances. We believe that where the regional strategic body is a university, as it is in the case of UHI, any attempts to restrict the powers would be harmful to the autonomy of the university and hinder the application of the principle of regionalisation.

Under 7C1 “Other Strategic Regional Bodies”, the bill refers to “colleges of further education” being assigned to the regional strategic body. The Academic Partner Colleges of the University include a mixture of incorporated Colleges and unincorporated colleges including two Local Authority Colleges. Some are fundable bodies and some are not. We believe that the effective regionalisation of FE and HE makes it imperative that the University’s FE Regional Board funds all these entities and that the general provisions which are intended for incorporate Colleges apply equally to all. This would promote a more thoroughly homogeneous regional sector. Whether this is what is intended depends upon the interpretation of the term “colleges of further education”. We recognise, of course, that this may be problematic for Local Authority Colleges – in the case of UHI the colleges in Shetland and Orkney.

Further & Higher Education

We welcome the creation of a single outcome agreement with SFC as a means of further enhancing the co-ordination of HE and FE and of the activities of the University and its Academic Partners.

We endorse the need for regional coherence of curricula and courses but note that under Section 10, 23C UHI would have a duty to “have regard to any fundable further education and fundable higher education provided by other post-16 education bodies in the localities of its colleges”. Since “locality” is undefined and since UHI’s Colleges cover such a wide geographic area this could commit UHI to consult an enormous number of institutions, including other universities, without these other universities being under any obligation to consult UHI. This is both impractical and unnecessary since UHI as a University will be under the advice of SFC to secure regional coherence.
It is an honour to present this written evidence in re Post-16 Education (Scotland) Bill as introduced to the Scottish Parliament on 27 November 2012 by the Hon. Michael Russell, the Cabinet Secretary for Education and Lifelong Learning.

For the proposed addition of section 9A to the Further and Higher Education (Scotland) Act 2005 the words: ‘which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.’ Provide in a sense liberty to the Ministers to define the ‘good practices’ as a subjective realm. It must be noted that good practices may be presented as a secondary document or as a reference to the practices, to be adopted by higher education institutes. No definition of ‘good practices’ has been provided and has been left open-ended.

Section 4 of the Bill, proposed addition 9C to the Further and Higher Education (Scotland) Act 2005, the following is requested to be added as Section 9C, sub section 3(c): ‘that the amount of fees payable by an international student attending any course of education provided by a post-16 education body in any particular academic year does not exceed the maximum amount of fees which that person would by virtue of any enactment be liable to pay if attending any higher education course provided elsewhere in the United Kingdom during that year and an equality of fees is observed among all post-16 education bodies, the upper limit of which shall be determined by the Scottish Ministers’.

Requested amendment to Section 23B, subsection 3(b) to read as follows: ‘its students’ association, ensuring appropriate representation of all groups.’ As emphasized in the Scottish Ministers powers to impose conditions on funding for underrepresented groups, this must also apply here to ensure that all have the ability to raise opinions.

Request that a new section be added to the bill, at appropriate position, to allow the Scottish Ministers to advise the University management or college bodies to consider changes in curriculum delivery and pedagogical methods to ensure universities embrace new technologies and realms such as distance learning.

Request that for funding and international students, the funding conditions be imposed such that they are fair and equal for all international students and do not strictly adhere to the Scottish Government’s International Framework and the priority countries. International students come from various economic backgrounds and where an economically stronger country does support the Scottish Government Economic Strategy; students from poorer countries do present a reasonable percentage of the body. See letter PE1429/C to the Scottish Parliament Public Petitions Committee.

http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents /PE1429_C_Petitioner_07.08.12.pdf
Education and Culture Committee
Post-16 Education (Scotland) Bill
West Dunbartonshire Council

Background
The comments recorded within this report reflect the views of a wide range of staff working within West Dunbartonshire Council’s Educational Services and Community Learning and Development; Skill Development Scotland (SDS); and Clydebank College.

General comments
The name of the Bill should be changed to: ‘Post-School Education’ as the Bill does not include any clauses on the provision of school education.

The Bill asks for comments on several aims many of which appear to have been enacted already, such as the regionalisation of the colleges. This raises the question as to the purpose of the evidence-gathering exercise at this time.

University Governance
The merging of colleges has encouraged the new organisations to be more receptive to the demands of the labour market and the needs of consumers. Within the sphere of higher education the use of funding to impose an expectation on universities that they will improve their level of engagement with Community Planning Partnerships (CPP) is welcomed.

Widening Access
Local authorities, through their CPPs, should be more actively engaged with universities thereby informing decisions on how to widen access for more disadvantaged young people. The group welcomed initiatives or approaches which made accessing university easier for young people living within areas of deprivation such as West Dunbartonshire Council.

College Regionalisation
The merging of colleges into single larger establishments threatens to impact negatively on the ability to sustain existing strong relationships between staff and stakeholders. Increasingly it will be more difficult to build new relationships with staff working across three colleges. There is a challenge in maintaining localised community based learning centred around Clydebank College which is recognised as good practice. However, the benefit of being able to share resources from three colleges will lead to improved progression pathways and a wider range of additional courses.
Data Sharing

Currently there is no way of effectively tracking students who attend college or university for only a short time as the information is not shared with SDS. The importance of colleges and universities sharing information on young people’s progress is paramount to ensure that the various agencies are able to deploy early interventions to support a person back to the world of work or education. The sharing of data would help post-16 education to become more focused on positive outcomes. The ability to track the learners’ journey, widen provision and involve partners is improved with the availability of data. The collation and sharing of information will encourage a self-evaluative culture and more evidence based framework for the delivery of services.
Education and Culture Committee

Post-16 Education (Scotland) Bill

West Highland College UHI

Introduction

West Highland College UHI became a recognised fundable body in terms of the Further and Higher Education (Scotland) Act 2005 in August 2012. It is a full academic partner of University of the Highlands and Islands, and as such delivers both further and higher education. It operates through a network of ten learning centres spread across Lochaber, Skye and Wester Ross. It was created to address the historic deficit in further education provision in the area and in the two years since its establishment has made significant progress. The college is a company limited by guarantee and is a registered charity. It is constituted by Articles of Association and governed by a board of management.

Overall view on the direction of the Post-16 Education (Scotland) Bill

The board welcomes the purpose of the Bill. It believes that the drive for better governance, wider access, coherent provision and effective delivery in further and higher education sends out positive messages to all those involved, whether as providers or consumers.

The following paragraphs are comments on individual provisions and requests for clarification:

University governance

As an academic partner in UHI, West Highland College UHI strongly supported the recommendations contained with the report from the Working Group on the future structure and function of the University of the Highlands and Islands and to this end, desire to reiterate their support for the continued development of good governance in the sector.

Widening access

West Highland College UHI is founded on the principle of increasing access to education, particularly for those whose opportunities to participate have been constrained by either geographic or other factors. We welcome the changes proposed by the Bill to ensure equitable access for all socio-economic groups.

College regionalisation

The benefits of a regional grouping to enable collaboration, co-operation and effectiveness have already been demonstrated to West Highland College UHI as through the UHI partnership we have been able to develop a progressive curriculum, as well as access services and facilities which a stand-alone college of our scale would never achieve. We foresee that the further education strategic regional body
being part of UHI will develop these benefits further so long as the spirit of and commitment to collaboration is fostered at every level. We would welcome mechanisms to ensure that those partners in the smaller institutions are not disadvantaged in terms of influence, resources or opportunities as a result of these changes.

Clarification on definition of ‘college’

Throughout the Bill there are references to ‘a college’. The Guidance to the Bill states that the proposed changes apply to incorporated colleges. However the Guidance also states that it is not part of the Bill. As an unincorporated college we would seek clarification as to which parts of the Bill apply to us and which do not and would request that this clarification is evident in the wording of the Bill if the Guidance is not considered statutory.

Consequences of definition

If this is the case, ie the changes in the Bill do not apply to unincorporated colleges, we would request that the statutory basis for such colleges’ accountability and operations within a regional structure is made explicit.

Clarification of University of Highlands and Islands’ role as a regional strategic body

Section 8 Regional Strategic Bodies lists two types of regional strategic bodies: one being a regional board; the other being another regional strategic body, singularly UHI. We are an academic partner of UHI and one which strongly supported the recommendations of the Working Group on the creation of an FE Committee within UHI. We are not clear whether the reference to the University of the Highlands and Islands means that the Court of UHI as it is currently constituted is to be the strategic body or whether, as the report recommended, that an FE Committee would be established within UHI and that committee would be the regional strategic body with all the duties and functions as described in pages 8, line 28 – page 17, line 14 of the Bill; or whether the regional board constitution (page 17, line 16 – page 25, line 34) would apply.

We believe that the appointment of an independent chair for an FE board within UHI would provide the necessary focus to ensure that FE is recognised as an equal partner in the partnership of higher education, further education and research and we would wish to see the Bill reflect this.

Public appointments and remuneration

We believe that the introduction of the ministerial public appointment process brings opportunities and challenges. The role of chair of a regional board or college will, without doubt, be onerous and time-consuming and there is no doubt that we all seek the best person for the post. However, we are not convinced that the additional bureaucracy and timescale that attends this process will necessarily add significant value to the appointment.
Remuneration of regional board members could cause a further divide between the boards of regional colleges/strategic bodies and that of the individual college boards, with the latter unrecompensed for their time and input. It is interesting that there is a disparity between higher education and further education in terms of public appointments and we would suggest that the same principle should apply to both.

For the appointment of members to college boards (ie those that are not regional colleges), we would recommend that the college board should continue to appoint its members as currently happens. To assist good governance within a regional structure, the regional board would then be asked to endorse the appointments and it should not unreasonably refuse to endorse.

**Non-teaching staff**

The Bill refers to non-teaching staff in the sections concerning board members. We would recommend that this group of people should be designated in a positive way, ie support staff, rather than being defined by what they are not.

**Summary**

In summary, our recommendations are:

- That regionalisation does not disadvantage the smaller colleges
- That the Bill itself is clear on which colleges are contained within its remit
- That for any colleges outwith the Bill's remit, the statutory basis for their remit, accountability and functions within a regionalised structure is made explicit
- That the recommendation of the UHI Working Group that an FE committee be established within UHI is endorsed in the Bill
- That the application of a ministerial public appointments process and remuneration should apply to both sectors of tertiary education, ie further and higher.
- That a college board should make the appointments of its board members, with these appointments being endorsed by the regional board who shall not unreasonably withhold the endorsement.
- That the term 'non-teaching staff' be replaced by 'support staff'.

We would appreciate the opportunity to provide further amplification on any of the points expressed above, either in writing or in person.
Introduction

West Lothian College Board welcomes the opportunity to comment on the Post-16 Education (Scotland) Bill. The college has also contributed to a sector paper drafted by College’s Scotland.

This paper provides both comments on the content of the Bill and, by this means, an update on the Board’s comments submitted in February 2012 in response to the review of Further Education Governance in Scotland undertaken by Professor Griggs.

The Board would like to acknowledge the high standard of governance which currently exists within the college sector and which has been noted in previous reviews undertaken by the Scottish Government and Audit Scotland.

This paper focuses specifically on college regionalisation, data sharing and the role of the Scottish Funding Council in reviews of FE and HE funded education.

College Regionalisation

West Lothian College Board is pleased that the Scottish Government approved the designation of West Lothian as a single-college region. The Board is not complacent about the challenges which lie ahead but it is confident that the College has both the skills and expertise in its Board Members and executive management as well as strong partnerships with its community to enable it to address the challenges and opportunities of the Regional Outcome Agreement.

This paper focuses on the issues for a single-college region. However, the Board notes the differences for multi college regions and the challenges which may be presented by these.

The Board would be keen that no matter what Regional structures are in place a united college sector approach to initiatives or issues is achieved.

Board Membership

The Board notes the Government’s proposals for membership of a single-college regional board, with a maximum membership of 18. It is pleased that the new regional board may appoint the Principal as a member, and that there will be both teaching and support staff members, and two student members.
The Board also welcomes the more flexible arrangements provided in the Bill for different lengths of service with a board and the provision of an extension of up to a further four years.

In February 2012, the Board expressed the very strong view it had that the positions of Chair and Board Members should continue to be non-remunerated. The Board is still of the view that the voluntary membership of West Lothian College Board has resulted in collective responsibility, independence of mindset, selfless public behaviours, credibility with the wider community and natural participants with a philanthropic and generous spirit. We would reiterate that view.

The Board is pleased, that Board Members other than the Chair can be appointed by the Board, with the approval of the Chair and Scottish Ministers, without having to go through the formal Public Appointments process.

Stability in board membership over the next few years of change and challenge will also be crucial. The current membership of West Lothian College Board includes persons with extensive skills, knowledge and expertise in their specialist areas as well as substantial knowledge of the college and the West Lothian community. It is hoped that as many of these persons will be appointed to the new board as possible in order to maintain stability, provide succession planning, and to give the College and the region the best chance to develop for the future.

The Board notes the introduction of Ministerial powers to remove chairs and other members for reasons of failure in addition to mismanagement. The Board reiterates its view that it has no difficulty with being audited against a set of agreed outcomes,

Data Sharing

West Lothian College Board notes these new provisions and has no specific comments to make. The College already has a number of data sharing agreements in place but welcomes the opportunity the provisions create for involvement in a nation-wide monitoring and tracking of the 16-24 year old age group’s participation in education and training.

Review of FE and HE Funded Education

West Lothian Colleges Board notes the provisions set out in the Bill to allow the Scottish Funding Council (SFC) to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner. We would assume this to be done within existing resources and that it would not further reduce funding to colleges.
Annual Accounts

We would recommend 31\textsuperscript{st} July as the year end for college accounts in line with current practice.

Board of Governors
West Lothian College
Introduction and background

Young Scot is the national youth information and citizenship agency for Scotland. We provide young people, aged 11-26, with a mixture of information, ideas, training and opportunities to help them become confident, informed and active citizens.

As a universal service, we do this in a variety of formats so young people can access information in a way they are comfortable with. Through the delivery of our six strategic impacts, Young Scot strives to ensure that young people will be able to:

- Make informed decisions and choices
- Turn ideas into action
- Take advantage of the opportunities available to them
- Have the confidence, skills and knowledge to take their place as active citizens in their communities – locally, nationally and globally

We pay particular attention to reaching both young people “in-school” and those aged 16+, supporting them through key transitions with information and opportunities relevant to their needs and life stage.

Young Scot welcomes the opportunity to provide evidence to the Scottish Parliament’s Education and Culture Committee on the Post-16 Education (Scotland) Bill. We believe that the Young Scot National Entitlement Card (NEC) can enhance the learner journey and should be considered as part of the implementation of measures associated with post-16 education reform. While perhaps not requiring a legislative underpinning as part of the Bill, the time would be right to consider how the Card can be further used to support learners in further and higher education as systems and processes change as a result of college regionalisation and new data sharing protocols.

About the Young Scot National Entitlement Card

Although Young Scot provides a wide range of services, we are perhaps best known for the Young Scot card. There has been a Young Scot card in existence for almost 30 years, offering young people access to discounts at shops and services. But over the last 10 years the card has developed significantly.

Through the Dialogue Youth programme, established in 2002 as part of the wider Modernising Government Programme, local authority services began to be added on to
the card, such as cashless catering in schools. We also added the Proof of Age Standards Scheme (PASS) hologram – to make it a recognised form of proof of age – something which has been of significant value to both young people and businesses.

Since 2006, the Young Scot card has been integrated with the National EntitlementCard programme – a partnership between Young Scot, the Scottish Government, Transport Scotland, the Improvement Service and all 32 local authorities. This partnership has been crucial to its success and its reach continues to grow, with over 465,000 young people in Scotland now carrying the card. Young people commonly first receive the card as part of the Primary 7 to Secondary transition.

The National Entitlement Card is a great example of joining services up for citizens. The Card is maximising the opportunities to deliver shared services for young people, with the Young Scot NEC now carrying:

- Young Scot services (PASS, Discounts and Rewards, connecting people with information and opportunities)
- Local authority services (such as cashless catering, leisure and libraries)
- National transport services (concessions for 16-19 year olds and disabled concessions)
- Other services (including e-Voting and payments)

Potential use of the Card in Post-16 Education Reform

The development of the Card for use in further and higher education was stimulated with financial support from the Scottish Funding Council (SFC) as part of the project “Shared services for lifelong learners through the National Entitlement Card”. Through a partnership between Dundee City Council, the University of Abertay and Young Scot, the Further and Higher Education NEC Matriculation Card was launched in October 2008. The Card contained University of Abertay student card branding on one side and the familiar NEC branding on the other. Students who enrolled in October 2008 were issued the new Card and used it to access university services such as secure access to university properties, university library services and photocopying. Additionally, students could access all the other benefits associated with the Card noted above. As part of the project, it was agreed that some Dundee secondary pupils can use their cards to access the university’s facilities, supporting the concept of a “City Campus”.

The evaluation of the project demonstrated:

- “Effective enrolment… that eases their use of a range of learning services, and also a wide range of ‘citizen’ services”
- A “strong belief… that this project will advance the cause of the shared services agenda in Scotland”
That the use of the card resulted in some measurable efficiencies, but that the key measure of success had been its \textbf{effectiveness} for learners.

A belief the NEC can \textit{“add considerable value to learning provision”}.

The University of Abertay has continued to use the Card and Dundee College became the first Further Education institute to roll-out the card to their students in August 2011. Several new institutions are now also considering replacing their own matriculation card with a combined card.

At a time of significant structural change in the further and higher education landscape, we believe that there is an opportunity to fully embed the Card as part of the reform of post-16 education. This would potentially bring a wide range of benefits, including:

- Giving students access to a wider range of benefits than currently available through their standalone student cards;
- Connecting students with information and opportunities provided by Young Scot related to health, well-being and citizenship;
- Facilitating shared use of facilities by schools, colleges and universities, supporting transitions from school to further or higher education;
- Reducing costs through the use of a national service; and
- Providing a consistent tool across a young person’s learning journey which can potentially be used to store and share qualifications and achievements.
Post-16 Education (Scotland) Bill

Professor Ferdinand von Prondzynski

The Post-16 Education (Scotland) Bill is an important piece of legislation, setting out some new principles in particular for the college sector. It also contains some provisions of relevance to the higher education sector, and I shall here restrict my comments to these.

Section 2 of the Bill allows the Scottish Funding Council to impose a condition of grant on universities, requiring them to ‘comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.’ This may be taken to be a reference to the review on higher education governance that I chaired in 2011, and which reported about one year ago. In our conclusions we recommended that there should be a code of good governance drafted specifically for Scotland. Since we made that recommendation, the Committee of Scottish Chairs have come forward with a proposal to draft such a code.

The controversy surrounding this provision in the Bill may in part be related to the fact that the Chairs’ code has not yet been finalized or published. In these circumstances, it is not yet clear what particular principles of good governance might be enforced by the legislation. Moreover, the fear has arisen that the provision could be used to apply some other unspecified set of principles of good governance, or might even at some future date be used to apply the views of particular politicians or officials.

There are potentially two ways of dealing with this situation. One is to suggest that the timing of the provision is wrong, and that it should be addressed (if at all) when the legislation promised for higher education is published a year or two from now. In those circumstances the code, the content of which should by then be known, could be referenced specifically, thereby removing the fear that the principles of good governance to be applied could be from another source altogether.

The other possibility would be to allow this matter to be handled outside of any legislative framework. It could be addressed by the Cabinet Secretary, writing in his usual guidance to the Funding Council, asking the SFC to make it a condition of grant that principles of good governance are applied, on a ‘comply or explain’ basis.

Section 3 of the Bill addresses access to higher education. If it is enacted it will allow the SFC to make it a condition of grant that a higher education institution apply an access agreement negotiated with the Council.

There can and should be little argument that widening access to higher education has to be a public policy priority. Universities themselves, and indeed university Principals explicitly in a recent communication, are committed to widening access. It is also appropriate that this matter is addressed by the SFC, and that it do so through imposing a condition of grant as set out above. It could be suggested that this is best dealt with through the normal ministerial guidance, rather than through legislation. That said, I have little argument with the principle stated in this proposed
provision, nor with the concept of an access agreement negotiated between universities and the SFC. However, if it is to be contained in a workable statutory provision, the drafting may need to be re-considered to ensure that it does not permit unexpected and unworkable consequences.

Section 4 addresses the issue of tuition fees payable by students from the other jurisdictions in the United Kingdom. The main provision here is one that would limit the amount that a university may charge to the maximum permitted elsewhere in the UK. There is a technical issue in relation to this, in that tuition fees charged elsewhere in the UK are not all the same. The system varies between England, Wales, and Northern Ireland. To be effective, the sector would probably need to state that the limit is set to the highest amount that can be charged in any other UK jurisdiction.

It could be argued that UK fees should be treated like fees payable by international (non-EU) students. Tuition fee levels for these students are decided autonomously by universities. However, fee levels in other parts of the UK are capped for students studying there, and in these circumstances it may be difficult to allow fees in Scotland for the same categories of students from those parts of the UK to be higher. The section as drafted is probably more complex than it should ideally be, as it allows, in its drafting, a capping that uses other criteria than fee levels in the other UK jurisdictions. I do not myself have any serious misgivings about a tuition fee cap that matches the limits set elsewhere in the UK, but might have concerns about a provision that is rather more open-ended than that, allowing criteria to be applied that are not explicitly set out in the Bill.

Overall, I have no argument with the principles that are at the heart of the Bill in its provisions as they affect higher education. The essence of these is that universities, like other bodies, need to be accountable, and need where appropriate to apply principles and priorities of public policy. Whether this needs to be done by the legislation in the current instance could be debated.

There may be an argument for suggesting that the key issues at stake here should be part of an overall statute on higher education, which has in any case been signalled for later in this parliament. But if the provisions are to be enacted now, there is an argument for some re-drafting of the provisions set out in the Bill as published. In that context, reinforcing the clear principle of university autonomy should be an important objective.
In general I am content with the way the Scottish Government has responded to my review and how that has been enacted through the proposed legislation.

However I will make comment in a number of areas more to make some more general comments and hopefully dispel some myths and misunderstandings that have grown up around what I said in my review.

Firstly I repeat that when myself and those that helped me write the review made our recommendations it was done in respect of what we felt was best for the learner and not in any way to save cost. There will be costs savings from regionalisation as has happened in other parts of the world as more countries and provinces move to a ‘regional’ model of some kind but the other benefits that a more focused system brings are the real benefits and it was those that drove us to recommend the regional model.

Secondly at the heart of a lot of what we recommended was a move to an outcome based system which set clear outcomes for the FE sector but left each to be innovative and creative in terms of how they achieved those. In the report we said we were not convinced that those who set targets or monitor Colleges were equipped to create and manage an outcome system well and I still have concerns in this area.

Outcomes in simple terms are focussing on what you want and less on how it is done. If you want clean water out the end of the pipe then you check the water is clean and not what happens within the pipe to get it that way. There will be standards that have to be achieved within the pipe but there may be many and varied ways of achieving those standards and we should not worry too much about how they are done if we get clean water out the end. From what I have seen to date I think there is still too much inconsistency in how individual staff members at SFC are interpreting this and while for some College outcome statements that are short and focused and cover no more than a couple of side of A4 there are others that are long and still too full of kip data collection that still discusses what goes on in the pipe. While the second year of setting these has been better than the first there is still much to be done to get them to a consistent and sensible level.

In terms of reserves and surpluses the view we took and the recommendations we made had nothing to do with trying to save money but was all about fairness. Even in the restructured sector some Colleges due to their geography or demographics will always find it easier to generate surpluses than others and the calibre of management has little if any effect on that ability. Our view was that it was unfair at least not to ask the question that if there were available surpluses that could be used without harming the individual College they were generated in then somewhere there should be a discussion around where could they best be used across Scotland to help the learner. Currently there is no vehicle for doing this which is why we recommended the formation of the Strategic Forum who would take in that responsibility and examine this and other issues e.g. National staff contracts, pay bargaining, international marketing etc.. That is why in choosing the new chairs for...
each region it is critical to ensure that they can take a Scotland wide view as well as a local view in how they work.

In terms of Chairs we believe that they are the key people now within the sector as from them stems all else. One of the key reasons the sector had become dysfunctional was that the relationship between Chairs and Principals had in many places become unclear and that situation needed resolved.

Can I be clear that I never said or wrote that a Principal should not attend or be a key part of the Board. All I said was whether they become a legal member of the Board is up to the Chair and Board of each region to decide in discussion with their Principal. Of course they should attend and be part of each Board but legal status should be a local decision. I sit on the Board of two public bodies and in one the CEO is a legal member on the Board and the other is not. That was a decision each CEO reached in discussion with their chair and Board and works well for each. Does in make any difference to how we work as a Board and with the CEO. Not a jot as each CEO as well as Board decided this is how they wanted to work.

In terms of pace of change I am not one of those who think it is going too fast and indeed would have strived to make it quicker. As mergers come together so the Chair who will be the Chair post legislation should be the one to choose the new Principal as if it is another then the key relationship between the Chair and the Principal will not be established at the right time. I myself resigned as the regional lead for Ayrshire for that specific reason in that I had made it clear that I would not be applying for the regional Chair position post legislation so when the need to recruit the new Principal became necessary I made way for someone who could have wanted to be the Chair post legislation.

Similarly I probably would have been less flexible on regional structures and think that within a few years all will have moved to the merged model. However that is not a criticism as such as I understand that change involves a journey and there are different ways and pace for regions at times.

Where I do think we could have been cleverer, and we are now tighter but too late for many, is in sharing the learning and data amongst merging Colleges rather than in many cases each College collecting and paying for their own. We could have established a national data room for each merging College to use which in the end I think would have saved the substantial amounts of public money that have been spent by individual Colleges doing it themselves. Laterally this has started to happen but not before many had already done it themselves.

However, even given all the above, I think that where we will be post legislation in terms of a fit for purpose FE sector will be a lot better than where we were.
Introduction

The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,500 charities registered in Scotland.

OSCR has been asked to give a view to the Scottish Parliament Education and Culture Committee on the Post-16 Education (Scotland) Bill. In particular, we have been asked to comment on whether the bill would affect Colleges’ charitable status.

This note is intended to clarify OSCR’s position. In forming our view we have considered our overall vision, which is for charities you can trust and that provide public benefit, underpinned by the effective delivery of our regulatory role.

The charity test

Generally, where an organisation wishes to represent itself as a charity in Scotland, the 2005 Act requires that it must be entered in the Scottish Charity Register.

To be registered as a charity in Scotland, an organisation must pass the charity test, which is set out in sections 7 and 8 of the 2005 Act. This means the organisation must have charitable purposes and provide public benefit in Scotland or elsewhere. There are also some specific requirements (in section 7(4) of the 2005 Act) which mean that even where an organisation meets the charitable purpose and public benefit requirements it will not meet the test. The most relevant of these are that an organisation does not 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 (‘the distribution of assets condition’)

b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities (‘the ministerial direction and control condition’)

However (and this is relevant to the FE Colleges) section 7(5) of the 2005 Act allows Scottish Ministers to disapply either or both of (a) and (b) by making an order in respect of an organisation or organisations.

FE Colleges’ current charitable status

As things stand, all FE colleges (or more precisely their Boards of Management) in Scotland are entered in the Scottish Charity Register and thereby have charitable status. This is despite the fact that their constitution, the Further and Higher Education (Scotland) Act 1992 (as amended) would, in the normal course of things, cause them to fail the charity test under the ministerial direction and control condition. The provisions in the 1992
and succeeding acts which set out how the colleges will be governed contain a number of powers of control for Scottish Ministers, including among other things powers for Ministers to close or merge colleges and powers to remove trustees.

However, Ministers made use of the power provided in section 7(5) of the 2005 Act and disapplied the ministerial direction and control condition for all of the FE College Boards of Management listed in the Charity Test (Specified Bodies) (Scotland) Order 2008.

Effect of the Bill on FE Colleges’ charitable status

The Post-16 Education (Scotland) Bill introduces the concept of two types of college, the regional college and the college within a region.

Regional colleges

In terms of the regional college (which is likely to be the product of formal merger between existing colleges), the bill includes a number of provisions relevant to the colleges' charitable status.

Firstly, it sets out the functions of the regional colleges (in a proposed new section 23A of the Further and Higher Education (Scotland) Act). These new functions would be treated as indicating the purposes of the regional colleges in terms of the charity test. We would be likely to find that these were charitable purposes and would therefore allow the regional colleges to pass that part of the charity test.

Secondly, the Bill contains a number of provisions which would, to a greater or lesser extent indicate powers of control for Ministers additional to the powers Ministers already have over the FE colleges. These include the power to appoint of Regional College chairs and to approve Board appointments. In addition, section 7 of the Bill extends the existing powers of Ministers in relation to removal of Board members, listing additional circumstances where they may be removed.

While these powers would in the normal course of things affect whether a college would fail the charity test under the ministerial direction and control condition, we anticipate that the Charity Test (Specified Bodies) (Scotland) Order 2008 would be extended or amended to cover the regional colleges and so disapply the condition.

Overall, then the Bill will not affect the charitable status of the colleges which become regional colleges.

Colleges within regions

Turning to the colleges within regions, we note that the Bill also contains provisions to establish regional boards, to which Ministers can assign individual colleges. The Bill gives significant powers over individual colleges to the regional boards. Most notably, they have a power to give binding directions to individual colleges. This would not cause the college to fail the charity test under the Ministerial direction and control condition, since that only applies where Ministers exercise the power of direction. This provision would not affect the charitable status of the colleges within regions therefore (though see further comments below).
The regional board can also require a college within its region to transfer staff, property, rights, liabilities or obligations to another college in the region or to the board itself. This is relevant to the distribution of assets condition in the charity test. However, since the Bill provides that these assets must be used for the advancement of education, which is a charitable purpose, this provision would not cause a college to fail the charity test.

Overall, the Bill will not affect the charitable status of the colleges which become colleges within regions.

Our understanding is that it is not planned that the regional boards would seek charitable status, and we have not considered them from this point of view.

Other issues

We noted above the power that the Bill contains for regional boards to give directions to colleges within their region. We noted that this would not affect the colleges’ charitable status. However, it may be worth considering the effect of such a direction power where it is exercised on the governance of a college.

The members of a college board as the charity trustees of the college have a number of duties under section 66 of the 2005 Act, with their overall duty being to act in the interests of the charity, that is, the individual college. In general it would be safe to assume that compliance with legislation will be in the interests of a charity, and indeed compliance with applicable legislation is a duty on trustees under the 2005 Act.

However, it is possible to conceive of a situation (though it may not be particularly likely) where a regional board gives a direction to a college which, though it perhaps may be in the interests of education in the region as a whole, the charity trustees do not feel to be in the specific interest of the college. Charity trustees in such a case might feel themselves to be in a complex and conflicted position.

We do note that section 23K of Bill imposes a duty on regional boards to consult various parties, including the colleges themselves, before issuing such a direction, and this may help to avoid the situation indicated above.

OSCR
28 February 2013
Introduction

The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,500 charities registered in Scotland.

Further to our briefing note of 26 February OSCR has been asked to give a view to the Scottish Parliament Education and Culture Committee on the effect of Post-16 Education (Scotland) Bill on charitable status of universities and HE institutions.

This note is intended to clarify OSCR’s position. In forming our view we have considered our overall vision, which is for charities you can trust and that provide public benefit, underpinned by the effective delivery of our regulatory role.

The charity test

Generally, where an organisation wishes to represent itself as a charity in Scotland, the 2005 Act requires that it must be entered in the Scottish Charity Register.

To be registered as a charity in Scotland, an organisation must pass the charity test, which is set out in sections 7 and 8 of the 2005 Act. This means the organisation must have charitable purposes and provide public benefit in Scotland or elsewhere. There are also some specific requirements (in section 7(4) of the 2005 Act) which mean that even where an organisation meets the charitable purpose and public benefit requirements it will not meet the test. The most relevant of these are that an organisation does not 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 (‘the distribution of assets condition’)

b) its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities (‘the ministerial direction and control condition’)

Section 7(5) of the 2005 Act allows Scottish Ministers to disapply either or both of (a) and (b) by making an order in respect of an organisation or organisations.

Universities’ current charitable status

As things stand, all universities in Scotland are entered in the Scottish Charity Register and thereby have charitable status. The nature of universities’ constitutional arrangements varies widely, from older institutions where constitutions have developed over a long period to institutions set up under the Further and Higher Education (Scotland) Act 1992.
In contrast to the situation with FE Colleges, Ministers have not had occasion to make use
of the power provided in section 7(5) of the 2005 Act to disapply the ministerial direction
and control condition in respect of universities as such powers have not been present in
the constitutions of these charities.

**Effect of the Bill on universities’ charitable status**

The Post 16 Education Bill includes a number of provisions which amend or extend
Ministers’ powers to impose conditions on the Scottish Funding Council (SFC) in respect
of terms and conditions to be attached to payments to HE institutions. These include:

- **Section 2 of the Bill** – allows Scottish Ministers to impose a condition on SFC such
  that when it makes a payment to and HE institution it must require the institution to
  comply with any principles of governance or management which appear to Ministers
to constitute good practice

- **Section 3 of the Bill** – allows Scottish Ministers to impose on SFC terms and
  conditions on payments for the purposes of increasing participation in fundable
  further education by persons belonging to any socio-economic group which they
  reasonably consider to be under-represented in such education (including a
  widening access agreement)

- **Section 4 of the Bill** – allows Ministers to impose terms and conditions to require an
  institution to ensure that the fees it charges must not exceed a certain amount.

These powers do not change the constitutions of the HE institutions to which they may be
applied. Instead they relate to funding conditions. In themselves therefore they do not
affect charitable HE institutions’ compliance with the ministerial direction and control
condition, since this relates to express provisions in constitutions.

The Bill will therefore not affect the charitable status of universities and HE institutions
currently entered on the Scottish Charity Register.

**Other issues**

The members of a the governing body of an HE institution as its charity trustees of the
college have a number of duties under section 66 of the 2005 Act, with their overall duty
being to act in the interests of the charity. In deciding whether or not to accept funding
from any source, it would be incumbent on the charity trustees to ensure that, in accepting
any terms and conditions attached to the funding, they were acting in the interests of the
charity, when all factors are considered.

OSCR
4 March 2013
Introduction
The National Deaf Children’s Society (NDCS) is the national charity dedicated to creating a world without barriers for deaf children and young people. NDCS Scotland estimates there are 3500 deaf children and young people in Scotland, 90% of whom have hearing parents or carers.

We use the term deaf to refer to all levels of childhood deafness including hearing loss in one ear, temporary hearing loss such as glue ear and also to refer to all types of communication methods, including British Sign Language.

Context
Given the range of additional support that deaf children and young people often require from education services, transitions to post school education, training or employment are particularly challenging for this group.

While it is clear that with the right information and support deaf people can achieve equally to their hearing peers, unfortunately this is too often lacking for young deaf people during these transition periods, meaning many fail to go on to positive destinations. Data from the Deaf Achievement Scotland project shows that in 2010 the unemployment rate of young deaf people aged 16 – 24 was 49% compared to 19% for all young people.

Widening Access
NDCS Scotland welcomes the Bill’s commitment to widening access to post 16 education in Scotland. However we would like to strongly agree with the view put forward by other organisations representing disabled people, that solely using levels of socio-economic deprivation to define the most under-represented groups in post 16 education is both misleading and dangerous.

The sole use of this indicator does not allow for a rich understanding of the student population and their needs and vulnerabilities as learners. It doesn’t take into account the other barriers individuals experience, which in many cases they may find more difficult to overcome than their socio-economic status.

It would be very much a missed opportunity to not include other under represented groups particularly disabled and deaf people within the scope of how widening access is both defined and measured within the proposed changes. NDCS Scotland has also noted the lack of explicit detail outlined in FEI and HEI Outcome Agreements regards local plans to ensure widening access to disabled and deaf students. Again, NDCS Scotland is concerned about what seems to the omission of this issue and would welcome a thorough inclusion of this in future Agreements.

Data sharing
The proposed changes in data collection and sharing offers some opportunities with regards to students with additional support needs, in particular deafness. According to Scottish Government statistics for 2009/10 there were 850 students in Scottish FEIs and
HEIs who receive Disabled Students Allowance. This data is unlikely to be fully representative as many deaf students will not be in receipt of this Allowance.

Similarly, there are gaps in our knowledge with regards to attainment and destinations of deaf young people. NDCS Scotland has commissioned research from the University of Edinburgh around this issue, but nationally held and shared data with regards to deaf students would be a significant step forward in terms of ensuring appropriate strategies and support are delivered across post 16 education. NDCS Scotland would welcome further consultation around appropriate data fields to utilise in this respect.

**Review of fundable further and higher education**

NDCS Scotland would welcome further clarity around how non-recognised qualifications will be defined and offered to students. Clearly, to provide students with flexible and appropriate learner journeys it is essential to fully meet the needs of a diverse student population with a similarly diverse qualifications framework.

NDCS Scotland is particularly concerned, with the previous cuts to courses for those with learning disabilities, that NRQs will be squeezed out of the selection of courses on offer to students. NDCS Scotland would welcome steps to ensure that colleges are encouraged to maintain courses that can or cannot be credit rated but which provide invaluable pathways into post 16 education for vulnerable groups and may lead to opportunities for further articulation for these individuals.

In addition, NDCS Scotland would welcome further information on how the SFC will be making their review of fundable further and higher education and particularly the definition of "recognised qualification". We would also welcome information on whether disabled people or organisations representing disabled people have been consulted in this process.

**Regionalisation**

With regards to regionalisation, which we note is already in varying stages of progress across Scotland, NDCS Scotland raises the concern around extensive staff changes and the impact this will have on the provision of specialised additional support.

In a specialised area such as deafness for example, staff often develop the skills needed to support students over a long period of time through training opportunities and experience. This makes deaf-aware staff rare and difficult to replace.

In the proposed changes, of which staff reduction and restructure is an intended consequence, NDCS Scotland would recommend due consideration being given to how the expertise of college staff is mapped throughout the regionalisation process, and how colleges have planned to ensure that the impact of regionalisation will not leave them short of staff with this kind of specialised skills and expertise for deafness, and other low-incidence disabilities such as visual impairment.

**Other comments**

**Additional Support for Learning**

The proposed changes to post 16 education presents opportunities to revisit the Additional Support for Learning Act. In particular NDCS Scotland is concerned that the current time scale of 12 months of transitional planning can still mean significant challenges in addressing all social care, health, education and wellbeing needs of a deaf young person to support the right transitions for them.
In addition, NDCS Scotland is concerned that the ASL Act allows actions to be taken to tribunal if a transition plan is not prepared but it currently leaves no route of redress if actions required by that transition plan are not completed post school.

16 to 19 guarantee
NDCS Scotland welcomes the significant commitment to guarantee all 16 to 19 year olds a place in education, employment and training. However we hope that full consideration has been given to those young people with additional support needs, or disabilities such as deafness, which by their nature mean some individuals may not be prepared to move into these opportunities within this age profile. NDCS Scotland would not like to see young deaf people, and those with other disabilities, disadvantaged by this guarantee.
Finance Committee

Report on the Financial Memorandum of the Post-16 Education (Scotland) Bill

The Committee reports to the Education and Culture Committee as follows—

INTRODUCTION

1. The Post-16 Education (Scotland) Bill was introduced in the Parliament on 27 November 2012.

2. The Policy Memorandum (PM) states that the Bill’s overarching purpose is “to make post-16 education more responsive to the needs of learners and employers”¹ and in so doing, “ensure the system better supports jobs and growth; improves life chances, especially for young people; and is sustainable for the long-term.”² In order to do so, the Bill introduces provisions covering six areas—

   - University governance;
   - Widening access;
   - Tuition fees cap;
   - College regionalisation;
   - Review of fundable further and higher education; and
   - Data sharing

3. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum (FM). In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

4. Rule 9.3.2 of the Standing Orders sets out the requirements for the FM accompanying a Bill.

5. The FM relating to this Bill can be accessed via the following link: Explanatory Notes (And Other Accompanying Documents)

¹ Post-16 Education (Scotland) Bill. Policy Memorandum, paragraph 4.
² Post-16 Education (Scotland) Bill. Policy Memorandum, paragraph 2.
6. At its meeting on 5 December 2012, the Committee agreed to seek written evidence from a number of organisations potentially affected by the Bill. Submissions were received from—

- Colleges Scotland
- Commission for Ethical Standards in Public Life in Scotland
- Scottish Public Services Ombudsman
- Skills Development Scotland
- Standards Commission for Scotland
- Universities Scotland
- University of the Highland and Islands

7. All submissions can be accessed on the Committee’s website via the following link: Finance Committee - Scrutiny of Financial Memoranda

8. At its meeting on 30 January the Committee took evidence from the Bill Team. The Official Report of the evidence session can be found on the Parliament’s website here: Link to Official Report of meeting 30 January 2013

9. Following the evidence session a further written submission was provided by the Bill Team. This can also be accessed via the Committee’s website.

10. Whilst the Bill introduces policy provisions relating to six distinct areas, the written and oral evidence contained substantive comments relating to three of these:

- Widening access;
- College regionalisation; and
- Data sharing

11. The relevant costs as set out in the FM and the Committee’s consideration of each of these three aspects are detailed separately below.

   **WIDENING ACCESS**

12. The FM states that “there would be no new or additional budget required”\(^3\) as a result of the widening access provisions contained in the Bill. It notes that there is a possibility that universities and other higher education institutes would incur some additional costs as a result of reprioritisation to widen access to education for underrepresented groups but states that any such costs “are expected to be marginal.”\(^4\)

13. In its submission, Universities Scotland stated that it “would question this assumption”\(^5\) and that “there are significant costs associated with delivering their commitment to recruiting and retaining learners from challenged socio-economic

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\(^3\) Post-16 Education (Scotland) Bill. Financial Memorandum, paragraph 131.
\(^4\) Post-16 Education (Scotland) Bill. Financial Memorandum, paragraph 133.
\(^5\) Scottish Parliament. Written submission.
backgrounds”\(^6\). It refers to a study by JM Consulting which “estimated that, in aggregate, the costs of attracting, teaching and retaining ‘widening access’ students were around 31\% higher than for students from more privileged backgrounds.”\(^7\) The submission went on to state that “if the JM Consulting report’s analysis of costs is correct and £7,500 p.a. is accepted as the average cost of teaching a ‘normal’ student, the additional cost to higher education institutions per ‘widening access’ student would be £2,325.”\(^8\)

14. The Committee sought clarification on this point during its evidence session with the Bill Team and was advised that—

“The report that underpinned the assessment of a 31 per cent additional cost is based on data from 2002 in England. Of course, simply because of its historical nature, that report cannot reflect in any way the substantial funding that has gone into widening access in Scotland, the different distribution of disadvantage in Scotland relative to England or the dramatic changes in recruitment, retention and outreach activity in universities since 2002. Things that were considered as routes only for potential widening access students in 2002 are now mainstream activities for all students. I am therefore rather bemused by the basis on which the evidence was put forward.”\(^9\)

15. Whilst not falling directly within the scope of the Bill, the Committee was informed that funding of around £29 million per annum was provided by the SFC to support widening access activities.

16. The Committee sought further clarification from the Bill Team on any costs that might result from the provision of additional services relating to the widening of access to higher education institutions for under-represented socio-economic groups and was informed that—

“Student support falls very much outwith the provisions in the bill. Substantial changes to the student support package have been introduced for 2013-14. Those changes are specifically designed to help to support widening access and retention by providing a minimum income for low-income students of £7,250 per year and a minimum student loan of £4,500 for all students. That has already been provided, outwith the bill; issues to do with student support were addressed in the spending review.”\(^10\)

17. It went on to state that—

“On the universities’ activities, the financial memorandum indicates that the additional costs will be marginal, rather than zero. There might well be changes in individual institutions, and changes will be greater in some places than in others. The sector has been engaged in widening access activities,

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\(^6\) Scottish Parliament. Written submission.  
\(^7\) Scottish Parliament. Written submission.  
\(^8\) Scottish Parliament. Written submission.  
supported by the Scottish funding council, and as I said there is no indication that the sector thinks that such activities have been underfunded.”

18. When asked directly whether access could be further widened without additional funding the Bill Team responded “in relation to the bill, yes,”11 and went on to state that—

“We have provided student support that will remove financial barriers for widening-access students who have the aspiration and ambition to go to university, so we do that transition.”12

19. The Committee was then informed that—

“The Universities and Colleges Admissions Service statistics that were released this morning indicate that there has been a substantial transition on widening access, with students from our most disadvantaged areas now 80 per cent more likely to apply to university than in 2004. We have been on a journey and we have already had quite a lot of impact. The changes are starting to become well embedded in the universities’ core systems and processes.”13

20. Universities Scotland’s submission went on to state that the SG’s assumption that widening access costs would be marginal “has not been the subject of consultation with Universities Scotland or with member institutions.”14

21. When asked by the Committee why this had been the case the Bill Team stated—

“That is simply because there has been a long and on-going conversation around widening access. The universities are involved in drawing together plans for outreach activity and they have been involved in the development of the widening access agreements, which are part of their outcome agreements. Cost issues were not raised as part of those processes.”15

22. It did go on to state, however, that it would be—

“more than happy to have conversations with Universities Scotland to see whether we have any evidence or indication that is somewhat more recent than the report that was mentioned.”16

23. The Committee invites the lead committee to ask the Scottish Government and Universities Scotland to provide further detail on the likely costs to universities arising from the widening access provisions within the Bill.

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14 Scottish Parliament. Written submission.
24. The lead committee may also wish to seek a breakdown of the £29 million per annum provided by the SFC to support widening access activities.

**COLLEGE REGIONALISATION**

*College Mergers*

25. The PM states that (at the time of writing) the Bill would create 13 different college regions (nine of which would contain single colleges whilst four would consist of a regional strategic body working with more than one college). It states that “beyond the scope of the Bill itself, there will be savings arising from the wider reform programme,”\(^{17}\) and that the SFC “expects to see efficiencies in the region of £50 million per annum by 2015-16.”\(^{18}\) The Committee sought clarification of the basis for this estimate during its oral evidence session with the Bill Team and was provided with supplementary evidence, in the form of correspondence between both the SG and the SFC and the Public Audit Committee which aimed to “make clear the basis of the SFC’s assumptions.”\(^{19}\)

26. This correspondence explained that—

“In our letter of guidance from the Cabinet Secretary for Education and Lifelong Learning, he asked the SFC to make efficiency savings of £18M in 2013-14 and £33M in 2014-15. On our current estimates (based upon mergers that have been completed and our discussions with the colleges that are currently engaged in a merger process) the aggregate of potential merger efficiencies in these years means that these savings are achievable.”

*Regional strategic bodies*

27. In its submission, Colleges Scotland stated that many of the figures quoted in the FM relating to regional strategic bodies “appear light” or “seem very low”. It went on to state that—

“The Financial Memorandum contains new proposals within the College Regionalisation section for staffing structures/costs of the regional strategic bodies and regional boards as well as proposed remuneration levels for chairs of regional college boards which were not explicit in the previous Scottish Government consultation exercises.”\(^{20}\)

28. When questioned by the Committee as to why these figures had not been reflected during consultations, the Bill Team responded—

“It is true that the estimates did not appear in the consultations that the Government published, but the structure of the regional board was developed on the basis of those consultations. We discussed with Colleges Scotland—or, rather, with the former Scotland’s Colleges—the content of the financial memorandum. Specifically, we discussed it with the college legislative group,

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\(^{17}\) Post-16 Education (Scotland) Bill. Policy Memorandum, paragraph 6.

\(^{18}\) Post-16 Education (Scotland) Bill. Policy Memorandum, paragraph 8.


\(^{20}\) Scottish Parliament. Written submission.
to which I referred in my opening statement, which comprised four current principals, one of whom is a regional lead at the moment, and a college chair. The purpose of that engagement was to help shape the content of the bill, which in turn reflected the earlier consultations. Like Tracey Slaven, I am slightly puzzled that Colleges Scotland is saying that it was unaware of the figures. We think that they are at the upper end of the costs likely to be incurred by a regional board, but we did expose those figures to Colleges Scotland as they were developed.”

29. The Bill Team also informed the Committee that instead of the three multi-college regions referred to in the FM, there would now be only two (in addition to UHI) as the two colleges in Aberdeenshire had recently agreed to merge.

30. The Committee sought clarification of how the total of £560,000 was arrived at and was informed that—

“We spent some time talking to Colleges Scotland about the figures and they were influenced by a human resources professional from the sector—an assistant principal who is on secondment to us. We estimate the staff costs to be about £430,000, which covers 6.5 staff. We envisage the position of chief executive officer or strategic lead within the region, a strategic curriculum lead, an operational finance role, an information and communication technology lead, a regional board secretary who will act part time, and two administrators. That comes to £430,000. There are then the on-costs of about £110,000, which we discussed earlier, and the costs of remunerating the chair. Those are the component parts of the global figure. Again, we will be happy to send you a breakdown.” (available online as part of supplementary written submission)

31. In its submission Colleges Scotland stated that “ongoing costs of £110k per annum (including VAT) for the regional strategic bodies appears to be light if these costs are expected to cover new premises, insurances, licences, audit fees, membership fees and staff training, to name but a few, items of expenditure.” However, the Committee raised this point with the Bill Team and was told that—

“We disagree. We have a detailed breakdown of the £110,000, ranging from the computing equipment necessary through consumables and hospitality to travel expenses for board members, recruitment of board members and professional services. We would be happy to share those details with the committee. We do not agree that the forecasts are light.”

32. This breakdown was provided in supplementary written evidence and can be found on the Committee’s website as stated above.

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23 Scottish Parliament. Written submission.
33. The Committee asked what would happen to a regional board in the event that all colleges within its region agreed to merge at a later date. The Bill Team’s supplementary written evidence confirmed that—

“Section 13 of the Bill, which inserts new section 23O into the Further and Higher Education (Scotland) Act 2005, makes provision for Ministers to make an order to abolish a regional board and to transfer the staff, property, right and liabilities of the regional board. We would expect these to be transferred to the merged college in the region which would then benefit from the savings and efficiencies associated with merger.”

34. During its oral evidence session, when questioned about the prospect of further mergers, the Bill Team replied—

“In the sense that merged colleges can provide a better service to learners, there was encouragement to merge where that suited the colleges. If the second part of your question was whether further mergers are in prospect, I think that they probably are, for that reason.”

35. The Committee invites the lead committee to ask the Scottish Government and Colleges Scotland to provide further detail on the extent of the consultation which the Scottish Government carried out in relation to the costs arising from the college regionalisation provisions within the Bill.

36. As the FM stated that the annual costs for each of the three regional boards for 2014-15 and 2015-16 were estimated to be up to £560,000 each giving an annual total of £1,680,000, the lead committee may wish to seek clarification of the new aggregate total following the merger of the two Aberdeenshire colleges.

37. The Committee invites the lead committee to ask the Scottish Government for details of the process of how any regional board would be wound up and its assets and liabilities transferred to a merged college in the event that all colleges within a region agreed to merge at a later date.

*University of the Highlands and Islands*

38. In its submission, the University of the Highlands and Islands (UHI) refers to footnote 2 to the “Summary of Estimated Costs” table in the FM which states that “these costs do not include UHI, which is not a regional board.” As a result, UHI states that it “will apply to the SFC for transitional funding to cover one-off costs of employing a senior member of staff to support FE and associated support staff costs at £420K pa and £310K of one-off preparatory costs.”

39. When questioned on this point the Bill Team responded—

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27 Post-16 Education (Scotland) Bill. Financial Memorandum, paragraph 123.
28 Post-16 Education (Scotland) Bill. Financial Memorandum, paragraph 123.
29 Scottish Parliament. Written submission.
“There probably will be set-up costs for UHI. The financial memorandum is not quite accurate on that point. I am conscious that UHI has made a submission in which it identifies start-up costs. We are talking to it—constructively, I might add—about those costs.”\(^{30}\)

40. **The lead committee may wish to invite the Scottish Government to confirm the set-up costs for UHI and ask why this was not reflected in the FM.**

*VAT registration*

41. The FM states that the new regional boards created by the Bill would not be registered for VAT and would therefore be unable to claim recoverable VAT on non-business activities.

42. In its written submission Colleges Scotland suggested that “it might be prudent to consult a VAT expert to ensure that costs can be minimised within regional strategic bodies and assigned colleges as there may well be VAT implications unless a shared service provider is set-up as a third party body owned by the institutions concerned.”\(^{31}\)

43. When questioned by the Committee as to whether a VAT expert had been or was being consulted, the Bill Team stated that—

> “We consulted the VAT expert in the Scottish Government. Our initial assessment of whether the new bodies would wish to register for VAT was based on an analysis that the bodies would be similar to non-departmental public bodies. As such, they would be able to recover only the element of VAT that related to their business activities. As the vast majority of their activity relates to education, which is exempt from VAT, our expectation is that they would be able to reclaim minimal amounts of VAT and therefore may choose not to register for VAT initially. The financial memorandum was prepared on that basis.”\(^{32}\)

44. The Bill Team went on to explain—

> “There is new legislation that specifically looks at cost-sharing groups, which we believe would be applicable in this instance, but further activity would be needed once the bodies were established. My expectation is that there would be a review of the VAT position as cost sharing was explored.”\(^{33}\)

*Commissioners/Ombudsman*

45. The FM states that—

> “The Bill would extend the remit of the Standards Commission for Scotland, the Scottish Public Services Ombudsman and the Scottish Information Commissioner to include statutory regional boards. This has the potential to

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\(^{31}\) Scottish Parliament. Written submission.


increase their work slightly. Any net increase in costs would be marginal. Moreover, wider college reforms would see the overall number of college bodies decrease.\textsuperscript{34}

46. The Scottish Public Services Ombudsman stated that “it is difficult to assess the impact of new organisations coming within our jurisdiction as well as the changes that will occur in the sector in terms of complaints numbers…working on the assumption that the changes are implemented well we are, therefore, in broad agreement that the impact is likely to be marginal.” However, it goes on to note that “on the assumption that any increase in complaint numbers is small, we are content we can manage this. If we consider that a number of small changes have reached the point where there will be a cumulative impact or if we see a spike in complaint numbers because of any unexpected occurrences during implementation of the legislation, we will work with SPCB and SG to ensure that our ability to maintain our service is maintained.”\textsuperscript{35}

47. When asked about the possibility of a large increase in complaints to the Scottish Public Services Ombudsman as a result of changes proposed by the Bill, the Bill Team stated that whilst neither they nor the ombudsman expected any large increase in complaints, “if there was a large increase in complaints that the ombudsman was not funded to accommodate, we would need to take that into account\textsuperscript{36} and that this would be kept under review if necessary.

48. The Commission for Ethical Standards in Public Life in Scotland states that it has “been informed by the Scottish Government that Ministers plan to amend the Bill at Stage 2 to bring these appointments (chairs of regional colleges and regional boards) within the remit of the Public Appointments Commissioner”\textsuperscript{37} and that this will “result in additional costs for the Commission of £24,000 in financial year 2013/14. These costs are not currently reflected in the Financial Memorandum.”\textsuperscript{38} It goes on to state that if the relevant legislation is passed it “is unlikely we would be able to absorb the full £24,000 in our proposed 2013/14 budget of £798,000. Additional funding would be sought via the Scottish Parliamentary Corporate Body.”\textsuperscript{39}

49. The lead committee may wish to ask the Scottish Government whether the SPCB has been consulted on the proposed additional funding for the Public Appointments Commissioner.

DATA SHARING

50. The FM states that SDS and a number of partner organisations are expected to share costs estimated at £52,000 (over financial years 2011-12 and 2012-13) which would be met from existing budgetary provisions.

\textsuperscript{34} Post-16 Education (Scotland) Bill. Financial Memorandum, paragraph 157.
\textsuperscript{35} Scottish Parliament. Written submission.
\textsuperscript{36} Scottish Parliament. Written submission.
\textsuperscript{37} Scottish Parliament. Written submission.
\textsuperscript{38} Scottish Parliament. Written submission.
\textsuperscript{39} Scottish Parliament. Written submission.
51. Colleges Scotland expressed concerns as to whether this estimate was sufficient and suggested that “this could possibly result in a very bureaucratic and administratively onerous process if not streamlined and automated.”\textsuperscript{40} However, Skills Development Scotland stated that “the figure of £52,000 quoted in the FM represents a likely estimate of incremental costs to make small modifications to partners’ systems.”\textsuperscript{41}

52. The Committee noted that the end of financial year 2012-13 was approaching and asked whether this estimate had proven to be correct and whether work on this project was nearing completion. The Bill Team informed it that—

“We are confident that the £52,000 is the best estimate that we can provide you with. Your point on timing is well made. It is unlikely that there will not be some slippage of that cost into 2013-14. However, we write to you to confirm that point.”\textsuperscript{42}

53. The Bill team provided further information which can be found on the Committee’s website and states that—

“The £52k allocated to meet the costs of developing technical solutions to support data sharing in Section 15 of the Post-16 Education (Scotland) Bill is provided by Skills Development Scotland (SDS). In financial year 2012/13 SDS have spent approximately £6k developing and refining technical solutions for sharing data with local authorities. SDS have reallocated the remaining anticipated spend against financial years 2013/14 and 2014/15 to take in to account the timescales for incorporating partners within the data sharing community and legislation coming in to force. SDS remain satisfied that the overall figure of £52k is sufficient to deliver the software changes required to implement these changes.”\textsuperscript{43}

CONCLUSION

54. The lead committee is invited to consider this submission as part of its scrutiny of the FM.

\textsuperscript{40} Scottish Parliament. Written submission.
\textsuperscript{41} Scottish Parliament. Written submission.
\textsuperscript{43} Scottish Parliament. Supplementary written evidence.
ANNEXE A: ORAL AND WRITTEN EVIDENCE

4th Meeting, 2013 (Session 4), Wednesday 30 January 2013

ORAL EVIDENCE
Michael Cross, Deputy Director, Colleges and Adult Learning, Scottish Government;
Gavin Gray, Bill Team Leader, Colleges and Adult Learning, Scottish Government;
Tracey Slaven, Deputy Director, Higher Education and Learner Support Division, Scottish Government; and

WRITTEN EVIDENCE
- Colleges Scotland (233KB pdf)
- Commission for Ethical Standards in Public Life in Scotland (149KB pdf)
- Scottish Public Services Ombudsman (149KB pdf)
- Skills Development Scotland (159KB pdf)
- Standards Commission for Scotland (81KB pdf)
- Universities Scotland (158KB pdf)
- University of the Highlands and Islands (85KB pdf)

SUPPLEMENTARY WRITTEN EVIDENCE
- Post-16 Education Bill Team (171KB pdf)
- Correspondence to Public Audit Committee
- Learning for All: sixth update report on measures of success 2012 (This document was published online and is available at the following link: http://www.sfc.ac.uk/web/FILES/Our_Priorities_Access/Learning_for_All_sixth_update_report_on_measures_of_success.pdf)
The Government consulted on its proposals twice: first through “Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education”, which set out our ideas for the wider post-16 learning agenda; and subsequently through a specific consultation on college regionalisation, which was undertaken jointly with the Scottish Further and Higher Education Funding Council. The reform programme is also proceeding in the context of the independent reviews of university and college governance that were undertaken, respectively, by Professor Ferdinand von Prondzynski and Professor Russel Griggs. Their work, too, was the subject of consultation with stakeholders. That is the strategic background.

Turning to the bill, college regionalisation forms its most substantial part. It is a central element of our wider college reform programme, which is well under way. Although the bill is not needed to deliver college mergers or the significant efficiency savings that the Scottish funding council expects them to realise, it will establish a new approach to college governance, support the new regional structures and reflect the different approaches that colleges are choosing to take.

As the financial memorandum makes clear, there are costs associated with the new governance arrangements. We estimate that the most significant of those costs relates to the establishment of new regional boards, and we estimate a recurrent cost of some £560,000 for a regional board. It is worth saying that the assumptions that form the basis of that figure were developed with the support of a college assistant principal who is a human resources professional, who is currently on a secondment to my division in the Scottish Government. We shared our assumptions with the college legislative group that was established by what was Scotland’s Colleges—it is now Colleges Scotland—so that a group of college professionals could act as a sounding board as we developed the bill.

The aim of the new governance measures is simply to deliver ministers’ ambition for greater diversity in college and regional boards. The proposed new arrangements for boards’ constitutions and for appointments will improve public accountability by clarifying what is expected of boards and their members, in the context of the existing arrangements for clear accountability for funding and the new regional outcome agreements.

The second area of the bill in which we expect some costs is the new power to ensure that the Scottish funding council can proactively review the structure and provision of fundable further and higher education. The SFC already has a duty to exercise its functions for the purposes of securing coherent provision, but the bill provides a more explicit mechanism for conducting a review of the overall delivery landscape and gives the SFC a clearer remit to use the evidence that it has to ensure that the structures that we fund operate as effectively as possible. We believe that such a power is important in giving the council a clearer mandate to discuss with institutions evidence of, for example, unnecessary duplication that is to the detriment of learners and wider public investment. We sought advice from the SFC on the potential costs of such a review, which we know would not be incurred annually. They would depend on the scope of the review that was undertaken.

The third area in which costs arise is that of data sharing, in relation to which the bill provides for a ministerial power to develop secondary legislation that specifies bodies that would be required to share data with Skills Development Scotland and which sets out the information that needs to be
shared. The background is that for some years SDS has operated a client management database system that allows staff to target their activity at young people who are at risk with a view to re-engaging them in education. We estimate that the cost to partner organisations of the proposed provisions will be around £52,000. We base that on SDS’s experience with other partners such as local authorities.

We do not expect additional costs to arise from the bill’s provisions on higher education governance, those on widening access or those on tuition fees.

I hope that that provides a helpful overview that sets the context for our discussion of the financial aspects of the bill.

As the clerk is aware, a combination of circumstances means that our two colleagues who are working on college governance are unavoidably absent today. We shall do our best to answer the committee’s questions on such matters, but we might need to write to you—if that is the case we will do so immediately, of course.

The Convener: Thank you. We have dealt with a number of financial memoranda over the past few months and it seems clear that the Scottish Government never errrs on the side of generosity in its financial assessments and that stakeholders never believe that adequate funding is available. We have to ascertain the reality, which might be somewhere in between.

Universities Scotland’s view on widening access is completely different from that of the Scottish Government, as you are no doubt aware. Universities Scotland said:

"the costs of attracting, teaching and retaining ‘widening access’ students were around 31% higher than for students from more privileged backgrounds.”

It went on to say that the additional cost of educating a widening access student is £2,325 per student per annum. Why does the Scottish Government say that there will be no additional cost in relation to widening access?

Michael Cross: I will ask Tracey Slaven, who is head of higher education and learner support, to respond.

Tracey Slaven (Scottish Government): I think that I can answer the convener’s question quite directly. Widening access activities, particularly around outreach and retention, are significantly funded, to the tune of about £25 million per annum, by the Scottish funding council. Our progress on widening access has been steady, if unspectacular, and the SFC has had no indication that underfunding is the cause of the slowness of progress. I am a little surprised by Universities Scotland’s argument, but we will be more than happy to have a rather belated conversation on the matter if any institution thinks that there has been underfunding.

The report that underpinned the assessment of a 31 per cent additional cost is based on data from 2002 in England. Of course, simply because of its historic nature, that report cannot reflect in any way the substantial funding that has gone into widening access in Scotland, the different distribution of disadvantage in Scotland relative to England or the dramatic changes in recruitment, retention and outreach activity in universities since 2002. Things that were considered as routes only for potential widening access students in 2002 are now mainstream activities for all students. I am therefore rather bemused by the basis on which the evidence was put forward.

The Convener: I understand your point about the time lag and the changes since 2002, but are you arguing—as seems to be the case—that there will be no additional costs whatever? Even if the £2,325 figure is inaccurate—I do not know whether that is the case; we should look into the matter further—there must surely be additional costs in relation to a group of people who are more likely to drop out of university and who need more support for financial and other reasons. If the number of people from that group increases by 20, 30 or 40 per cent, there will surely be an additional cost, because additional services will be provided.

Tracey Slaven: Student support falls very much outwith the provisions in the bill. Substantial changes to the student support package have been introduced for 2013-14. Those changes are specifically designed to help to support widening access and retention by providing a minimum income for low-income students of £7,250 per year and a minimum student loan of £4,500 for all students. That has already been provided, outwith the bill; issues to do with student support were addressed in the spending review.

On the universities’ activities, the financial memorandum indicates that the additional costs will be marginal, rather than zero. There might well be changes in individual institutions, and changes will be greater in some places than in others. The sector has been engaged in widening access activities, supported by the Scottish funding council, and as I said there is no indication that the sector thinks that such activities have been underfunded.

In this case, the issue is the move from activity to outcomes for students. We are looking for that translation and commitment in the widening access agreements, remembering, of course, that those agreements are reached by the institution with the funding council. The institutions are not being set targets either in the legislation or directly by the Government.
The Convener: They are not being set targets, but do you have a ball-park figure for how many additional students would gain access through that approach?

Tracey Slaven: We have already provided around 2,000 additional places for students in relation to widening access-type activities and articulation. Therefore, the Government has provided additional places to address issues around headroom. Those were raised as the key issues in addressing widening access by the research-intensive institutions, rather than the funding of widening access, outreach or retention.

The Convener: To switch to colleges, the regionalisation agenda will produce expected savings of approximately £50 million by 2015-16. I am always very suspicious of round figures such as “£100 million”, “£50 million” or “£25 million”. If you said to me that the figure would be £47,233,411, I might be inclined to think that it had been accurately assessed. How was the figure of £50 million reached?

Michael Cross: The £50 million figure is a matter for the Scottish funding council, which is supporting the merger programme that is currently under way in the college sector. Drawing on its experience of several previous college mergers, the Scottish funding council has estimated a figure of some £50 million, which its chief executive has, I think, made clear is a round figure.

There has been an extensive exchange of correspondence on the matter following Audit Scotland’s report last autumn. Both the director general for Mr Russell’s portfolio and the chief executive of the funding council have written to the Public Audit Committee to make clear the basis of the Scottish funding council’s assumptions. That is, of course, outwith the scope of the bill as it stands, as the bill is not necessary to deliver the mergers, but we would happily copy that correspondence to the committee, if members would find that helpful.

The Convener: Okay. That would be useful, because Colleges Scotland talks about.

Michael Cross: With the Scottish funding council, we are continuing to talk to colleges about the support for mergers. We do that on the basis of the merger in question. The costs will clearly vary from merger to merger. The Government has made available a £15 million college transformation fund, and the Scottish funding council has access to strategic funds that supplement that transformation fund. I am not sure whether they are of the order of £10 million, but that would take the figure to the £25 million that Colleges Scotland talks about.

I think that there is the prospect of continued support for mergers in order to ensure that they happen on time.

Scott Mackay (Scottish Government): The funding council’s letter to the Public Audit Committee refers to providing additional merger funding in subsequent years and to an estimated cost of £54 million in one-off expenditure funded through a combination of SFC strategic funding and the college transformation fund.

The Convener: Okay.

The issue of VAT has been raised. The new regional boards that will be created by the bill cannot be registered for VAT and will therefore be unable to claim recoverable VAT on non-business activities. However, Colleges Scotland has stated that many of the predicted costs in the financial memorandum relating to regionalisation “appear light”. It suggested:

“It might be prudent to consult a VAT expert to ensure that costs can be minimised within regional strategic bodies”.

Is that happening? Is a VAT expert being consulted?

Scott Mackay: We consulted the VAT expert in the Scottish Government. Our initial assessment of whether the new bodies would wish to register for VAT was based on an analysis that the bodies would be similar to non-departmental public bodies. As such, they would be able to recover only the element of VAT that related to their business activities. As the vast majority of their activity relates to education, which is exempt from VAT, our expectation is that they would be able to reclaim minimal amounts of VAT and therefore may choose not to register for VAT initially. The financial memorandum was prepared on that basis.

The situation would be subject to review if the bodies themselves investigated cost sharing. My understanding is that the bill makes provision to allow that to be explored but does not require it.

11:45

Michael Cross: The bill makes provision for regional bodies to operate “economically, efficiently and effectively”. Were those criteria met,
the colleges would pursue the approach suggested by Scott Mackay.

Scott Mackay: There is new legislation that specifically looks at cost-sharing groups, which we believe would be applicable in this instance, but further activity would be needed once the bodies were established. My expectation is that there would be a review of the VAT position as cost sharing was explored.

The Convener: I have one last question before I open up the session to colleagues, who are all champing at the bit to come in with questions.

On-going costs of £110,000, including VAT, have been estimated for the regional strategic bodies. Concerns have been expressed to the committee that those costs, which

“are expected to cover new premises, insurances, licences, audit fees, membership fees and staff training, to name but a few items of expenditure”,

are a woeful underestimate. What is your view on that?

Michael Cross: We disagree. We have a detailed breakdown of the £110,000, ranging from the computing equipment necessary through consumables and hospitality to travel expenses for board members, recruitment of board members and professional services. We would be happy to share those details with the committee. We do not agree that the forecasts are light.

The Convener: Gavin Brown will be next to ask a question, followed by Michael McMahon.

Gavin Brown: I will start with a simple one. You have given predictions for the cost of data sharing, which you describe as “Marginal”. However, in a helpful footnote in the financial memorandum, you say that the cost will be £52,000. Skills Development Scotland says that that is the correct level. I do not know for certain that it has been spent but we can clarify that.

Gavin Gray (Scottish Government): I am sorry but the main policy lead on that is not here today. From SDS information, we are aware that is the correct level. I do not know for certain that it has been spent but we can clarify that.

Gavin Brown: I do not want to press the matter if the right person is not here; perhaps we could get a letter on that. When the financial memorandum was produced, there may have been some dubiety. However, given that we are fairly close to the end of the financial year that the money was for, we must now know whether it is enough.

Michael Cross: We are confident that the £52,000 is the best estimate that we can provide you with. Your point on timing is well made. It is unlikely that there will not be some slippage of that cost into 2013-14. However, we will write to you to confirm that point.

Gavin Brown: I want to return to the subject with which the convener started, which is widening access. We have heard what Universities Scotland has had to say on that. It also states that the cost assessment

"has not been the subject of consultation with Universities Scotland or with member institutions."

Is that correct?

Tracey Slaven: There has not been a specific consultation on the preparation of the financial memorandum. However, conversations on the costs of widening access and the provision of support through the funding council for the outreach activities that I described earlier have been on-going for a number of years. As I said, there was no indication of underfunding on those issues.

Gavin Brown: When you had informal discussions, if not formal consultation, with institutions and Universities Scotland on the financial memorandum, did they say something different from what the written evidence that we have received says?

Tracey Slaven: As I said, there has not been a specific conversation on the financial memorandum.

Gavin Brown: Has there been a specific conversation with universities or Universities Scotland on the costs of widening access as a consequence of the bill?

Tracey Slaven: No.

Gavin Brown: That leads me to the obvious question: why has there not been a conversation? In working out the costs, why would you not ask them about that?

Tracey Slaven: That is simply because there has been a long and on-going conversation around widening access. The universities are involved in drawing together plans for outreach activity and they have been involved in the development of the widening access agreements, which are part of their outcome agreements. Cost issues were not raised as part of those processes.

Gavin Brown: Obviously, cost issues have now been raised, on the record, in Universities Scotland’s written submission. What will the Government do in response to that?
Tracey Slaven: As I said, I am more than happy to have conversations with Universities Scotland to see whether we have any evidence or indication that is somewhat more recent than the report that was mentioned.

Gavin Brown: The convener mentioned that report and the additional cost per student of about £2,350, which you do not agree with. He fairly pointed out the year in which that report was produced, and I believe that it referred mainly, or possibly exclusively, to the situation south of the border. I am happy to take all that on board, but what is your idea of the additional cost per student for widening access? The report states that it is £2,350 or thereabouts, but you do not agree with that. To disagree, you must have some idea of the cost per student. What is it?

Tracey Slaven: As indicated in the financial memorandum, we believe that, at sector level, the cost is marginal. That is because recruitment and the admissions process are, as universities have said, intrinsic to their core mission. The processes are changing and developing over time. Five or 10 years ago, the idea that a university would have a social media presence to try to recruit students simply would not have been tenable. Those processes are changing the costs. Widening access is part of that mainstream activity. The bill simply requires commitments to demonstrate the impact of those activities.

Gavin Brown: So your view is that you can widen widening access—if I can couch it in those terms—without additional funding?

Tracey Slaven: In relation to the bill, yes. As I said, we made additional places available when it was indicated that headroom provision of places was the key constraint for our research-intensive universities in performing against the widening-access targets. We have provided student support that will remove financial barriers for widening-access students who have the aspiration and ambition to go to university, so we do that transition.

It is worth reflecting that the Universities and Colleges Admissions Service statistics that were released this morning indicate that there has been a substantial transition on widening access, with students from our most disadvantaged areas now 80 per cent more likely to apply to university than in 2004. We have been on a journey and we have already had quite a lot of impact. The changes are starting to become well embedded in the universities’ core systems and processes.

Gavin Brown: You referred to a figure of £29 million. Is that an annual figure or does it cover a spending review period?

Tracey Slaven: It is an annual figure.

Gavin Brown: Okay. As it stands, there is an annual sum of £29 million for widening access. How many students are helped by that £29 million?

Tracey Slaven: I would have to refer to the latest report, which I do not have with me, for that information. It is worth knowing that that money goes to fund outreach activities, which obviously impact on a large number of individuals, a number of whom become applicants and then students. I can get a copy of the latest report to you.

Gavin Brown: You do not have it to hand, but if you are prepared to furnish us with it, that would be helpful.

Tracey Slaven: It is a published document from the SFC, so we can get it for you.

Gavin Brown: Thank you.

Michael McMahon: A number of consultations took place prior to the bill being introduced. We asked people to comment on their participation in those. Colleges Scotland states in its response:

“The Financial Memorandum contains new proposals within the College Regionalisation section for staffing structures/costs of the regional strategic bodies and regional boards as well as proposed remuneration levels for chairs of regional college boards”.

It goes on to say that those were not part of the initial consultations. Can we trust the figures that you have come up with, given that they were not consulted on and given that all those other costs have been added without having been reflected in the consultations?

Michael Cross: I hope that you can trust the figures. It is true that the estimates did not appear in the consultations that the Government published, but the structure of the regional board was developed on the basis of those consultations. We discussed with Colleages Scotland—or, rather, with the former Scotland’s Colleges—the content of the financial memorandum. Specifically, we discussed it with the college legislative group, to which I referred in my opening statement, which comprised four current principals, one of whom is a regional lead at the moment, and a college chair. The purpose of that engagement was to help shape the content of the bill, which in turn reflected the earlier consultations. Like Tracey Slaven, I am slightly puzzled that Colleges Scotland is saying that it was unaware of the figures. We think that they are at the upper end of the costs likely to be incurred by a regional board, but we did expose those figures to Colleges Scotland as they were developed.

Michael McMahon: There is a supposition in all this that the regional boards are just going to happen and that we will end up at the end of this
process with the structures that the Government envisages for them. However, regionalisation is not going well in Lanarkshire. What happens if we do not end up with the regional boards in the way that you envisage and we still have individual colleges that are not within the regional board structures that the bill projects?

**Michael Cross:** In a region such as Lanarkshire, which would in effect be one region with a number of colleges in it, we would construct a regional board to oversee provision in the region, working with the constituent colleges.

**Michael McMahon:** Will there be a regional board regardless of whether the colleges come together and form the structures that you hope or intend in the bill?

**Michael Cross:** Yes, there will be a regional board in each region.

**John Mason:** I occasionally get a complaint about a college, although not that many. The Scottish Public Services Ombudsman submission states that there has been an 18 per cent increase in complaints and highlights the potential for an increase in complaints if there is a lot of structural change. Is it the feeling that there will be just a marginal cost for the SPSO or is there a wee bit of a risk in there?

**Michael Cross:** Our view—and I think that of the ombudsman—is that such complaints are likely to remain a marginal cost.

**John Mason:** If there was quite a lot of movement, with courses being provided on only one campus rather than another, for example, I could foresee that meeting a certain amount of resistance.

**Michael Cross:** Yes, it might meet resistance. That goes to the heart of what we intend by regionalisation. We do not intend to reduce the offer available to learn—that is not ministers’ ambition. However, on the point about the ombudsman, if there was a large increase in complaints that the ombudsman was not funded to accommodate, we would need to take account of that.

**John Mason:** Would that be kept under review?

**Michael Cross:** It would have to be.

12:00

**John Mason:** Although we have been talking about mergers, am I correct that, technically, mergers are not in the bill? Regions are in the bill and whether colleges merge is a separate issue.

**Michael Cross:** Yes, mergers are a matter for the colleges.

**John Mason:** People certainly think that the two are interlinked.

An issue that has been raised with me is salary structures, which I think are very different around the country at present. I presume that when colleges merge there will be one salary structure. I accept that that would fall outwith the provisions of the bill.

I am wondering about somewhere such as Glasgow, where there will probably be three colleges in one region. If they all have separate salary structures, will it be the region’s responsibility to bring that under control, or will it live with different costs? There would be quite a cost in trying to bring it all together.

**Michael Cross:** There may be a cost in that, which would be a matter for the region to resolve. If there was a significant additional cost, the region would have to take account of it when deploying the funding it would receive from the Scottish funding council.

**John Mason:** Would that be included in the change fund or the £54 million that has been mentioned?

**Michael Cross:** No funding will be provided specifically for the harmonisation of terms and conditions in the way that you suggest.

**John Mason:** Is that because it is seen as purely a college merger function and not a regional function?

**Michael Cross:** It is seen that it could be a consequence of college merger.

**John Mason:** Is it possible that there could be one region with three different salary structures within it?

**Michael Cross:** Yes, that is possible.

**John Mason:** Okay. Thank you.

**Jamie Hepburn:** I want to clarify a couple of things about college regionalisation. Nine out of the 13 regions that will be established will have single colleges. Is it correct that the four regions that will have multiple colleges are Lanarkshire, Glasgow, Fife and the Highlands?

**Michael Cross:** No, that is not quite correct.

**Jamie Hepburn:** Correct me then.
Michael Cross: I will try to do that. The regions that will remain single-college regions are, I think Dumfries and Galloway—

Jamie Hepburn: No, I am asking about the four that will have more than one college.

Michael Cross: The University of the Highlands and Islands will have more than one college. Fife is not expected to have more than one college. Glasgow and, as your colleague suggests, Lanarkshire will.

Jamie Hepburn: I am aware of that one.

Michael Cross: The position of UHI is rather distinct from the college sector, so Tracey Slaven will pick up on that.

Tracey Slaven: In essence, the function of the regional board will be conducted by a further education subcommittee of the UHI council.

Jamie Hepburn: So there will be no set-up costs or on-going costs for UHI within the arrangements that you referred to.

Michael Cross: That is a slightly different point. There probably will be set-up costs for UHI. The financial memorandum is not quite accurate on that point. I am conscious that UHI has made a submission in which it identifies start-up costs. We are talking to it—constructively, I might add—about those costs.

Jamie Hepburn: There is also reference to three boards and a £560,000 cost. Are you suggesting that there might be only two boards?

Michael Cross: Yes.

Jamie Hepburn: So might that £560,000 figure come down?

Michael Cross: It might well come down, yes.

Jamie Hepburn: I presume that we would recognise that as good news.

Scott Mackay: The £560,000 would not come down. The aggregate of £1.86 million was based on three regional boards.

Jamie Hepburn: So the figure is £560,000 per board?

Scott Mackay: Yes.

Jamie Hepburn: Okay. That was my misunderstanding. So the aggregate costs will come down a little.

Can you explain how the £560,000 figure was arrived at?

Michael Cross: We spent some time talking to Colleges Scotland about the figures and they were influenced by a human resources professional from the sector—an assistant principal who is on secondment to us. We estimate the staff costs to be about £430,000, which covers 6.5 staff. We envisage the position of chief executive officer or strategic lead within the region, a strategic curriculum lead, an operational finance role, an information and communication technology lead, a regional board secretary who will act part time, and two administrators. That comes to £430,000. There are then the on-costs of about £110,000, which we discussed earlier, and the costs of remunerating the chair. Those are the component parts of the global figure. Again, we will be happy to send you a breakdown.

Jamie Hepburn: That would be helpful.

Where a regional board has been established, it is subject to a degree of oversight by the Commission for Ethical Standards in Public Life and the Scottish Public Services Ombudsman—we have talked a little about complaints. Can I clarify that, where there is no regional board, those bodies will have no role and there will be no cost implication for them?

Michael Cross: Yes, barring the remuneration that we propose for the chair of that board.

Jamie Hepburn: What board?

Michael Cross: The board would be the board of the single college.

Jamie Hepburn: Okay, so that will still be subject to—

Michael Cross: That would become subject to remuneration.

Jamie Hepburn: But there will be no role for the SPSO, because they will be incorporated—

Michael Cross: That matter is still to be determined by the cabinet secretary.

Jamie Hepburn: Okay. What will happen to a regional board if the region ceases to have more
than one college—that is, if the colleges merge into one?

**Michael Cross:** That would merge into one board, which would essentially become the regional board for the region.

**Jamie Hepburn:** I thought that there would not be a regional board because it was no longer a multi-college region.

**Michael Cross:** There would be one college and that board would act as—

**Jamie Hepburn:** Would it, or would it cease to exist?

**Michael Cross:** No. There would be one college in the region and that college would have one board, and that would be it. There would be nothing sitting above that.

**Jamie Hepburn:** That is an interesting point, because is that not a disincentive for colleges? I am not saying that there should necessarily be an incentive, but colleges are going to think, “If we merge, we will have no say over who our board will be.”

**Michael Cross:** No. I think that the reality is that they would have a considerable say in the constitution of their board. Part of the act of merging is to discuss what the joint board of the merged colleges will look like.

**Jamie Hepburn:** I wonder whether we are talking at cross purposes. I am talking about circumstances in which a regional board has been put in place or appointed to deal with a region in which there is more than one college and, at some point down the line, the colleges decide to merge. In other regions where there is only one college, there is no regional board, so my instinct was that after the merger the regional board would serve no purpose and would cease to exist, but you are telling me that, in fact, it will become the de facto board of the merged college.

**Michael Cross:** No. I am sorry if I gave you that impression.

**Jamie Hepburn:** That was the impression.

**Michael Cross:** I am sorry, because that is not the answer. There will be one board that is constructed jointly by the merging colleges.

**Jamie Hepburn:** My initial perspective was correct, then. The regional board will cease to exist.

**Scott Mackay:** There will be no public body where there was one.

**Jamie Hepburn:** Thank you. That is what I was trying to establish. I think that we got there in the end.

**Michael Cross:** Sorry. I was terribly slow on that.

**The Convener:** Are you all right, Jamie?

**Jamie Hepburn:** I am now.

**The Convener:** Jean?

**Jean Urquhart:** My question was mostly answered through Jamie Hepburn’s questions. Can I be clear about colleges that have merged and how that has come about? Was there a desire for more colleges to merge? Is there an expectation that more colleges will merge in future?

**Michael Cross:** I think that the cabinet secretary has always made clear the attractions of merger. The letter from Mr Batho at the funding council to Mr Gray at the Public Audit Committee makes quite plain the attractions of merger. In the sense that merged colleges can provide a better service to learners, there was encouragement to merge where that suited the colleges. If the second part of your question was whether further mergers are in prospect, I think that they probably are, for that reason.

**Jean Urquhart:** Thank you.

**The Convener:** Do you have any other questions, Jean?

**Jean Urquhart:** No.

**The Convener:** We seem to have exhausted the committee’s questions. As we have no further items on our agenda, I thank the witnesses and close the meeting.

*Meeting closed at 12:10.*
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Colleges Scotland submitted responses (as Scotland’s Colleges) to the following consultations:

- Putting Learners at the Centre: Delivering Our Ambitions for Post-16 Education (issued by the Scottish Government on 15 September 2011). Response Title: Realising the Potential of Scotland’s People: Scotland’s Colleges’ Response to the Pre-Legislative Consultation Paper Putting Learners at the Centre (submitted 16 December 2011).
- College Regionalisation: Proposals for Implementing Putting Learners at the Centre (issued jointly by the Scottish Government and the Scottish Funding Council (SFC) on 14 November 2011). Response Title: Scotland’s Colleges: Shaping a Sustainable Model for a Successful Future Response to Proposals for Implementing Putting Learners at the Centre (submitted 16 December 2011).

2. The Financial Memorandum contains new proposals within the College Regionalisation section for staffing structures/costs of the regional strategic bodies and regional boards as well as proposed remuneration levels for chairs of regional college boards which were not explicit in the previous Scottish Government consultation exercises noted above. The costs proposed for the Review of Fundable Further and Higher Education in the Explanatory Notes (paragraph 158, page 28) were not explicitly costed within the previous Scottish Government consultation exercises.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

3. See comments in question 1 above.

Did you have sufficient time to contribute to the consultation exercise?

4. The Christmas holiday period impinged upon the time to review and comment upon the Financial Memorandum within the draft legislation.
Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

5. Colleges Scotland is responding on behalf of the college sector, rather than commenting on direct costs associated with the organisation Colleges Scotland.

6. The following points reflect the financial implication for colleges:

College Regionalisation - Issues for Regional Strategic Bodies

• the staff costs as noted in the Summary of Estimated Costs in the Explanatory Notes (table contained within paragraph 123, page 22) within the Financial Memorandum for the regional strategic bodies appear light. There are five proposed positions equating to £430k per annum; this is on average £60k per role before on-costs. The CEO role is akin to a principal role and therefore it would be reasonable to assume a similar salary. Perhaps the additional costs of this post will be offset by the part-time administrative/board secretary role which are proposed.
• the proposal for the regional strategic body to combine administrative duties with board secretary responsibilities on a part-time basis may not be possible, as these roles require different skill sets and are unlikely to be accommodated by a part-time role.
• the Summary of Estimated Costs quotes £12k for one off start-up costs for the regional strategic bodies which would include setting up an office as well as financial and other processes. This figure seems very low.
• ongoing costs of £110k per annum (including VAT) for the regional strategic bodies appears to be light if these costs are expected to cover new premises, insurances, licences, audit fees, membership fees and staff training, to name but a few, items of expenditure.
• the assertion that the regional strategic body would not be VAT registered should be questioned. It might be prudent to consult a VAT expert to ensure that costs can be minimised within regional strategic bodies and assigned colleges as there may well be VAT implications unless a shared service provider is set-up as a third party body owned by the institutions concerned. Currently, many colleges consult with VAT experts to assist with this complex, specialist area.
• albeit not a direct cost, there are implications for staff of the regional strategic body e.g. assuming the curriculum lead has a teaching background, the new regional strategic body will require admitted body status to the teachers' pension scheme to ensure staff are not disadvantaged by being employed by such a body.
• the assessment that there will be no additional infrastructure costs for IT systems and processes for the new regional strategic bodies may prove to be optimistic. As a minimum, system set-up costs and initial training should be estimated.
• the cost of populating regional boards is estimated at £90k per board in 2013/14. These costs appear light as these boards will be new boards of 12-18 members. Advertising and recruitment costs will be incurred, as will disclosure costs for new board members. There are also no costs included for any changes to existing boards of regional colleges.
Review of Fundable Further and Higher Education
• costs of the review by SFC of fundable further and higher education (£150k - £300k every four years) are to be met from SFC which means these costs could ultimately come out of college budgets i.e. teaching grant.

Data Sharing with Skills Development Scotland (SDS)
• The estimating £52k one-off cost and estimated marginal on-going costs to establish technical solutions to effect the data sharing with SDS appears light. The data sharing imposes a legal duty on relevant bodies to share information on all 16-24 year olds moving through the learning system. This could possibly result in a very bureaucratic and administratively onerous process if not streamlined and automated. To do this would require investment and training for many partners.

Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?
7. With reference to the response to question 4 above, it would be prudent to add additional costs as suggested. Projections over 15 years can be difficult to gauge with so many variables outwith immediate control.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
8. Colleges Scotland have assumed that additional costs as noted in the Summary of Estimated Costs will be met from the budget within the regional colleges and regional strategic bodies which could ultimately results in a reduction to college teaching grant, if new monies are not made available or efficiency savings from SFC are not passed on.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
9. The Financial Memorandum as it currently stands does not accurately represent the margins of uncertainty, as detailed under question 4 and for the reason stated in question 5.

Wider Issues
Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
Cost of Mergers
10. There are currently nine mergers taking place as part of the college regionalisation agenda. Although there are expected savings of approximately £50m by 2015/16 based on recently completed mergers, the recent Audit Scotland (2012) report: Scotland’s colleges: current finances, future challenges also notes that “mergers can be costly, complex and time-consuming”. There is a £25m College Transformation Fund which will assist this process however this is unlikely to be enough to meet all the costs of merger. Audit Scotland suggested that the Financial Memorandum accompanying the Post-16 Education (Scotland) Bill should provide
detailed assessment of the costs and benefits of regionalisation, including the cost of funding mergers. The current Financial Memorandum does not provide this information.

**SDS Data Sharing**

11. Data sharing costs are noted as marginal within the Financial Memorandum. This does not appear to be an appropriate costing for a significant IT process, with multiple partners providing data on a considerable group of the population i.e. young people between the ages of 16 and 24 moving through the learning system, with possible follow up measures that may also require to be tracked.

**Highlands and Islands Region – Regional Strategic Body**

12. Costs are noted as marginal for the region of the Highlands and Islands, as the Bill designates the University of the Highlands and Islands as the regional strategic body. It might be prudent to expect some additional costs to enable the regional strategic body to carry out the duties already noted for other regional strategic bodies such as Glasgow and Lanarkshire.

**Highlands and Islands Region – Appointment and Remuneration of an independent Chair of the Regional Strategic Body**

13. There are costs estimated for the appointment of the nine regional college chairs and the three regional board chairs (£90k), and costs for remuneration of the nine regional college chairs and the three regional board chairs (total £240k), but no additional costs are included for the appointment or remuneration of an independent chair of the regional strategic body of the Highlands and Islands region. This seems at odds with the principle of the chair being appointed using the public appointments process and suggests that the chair within the Highlands and Islands region may not be remunerated.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

14. It is not clear from the draft legislation if single college regions can merge or operate under a federal system with another region, at some point in the future, for the benefit of the learner. The possible change to the current map of the regions and therefore fundable bodies may require secondary legislation.

15. There are other future potential costs associated with possible legal employment disputes as a consequence of the principal being employed by the assigned college in a multi-college region but the terms and conditions, performance review and remuneration, set by the regional board.

16. There are also potential costs associated with possible breaches of other legislation e.g. health & safety, equalities etc as a result of the same principle as noted above i.e. accountability held by the regional board and the responsibility held by the assigned college board.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. The Commission did not take part in the consultation exercises.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
2. Not applicable

Did you have sufficient time to contribute to the consultation exercise?
3. Not applicable

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

5. The Commission for Ethical Standards in Public Life in Scotland comprises two Commissioners. The Public Standards Commissioner for Scotland, who investigates complaints about the conduct of members of devolved public bodies, and the Public Appointments Commissioner for Scotland, who scrutinises ministerial appointments to the boards of public bodies within his remit.

6. The Public Standards Commissioner for Scotland will investigate any complaints about the conduct of members of the boards of the proposed regional colleges. It is anticipated that this work can be absorbed in current budgets.

7. The Chairs of the proposed regional colleges and regional boards will be ministerial appointments. However, the current draft of the Bill does not bring these appointments within the remit of the Public Appointments Commissioner. Therefore, at present there is no financial impact in this regard for the Commission.

8. However, we have been informed by the Scottish Government that Ministers plan to amend the Bill at Stage 2 to bring these appointments within the remit of the Public Appointments Commissioner. The Scottish Ministers intend to begin the appointment process in 2013.

9. The posts involved are detailed in paragraph 36 of the Policy Memorandum accompanying the Bill as reflected in the table overleaf. It should be noted that in the...
Highlands and Islands region the University of the Highlands and Islands (UHI), would be the regional strategic body. In practice, the regional board function would be delegated to a further education committee of the UHI court and the chair of that committee would not, therefore, be a ministerial appointment.

<table>
<thead>
<tr>
<th>Single college regions: regional colleges</th>
<th>Multi-college regions: regional strategic bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing</strong></td>
<td><strong>Regional boards</strong></td>
</tr>
<tr>
<td>Borders</td>
<td>Aberdeen and Aberdeenshire</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
<td>Glasgow</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>Lanarkshire</td>
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<tr>
<td>Forth Valley</td>
<td></td>
</tr>
<tr>
<td>West Lothian</td>
<td></td>
</tr>
<tr>
<td><strong>Anticipated (to become a single college as a result of future mergers)</strong></td>
<td></td>
</tr>
<tr>
<td>Ayrshire</td>
<td></td>
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<tr>
<td>Fife</td>
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<tr>
<td>Tayside</td>
<td></td>
</tr>
<tr>
<td>West</td>
<td></td>
</tr>
</tbody>
</table>

10. Currently, the average cost of overseeing a public appointment is £2,000 per appointment round. Subject to the enactment of the legislation we anticipate that provision of regulatory oversight for appointments to the 12 chair posts concerned (numbered in the table above) will therefore result in additional costs for the Commission of £24,000 in financial year 2013/14. These costs are not currently reflected in the Financial Memorandum.

**Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?**

11. We have no comment on the other costs outlined in the Financial Memorandum.

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**

12. If the relevant legislation bringing Chairs of the proposed regional colleges and boards within the remit of the Public Appointments Commissioner’ is passed, it is unlikely we would be able to absorb the full £24,000 in our proposed 2013/14 budget of £798,000. Additional funding would be sought via the Scottish Parliamentary Corporate Body.

13. We anticipate being able to plan for and absorb the costs of subsequent re-appointments and appointments to these posts within the Commission’s normal budget.
Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

14. We have no comment on the other costs outlined in the Financial Memorandum.

Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

15. We have no comment on the other costs associated with the Bill.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

16. We have no comment on the other costs associated with the Bill.
Background
1. In 2005 the role of the Scottish Public Services Ombudsman (SPSO) was extended to include complaints about further and higher education bodies. This was achieved by a change in our legislation which was amended to allow us to take complaints about “any fundable body within the meaning of Further and Higher Education (Scotland) Act 2005”. Since then we have received complaints from students and others who have unresolved concerns about universities and colleges. The numbers of such complaints are low, and out of a total of 3918 complaints received by SPSO during the year 2011-12, only 130 were about this sector. This was, however, an 18% increase on the number received about the sector in the previous year.

2. In 2011, the Public Services Reform (Scotland) Act gave us a new role and we now not only consider complaints but have a role in creating standard complaints procedures for each sector under our jurisdiction. The SPSO’s Complaints Standards Authority has been working with further and higher education bodies over the last year and anticipate that a model complaint handling procedure for this sector will be implemented over the next academic year (2013-2014). We will be working with bodies to support this change.

Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
3. We did not participate in the consultation process. We normally only respond to consultations when we are directly asked to do so; can identify a clear impact on the SPSO or feel that we have useful information from our experience of complaints which may help. We did not feel this was the case in the consultations which preceded this bill.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
4. N/A

Did you have sufficient time to contribute to the consultation exercise?
5. N/A
Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

6. The Financial Memorandum identifies at paragraph 157 that there will be an extension to our remit because of the creation of new regional boards, which will increase our work slightly. It adds that this would be marginal. It notes that the number of colleges themselves will reduce.

7. The creation of new bodies is not the only change which may have an implication for complaints arising from the Bill. New duties and responsibilities for bodies can drive complaints, as can significant structural change if not well-managed. The Bill allows for both of these scenarios, in particular there are new obligations to consult and the Bill encourages the merger of bodies.

8. It is difficult to assess the impact of new organisations coming within our jurisdiction as well as the changes that will occur in the sector in terms of complaints numbers. We rarely receive complaints about the current funding set up. Although the Financial Memorandum does not identify all the possible impacts on us, working on the assumption that the changes are implemented well we are, therefore, in broad agreement that the impact is likely to be marginal.

9. However, we would raise two points of caution. We have seen a double digit increase in complaint numbers from this sector over the last two years and this may be further inflated by any uncertainty arising from the changes. Also, while on its own a single net marginal increase may be absorbed by our organisation, if this were to occur in a number of areas we could experience a cumulative impact that would be much more difficult for us to absorb. Like all public bodies, we are currently seeing our budgets reduce and have extremely limited capacity to absorb any increase in workload. As the Finance Committee will be aware, our funding comes direct from the Scottish Parliament. We are seeking to monitor and keep the SPCB informed as far as we can of any possible cumulative impact of such changes, which would individually have only limited effect. We have also had some positive early discussions with the Scottish Government about the incremental impact of policy changes which on their own may be small or marginal.

Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

10. With the exception of the comments under question 4, we have no comments to make.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

11. As we have said above, on the assumption that any increase in complaint numbers is small, we are content we can manage this. If we consider that a number
of small changes have reached the point where there will be a cumulative impact or if we see a spike in complaint numbers because of any unexpected occurrences during implementation of the legislation, we will work with SPCB and SG to ensure that our ability to maintain our service is maintained. These possible costs are not ones that it would be easy to set out in a Financial Memorandum and they may, in any event, not be large in terms of the overall costs.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

12. See our answers above.

Wider Issues
Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

13. See our answers above
Introduction

1. Skills Development Scotland (SDS) is Scotland’s skills body, focused on contributing to the delivery of the Scottish Government’s Economic and Skills Strategies. We set out our vision and future development and delivery plans in our Corporate Strategy (2012-15) and annual Operating Plan (2012-13)\(^1\).

2. SDS’ key aim is to deliver support to those who need it most, particularly young people. SDS is working collaboratively with partners across Scotland to enable young people to move more successfully between learning and work opportunities. This submission provides an overview of the work we are doing in relation to data sharing between partners to support this ambition. SDS welcomes the data sharing elements of the Post 16 Reform Bill as being clearly supportive of this.

Data Sharing

3. Young people, especially those with disadvantages in life chances, benefit from the best support they can get at transition points such as leaving school and entering college. The Scottish Government and 16+ Learning Choices/More Choices More Chances (MCMC) delivery partners recognise the value that data sharing brings to successful delivery for young people and, to enable this, SDS is tasked by the Scottish Government with developing and sustaining the 16+ Learning Choices data hub for the benefit of all involved partners. At this point the main data sharing partners are SDS, all local authorities and colleges in Scotland, the Student Awards Agency for Scotland (SAAS) and Jobcentre Plus. SDS approaches the 16+ Learning Choices data hub as a joint endeavour between data sharing partners and focuses on the key success factor of embedding data sharing in the robust legal, governance and technical framework which make up the 16+ Learning Choices data hub.

4. The intended benefits from the data hub are:
   * a more effective and personalised service for young people, leading to more young people in positive destinations;
   * removal of data gaps and duplication to provide more effective and easier working for front-line service delivery staff;
   * more comprehensive and robust management information that supports well-informed strategy decisions;
   * more accurate and complete reporting to Scottish Government, particularly in relation to Opportunities for All.

5. The aim of the 16+ Learning Choices data hub is to achieve these benefits and support young people from S3 onwards by providing the central mechanism in Scotland for bringing together and sharing the information available on young people and their learning choices. Effective, straightforward data sharing between partners will support 16+ Learning Choices and Opportunities for All by achieving a more complete and reliable data set for all partners, allowing them to quickly identify and engage with any young person dropping out or failing to complete their learning choice, with a view to re-engaging them in the system.

6. At the time of writing, the core legal, governance and technical frameworks are in place, and SDS current activity is centred on sustaining and enhancing the data hub so that it can progressively better meet the needs of all partners and respond to evolving service delivery and management of reporting needs.

Finance

7. Given that the majority of the technical (i.e. Information Technology) work to enable multi-partner data sharing through the data hub is already in place, and also bearing in mind that all partners already own and sustain substantial customer data recording systems, the figure of £52,000 quoted in the Financial Memorandum to the Bill represents a likely estimate of incremental costs to make small modifications to partners’ systems, to increase or enhance their ability to share data through the 16+ Learning Choices data hub as the latter adapts to partners’ evolving business needs in relation to Post-16 Reform, particularly Opportunities for All.

Conclusion

8. SDS welcomes the data sharing elements of the Post 16 Reform Bill. These complement the ongoing work that partners are undertaking to enable multi-partner data sharing for the benefit of young people. Thorough parliamentary scrutiny of both primary and secondary legislation and the effective implementation of the legislation will help to provide clarity and shared understanding for the legal framework within which this work takes place.
1. Thank you for offering the Standards Commission for Scotland the opportunity to comment on the Post-16 Education (Scotland) Bill: Financial Memorandum.

2. We have considered the Financial Memorandum and consider that the financial implications for the Standards Commission would be minimal and will only lead to a significant increase in our costs should the ethical standards framework be extended to include Regional Boards and, under its statutory enforcement powers, the Standards Commission held a Hearing to determine whether a member or members of a Regional Board had breached their Code of Conduct.

3. We have no further comments on the consultation.
FINANCE COMMITTEE
POST-16 EDUCATION (SCOTLAND) BILL FINANCIAL MEMORANDUM
SUBMISSION FROM UNIVERSITIES SCOTLAND

1. Universities Scotland welcomes the opportunity to make observations to the Finance Committee on the content of the Financial Memorandum to this Bill. In the interests of brevity, we are restricting our evidence to the specific points which we need to make, rather than addressing exhaustively the issues in the questionnaire.

Widening access (section 3 of the Bill)
2. The costs of this measure are described in the summary table as ‘marginal’. We would question this assumption, which has not been the subject of consultation with Universities Scotland or with member institutions.

3. Higher Education Institutions’ experience is that there are significant costs associated with delivering their commitment to recruiting and retaining learners from challenged socio-economic backgrounds. Areas of cost include for instance:

- **Outreach activities** to attract students from low-participation backgrounds e.g. activities in schools and colleges to promote the opportunity for university-level study, summer schools to give learners a ‘taster’ of university-level study and enhance their likelihood to apply.

- **Recruitment processes**, e.g. developing opportunities for students to demonstrate capacity for university-level study which may not be fully evident from traditional qualifications, assessment of individual support needs of ‘widening access’ students, pre-entry contact to ensure the student enrols.

- **Retention activities**, to ensure that ‘widening access’ students are supported to complete their studies and achieve successful academic and personal outcomes, e.g. through enhanced tutorial support, access to ‘pastoral’ support, access to financial advice and assistance, development of procedures to detect and intervene where a student is at risk of ‘dropping out’.

4. There are all important activities which are intrinsic to universities’ missions, but they do have an additional cost per student.

5. An evaluation of these costs by JM Consulting estimated that, in aggregate, the costs of attracting, teaching and retaining ‘widening access’ students were around 31% higher than for students from more privileged backgrounds. A link to this report ‘The costs of widening participation in higher education’ is included here: [JM consulting report](#).
6. The overall cost of the measure proposed in the Bill cannot be determined in detail until the increase in numbers of students from challenged socio-economic backgrounds is established through the proposed ‘widening access agreements’. At the most simple level, if the JM Consulting report’s analysis of costs is correct and £7,500 p.a. is accepted as the average cost of teaching a ‘normal’ student, the additional cost to higher education institutions per ‘widening access’ student would be £2,325.

7. For reference, the 2010-11 FTE population of young undergraduate full-time entrants from National Statistics socio-economic classifications social classes 4-7 is 5,430 (27%).

8. The overall additional cost to institutions of the proposed measure will vary depending on the intended level of increase of students according to this and other measures of deprivation (e.g. university entrance from schools with low progression rates to higher education).

**Review of fundable further and higher education (section 14 of the Bill)**

9. The estimate of a typical cost to SFC of £150,000 for the process of conducting a review may be reasonable. There would also be costs to the institution(s) concerned of developing and representing their position in the review process, and of meeting information requests from SFC. These may be of a similar order to the costs to SFC, though they may principally take the form of ‘opportunity cost’ of diversion of time and effort from other activities.

10. What cannot be quantified are the costs of implementing any review. However, any review which led to significant redistribution of funding, significant changes to teaching provision or to a decision that an institution was no longer ‘fundable’ would have major costs, including the redundancy costs of the staff involved in activities which would be discontinued.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
2. See answer to question 5

Did you have sufficient time to contribute to the consultation exercise?
3. Yes

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?
4. No. See question 5

Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?
5. No, P22 footnote 1 indicates that the costs do not include UHI

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
6. We will apply to SFC for transitional funding to cover one-off costs of employing a senior member of staff to support FE and associated support staff costs at £420K pa and £310K of one-off preparatory costs. There are other costs of concomitant changes which relate to research in UHI but which are not directly related to the post-16 bill.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
7. Unlikely to since there may be further costs incurred in delivering the regionalisation of FE but also some off-setting savings associated with shared services etc.
Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

8. See above

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

9. See above
Additional information for Finance Committee on the Post-16 Education (Scotland) Bill - arising from officials evidence on 30 January 2013.

Before addressing the additional information officials offered to provide during this evidence session, we thought it might be helpful for members to recap on some of the proposed new college structures and related terminology.

Regionalisation: overview

As it is envisaged, there will be two types of college region: those with just one college (single-college regions, each with one regional college), and those with more than one college (multi-college regions). In multi-college regions there will be a regional strategic body that will fulfil a planning and funding function at a regional level. Colleges in that region will be assigned to the regional strategic body.

In the Highlands and Islands region, the UHI will fulfil the role of the regional strategic body. Elsewhere, a new 'Regional Board' will be established (e.g. the Bill proposes a Regional Board for Glasgow Colleges). The Regional Board will be an organisation with both executive staff and a board of governance.

Members may also find it helpful to refer to the diagram on page 7 which offers a very clear outline of college structures following regionalisation.

Specific matters following up Committee session on 31/1/13

Further to Michael Cross's statement (column 2183) that each region would have a "regional board", it should be clarified that each region would have a regional body, and that each regional body will have a governing body.

Further to John Mason's question (column 2184), we confirm it is possible that in a region with three colleges there might be three different salary scales. It is also possible that in such a region there may be more than three different salary scales. Just as now, individual colleges may not necessarily have one salary structure.

Further to Michael Cross's comments (column 2179 and 2186), we attach a breakdown of our estimates for the annual recurring cost of staff (£410,000) and other costs (£110,000) of regional boards.

Further to the exchange between Jamie Hepburn and Michael Cross (column 2186), we attach a table showing how the remit of oversight bodies would be amended by the Bill.

Further to Jamie Hepburn's question on what would happen to a regional board if all the colleges in the region were to merge (column 2186), section 13 of the Bill, which inserts new section 23O into the Further and Higher Education (Scotland) Act 2005, makes provision for Ministers to make an order to abolish a regional board and to transfer the staff, property, right and liabilities of the regional board. We would expect these to be transferred to the merged college in the region which would then benefit from the savings and efficiencies associated with merger.
There are two ways a college can merge. One way is for one of the colleges to remain and the other colleges close. The board of the college that remains is the board of the merged college. Steps are usually taken in this circumstance to ensure that the board membership is refreshed to reflect the merger. The other way is for all the colleges to close and an entirely new college is established. The new college would therefore require a board to be appointed.

In addition to abolishing the regional board by order, Ministers would make an order to designate the single college as a regional college. In this order, Ministers could make provision for board members to continue in office (only an option if it is not a new college) or the appointment by Scottish Ministers of board members (this would be required if it is a new college).

In response to Gavin Brown’s question about the cost of data sharing (column 2179), the £52k allocated to meet the costs of developing technical solutions to support data sharing in Section 15 of the Post-16 Education (Scotland) Bill is provided by Skills Development Scotland (SDS). In financial year 2012/13 SDS have spent approximately £6k developing and refining technical solutions for sharing data with local authorities. SDS have reallocated the remaining anticipated spend against financial years 2013/14 and 2014/15 to take in to account the timescales for incorporating partners within the data sharing community and legislation coming in to force. SDS remain satisfied that the overall figure of £52k is sufficient to deliver the software changes required to implement these changes.

Post-16 Bill Team
February 2013
## REGIONAL BOARD STAFF ESTIMATES

<table>
<thead>
<tr>
<th>Post / Resources</th>
<th>Accountabilities</th>
<th>Costs</th>
</tr>
</thead>
</table>
| CEO ( Strategic Finance Lead) | • Negotiate a Regional Outcome Agreement (ROA) with SFC on behalf of Regional Board  
• Accountable for delivery of ROA  
• Establish the strategic direction and aims of the board and of its partner colleges  
• Plan college provision across the region  
• Allocate funding to colleges, determining with them their respective contributions to the ROA through a local outcome agreement (LOA) with each of them as directed by Board  
• Be focal point for engagement with regional partners  
• Monitor college performance in terms of curriculum and resources | £100K-£120K      | £152k           |
| Strategic Curriculum Lead | • Accountable for development and implementation of regional curriculum plan and its delivery through local colleges  
• Monitor delivery of curriculum aspects of ROA and LOAs | £70K - £80K     | £101.6k         |
| Operational Finance role (if strategic finance rests with CEO) | • Allocate resources as directed by CEO and manage and maintain appropriate records  
• Maintain an required statutory accounts  
• Manage all operational financial transactions | £30K             | £38.1k          |
| ICT Systems and Data Management Lead | • Research and recommend systems and data collection and management integration across region  
• Manage ICT infrastructure and system in place for Regional Board | £40K            | £50.80k         |
| Regional Board Secretary (part-time – half time) | • Serving Regional Board and its meetings/ committees  
• Advising on governance accountabilities | £35K (pro-rata) | £22,225         |
| Administrative Support for roles above x 2 | • Secretarial, administrative and diary management support  
• All required record keeping | £25K (x2)        | £63.5k          |
| TOTAL | | **£428,225** |
Assumptions (these were identified in the Financial Memorandum – para 144)

Estimates of costs have been developed with the support of a college assistant principal HR professional seconded to the Scottish Government and assume:

a) the chief officer of a regional board would operate at a strategic level, comparable to principal level. The post holder would be responsible for regional planning, holding colleges to account for their agreed contribution to regional delivery and with overall accountability for the delivery of the region’s outcome agreement. Costs are expected to vary by region and are at the lower end of current college principal salaries. If the post holder had significant strategic financial and curriculum expertise, the posts outlined in b) and c) below may not be required at such a high level (if at all).

b) a finance role would not need to be at a strategic level if accountability for financial strategy rested with the chief officer, but the board would need an accountant and accounting systems. This post might not be required if this was within the expertise of the chief officer.

c) since a key regional board activity would be strategic curriculum planning, the estimate assumes the appointment of a strategic curriculum lead. This post might not be required if this is within the expertise of the chief officer.

d) the integration or shared arrangement of ICT systems is likely to be an important regional board activity, so a senior ICT post has been assumed.

e) administrative support would be required, including servicing of the board. (This is not envisaged to be a full-time role.)

f) the estimate does not include any shared services that the board might deliver to colleges. Such services are likely to involve the transfer of staff, equipment and budget from colleges to the board.
<table>
<thead>
<tr>
<th>Description</th>
<th>£k (VAT included)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computing Equipment - assumes incorporated into existing college network</td>
<td>3</td>
</tr>
<tr>
<td>Consumables/ hospitality</td>
<td>10</td>
</tr>
<tr>
<td>Travel expenses for Board members</td>
<td>10</td>
</tr>
<tr>
<td>Travel expenses for officials</td>
<td>5</td>
</tr>
<tr>
<td>Accommodation costs (non-rent)</td>
<td>8</td>
</tr>
<tr>
<td>Rent</td>
<td>24</td>
</tr>
<tr>
<td>Staff-related (non-salary)</td>
<td>18</td>
</tr>
<tr>
<td>Recruitment of board members</td>
<td>10</td>
</tr>
<tr>
<td>Professional services</td>
<td>12</td>
</tr>
<tr>
<td>Audit services</td>
<td>10</td>
</tr>
<tr>
<td><strong>SUBTOTAL</strong></td>
<td><strong>£110k</strong></td>
</tr>
<tr>
<td>Remuneration of chair</td>
<td>£20k</td>
</tr>
</tbody>
</table>

Start-up costs (2014/15) = £12k (setting up of office as well as of financial and other processes)
### POST-16 EDUCATION SCOTLAND BILL

<table>
<thead>
<tr>
<th>Body</th>
<th>Existing Scope</th>
<th>Scope after Bill</th>
<th>Provision in Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commission for Ethical Standards in Public Life - Public Standards Commissioner</strong></td>
<td>Colleges with a board of management under the 1992 Act</td>
<td>• Colleges with a board of management under the 1992 Act &lt;br&gt;• Regional boards</td>
<td>Paragraph 3 to the schedule to the Bill</td>
</tr>
<tr>
<td><strong>Standards Commission for Scotland</strong></td>
<td>Colleges with a board of management under the 1992 Act</td>
<td>• Colleges with a board of management under the 1992 Act &lt;br&gt;• Regional boards</td>
<td>Paragraph 3 to the schedule to the Bill</td>
</tr>
<tr>
<td><strong>Scottish Public Services Ombudsman</strong></td>
<td>Colleges eligible for funding by SFC*</td>
<td>• Colleges eligible for funding by SFC &lt;br&gt;• Colleges assigned to regional strategic bodies &lt;br&gt;• Regional strategic bodies</td>
<td>Paragraph 4 to the schedule to the Bill</td>
</tr>
<tr>
<td><strong>Information Commissioner</strong></td>
<td>• Colleges with a board of management under the 1992 Act &lt;br&gt;• An institution in receipt funding from SFC</td>
<td>• Colleges with a board of management under the 1992 Act &lt;br&gt;• An institution in receipt of funding from SFC** or a regional strategic body</td>
<td>Paragraph 5 to the schedule to the Bill</td>
</tr>
<tr>
<td><strong>Commission for Ethical Standards in Public Life - Public Appointments Commissioner</strong></td>
<td>No college bodies.</td>
<td>Bill, as introduced, makes no provision.</td>
<td></td>
</tr>
</tbody>
</table>

* The regionalisation plans involve colleges in multi-college regions no longer being directly funded by the SFC. Colleges assigned to regional strategic bodies would at an appropriate juncture be removed from the list of “fundable bodies”.

** This would bring regional strategic bodies within scope, as they would be funded SFC.
COLLEGE REGIONALISATION OVERVIEW

Single-college regions

- Existing
  - Borders
  - Dumfries & Galloway
  - Edinburgh
  - Forth Valley
  - West Lothian

- Anticipated
  - Ayrshire
  - Fife
  - Tayside
  - West
  - Aberdeen and Aberdeenshire

Multi-college regions

- SFC
  - Regional strategic bodies
    - Regional boards
    - University of Highlands and Islands
  - Assigned colleges
  - Assigned colleges

Anticipated Multi-College Regions

- Glasgow
- Lanarkshire
- Highlands & Islands
Dear Ms Evans

**Auditor General for Scotland report - “Scotland’s colleges – Current finances, future challenges”**

1. At its meeting on 24 October the Public Audit Committee took evidence from the Auditor General for Scotland (AGS) on her report entitled “Scotland’s colleges – Current finances, future challenges”. The relevant Official Report will be available at the following link by close on 30 October:


2. The evidence included discussion of the proposed regionalisation of colleges. The Committee appreciates that the overarching intention of the forthcoming regionalisation of colleges is to contribute to the Government’s national objectives of developing a highly educated and skilled workforce and providing more effective and sustainable delivery of learning and skills.

3. As you will be aware, in response to the AGS report, the Scottish Government has agreed to provide a detailed assessment of: the expected benefits and costs of college regionalisation (including structural change); how these benefits contribute to its reform objectives; and how costs are to be funded (AGS report, recommendation page 4).

4. The Committee notes that the Post-16 Education Reform Bill, which will progress the creation of the 13 regional boards, may be introduced to Parliament in November 2012. The Committee notes that without a detailed justification for change within such an assessment, it may be difficult for the Parliament to effectively scrutinise the forthcoming legislation.

5. The Committee therefore agreed, following evidence from the AGS, to write to you to request that the assessment of costs and benefits for the regionalisation proposal be provided to the Parliament at the Scottish Government’s earliest opportunity.

6. Additional information that the Committee would also be grateful for is detailed below.

**Public body mergers**

7. The Committee also looked at the ongoing programme of college mergers in evidence and was concerned that a lack of information on objectives and delivery of the mergers echoes issues raised in Audit Scotland’s previous published report *Learning the Lessons of public body mergers*. This report made recommendations around leadership and governance, measuring impact on organisational performance and accountability for the costs and savings associated with mergers. In responding to *Learning the Lessons of public body mergers*, the Scottish Government assured the Committee, at its meeting on 26 September, that lessons
would be learned and that Audit Scotland’s recommendations and accompanying good practice guidance would be applied to future mergers.

8. The Committee would welcome information on how the Scottish Government will use the recommendations in both the AGS colleges report and the mergers report to inform the overseeing of current and future college mergers.

Outcome agreements
9. The AGS also reported in evidence that the first set of college sector outcome agreements concentrate on input and process measures and that future agreements would need further refinement, for example to detail how colleges would contribute to Government objectives such as employability.

10. The Committee would welcome an assurance that future outcome agreements will have a greater focus on how colleges will contribute to the Government’s wider objectives.

Demand for college places
11. The AGS reports that there is likely to be a 24% real terms reduction in Scottish Government revenue grant support to colleges between 2011/12 (£545 million) and 2014/15 (£471 million) (AGS report, paragraph 38), with reduced income from other sources (paragraph 40) and an increased demand for college places due to unemployment (paragraph 41). The Committee would welcome information on how the Scottish Government will seek to ensure that Scotland’s colleges will meet increasing demand for college education with diminished resources.

12. In relation to this, the Committee notes that there is currently no national picture of the number of applicants to Scotland’s colleges and would ask whether the Scottish Government intends to start collecting this information as part of the forthcoming changes. This would enable the Government to determine to what extent demand is outstripping supply.

Community planning partnerships
13. Finally, the Committee would welcome information on how the proposed regions will collaborate with relevant Community Planning Partnerships to contribute to addressing local development needs such as demand for particular skills.

14. I should be grateful if you could provide a response to this letter by Tuesday 13 November to allow the Committee to consider it at its meeting on Wednesday 21 November. Should you require any further information please do not hesitate to contact the Assistant Clerk, Jason Nairn on 0131 348 5236 or by email at pa.committee@scottish.parliament.uk.

Yours sincerely

Iain Gray MSP, Convener
Correspondence from the Scottish Government, dated 14 November 2012, regarding the Auditor General for Scotland’s report entitled “Scotland’s colleges – Current finances, future challenges”

Dear Mr Gray

1. Thank you for your letter of 29 October about the recent report from Audit Scotland – “Scotland’s colleges – Current finances, future challenges” – and associated matters. You raise several questions about the Scottish Government’s programme of reform and I shall reply to each in turn.

2. However, it might be helpful if I begin by drawing the attention of your Committee to the strategic framework setting out the case for the Government’s wider post-16 education reforms. Putting Learners at the Centre, published in September 2011, made clear the Scottish Government’s priorities for this reform were jobs and growth, life chances, and sustainability. The strategic case for college regionalisation is predicated on effective delivery of these priorities, with regional planning and funding of the curriculum the central element and the means by which we would realise the overarching benefits: coherent, efficient provision relevant to local, regional and national skills needs. This approach recognised that while the scale and differentiation of the current arrangements has strengths, there is too much duplication and unnecessary competition. Very often colleges are competing for the same students and similar programmes are being run by institutions within a few miles of each other. Moreover, evidence from recent mergers shows that services to students can be sustained and improved by the creation of larger, more efficient colleges. That said, Putting Learners at the Centre also recognised regionalisation would take different forms; and that whilst the use of mergers to create regional colleges of scale was one means of securing coherent relevant provision, it might not be the best solution in all cases.

3. Since then, colleges have begun a process of significant structural change. This has seen the creation of 13 new college regions; two mergers in October 2012, in Edinburgh, and in the form of the new Scotland’s Rural College; a further sixteen colleges planning to merge in 2013 to create six new colleges (in Ayrshire, West, Glasgow South, Glasgow North, Fife, and Tayside regions); and six further colleges committing to create 2 federations (in Lanarkshire, and Aberdeen and Aberdeenshire).

4. That then, is the basis on which the Government’s reforms are taking place. I shall now address the specific questions you pose in your letter, in the order in which you put them.

(i) benefits and costs of regionalisation

5. Paragraphs 2 and 3 above set out the overarching benefits of regionalisation in improving the relevance, coherence, efficiency and sustainability of provision. Outcome Agreements are the principal means through which we shall measure these benefits, year on year. And while colleges are largely responsible for delivering the benefits (with partners, where appropriate), the Scottish Funding Council (SFC) will take strategic oversight of, and support for, delivery. To that end, it has developed a measurement framework, with five strategic priorities, and a set of underpinning measures and indicators, relating directly to Government priorities, allowing for consistent monitoring delivery of the benefits of regionalisation across Scotland. They are:
| Priority 1 | Efficient regional structures | To deliver efficient regional structures to meet the needs of the region |
| Priority 2 | Right learning in the right place | To contribute to meeting the national guarantee for young people, meeting the demands of the region, and where appropriate, the nation |
| Priority 3 | High quality and efficient learning | To ensure that learners are qualified to progress through the system in both an efficient and flexible manner |
| Priority 4 | A developed workforce | To ensure learners are qualified and prepared for work and to improve and adapt the skills of the regional workforce |
| Priority 5 | Sustainable institutions | To secure well-managed and financially and environmentally sustainable colleges |

I attach below a link to the SFC guidance on college outcome agreements for 2013-14, of which the measurement framework is a core component. [http://www.sfc.ac.uk/guidance/outcomeagreements/CollegeOAGuidance.aspx](http://www.sfc.ac.uk/guidance/outcomeagreements/CollegeOAGuidance.aspx)

6. Most of the costs of regionalisation relate to restructuring, principally (though not solely) through mergers. This is addressed in the next section of my letter. There are also some costs associated with the forthcoming Post-16 Education (Scotland) Bill. The Financial Memorandum supporting the Bill will address the resource implications of its measures.

Benefits and costs of restructuring

7. The programme of merger and federation that I describe in paragraph 3 will deliver significant efficiencies in the years ahead. The Cabinet Secretary for Education and Lifelong Learning discussed the scale of those efficiencies with your colleagues on the Education and Culture Committee (ECC) on 23 October. Mr Russell said then the SFC’s current estimate of efficiencies was some £50 million. Since it is in the lead in supporting structural change in the college sector, I have asked the SFC’s Chief Executive to let you have its current assessment of the expected benefits and costs of restructuring. But in the meantime, Annex A, provides information on planned SFC funding in support of mergers as set out in Mr Russell’s recent letter to the Convener of the ECC. You will note that in addition to planned SFC funding, merging partners are encouraged to contribute to merger costs. Annex B provides a brief summary of the main non-financial benefits of mergers, based on the post-merger evaluations.

(ii) Public body mergers

8. You refer in your letter to the recent Audit Scotland (AS) report “Learning the Lesson of public body mergers”. This is a helpful means of supporting the implementation of our reform programme. We are using it to do so: the SFC’s merger guidance for colleges refers explicitly to the good practice guidance in the report, and draws upon it, while providing more detail where appropriate. More specifically, and again, consistent with the AS report, the SFC guidance:
- provides advice on leadership, governance and early appointment of Principals and the senior leadership team for a merged college;
- makes clear the expectation that merger development proposals should demonstrate value for money, sound academic performance, impact and have a strong evidence base, with baseline data for ease of performance monitoring;
- provides guidelines on the financial data required;
- provides advice on pre-merger planning phases, as well as post-merger evaluation arrangements;
- gives clarity on leadership, communication and culture development expectations and how support can be accessed from the Government’s Change Team; and
- clarifies expectations on external stakeholder engagement.

(iii) Outcome agreements

9. In the light of AS’s observations on the first round of Outcome Agreements (OAs), you sought assurances on their future development. OAs are the means by which the wider benefits of reform will be articulated, measured, monitored and delivered. I am happy to assure the Committee that future outcome agreements with college regions will have a greater focus on colleges’ contribution to the Government’s wider objectives. Indeed, the SFC’s recently published guidance on ‘Delivering College Outcome Agreements (AY 2013-14)’ is clear on this point. Further work will take place over the coming months to develop a consistent national approach to demonstrating colleges' impact in a number of priority areas including improving workforce skills and matching provision to regional needs.

(iv) Demand for college places

10. Ensuring colleges maintain the volume of learning provision as reform progresses is a top priority. That aim is reflected in our annual guidance letter to SFC and in outcome agreements. It is encouraging that 2012-13 outcome agreements show college provision (measured as Weighted Student Units of measurement – ‘WSUMs’) will increase slightly compared to the previous year. In addition, and as set out in the guidance letter, we have taken steps to secure further college provision necessary to maintain volume in 2013-14 through the new Employability Fund administered by Skills Development Scotland (SDS). Both SFC and SDS therefore have a key role to play in working with colleges to ensure delivery of this priority.

(v) Applicants for college places

11. You asked if we plan to collect data on college applicants. As part of our discussions with learners and other stakeholders, we are considering the case for a common application process for colleges. Clearly, the main objective is to help learners make more informed decisions about their post-16 learning, and to make the application process itself easier; but a tool of this type has potential to generate data to provide a clearer picture of supply and demand for college places. We are in the very early stages of planning this project as part of our post-16 reform programme. In the meantime, as Mr Russell made clear to the Parliament on 8 November, we are undertaking an audit of the whole process of college applications, including a detailed examination of Scotland’s Colleges’ data and methodology, to ensure that it delivers maximum benefit for Scotland’s young people.

(vi) Community planning partnerships (CPPs)

12. Finally, I should make clear there is already significant collaboration between colleges and CPPs in addressing skills needs. You will see in the material I provide at paragraph 5
(the SFC’s guidance on Outcome Agreements guidance) its expectations about planning regionally and, specifically, the need to align college outcome agreements and single outcome agreements.

I hope this letter gives the Committee the assurances it seeks.

Yours sincerely


LESLIE EVANS
SFC funding for mergers

Purpose
1. The purpose of the College Transformation Fund (CTF) is to support colleges as they move towards regional groupings. It is intended primarily to fund voluntary severance (VS) schemes to deliver the staffing changes needed for mergers (or strong federations), and realise the associated efficiency gains. The fund can also be used to support innovation.

2. Audit Scotland’s (AS) report, “Scotland’s colleges – Current finances, future challenges”, makes clear the very significant growth in colleges’ accumulated surpluses over the period since 2006/07 (where AS noted a doubling of income and expenditure reserve from £98.9m to £206.4m at the end of 2010/11). It is against this background that Merging partners are expected to contribute to merger costs where it is clear they have the resources to do so.

Funding
3. The Scottish Government provided £15m to support the CTF, which SFC has supplemented by £10m of its strategic funding.

Mergers and Federations
4. Eight college mergers have now been agreed, with the new City of Edinburgh College and SRUC vesting on 1 October 2012. Of the remaining six, colleges in Ayrshire, the West, Glasgow South, Glasgow North, and Fife will merge during the course of 2013. The vesting date for Tayside has not yet been formally agreed.

5. The College Transformation Fund (CTF) is also available to help support the two planned federations in Aberdeenshire and Lanarkshire.

Analysis of Bids
6. As part of the bidding process colleges must demonstrate how any funding will deliver clear financial benefits within a year as well as how they will meet regional needs and deliver outcomes consistent with post 16 reform.

Payments
7. With the exception of Dumfries and Galloway, all of the payments made to date from the CTF have been in support of merger implementation or preparation. In Dumfries and Galloway the award supported an innovative learner journey project. The table below breaks down the awards which have been made by the SFC to date from both the CTF and SFC strategic funds.

<table>
<thead>
<tr>
<th>Region</th>
<th>CTF</th>
<th>SFC Strategic</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SRUC</td>
<td>5,000,000</td>
<td>5,000,000</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>3,500,000</td>
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<td>7,700,000</td>
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<tr>
<td>Ayrshire</td>
<td>180,000</td>
<td></td>
<td>180,000</td>
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<tr>
<td>Glasgow S &amp; W</td>
<td>0</td>
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<td>300,000</td>
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<tr>
<td>West</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fife</td>
<td>342,000</td>
<td>0</td>
<td>342,000</td>
</tr>
<tr>
<td>Tayside</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
<td>197,000</td>
<td>0</td>
<td>197,000</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------</td>
<td>---</td>
<td>---------</td>
</tr>
<tr>
<td>Total</td>
<td>4,219,000</td>
<td>9,500,000</td>
<td>13,719,000</td>
</tr>
</tbody>
</table>

7. The SFC provided additional small amounts from its Invest to Save fund to support the initial stages of merger preparation. Negotiations continue with the West, Glasgow South and West and Ayrshire, regions and SFC is close to agreeing packages of funding to support the implementation of the mergers. It is likely that these will account for a substantial proportion of the remaining CTF funding, which amounts to approximately £10m.

Scottish Government
November 2011
Overview of non-financial benefits of merger

Source: Post-Merger Evaluations of Glasgow Metropolitan, Adam Smith College, Forth Valley College and the University of the West of Scotland.

- stronger strategic role for in regional and local economic development;

- increased scale of operation, with positive impact on both high-volume and low-volume areas of provision allowing colleges to provide learning opportunities across an extended portfolio and a wider range of levels;

- for example, in areas of high demand such as Care, Computing and IT, and Social Sciences, mergers allowed for far greater breadth and depth of provision (from Access through to HN and Degree), and improve the sustainability of specialist options;

- better articulation arrangements and scope for HN progression; and improved linkages between programmes, with the creation of new subject combinations (e.g. in Business and Computing) to improve flexibility for learners;

- greater responsiveness to stakeholders including learners, employers, schools and community planning partners.

Scottish Government
November 2011
Correspondence from the Scottish Funding Council, dated 14 November 2012, regarding the Auditor General for Scotland’s report entitled “Scotland’s colleges – Current finances, future challenges”

Benefits of regionalisation and mergers

I am writing to follow up Leslie Evans’ letter to you of 14 November. In that letter, she said that she had asked me to let you have the Scottish Funding Council’s current assessment of the expected benefits and costs of restructuring of the college sector.

Audit Scotland’s report Scotland’s Colleges: current finances, future challenges recommended that the Government ‘provide a clear assessment of the benefits and cost of regionalisation (including structural change), how these benefits contribute to its reform objectives and how they will be funded’. This letter is intended to contribute to the overall response to that request.

Benefits of regionalisation

In her letter, Ms Evans describes the rationale behind regionalisation. However, in order to set the context for the specific discussion of the costs and financial benefits of restructuring below, it is worth repeating that the key benefit of regionalisation and the associated programme of mergers is that college education can be delivered more effectively – for students and for the benefit of regional economies – by a system of larger colleges serving broad regions; and this will be more efficient than the system of over 40 colleges, often competing for students in overlapping catchments.

This change is particularly important in the current challenging public spending context. Colleges have been making savings across the existing structure and arguably could continue to do so. However, by merging, they are enabled to achieve savings in a way which reduces management costs – in both central management and academic management – without damaging the quality, volume or spread of academic provision, thereby protecting the interests of their learners. Evidence of the ability of larger colleges to be able to spend less on administration and support services is available in a large scale study carried out for the Learning and Skills Council in England by KPMG (Delivering value for money though infrastructural change, LSC, 2010). That study concluded:

‘Notwithstanding some caveats on the data sources, it is possible to demonstrate the following general conclusions, which are confirmed from other sources:

- **Efficiency**: larger colleges have lower administration costs as a percentage of total costs than smaller colleges and are also able to provide provision with a lower level of base funding for 16-18 year olds.
- **Success rates**: size of college has very little impact on success rates – although there is a slight positive correlation between college size and success rates. Furthermore, larger colleges achieve, on average better OFSTED gradings than those obtained by smaller colleges.’

Evidence on the ability of newly merged colleges in Scotland to maintain quality is in the reviews by Education Scotland (and prior to that HMIe) of recently merged colleges. Most recently for example, the Education Scotland review of the newly formed City of Glasgow College was very positive.
Therefore, in our future funding for colleges (from 2013-14 and beyond) SFC will fund colleges in a way that recognises the potential efficiencies of the large, single-college regions. In effect we will move from a one size fits all funding allocation to one that recognises scale.

**The savings from mergers**

The Audit Scotland report *Scotland’s Colleges: current finances, future challenges* correctly states that when managed well, college mergers can produce savings.

As stated in Ms Evans’ letter, the SFC’s current estimate of potential efficiencies from mergers is around £50M annually. This estimate is for the eventual recurrent annual potential efficiency saving once the merger programme is complete and the efficiencies have been realised in the new colleges/federations. Our current estimate is that that the programme will be largely implemented by the beginning of academic year (AY) 2015-16. Clearly in the years before then (the current academic year, 2012-13 and AY2013-14), the potential efficiency will be less than this eventual steady state.

Our estimates on the potential efficiency savings across the sector are based on the efficiencies reported by the City of Glasgow College merger, the business plans of the Edinburgh College and the SRUC mergers that took place earlier this year, and the emerging business plans of three other planned mergers (Ayrshire, West and Clyde). We have used evidence from these mergers to make estimates for the mergers for which we do not yet have firm information, by scaling the figures for savings on mergers for which we do have information on to the size of the colleges for which we don’t. SFC regularly updates these estimates as new information becomes available.

We have aimed to be very measured in estimating the savings created by mergers. For example, our estimates are based on a lower savings figure for the City of Glasgow’s annual recurrent saving (£5M) than the more recent £5.8M quoted by Audit Scotland in its report. The Edinburgh College merger business plan assumes that that merger can deliver savings of £9M annually by 2014-15.

We have adopted this conservative approach to estimating savings for two reasons. First, we recognise that colleges have been reducing costs anyway in recent years in response to public spending constraints and that this will have an impact upon their capacity to deliver further savings. Second, we recognise too, that some of the savings of merger can take some time to materialise and may require investment in order to be delivered.

The main area of savings – and the one that accounts for the bulk of our estimate of the potential efficiencies – is that associated with staff restructuring. In the case of the City of Glasgow merger, Audit Scotland notes that these savings are around £4.6M of the £5.8M annual savings total. In the case of Edinburgh College, staff savings are estimated in the business plan to be £9M annually by 2014-15.

There are other savings in areas such as procurement, shared services, and ICT costs. However, we recognise that these are more difficult to quantify in most mergers, in terms of their size, how much investment is required to achieve them and how long they take to achieve. The merger of the University of Paisley and Bell College to form the University of...
the West of Scotland in 2007 provides useful evidence of the scale of non-staff savings that can be made (though that merger also made considerable staff savings too). By the time of the post-merger evaluation of that merger in 2009 the new university was able to report recurrent annual savings of £409,000 on ICT alone. They also reported savings of £146,000 in marketing costs.

We are not assuming any estates savings in these mergers.

As indicated above, the savings from mergers are achieved over several years before reaching a steady state. In past mergers, it has often taken some time to achieve savings as the work on implementing the merger – and in particular on staff restructuring – has taken place well after vesting day. However, in more recent mergers, colleges have made an earlier start and have begun to make savings prior to vesting day. These savings are therefore coming earlier in the process than has been the case in the past.

**The costs of mergers**

We recognise that for mergers to be effective they require investment on the ‘spend to save’ principle. The two most recent mergers give a good indication of the scale of this.

- The Edinburgh College merger is estimated to cost around £14.6M. Of that, around £8M will come from the SFC/College Transformation Fund (CTF).
- The merger to form SRUC was estimated by the merger partners to cost £10.2M in total. SFC/CTF funding will cover just under half that amount.

For the proposed mergers that are at a relatively advanced stage of their planning – West, Ayrshire and Clyde – the individual mergers are estimated (by the colleges) to have a cost of between £7M and £10M. We estimate that that expenditure will lead to annual savings of between £4.8M and £7.9M for these individual mergers, with a substantial part of the savings available in AY 2013-14 and the full amount in 2014-15.

We recognise that not all of the costs of merger are ones that can be detailed in advance and that some of the costs of existing mergers may not have been specifically identified as such by the colleges involved. The post-merger evaluation work that we have in hand will help to identify any such costs.

**Supporting mergers**

In supporting the cost of mergers, the SFC will prioritise those areas of merger activity that can produce the most robust cost reductions. This means that we are more likely to support the staff restructuring element of a merger – with a Voluntary Severance scheme that has an early impact on efficiency – rather than, say, ICT investment which might take longer to produce savings.

In deciding on the level of support from SFC and CTF funds for a merger, we will take into account the ability of the college to fund the remaining element of the necessary costs. In the two most recent examples (Edinburgh and SRUC), external – that is, SFC/CTF – funding has accounted for around half of the estimated cost. This proportion is not one that is constant: in some mergers we will pay a higher proportion, in others lower. While we have
not concluded the negotiations on the West, Ayrshire and Clyde mergers, it is likely that external investment will account for just over half of the total cost of these three mergers – though in varying proportions, depending on the resources that the colleges themselves have available, including reserves.

As the Committee is aware from Ms Evans’ letter, the Council and the Government have made around £25M available in 2012-13 to support mergers, between the CTF and SFC’s own strategic funding. Clearly there will also be costs in 2013-14 and beyond. It is not possible to give a detailed analysis of the cost of all of the mergers at this stage. Some are at an early stage of planning. In other cases we are only just beginning to discuss funding arrangements. However, given that the examples I have mentioned above fall within a fairly well defined range and that some of the variation is to do with scale of the colleges being created, we can make a reasonable estimate of the total likely costs and budget accordingly. I will take this into account in advising my Council as it makes budget decisions for 2013-14 and beyond.

Our estimate at this stage is that continuing the SFC element of merger funding at around £10M in each of 2013-14 and 2014-15 will be required. That would mean that the total merger programme (including the City of Glasgow merger which just preceded regionalisation) would cost around £54M of one-off expenditure of SFC/CTF funds.

As well as financial support for mergers, we recognise that it is important to support colleges in the merger process. As is noted in the Audit Scotland report on colleges, we have recently revised our guidance on mergers. This guidance is consistent with the key messages from the Audit Scotland report on public body mergers. SFC’s Outcome Agreement Managers are also working very closely with colleges as they prepare their merger plans. As mergers progress to the implementation stage – as the Edinburgh College and SRUC mergers have already done – we will use the outcome agreements with the new colleges to monitor progress beyond vesting day.

**Conclusion**

In our letter of guidance from the Cabinet Secretary for Education and Lifelong Learning, he asked the SFC to make efficiency savings of £18M in 2013-14 and £33M in 2014-15. On our current estimates (based upon mergers that have been completed and our discussions with the colleges that are currently engaged in a merger process) the aggregate of potential merger efficiencies in these years means that these savings are achievable.

If this letter has not covered all of the areas that you would like information on I will, of course be happy to provide further information.

**MTS Batho**  
Chief Executive

cc: Leslie Evans, Scottish Government
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) subordinate legislation laid before the Parliament;
   (i) any Scottish Statutory Instrument not laid before the Parliament but classed as general according to its subject matter;
   and, in particular, to determine whether the attention of Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
(c) general questions relating to powers to make subordinate legislation;

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 22 January and 19 February 2013 the Subordinate Legislation Committee considered the delegated powers provisions in the Post-16 Education (Scotland) Bill at Stage 1 ("the Bill")\(^1\). The Committee submits this report to the Education and Culture Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM")\(^2\).

OVERVIEW OF THE BILL

3. The Post-16 Education (Scotland) Bill was introduced in the Scottish Parliament by the Scottish Government on 27 November 2012. It is described as providing a technical and administrative underpinning to the Scottish Government’s wider post-16 education reform programme. As a result, the Bill principally amends the two main enactments in this area, the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act") and the Further and Higher Education (Scotland) Act 2005 ("the 2005 Act").

4. Part I of the 1992 Act provides the legislative basis for the existence of colleges of further education in their current form, providing for their constitution and giving the Scottish Ministers powers to establish, merge and close colleges of further education. The 2005 Act is principally concerned with the creation of the Scottish Further and Higher Education Funding Council (more commonly known

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\(^1\) Post-16 Education (Scotland) Bill available here: [http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18s4-introd.pdf)

as the Scottish Funding Council ("the SFC"), its functions and the funding of further and higher education generally.

5. In the consideration of the DPM at its meeting on 22 January, the Committee agreed to write to Scottish Government officials to raise questions on the delegated powers. This correspondence is reproduced in the Annex.

DELEGATED POWERS PROVISIONS

6. The Committee considered each of the delegated powers in the Bill.

7. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

   Section 5(1) (inserting section 7A into the 2005 Act) – Regional colleges

   Section 5(2) (inserting section 23B into the 2005 Act) – Regional colleges: planning, consultation and collaboration

   Section 6 (inserting paragraph 3C of Schedule 2 to the 1992 Act) – Colleges: boards of management

   Section 8(3) (inserting section 7C of the 2005 Act) – Assignation of colleges

   Section 10(1) (inserting section 23J of the 2005 Act) – Regional strategic bodies: consultation and collaboration

   Section 10(1) (inserting section 23K(2) of the 2005 Act) – Assigned colleges: information and directions

   Section 10(1) (inserting section 23L of the 2005 Act) – Transfer of staff and property etc.

   Section 10(2) (inserting section 25A of the 2005 Act) – Directions where financial mismanagement by assigned college

   Section 11(2) (inserting paragraph 3(5) of new Schedule 2B to the 2005 Act) – Membership

   Section 11(2) (inserting paragraph 10(4) of new Schedule 2B to the 2005 Act) – Staff

   Section 11(2) (inserting paragraph 17(1) of new Schedule 2B to the 2005 Act) – Accounts

   Section 17 – Ancillary provision

   Section 18 – Commencement
Schedule, paragraph 6(5) (inserting section 7D of the 2005 Act) – Orders under sections 7A to 7C: supplemental

Schedule, paragraph 6(20) (modifying section 34(4) of the 2005 Act as it applies to section 7(1)) – Fundable bodies: further provision

8. The Committee’s comments and, where appropriate, recommendations on the other delegated powers are detailed below.

Section 4 (inserting section 9C into the 2005 Act) – Fee cap: students liable for higher education fees

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<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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</thead>
<tbody>
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<td>Power exercisable by:</td>
<td>order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>negative procedure</td>
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</table>

Background

9. This provision enables the Scottish Ministers to make an order prescribing the upper limit on tuition fees chargeable to students from the rest of the United Kingdom in respect of higher education courses. The fees payable by students vary according to their status – so Scottish students and students from elsewhere in the European Union are required to pay a set fee of £1,820 per year in respect of any ordinary or honours degree course, in terms of the Student Fees (Specification) (Scotland) Order 2011 (“the 2011 Order”). Until the 2012/13 academic year, students from the rest of the UK were similarly liable to pay the fee set in the Student Fees (Specification) (Scotland) Order 2006. However, the effect of the 2011 Order and its associated regulations is that the set fee no longer applies to students from the rest of the UK. The fees chargeable to those students are accordingly unregulated at present – as is the case with fees chargeable to international students from outwith the EU.

10. This power has been described as a fee capping power. The Scottish Ministers do not propose to set a fee which is payable by all students from the rest of the UK. Instead, the power will enable them to set a limit beyond which universities and higher education institutions may not charge (by contrast with international students, in respect of whom the fees chargeable are whatever the market will bear). In making an order, the Ministers are required to seek to ensure that a) it applies only in relation to persons with a connection with the UK (although Scottish students will continue to benefit from the set fee arrangements in the 2011 Order), and b) the fees payable do not exceed the maximum payable if that person were attending a higher education course elsewhere in the UK during that year.

Comment

11. This power, if exercised, will confer upon students from the rest of the UK greater protection in respect of fees chargeable for higher education courses than they presently have. The Committee understands that at present there is, in effect, a voluntary agreement with the universities that they will not charge students from the rest of the UK a fee higher than the maximum presently obtaining in England (£9,000). An order made under this power would formalise that position. In principle, it seems to the Committee to be appropriate that a function of this nature be exercised by way of subordinate legislation.
12. However, the Committee wished to explore in more detail the Scottish Ministers’ views on the appropriate Parliamentary procedure which is to apply to the exercise of this power. The Ministers consider that the negative procedure is appropriate, apparently because the Ministers may not exceed the highest fee set in any other part of the UK in making an order fixing the upper limit for students from the rest of the UK studying in Scotland. It is not instantly apparent to the Committee that this fact has any bearing on the appropriate degree of Parliamentary scrutiny. The Committee notes that this is an acutely politically sensitive area and that any setting of the maximum fee level is likely to attract considerable attention from Members, the media and members of the public.

13. The Committee accordingly asked the Scottish Ministers to explain the procedure applicable in the other parts of the United Kingdom when setting the level of fees for higher education. They were also asked to explain why, when the setting of fees payable by Scottish and EU students for higher education courses under section 9 of the 2005 Act is subject to a form of super-affirmative procedure, the negative procedure would be appropriate when setting the maximum fee payable by English, Welsh and Northern Irish students.

14. In their response, the Scottish Ministers narrate that in each of England, Wales and Northern Ireland, a broadly similar method of setting the maximum fee chargeable applies. In each jurisdiction, there exists a “basic amount” and a “higher amount” which is prescribed in subordinate legislation by the relevant Government. These are limits on the maximum tuition fees chargeable. The Ministers advise that, in England, the basic amount applies where no widening access plan approved by the Office for Fair Access has been entered into by the higher education institution. Where such a plan exists, the institution may set fees up to the higher amount. In essence, then, whichever of these jurisdictions sets the highest “higher amount” will determine the maximum level at which the Scottish Ministers may fix the tuition fee cap for students from the rest of the UK studying in Scotland.

15. For England, Wales and Northern Ireland, the first exercise of the power to set the basic and higher amount is subject to the equivalent of the affirmative procedure. If regulations are made to vary the higher amount, then they will be subject to the negative procedure so long as any increase is no greater than that required to maintain the value of the amount in real terms (or if the variation decreases the higher amount). However, where an increase in excess of that required to allow for inflation is intended, it is necessary to secure a resolution in each House of Parliament or the appropriate Assembly agreeing an increase to a specified amount as from a specified date before making the regulations. This appears to the Committee to be a variant of the affirmative procedure.

16. The Committee considers it instructive that in every other jurisdiction of the UK, the setting of the maximum fee level is subject (leaving aside inflationary uprating and decreases) to a form of the affirmative procedure. It considers that it would be a significant departure from the level of scrutiny obtaining elsewhere in the UK were this power to be exercisable by the negative procedure in all cases. It is fortified in this view by the fact that the power to set fees for Scottish and EU students (which power was formerly exercised in relation to the rest of UK students as well) is subject to the super-affirmative procedure specified in section
9(13) and (14) of the 2005 Act. Although the Ministers suggest that they may need to vary the Scottish upper limit quickly in response to changes in other parts of the United Kingdom, the Committee observes that the same principle applies in those other jurisdictions. It suggests that, so long as a co-operative and coherent approach is adopted by the various administrations, it should be possible to exercise this power in a way which ensures parity (that being, apparently, the Ministers’ policy) while adequately respecting the need for appropriate Parliamentary scrutiny of Scottish instruments.

17. It is not apparent to the Committee that the question of additional costs for the Scottish Government or market disadvantage for Scottish higher education institutions is of any particular bearing in determining the appropriate level of Parliamentary scrutiny for an instrument made under this power.

18. Accordingly, the Committee does not consider that the negative procedure would represent an adequate level of scrutiny for the exercise of this power, given the sensitivity of the function being exercised, and the fact that it would represent a substantially lower level of scrutiny than that applicable when setting fees for Scottish and EU students.

19. The Committee considers that the power in section 4 (inserting section 9C into the 2005 Act) is acceptable in principle, subject to the following recommendation.

20. The Committee does not consider that the negative procedure would represent an adequate level of scrutiny for the exercise of this power. It recommends that its exercise be subject to the affirmative procedure, except when the increase in the fee cap is no greater than is required to maintain the value of the amount previously set in real terms.

Section 7 (substituting section 24 of the 1992 Act) – Mismanagement by boards

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Background
21. Section 7 of the Bill substitutes a new section 24 into the 1992 Act. Section 24, at present, enables the Scottish Ministers to remove members of a college’s board of management for mismanagement of the affairs of the board. The DPM, at paragraph 19, narrates that the replacement section 24 specifies additional circumstances where the Ministers may remove board members. It further states that this is considered necessary in order to ensure that colleges are “accountable for agreed outcomes” and “to safeguard educational opportunities”.

Comment
22. The Committee observes that the Scottish Ministers’ (or, pre-devolution, the Secretary of State’s) power to make subordinate legislation to remove board members for mismanaging the affairs of the board is a longstanding one. However, as the Ministers indicate in the DPM, the new section 24 represents an extension of the power of removal. It now extends beyond mismanagement to...
encompass breaching the terms and conditions of grants made to that college under the 2005 Act, failing to provide education to a standard the Ministers consider appropriate, and failing to exercise any other functions properly. It may also be exercised where the SFC or regional strategic body reports to the Ministers that the college no longer has suitable provisions, procedures and arrangements as described in section 7(2) of the 2005 Act. In their response to the Committee’s letter of 22 January, the Ministers advise that the proposed change is in response to a Review of Further Education Governance carried out by Professor Griggs.

23. While the Committee agrees in principle that a power to make subordinate legislation to remove board members may be appropriate, it appears to the Committee that the new section 24 represents a substantial expansion of the scope of this power. The Scottish Ministers appear to say that this is necessary because of difficulties in establishing that circumstances arose as a result of mismanagement. The Committee notes, from the Ministers’ response, that the lead Committee has already taken evidence on this matter. It accordingly draws to the attention of the lead Committee its view that this represents a substantial innovation on, and expansion of, the existing section 24 power.

24. The exercise of this power is subject to the negative procedure. The Committee notes the Scottish Ministers’ explanation that the existing section 24 power is subject to the negative procedure, and that the 1992 Act further enables them to close colleges (rather than merely removing board members), with that power being subject also to the negative procedure. They take the view that, if a college may be closed using an instrument subject to the negative procedure, it would be disproportionate to require a higher degree of scrutiny for removal of members of its governing body. The Committee considers that the argument being made (taken to its logical conclusion) is that as the ultimate sanction of closing a college is subject only to the negative procedure, any lesser step ought necessarily not to be subject to a higher degree of scrutiny. The Committee is not entirely persuaded by this argument, particularly as removal touches upon the rights and interests of individual board members. However, it does accept that this power has for a lengthy period been subject to the negative procedure. In the circumstances, it does not consider that a higher level of scrutiny is necessary to ensure adequate Parliamentary consideration of orders made under this power.

25. Given the substantial expansion of the grounds upon which members of a college’s board of management may be removed, the Committee draws the power in section 7 (substituting section 24 of the 1992 Act) to the attention of the lead Committee.

26. It is otherwise content that the exercise of the power be subject to the negative procedure.
Section 12 (inserting section 23N of the 2005 Act) – Mismanagement of regional boards

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Background
27. This provision inserts new section 23N into the 2005 Act. It appears to be closely modelled on the replacement section 24 of the 1992 Act which is discussed immediately above, and it is applicable to the regional boards. Any variations appear merely to reflect the differing functions of the colleges and regional boards.

Comment
28. The Committee considers that, as this power is so closely modelled upon that in section 24 of the 1992 Act (as substituted by section 7 of this Bill), similar considerations apply in respect of it. If it is appropriate to delegate power to remove members of the boards of management of individual colleges on specified grounds, then it appears to be appropriate to the Committee that the members of regional boards may be removed in a similar fashion and on similar grounds (adjusted to take account of the differing functions of the bodies in question). Equally, it would appear to be appropriate for the power to be subject to the same level of Parliamentary scrutiny.

29. Accordingly, given the breadth of the grounds upon which the members of a regional board may be removed, the Committee draws the power in section 12 (inserting section 23N of the 2005 Act) to the attention of the lead Committee.

30. It is otherwise content that the exercise of the power be subject to the negative procedure.³

³ Hanzala Malik dissented from this paragraph.
Section 8(1) (inserting section 7B of the 2005 Act) – Regional strategic bodies

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure (see comment below)

Section 13 (introducing section 23O of the 2005 Act) – Establishment and abolition of regional boards: supplemental

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure (only exercisable when making an order under section 7B(2)(a) of the 2005 Act, which is subject to the negative procedure)

Background

31. A new schedule 2A is inserted into the 2005 Act by the Bill. It specifies the regional strategic bodies. Section 8(1) inserts section 7B, which gives the Scottish Ministers powers to modify the schedule. So far as the regional boards are concerned, the Ministers may establish, abolish or rename them. At present, the only regional strategic body which is not a regional board is the University of Highlands and Islands (“UHI”). The Ministers may remove that entry, add another fundable post-16 education body to the list of regional strategic boards, or vary any entry. For the avoidance of doubt, however, this does not confer a power to establish or abolish such a body. That power is only exercisable in relation to the regional boards created for the purposes of this Bill.

32. Section 13 inserts a new section 23O into the 2005 Act, which makes supplemental provision about the establishment and abolition of regional boards. In particular, section 23O(3) enables the Scottish Ministers, when making an order abolishing a regional board, to provide for the transfer of its staff, property, rights, liabilities and obligations to another person, and for consequential provision about the expenses of abolition and the exercise of functions. These supplemental powers are in many respects analogous to the provisions of section 25 of the 1992 Act, which apply when a college is being closed and wound up.

Comment

33. The Scottish Ministers identify in their Policy Memorandum that the intention is ultimately to move to single colleges in each region (which will be designated as regional colleges). There may accordingly be a need to abolish or otherwise modify the regional boards as mergers arise. Equally, the underlying flexibility of the regional strategic body structure could see other higher education institutions join UHI in acting as a regional strategic body in lieu of the boards. The powers in section 7B enable the Ministers to make the necessary amendments to schedule 2A to give effect to these intentions. The Committee agrees that this is a function which might appropriately be delegated, rather than requiring primary legislation every time some reorganisation takes place.

34. Similarly, the new section 23O enables the Scottish Ministers to make supplemental provision when abolishing a regional board, to provide for the transfer in particular of its staff and property, and to enable the carrying out of its
winding up. Similar powers have been conferred in relation to the winding up of colleges and designated higher education institutions in terms of the 1992 Act. The Committee accordingly accepts that it is, in principle, appropriate to confer these supplemental powers by analogy with the provisions applicable to the winding up of other education bodies.

35. The Committee has had some difficulty in relation to the procedure applicable to this power. As the section 23O power is only exercisable when making an order under section 7B(2)(a), these comments apply equally to the exercise of the supplemental powers. The DPM, at paragraph 23, narrates that the affirmative procedure is considered appropriate and gives reasons for that. However, the Bill as drafted makes the section 7B power subject to the negative procedure. In their response, the Scottish Ministers acknowledge this inconsistency.

36. The Scottish Ministers go on to advise that it is intended that either the affirmative or the negative procedure will apply to the exercise of the section 7B power, depending on the circumstances. The power is considered by them to be analogous to the power in section 7 of the 2005 Act which gives the Ministers a power to amend the list of “fundable bodies” in schedule 2 to that Act. Paragraph 6(20) of the schedule to this Bill will amend the procedure applicable to section 7 so that the affirmative procedure applies except where the amendment results from a change in name of or from the closure of a fundable body. Neither a change in name nor the closure of a fundable body is achieved by subordinate legislation which is subject to the affirmative procedure, and the Ministers argue that it is disproportionate, say, to close a college (which is done by order subject to the negative procedure) but then to require an affirmative instrument to make the consequential adjustment of the list of fundable bodies.

37. The Committee considers that the alteration of the procedure applicable to section 7 of the 2005 Act is appropriate and proportionate. It also accepts the Scottish Ministers’ view that the new power in section 7B is analogous to the section 7 power. It accordingly appears to the Committee to be appropriate that the power in section 7B (and, by extension, the power in section 23O) be subject to the negative procedure when it is exercised in consequence of a change in name, or of a removal from the list on closure of the relevant body, but that in all other cases the exercise of the power be subject to the affirmative procedure.

38. The Scottish Ministers propose to bring forward an amendment to the Bill at Stage 2 which will further amend section 34(4) of the 2005 Act (which specifies the Parliamentary procedure applicable to the exercise of the section 7B power) in order to achieve this intention.

39. The Committee finds the powers in sections 8(1) (inserting section 7B of the 2005 Act) and 13 (introducing section 23O of the 2005 Act) to be acceptable in principle.

40. Rather than the exercise of these powers being subject to the negative procedure in all cases, as the Bill presently provides, the Committee considers that it would be appropriate for these powers to be subject to the negative procedure when being exercised in consequence of a change of
name of a body, or to remove a body from the new schedule 2A to the 2005 Act following its closure. In all other circumstances, it considers that the powers should be subject to the affirmative procedure.

41. The Committee welcomes the intention of the Scottish Ministers to bring forward amendments to the Bill at Stage 2 so that the negative and the affirmative procedures will apply to the exercise of these powers as outlined above.

Section 11(2) (inserting paragraph 18(1) of new schedule 2B (Regional boards) to the 2005 Act) – Modification

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Background
42. Schedule 2B to the 2005 Act is inserted by section 11(2) of the Bill. It provides for the constitution, functions and administrative arrangements of regional boards. Paragraph 18(1) of the schedule confers on the Scottish Ministers a power to modify the schedule (with the exception of paragraph 2, relating to the status of boards) by varying, adding to or removing any of its provisions relating to a board’s constitution, functions or administrative arrangements.

Comment
43. The DPM, at paragraph 31, narrates that as regional boards are an entirely new creation, it is thought appropriate to have the power to modify the schedule governing their operation to respond to any new demands upon them which arise. The Scottish Ministers point out that they have comparable powers in relation to the constitution, proceedings and powers of the boards of management of further education colleges, in terms of sections 3(5) and 12(8) of the 1992 Act. Those provisions enable the amendment of section 12(2) of and Schedule 2 to that Act, and orders under those powers are subject to the negative procedure. The Committee agrees that it would be excessive if technical changes of this nature required primary legislation to achieve them.

44. The Scottish Ministers appeared to take the view that the negative procedure would be appropriate to the exercise of this power, apparently on the basis of consistency with the 1992 Act powers. The Committee, while noting the technical and administrative nature of the schedule which may be modified under this power, took the view that some of its provisions are more substantive in their nature. It was not persuaded that the negative procedure would necessarily be appropriate, given that this is a power to modify primary legislation. It accordingly asked the Scottish Ministers for further justification as to why the negative procedure would ensure an adequate degree of Parliamentary scrutiny.

45. In their response, the Scottish Ministers point to the desirability of consistency with the 1992 Act. However, they go on to accept that approaches to the delegation of powers have changed since 1992, and indicate that they would be prepared to seek to amend the procedure applicable. In the Ministers’ view, it would be appropriate for the power to be subject to the affirmative procedure,
save where the sole purpose of the instrument is to vary the size of a regional board. The Committee considers that this is an appropriate and proportionate proposal on the part of the Ministers. It observes that this will ensure that a higher level of scrutiny can be devoted to substantive changes to the schedule, while permitting technical variations to the size of the board to be achieved with a lesser degree of scrutiny.

46. The Committee finds the powers in section 11(2) (inserting paragraph 18(1) of new schedule 2B (Regional boards) to the 2005 Act) to be acceptable in principle.

47. The Committee considers that it would be appropriate for this power to be subject to the affirmative procedure, except where the power is exercised solely to vary the number of members of a regional board when the negative procedure should apply.

48. The Committee accordingly welcomes the intention of the Scottish Ministers to bring forward amendments at Stage 2 so that the affirmative and the negative procedures will apply to the exercise of this power as outlined above.

**Section 15(1) – Duty to provide information to Skills Development Scotland**

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* order  
*Parliamentary procedure:* negative procedure

**Background**

49. Section 15 of the Bill enables the Scottish Ministers to make subordinate legislation requiring any person to provide information which that person holds about a young person to Skills Development Scotland Co. Limited (“SDS”), for the purposes of enabling or assisting SDS to monitor that young person’s involvement in education or training, to provide advice or support as regards that young person’s education or training, or to exercise any of its other functions in relation to that young person. The Ministers may specify the persons to whom the duty is to apply, the information which is to be provided, and the form and manner in which it is to be provided.

**Comment**

50. As the DPM, at paragraph 37, specifies that the Scottish Ministers would wish to exercise this power in relation to “persons who are providing education and training to young persons”, the Committee asked why it was necessary that this power apply to any person, instead of being restricted to persons in that category. In their response, the Ministers advise that it may be necessary to exercise the power in relation to third parties who have relationships with the providers of education and training. They give the example of the SFC, and say that it may be required to share information for the purpose of identifying those persons who have withdrawn from their courses. The Committee notes that there is some force in what the Ministers say, although it continues to be concerned that this power is drawn so widely that it might, for example, be applied to private tutors and other individuals in similar circumstances. The Committee recalls that, although this administration may not propose to use the power otherwise than as
it presently advises, it cannot bind a future administration and so the grant of broad powers creates a risk that they may be exercised differently to the way that the Parliament or the administration of the day intended.

51. The Scottish Ministers take the view that the power is inherently constrained as information may only be shared for the purposes set out within subsection (1) of section 15. It appears to the Committee, however, that these are still broad categories and it is not convinced that this represents any substantial limitation on the exercise of the section 15 power. Furthermore, the Committee notes the references in the Ministers’ response to the sharing of data in accordance with the provisions of the Data Protection Act 1998. While the Committee is content that that Act provides certain safeguards in relation to information sharing, it also observes that the sharing of personal data is likely to engage the rights guaranteed by Article 8 of the European Convention on Human Rights (the right to private and family life). The Ministers have not addressed this point specifically and accordingly it is not clear to the Committee what justification there might be for interference with Article 8 rights in the exercise of this power. The Committee will accordingly wish to be reassured, when this power is exercised, that all steps have been taken to ensure that the resulting instrument adequately respects the Article 8 rights with which it engages.

52. The Scottish Ministers’ position is that the constraints in section 15(1), coupled with the requirements of the Data Protection Act 1998, mean that the negative procedure will provide an adequate level of scrutiny for instruments made under that power. The Committee is not convinced that the power is as restricted as the Ministers appear to think. While the Ministers may intend to exercise it in a fairly limited fashion, the Committee is obliged to consider what is possible under the power rather than what the Ministers propose to do with it. Accordingly, if the Ministers do not wish to draw the power more narrowly then the Committee considers that its exercise should be subject to a higher level of Parliamentary scrutiny, not least because its exercise is likely to engage individuals’ Convention rights as well as questions about whether it adequately complies with the provisions of the Data Protection Act 1998.

53. The Committee therefore draws the power in section 15(1) to the attention of the lead Committee on the basis that it has been drafted in terms which are rather broader than the Scottish Ministers’ declared policy intention, observing that it appears possible that the power as drafted could extend beyond the provision which the Ministers say they propose to make.

54. The Committee also observes that the exercise of this power appears likely to engage the rights under Article 8 of the European Convention on Human Rights of the persons whose personal data is shared in terms of an order under this section. It accordingly notes that it will wish to be reassured, when it comes to consider any subordinate legislation made under this power, that adequate consideration has been given to the Convention rights (in particular Article 8) and that – to the extent that Article 8 is engaged – any interference is capable of being objectively justified and is proportionate.
55. The Committee further recommends that, if the Scottish Ministers continue to consider it necessary to take this power in its present form, then its exercise should be subject to the affirmative procedure to ensure adequate Parliamentary scrutiny of the use of the power, in particular so that the Parliament may be reassured that the power is being used as intended and not in a wider fashion.

Section 15(5) – Duty to provide information to Skills Development Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure, or where relating to a change of name, laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

Background

56. This power is intended to enable the Scottish Ministers to modify section 15 to replace references to SDS with references to any other person. It appears that it is also intended to allow them to update section 15 to reflect changes in name (i.e. where the person referred to remains the same, but has changed its name).

Comment

57. As the DPM indicates, it may be that in future the role of SDS is varied and that the Scottish Ministers will wish to confer certain of its functions on other bodies. Alternatively, it may simply change its name (as a limited company, it can do so in the same way as any other company, in accordance with the Companies Act 2006). The Ministers wish to have a power to modify section 15 in consequence of changes of this nature. This does not appear to the Committee to be disproportionate. It remarks, however, that it is not clear that the drafting of the provision adequately delivers the Ministers’ intentions in respect of that second situation. The power is to replace reference to “Skills Development Scotland Co. Ltd.” with references to such other persons as they consider appropriate. If SDS merely changes its name in accordance with company law, the Committee considers that it would be the same legal person. Accordingly, it is unclear to the Committee what other person could be said to be substituted (the situation, properly analysed, being merely the change of name of one legal person rather than the substitution of one legal person for another). The Committee accordingly considers that it is doubtful if the power may be exercised simply to reflect any change in name of SDS.

58. The Scottish Ministers assert that section 15(5) is sufficient to cover the situation where a company merely changes its name. They do not provide any justification for that view. Indeed, they go on to pray in aid the procedural provisions of section 15(8) in support of their position. The Committee does not consider that a provision specifying the procedure which will apply should certain circumstances come to pass can rectify a failure to provide in the power itself for one of those circumstances. Shortly put, if section 15(5) is insufficient to confer power to modify the name of SDS in section 15, then there is no power to make such an order and the words in subsection (8) relating to a change of name are at best otiose, as the situation can never competently arise.
59. The Committee wishes to make it clear that it has no objection in principle to this power being conferred. It does, however, have a concern that the present drafting of the power does not deliver the Scottish Ministers’ apparent policy intention, and observes that this may lead to doubt and difficulty when the power comes to be exercised. It accordingly recommends that the Ministers revisit the drafting of this provision to ensure that it clearly and unambiguously enables the Ministers to make orders in all of the situations where they wish to. It therefore welcomes the Ministers’ intentions to give further consideration to the drafting of this provision.

60. The Committee is content that the negative procedure is appropriate when one person is being substituted for another by virtue of this power, as that gives the Parliament an opportunity to consider the replacement of SDS by another person or body, and enables the Parliament to control that replacement if it thinks it necessary. By contrast, as set out above, a change in name involves no change in legal personality and so there will be no substantive change (merely the reflection of a technical and administrative matter). The Committee agrees that – were the power in section 15(5) adequately to provide for such a situation – then it would be appropriate for such an order to be laid before the Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, but not to be subject to any further procedure.

61. The Committee accordingly recommends that the Scottish Ministers revisit the drafting of this provision to ensure that it clearly and unambiguously delivers their stated policy intentions. It therefore welcomes the Ministers’ intentions to give further consideration to the drafting of this provision.

62. The Committee considers that it would be appropriate for this power to be subject to the negative procedure. Should the power properly extend to changing the name of Skills Development Scotland Co. Limited, then the Committee is content that such an order would be laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, but would not be subject to any further procedure.

Section 15(7) – Duty to provide information to Skills Development Scotland

- Power conferred on: the Scottish Ministers
- Power exercisable by: order
- Parliamentary procedure: negative procedure, or where relating to a change of name, laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

Background

63. Section 15(7) contains a bespoke ancillary powers provision in addition to the standalone power in section 17. It enables the Scottish Ministers, in making an order under section 15(1) or (5), to include such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.
Comment
64. It appeared to the Committee that the bespoke ancillary powers provision in section 15(7)(b) duplicated the ancillary powers provision in section 17(1). Given that section 15 is the only substantive delegated powers provision in the Bill itself (as opposed to being inserted into the 1992 or the 2005 Acts), the Committee asked the Scottish Ministers why these powers were considered necessary.

65. The Committee is content to clarify that its interest extends to the powers conferred by section 15(7)(b), not to the whole of section 15(7). It observes that section 15(7)(a) appears to be a method of exercising the section 15 powers (so as to make different provision for different purposes) rather than being a species of power in its own right. It accordingly takes no issue with the inclusion of section 15(7)(a).

66. The Committee notes the Scottish Ministers’ concession that there is an element of duplication, and that section 15(7)(b) may not be necessary given the terms of section 17(1). It is not persuaded, given the relatively short length of the Bill and the limited number of powers involved, that there is any great merit in repeating the powers within section 15 for the sake of clarity. If anything, it considers that in future the view might be taken that the two provisions must be intended to have different effect, given the presumption that Parliament does not legislate needlessly. The Committee considers that it would be as well to avoid any possible confusion between the scope of section 15(7)(b) and section 17(1). It accordingly welcomes the Ministers’ commitment to give further consideration to this matter, and it recommends that the Ministers consider simplifying the Bill by omitting the duplicated provision in section 15(7)(b).

67. In the usual way, the procedure applicable to the exercise of an ancillary power is dependent upon the procedure applicable to the principal power being exercised. As a result, the section 15(7)(b) ancillary power will be subject to the negative procedure, unless it is being exercised to make ancillary provision in an order changing the name of SDS, in which case it will be laid before the Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010, but would not to be subject to any further procedure.

68. Were the Scottish Ministers to omit the duplicated provision in section 15(7)(b) in favour of relying upon the ancillary powers in section 17(1), the Committee observes that this would potentially have an impact on the applicable Parliamentary procedure: where the power in section 17(1) is exercised so as to textually amend any Act, it is subject to the affirmative procedure, and otherwise to the negative procedure. As matters stand, it is at least arguable that section 15(7)(b) – when exercised in conjunction with section 15(5) – might allow ancillary textual amendments which are subject only to the negative procedure (or, in the case of a change of name, to laying under section 30 only). The Committee considers that, if ancillary textual amendments are required which go beyond those narrow powers which are expressly conferred by section 15(5), it would be appropriate for the affirmative procedure to apply in any case. However, the Committee also observes that, in the majority of cases where no textual amendment is required, the use of the section 17(1) ancillary powers would have no overall effect on the level of Parliamentary procedure applicable (with the negative procedure continuing to apply).
The Committee accordingly recommends that the Scottish Ministers consider simplifying the Bill by omitting the duplicated provision in section 15(7)(b), and welcomes their commitment to give further consideration to this matter.
Correspondence with the Scottish Government

On 22 January, the Subordinate Legislation Committee wrote to The Scottish Government as follows:

Post-16 Education (Scotland) Bill at Stage 1

The Subordinate Legislation Committee considered the above Bill on Tuesday 22 January and seeks an explanation of the following matters:

Section 4 (inserting section 9C into the 2005 Act) – Fee cap: students liable for higher education fees

- Power conferred on: the Scottish Ministers
- Power exercisable by: order
- Parliamentary procedure: negative procedure

1. Section 4 enables the Scottish Ministers to make an order prescribing the upper limit on tuition fees chargeable to students from the rest of the United Kingdom in respect of higher education courses.

The Committee asks for an explanation as to:

- Given the reliance placed on the fact that fees will not exceed those chargeable elsewhere in the United Kingdom, what level of Parliamentary scrutiny applies when higher education fees are being set by the relevant rule-making authorities in each part of the United Kingdom?

- Further to this, and given that in Scotland the setting of fees for higher education courses under section 9 of the Further and Higher Education (Scotland) Act 2005 is subject to a form of super-affirmative procedure, why is the negative procedure considered to be appropriate when setting the maximum fees payable by students from the rest of the United Kingdom?

Section 7 (substituting section 24 of the 1992 Act) – Mismanagement by boards

- Power conferred on: the Scottish Ministers
- Power exercisable by: order
- Parliamentary procedure: negative procedure

2. Section 7 of the Bill substitutes a new section 24 into the Further and Higher Education (Scotland) Act 1992. Section 24, at present, enables the Scottish Ministers to remove members of a college’s board of management for mismanagement of the affairs of the board. The replacement section 24 specifies additional circumstances where the Ministers may remove board members.

The Committee asks for an explanation as to:
• Why it is considered necessary to expand upon the original powers to remove board members in section 24 of the Further and Higher Education (Scotland) Act 1992 to the extent set out in the substituted section;

• The basis for reaching that conclusion;

• The basis for concluding that the negative procedure continues to be the appropriate level of Parliamentary scrutiny, standing the substantial expansion of the power to remove and its resulting impact on the independence of boards of management and their members?

Section 12 (inserting section 23N of the 2005 Act) – Mismanagement of regional boards
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

3. This provision inserts new section 23N into the 2005 Act. It appears to be closely modelled on the replacement section 24 of the 1992 Act, which is discussed immediately above, and it is applicable to the regional boards. Any variations appear merely to reflect the differing functions of the colleges and regional boards.

4. The Committee agreed to await the explanation given to the above question on Section 7 before forming a view on this power.

Section 8(1) (inserting section 7B of the 2005 Act) – Regional strategic bodies
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure (see comment below)

Section 13 (introducing section 23O of the 2005 Act) – Establishment and abolition of regional boards: supplemental
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure (only exercisable when making an order under section 7B(2)(a) of the 2005 Act, which is subject to the negative procedure)

5. A new schedule 2A is inserted into the 2005 Act by the Bill. It specifies the regional strategic bodies. Section 8(1) inserts section 7B, which gives the Scottish Ministers powers to modify the schedule.

6. Section 13 inserts a new section 23O into the 2005 Act, which makes supplemental provision about the establishment and abolition of regional boards.

The Committee asks the Scottish Government:
• For clarification of the level of Parliamentary procedure which is intended to apply to this power, given that the effect of section 34 of the Further and Higher Education (Scotland) Act 2005 is to make it subject to the negative procedure, when the Delegated Powers Memorandum indicates that the affirmative procedure is applicable;

• For explanation as to whether, standing the analogy to the procedure applicable to orders under section 7(1) of that Act, it is intended that the appropriate procedure is that applicable to section 7(1) as it stands, or section 7(1) as prospectively amended by paragraph 6(20) of the schedule to this Bill;

• What steps they propose to take to ensure that the Bill adequately reflects its policy intentions in respect of the Parliamentary procedure applicable to this power?

Section 11(2) (inserting paragraph 18(1) of new Schedule 2B (Regional boards) to the 2005 Act) – Modification
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

7. Schedule 2B to the 2005 Act is inserted by section 11(2) of the Bill. It provides for the constitution, functions and administrative arrangements of regional boards. Paragraph 18(1) of the schedule confers on the Scottish Ministers a power to modify the schedule (with the exception of paragraph 2, relating to the status of boards) by varying, adding to or removing any of its provisions relating to a board’s constitution, functions or administrative arrangements.

The Committee asks for an explanation as to:

• Whether the Scottish Government are in a position to provide any further explanation as to why the negative procedure is appropriate, given that:
  
  ▪ this is a power to modify primary legislation; and
  
  ▪ the Committee does not consider the reference to the procedure applicable under the Further and Higher Education (Scotland) Act 1992 to be conclusive, given a) that no powers in that Act appear to subject to the affirmative procedure and b) that it is now over 20 years since that Act was considered by the UK Parliament, and that the approach to delegation of powers appears to have altered since then?
Section 15(1) – Duty to provide information to Skills Development Scotland
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

8. Section 15 of the Bill enables the Scottish Ministers to make subordinate legislation requiring any person to provide information which that person holds about a young person to Skills Development Scotland Co. Limited for the purposes of enabling or assisting Skills Development Scotland to monitor that young person’s involvement in education or training, to provide advice or support as regards that young person’s education or training, or to exercise any of its other functions in relation to that young person.

The Committee asks for an explanation as to:

- Why, given the stated position in the Delegated Powers Memorandum that the Scottish Government will wish to impose the duties under this section on “persons who are providing education and training to young persons”, it is necessary that it is framed more widely to allow them to impose that duty on any person; and

- Standing the breadth of the power and the possibility that it may be used in a manner other than that which is apparently intended at some point in the future, whether it would not be more appropriate to ensure that such an order is subject to greater Parliamentary scrutiny by way of the affirmative procedure?

Section 15(5) – Duty to provide information to Skills Development Scotland
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure, or where relating to a change of name, laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

9. Section 15(5) is intended to enable the Scottish Ministers to modify section 15 to replace references to Skills Development Scotland with references to any other person. It appears that it is also intended to allow them to update section 15 to reflect changes in name.

The Committee asks for an explanation as to:

- Why it is considered that the power in section 15(5) may be used to effect a change of name, given that a change of name does not involve any change in legal personality and so there is no “other person” to substitute for references to Skills Development Scotland Co. Limited;

- Whether the power in section 15(5) is intended to be exercisable more than once, and if so whether this means that the power is capable of modifying the reference to "Skills Development Scotland Co. Limited" within the power itself; and
• If this is the intended effect, whether that is sufficiently clear from the drafting?

Section 15(7) – Duty to provide information to Skills Development Scotland
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure, or where relating to a change of name, laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

10. Section 15(7) contains a bespoke ancillary powers provision in addition to the standalone power in section 17. It enables the Scottish Ministers, in making an order under section 15(1) or (5), to include such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

The Committee asks for an explanation as to:

• Why it is considered necessary to seek bespoke ancillary powers provision for the purposes of section 15, when it appears to the Committee that adequate provision for ancillary powers is already made in section 17 of the Bill, which powers could also be exercised in an instrument made under section 15?

The Scottish Government responded as follows:

Section 4 (inserting section 9C into the 2005 Act) – Fee cap: students liable for higher education fees
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

The Committee asked the Scottish Government:

• Given the reliance placed on the fact that fees will not exceed those chargeable elsewhere in the United Kingdom, what level of Parliamentary scrutiny applies when higher education fees are being set by the relevant rule-making authorities in each part of the United Kingdom?

• Further to this, and given that in Scotland the setting of fees for higher education courses under section 9 of the Further and Higher Education (Scotland) Act 2005 is subject to a form of super-affirmative procedure, why is the negative procedure considered to be appropriate when setting the maximum fees payable by students from the rest of the United Kingdom?

In relation to the first bullet point, we will deal with England and Wales and Northern Ireland separately.
England and Wales

The relevant primary legislation for both England and Wales is the Higher Education Act 2004 ("the 2004 Act"), but there are different provisions within the 2004 Act for each of England and Wales. Very broadly, sections 23 and 24 provide a legislative basis for the Secretary of State to impose a condition of grant to the Higher Education Funding Council for England requiring the Council to impose a condition on financial support given to the governing body of an institution requiring the governing body of that institution to secure that tuition fee upper limits are adhered to. There are two different upper limits, a “basic amount” and a “higher amount”. The “basic amount” is the one which applies where an institution does not have in place a plan (regarding access) approved by the Office for Fair Access. The “higher amount” is the one which applies where an institution does have such a plan in place.

Very broadly, sections 27 and 28 of the 2004 Act provide a legislative basis for the Welsh Ministers to impose a condition of grant to the Higher Education Funding Council for Wales requiring the Council to impose a condition on financial support given to the governing body of an institution requiring the governing body of that institution to secure that tuition fee upper limits are adhered to. Again there are two different upper limits, a “basic amount” and a “higher amount”.

Sections 26 and 47 of the 2004 Act are relevant in relation to the parliamentary scrutiny of regulations made under section 24(6) (England) and section 28(6) (Wales) prescribing the “basic amount” and the “higher amount”.

Northern Ireland

The Higher Education (Northern Ireland) Order 2005 is applicable and Articles 2, 4 and 14 are relevant. Very broadly, Article 4 provides a legislative basis for the Department for Employment and Learning (“the Department”) to impose a condition of grant to the governing body of an institution requiring the governing body of the institution to secure that tuition fee upper limits are adhered to. Again, there are two different upper limits, a “basic amount” and a “higher amount”.

Article 4(10) and (11) and Article 14 are relevant in relation to parliamentary scrutiny of regulations under Article 4(8) prescribing the “basic amount” and the “higher amount”.

For each of England, Wales and Northern Ireland the relevant provisions on parliamentary procedure are set out in full in the Annex to this letter for ease of reference. As it will be seen, the provisions are complex and the level of parliamentary scrutiny is different for the first regulations made using these powers and for subsequent uses of the powers to make regulations to increase the two upper limits (the basic and the higher amounts); the procedure also varies depending on the level of the increase.

With reference to the question posed in the second bullet point of the question, the negative procedure is considered appropriate because the power is
constrained by section 9C(3) in that any order made can only apply to persons who have a connection with the United Kingdom and Scottish Ministers must seek to ensure that the amount provided for in the order will not result in the students to whom the order applies being charged fees per academic year at a post-16 education body which are higher than a maximum amount. That maximum amount is the amount of fees (set by legislation elsewhere in the UK) which a student would be charged to undertake a higher education course at an institution in a part of the United Kingdom other than Scotland. Given that Scottish Ministers cannot therefore set the maximum amount above that figure, it is considered that the negative procedure would provide sufficient opportunity for scrutiny.

Since Scottish Ministers may often be setting the upper limit in response to levels of tuition fees in other parts of the UK, it may be that they would need to be able to act relatively quickly to change the upper limit. Therefore the super-affirmative procedure could in certain circumstances, for example, prevent the upper limit being set in time for the start of an academic year.

The negative procedure is also considered to be appropriate when setting the maximum fees payable by RUK students as it will not result in additional costs to Scottish Government, and there is also no disadvantage to Scottish institutions who operate within the same market conditions as their UK counterparts.

Section 7 (substituting section 24 of the 1992 Act) – Mismanagement by boards

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

The Committee asked the Scottish Government for an explanation as to:

- Why it is considered necessary to expand upon the original powers to remove board members in section 24 of the Further and Higher Education (Scotland) Act 1992 to the extent set out in the substituted section;

- The basis for reaching that conclusion;

- The basis for concluding that the negative procedure continues to be the appropriate level of Parliamentary scrutiny, standing the substantial expansion of the power to remove and its resulting impact on the independence of boards of management and their members?

Section 7 of the Bill substitutes section 24 of the 1992 Act. Its effect, among other things, is to extend the grounds on which Ministers may remove members of a board of management under the 1992 Act.

The proposed change was prompted by the Review of Further Education Governance
Subordinate Legislation Committee, 14th Report, 2013 (Session 4)

Professor Griggs, which reported in January 2012. Professor Griggs recommended, among other things, the ultimate removal of the chair and members of a college board if they don’t fulfil required outcomes.

Under section 12(1) of the 1992 Act, the board of management is under a duty to manage and conduct their college. The aim of the substituted section is to be clear on the specified matters for which members of a college board will be held responsible. If the board fails on any of the specified matters, it would be open to Ministers to seek by order to remove members. The policy intention is to (i) ensure that failure in terms of outcome(s) is material in terms of grounds for removal; and (ii) improve accountability and clarity around roles and responsibilities, through specification of what is expected of board members.

As Scottish Government officials explained to the Education and Culture Committee on 15 January 2013 (Column 1761), the new grounds include failure in outcome. While the existing section 24 of the 1992 Act enables Ministers to take action if they consider that the affairs of the board “have been or are being mismanaged”, it may not always be possible in the given circumstances of any particular case to establish definitively that the circumstances arose because of mismanagement. Ministers consider that it should be sufficient that an undesirable outcome has occurred (e.g. a serious breach of any term of condition or the college is failing to secure education of an appropriate standard) for Ministers to be able to seek to take appropriate action.

In terms of the procedure proposed, Ministers do not consider the extension of the grounds on which board members can be removed changes the fundamental nature of their powers or their long-standing role in relation to the ability to remove college board members by order (negative resolution) if boards are failing. Ministers also have powers under the 1992 Act to merge and close colleges by order (negative resolution). The judgement is that it would be disproportionate for the procedure for removal of college board member(s) to be by affirmative resolution.

It may be of interest to the Committee that we are not aware of any power given to Ministers by the Scottish Parliament to remove board members that involves any form of Parliamentary procedure. By way of further background, the 1992 Act in Scotland when passed was in many respects similar to the Further and Higher Education Act 1992, which made similar provision England and Wales. When that Act was passed, it did not have a Parliamentary procedure attached to the equivalent order-making power for removal of board members.

Section 8(1) (inserting section 7B of the 2005 Act) – Regional strategic bodies

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure (see comment below)
Section 13 (introducing section 23O of the 2005 Act) – Establishment and abolition of regional boards: supplemental

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure (only exercisable when making an order under section 7B(2)(a) of the 2005 Act, which is subject to the negative procedure)

- The Committee asked the Scottish Government:
  - For clarification of the level of Parliamentary procedure which is intended to apply to this power, given that the effect of section 34 of the Further and Higher Education (Scotland) Act 2005 is to make it subject to the negative procedure, when the Delegated Powers Memorandum indicates that the affirmative procedure is applicable;
  - For explanation as to whether, standing the analogy to the procedure applicable to orders under section 7(1) of that Act, it is intended that the appropriate procedure is that applicable to section 7(1) as it stands, or section 7(1) as prospectively amended by paragraph 6(20) of the schedule to this Bill;
  - What steps they propose to take to ensure that the Bill adequately reflects its policy intentions in respect of the Parliamentary procedure applicable to this power?

The Scottish Government agrees that as currently drafted the Post-16 Education Bill provides that any order under the new section 7B is subject to the negative procedure. However the Government advises that both affirmative and negative procedures were intended to apply to the power in the new section 7B of the Further and Higher Education (Scotland) Act 2005. The power in section 7B(2)(a) allows Ministers to modify Part 1 of schedule 2A to establish, abolish and re-name regional boards; the power in section 7B(2)(b) allows Ministers to amend Part 2 of schedule 2A to add, remove or vary any entry relating to a fundable post-16 education body. A body which is listed in schedule 2A can be funded by the SFC.

At present bodies can be funded by the SFC if they are listed as fundable bodies in schedule 2 to the 2005 Act. Section 7 of the 2005 Act currently gives Ministers a power by order to amend schedule 2; that power is subject to affirmative procedure in all circumstances. However, the Government considers that the affirmative procedure is disproportionate when such an order seeks only to remove a fundable body from schedule 2 if it is being closed or to change the name of a fundable body. A change to negative procedure in such circumstances is proposed by means of an amendment to section 34(4) of the 2005 Act by means of paragraph 6(20)(c) of the schedule to the Post-16 Education (Scotland) Bill. The Government considers, however, that it remains appropriate to use affirmative procedure when a new body is being added to schedule 2 to the 2005 Act as a new body is being added to the list of bodies which receives public funding and such a body must meet certain criteria. Affirmative procedure would
also remain where a fundable body was being removed when it was not being closed.

A similar policy applies in relation to the power to amend the lists of bodies in Parts 1 and 2 of the new schedule 2A. Where a new body is being added to those lists (or a body is being removed for reasons other than closure), then it would be appropriate for the instrument to be subject to affirmative procedure, as again, in relation to a new body being added, that new body is to be receiving public funding. Equally, where the amendment to schedule 2A seeks only to change the name of an existing body or to remove a body from the list if the body is being closed, it would seem more appropriate that such an instrument should be subject to the negative procedure. The Government will therefore seek to bring forward an amendment to section 34(4) of the 2005 Act at Stage 2 to provide for both affirmative and negative procedure to apply to the power in the new section 7B in the manner outlined above.

Section 11(2) (inserting paragraph 18(1) of new Schedule 2B (Regional boards) to the 2005 Act) – Modification

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

The Committee asked the Scottish Government for an explanation as to:

- Whether the Scottish Government are in a position to provide any further explanation as to why the negative procedure is appropriate, given that:
  - this is a power to modify primary legislation; and
  - the Committee does not consider the reference to the procedure applicable under the Further and Higher Education (Scotland) Act 1992 to be conclusive, given a) that no powers in that Act appear to subject to the affirmative procedure and b) that it is now over 20 years since that Act was considered by the UK Parliament, and that the approach to delegation of powers appears to have altered since then?

As set out in paragraph 32 of the Delegated Powers Memorandum, when the Bill was originally drafted and introduced, negative procedure was considered appropriate having regard to the similar provision is made in section 3(5) and section 12(8) of the Further and Higher Education (Scotland) Act 1992 with respect to ‘incorporated’ colleges. Scottish Ministers considered it appropriate to take an approach consistent with these provisions. It was considered that this would allow sufficient Parliamentary scrutiny of any amendments made to the new schedule 2B.

The Scottish Government, however, appreciates that approaches to delegation of powers have changed since 1992 and is content to seek to amend this provision in the Bill. The Scottish Government would intend that the power is subject to the
affirmative procedure, except in circumstances where the sole purpose of the order is to increase or decrease the size of the board, in which case it would still be subject to negative procedure. That is still considered to be appropriate for changing the board size.

Section 15(1) – Duty to provide information to Skills Development Scotland
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

The Committee asked the Scottish Government for an explanation as to:

- Why, given the stated position in the Delegated Powers Memorandum that the Scottish Government will wish to impose the duties under this section on “persons who are providing education and training to young persons”, it is necessary that it is framed more widely to allow them to impose that duty on any person; and

- Standing the breadth of the power and the possibility that it may be used in a manner other than that which is apparently intended at some point in the future, whether it would not be more appropriate to ensure that such an order is subject to greater Parliamentary scrutiny by way of the affirmative procedure?

With reference to the first of these questions, it is necessary for the power to be framed more widely as, in some cases, persons other than the ‘persons who are providing education and training to young persons’ will collect and share the required data on behalf of the person providing education. For example, the Scottish Funding Council may share specified data with Skills Development Scotland about young people who are participating in provision at colleges. This data will be used in conjunction with data we seek to receive from colleges to identify any learners who have withdrawn from their college place.

With reference to the second of these questions, the power will only enable Ministers to place a duty on persons to share data with Skills Development Scotland to enable or assist it to carry out various functions which are set out at section 15 (1) (a), (b) and (c). Therefore, although the power can be exercised in relation to any person, it is still constrained by the provisions in section 15(1). We also seek to use subordinate legislation to set out in detail the matters listed in section 15(2) (a), (b) and (c).

If an order were to impose a duty on certain persons to share information, the sharing of the data by those persons would remain entirely subject to the requirements of the Data Protection Act 1998. For example, the use of this data would be determined by legally binding bilateral agreements, or Data Sharing Agreements, between the sharing parties and Skills Development Scotland. We consider therefore that both the constraints on the use of the power and the safeguards provided by the Data Protection Act 1998 are sufficient. Consequently we believe that the negative procedure provides sufficient scrutiny.
Section 15(5) – Duty to provide information to Skills Development Scotland

Power conferred on: the Scottish Ministers

Power exercisable by: order

Parliamentary procedure: negative procedure, or where relating to a change of name, laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

The Committee asked the Scottish Government for an explanation as to:

- Why it is considered that the power in section 15(5) may be used to effect a change of name, given that a change of name does not involve any change in legal personality and so there is no “other person” to substitute for references to Skills Development Scotland Co. Limited;

- Whether the power in section 15(5) is intended to be exercisable more than once, and if so whether this means that the power is capable of modifying the reference to “Skills Development Scotland Co. Limited” within the power itself; and

- If this is the intended effect, whether that is sufficiently clear from the drafting?

With reference to the first of these questions, the Scottish Government considers that the power in section 15(5) is apt to be used to effect a change of name. The Scottish Government considers that if, on the face of section 15(5) itself, there is any doubt about that then that doubt is removed by the bracketed wording in section 15(8) (emphasis added):

“(8) An order under this section is subject to the negative procedure (other than an order under subsection (5) which is made in consequence of a change of name by the person concerned).”

The Scottish Government will, however, give some further consideration to this aspect of section 15 of the Bill in light of the issue raised by the Committee.

With reference to the second and third questions, the Scottish Government considers that the section 15(6) makes clear that the section 15(5) power includes a power to replace references to any other person which are included in section 15 by virtue of an initial order under section 15(5). And so it is clear that the power is exercisable more than once. The Scottish Government accepts that the section 15(5) power is capable of being exercised in order to modify the reference to “Skills Development Scotland Co. Limited” within the section 15(5) power itself. But it is not considered that, standing section 15(6), the Scottish Ministers would ever wish to exercise the power in this way.

Section 15(7) – Duty to provide information to Skills Development Scotland
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure, or where relating to a change of name, laid in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

The Committee asked the Scottish Government for an explanation as to:

- Why it is considered necessary to seek bespoke ancillary powers provision for the purposes of section 15, when it appears to the Committee that adequate provision for ancillary powers is already made in section 17 of the Bill, which powers could also be exercised in an instrument made under section 15?

The Scottish Government concedes that there is an element of duplication and that section 15(7)(b) may not be necessary given the terms of section 17(1) (emphasis added):

“(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for the purposes of giving full effect to any provision made by, or by virtue of, this Act.”

That said the Scottish Government considers that there is some merit in including the provision made in section 15(7)(b) on the face of section 15 of the Bill as it makes the position clear to the reader on the face of section 15 itself.

The Scottish Government will give further consideration to the issue raised by the Committee.

With reference to section 15(7)(a), and for the avoidance of doubt, the Scottish Government considers that it is both necessary and appropriate to make provision in section 15 to the effect that an order under that section may itself make different provision for different purposes.

The Scottish Government considers that, in so doing, section 15(7)(a) makes provision of a wholly different nature to that made in section 17(2) of the Bill which provides that an order under that section (ie an order making such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for the purposes of giving full effect to any provision made by, or by virtue of, the Bill) may make different provision for different purposes.

ANNEX

Higher Education Act 2004 (applying to England and Wales)

26 Regulations under section 24(6) relating to basic or higher amount
(1) The Secretary of State may not make the first regulations under subsection (6) of section 24 prescribing the basic amount and the higher amount for the purposes of that section unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

(2) Where regulations under subsection (6) of section 24 have been made prescribing the basic amount and the higher amount for the purposes of that section—

(a) no regulations may be made increasing the basic amount unless—

(i) the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or

(ii) a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament, and

(b) no regulations may be made increasing the higher amount unless—

(i) the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or

(ii) each House of Parliament has at any time after 1st January 2010 passed a resolution that, with effect from a date specified in the resolution, the higher amount should be increased to an amount specified in the resolution, and the increase is an increase to the specified amount with effect from the specified date.

(3) For the purposes of subsection (2)(a)(i) and (b)(i) the Secretary of State is to have regard to such index of prices as may be specified in, or determined in accordance with, regulations made by him under this subsection.

47 Orders and regulations

(1) Any power—

(a) of the Secretary of State or the Assembly to make an order or regulations under this Act, or

(b) of the Scottish Ministers to make an order under this Act, is exercisable by statutory instrument.

(2) Any statutory instrument containing—

(a) an order made by the Secretary of State under section 18, or

(b) regulations made by the Secretary of State under any provision of this Act,

is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Subsection (2) does not apply to—

(a) regulations to which section 26(1) or (2)(a)(ii) or (b)(ii) applies,

(b) regulations to which paragraph 12(3) of Schedule 2 applies, or

(c) regulations to which subsection (4) applies.

(4) A statutory instrument which contains (whether alone or with other provisions) regulations made by the Secretary of State by virtue of section 33(2), 34 or 37(3)(c) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(5) Any order or regulations under this Act may—

(a) make different provision for different cases or different areas,
(b) make provision generally or only in relation to specified cases, and
(c) contain such incidental, supplemental, saving or transitional provisions
as the person making the order or regulations thinks fit.
(6) Nothing in this Act is to be regarded as affecting the generality of
subsection (5).

Higher Education (Northern Ireland) Order 2005

4 (10) The Department may not make the first regulations under paragraph
(8) prescribing the basic amount and the higher amount for the purposes of
this Article unless a draft of the regulations has been laid before, and
approved by a resolution of, the Assembly.

4 (11) Where regulations under paragraph (8) have been made prescribing
the basic amount and the higher amount for the purposes of this Article—
(a) no regulations may be made increasing the basic amount unless—
(i) the Department is satisfied that the increase is no greater than is
required to maintain the value of the amount in real terms, or
(ii) a draft of the regulations has been laid before, and approved by a
resolution of, the Assembly, and
(b) no regulations may be made increasing the higher amount unless—
(i) the Department is satisfied that the increase is no greater than is
required to maintain the value of the amount in real terms, or
(ii) the Assembly has at any time after 1st January 2010 passed a
resolution that, with effect from a date specified in the resolution, the higher
amount should be increased to an amount specified in the resolution, and
the increase is an increase to the specified amount with effect from the
specified date.

14.— Orders and regulations
(1) Subject to paragraph (2), regulations under any provision of this Order
shall be subject to negative resolution.
(2) Paragraph (1) does not apply to—
(a) regulations to which Article 4(10) or (11)(a)(ii) or (b)(ii) applies, or
(b) regulations to which paragraph (3) applies.
(3) Regulations which contain (whether alone or with other provisions)
provision made by virtue of Article 6(2) or 7 may not be made unless a draft
of the regulations has been laid before, and approved by resolution of, the
Assembly.
(4) Any order or regulations under this Order may contain such incidental,
supplemental, saving or transitional provisions as the Department thinks
fit."
SUBORDINATE LEGISLATION COMMITTEE

EXTRACT FROM THE MINUTES

3rd Meeting, 2013 (Session 4)

Tuesday 22 January 2013

Present:
Nigel Don (Convener)  Jim Eadie
Mike MacKenzie  Hanzala Malik
John Pentland  John Scott

Post-16 Education (Scotland) Bill: The Committee considered the delegated powers provisions in this Bill at Stage 1 and agreed to seek further information from the Scottish Government.
Post-16 Education (Scotland) Bill: Stage 1

11:00

The Convener: The purpose of this item is for the committee to consider the delegated powers in the Post-16 Education (Scotland) Bill. In considering the bill, the committee is invited to agree the questions that it wishes to raise with the Scottish Government on the delegated powers in the bill. It is suggested that those questions be raised in written correspondence. On the basis of the responses that are received, the committee would expect to consider a draft report at its meeting on 5 February.

Section 4 enables the Scottish ministers to make an order that prescribes the upper limit on tuition fees that are chargeable to students from the rest of the United Kingdom in respect of higher education courses. Given the reliance that is placed on the fact that fees will not exceed those that are chargeable elsewhere in the United Kingdom, does the committee agree to ask the Scottish Government to explain what level of parliamentary scrutiny applies when higher education fees are set by the relevant rule-making authorities in each part of the UK; and, further to that, why—given that in Scotland, under section 9 of the Further and Higher Education (Scotland) Act 2005, the setting of fees for higher education courses is subject to a form of super-affirmative procedure—the negative procedure is considered to be appropriate when the maximum fees that are payable by students from the rest of the UK are set?

Members indicated agreement.

The Convener: Section 7 of the bill substitutes the existing section 24 of the Further and Higher Education (Scotland) Act 1992 with a new section 24. At present, section 24 enables the Scottish ministers to remove members of a college’s board of management for mismanagement of the board. The replacement section 24 specifies additional circumstances in which the ministers may remove board members.

Does the committee agree to ask the Scottish Government to explain why it is considered necessary to expand on the original powers to remove board members in section 24 of the 1992 act to the extent that is set out in the substituted section; the basis for reaching that conclusion; and the basis for concluding that the negative procedure continues to be the appropriate level of parliamentary scrutiny, given the substantial expansion of the powers in question and the resulting impact on the independence of boards of management and their members?
Members indicated agreement.

John Scott: I agree. As I understand it, what is proposed is quite a radical extension of the existing powers. I emphasise the point that we need a very strong justification for the increased scope of the powers.

Hanzala Malik (Glasgow) (Lab): I agree with that sentiment. The independence of boards is important, particularly as colleges amalgamate and the number of colleges in Scotland overall is reduced. I am keen to find out why the Government needs the proposed additional powers.

The Convener: Section 12 will insert new section 23N into the 2005 act. It appears to be closely modelled on the replacement section 24 of the 1992 act, which we just agreed to ask the Scottish Government for further explanation of, and it is applicable to the regional boards. Any variations appear merely to reflect the differing functions of the colleges and the regional boards.

Does the committee agree to await any explanation that is offered by the Scottish ministers in response to the previous question before forming a view on the power?

Members indicated agreement.

The Convener: The bill will insert into the 2005 act a new schedule 2A, which specifies the regional strategic bodies. Section 8(1) will insert section 7B, which will give the Scottish ministers powers to modify the schedule. Section 13 will insert into the 2005 act a new section 23O, which makes supplemental provision about the establishment and abolition of regional boards.

Does the committee agree to ask the Scottish Government to clarify the level of parliamentary procedure that is intended to apply to the power, given that the effect of section 34 of the 2005 act is to make it subject to the negative procedure, when the delegated powers memorandum indicates that the affirmative procedure is applicable; to explain whether, standing the analogy with the procedure that is applicable to orders under section 7(1) of that act, it is intended that the appropriate procedure is the one that is applicable to section 7(1) as it stands, or section 7(1) as prospectively amended by paragraph 6(20) of the schedule to the bill; and to say what steps it proposes to take to ensure that the bill adequately reflects its policy intentions in respect of the parliamentary procedure that is applicable to the power?

Members indicated agreement.

John Scott: I agree. We need clarification about the circumstances in which affirmative and negative procedures will be used. It is far from impossible that I might have missed the point, but the circumstances in which one procedure or the other will be applied, who will decide that and whether the Parliament will be able to scrutinise such matters are not immediately clear to me.

The Convener: The plan is that, through these questions, we will invite the Government to provide some explanation.

Schedule 2B to the 2005 act, which is inserted by section 11(2) of the bill, provides for regional boards’ constitution, functions and administrative arrangements. Paragraph 18(1) of the schedule confers on the Scottish ministers a power to modify the schedule—with the exception of paragraph 2, which relates to the status of boards—

“by varying, adding to or removing any of its provisions relating to a regional board’s constitution, functions or administrative arrangements.”

Does the committee agree to ask the Scottish Government whether it is in a position to explain why the negative procedure is appropriate, given that the power modifies primary legislation and that the committee does not consider the reference to the procedure applicable under the Further and Higher Education (Scotland) Act 1992 to be conclusive, especially as no powers in the 1992 act appear to be subject to affirmative procedure and as it is now more than 20 years since the act was considered by the UK Parliament and the approach to the delegation of powers appears to have altered since then?

John Scott: As these powers to amend primary legislation through the negative procedure are very wide, the Scottish Government needs to justify its approach. The approach might have been normal in 1992, but we are a new Parliament with new procedures and therefore need better justification than we have received.

The Convener: The question reflects what is now our principled position that affirmative procedure should be used for amendments to the text of primary legislation.

John Scott: Absolutely.

The Convener: Let us see what explanation the Government gives us.

Unlike all the powers that have been previously discussed, section 15 is an integral part of the bill, rather than an amendment to the 1992 or 2005 act. It enables the Scottish ministers to make subordinate legislation requiring any person

“to provide information the person holds about a young person to Skills Development Scotland Co. Limited for the purposes of enabling or assisting”

Skills Development Scotland
“to monitor that young person’s involvement in education or training ... to provide advice or support as regards that young person’s education or training”

or

“to exercise any of its other functions in relation to that young person.”

Does the committee agree to ask the Scottish Government why, given the stated position in the delegated powers memorandum that ministers will wish to impose the duties under this section on “persons who are providing education and training to young persons”, it is necessary to frame them more widely to allow it to impose them on any person; and whether, given the breadth of the power and the possibility of its being used at some point in the future in a manner other than that which is apparently intended, it would not be more appropriate to ensure that such an order is subject to greater parliamentary scrutiny by way of the affirmative procedure?

Members indicated agreement.

The Convener: Section 15(5) is intended to enable the Scottish ministers to modify section 15 to replace references to Skills Development Scotland with references to any other person. It appears that it is also intended to allow them to update section 15 to reflect changes in name, for example, where the person referred to remains the same, but has changed their name. Does the committee agree to ask the Scottish Government why it considers that the power in section 15(5) may be used to effect a change of name, given that a change of name does not involve any change in legal personality and so there is no “other person” to substitute for references to “Skills Development Scotland Co. Limited”; whether the power in section 15(5) is intended to be exercisable more than once and, if so, whether that means that the power is capable of modifying the reference to “Skills Development Scotland Co. Limited” within the power itself; and whether, if that is indeed the intended effect, that is sufficiently clear from the drafting?

Members indicated agreement.

The Convener: Section 15(7) contains a bespoke ancillary powers provision in addition to the standalone power in section 17 and enables the Scottish ministers, in making an order under section 15(1) or 15(5), to include

“such supplementary, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.”

Does the committee agree to ask the Scottish Government why it is considered necessary to seek bespoke ancillary powers provision for the purposes of section 15, when it appears to the committee that adequate provision for ancillary powers has already been made in section 17 and that those powers could also be exercised in an instrument made under section 15?

John Scott: It seems a bit of an excessive belt-and-braces approach if the power has already been put in.

The Convener: Let us ask the question and see what reply we get.

Members will be happy to note that that brings us to the end of agenda item 4.
SCOTTISH GOVERNMENT

POST-16 EDUCATION (SCOTLAND) BILL

RESPONSE TO THE EDUCATION AND CULTURE COMMITTEE’S STAGE 1 REPORT
INTRODUCTION

I would like to thank the Committee for its consideration of this legislation at Stage 1. I welcome this report and the Committee’s recognition of the ‘broad and strong support’ for the aims and policy direction of this Bill.

During my evidence I made clear my position that we will consider all views and I note the Committee’s desire for further information on some areas. I am keen to clarify as many of these issues as I can ahead of the Stage 1 debate and answers to all of your questions are set out below. For ease of reference I have used the paragraph numbering from your report.

HIGHER EDUCATION GOVERNANCE (SECTION 2)

33. The Committee would welcome clarification from the Cabinet Secretary on whether this issue [requiring 40% of a university governing body to be female] is likely to be addressed in the code or in the Bill itself.

I have asked the Committee of Scottish Chairs to ensure that all issues of equality and diversity are addressed in the code. The concerns raised in evidence about the diversity of HEI governing bodies were well made and I have made clear my commitment to fully exploring the options to address this.

This Government’s general approach on equalities has been to rely on non-legislative measures and it is right that we do this. However, I am fully committed to looking at this issue and will continue to reflect on matters in considering whether to bring forward any amendment to this provision at Stage 2.

41. The Committee would welcome a detailed explanation of the process by which the code will be signed off.

The development of the code is being taken forward by the Committee of Scottish Chairs. They have set up a steering group to draft the code on their behalf. When that process is complete I understand that the draft code will be subject to consultation. On completion of that consultation the final code will be drafted, informed by the consultation. It will then be submitted to the Committee of Scottish Chairs for final consideration and sign off.

In terms of section 2 of the Bill as introduced Scottish Ministers will have responsibility for considering whether to ‘endorse’ the code as fit for purpose, that is to say for determining whether the code reflects “principles of governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions” for the purposes of proposed new section 9A of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”). Until the new code has been endorsed and is in place, the existing code will continue in operation.
44. The Committee invites the Cabinet Secretary to state whether section 2 should be amended at Stage 2, in light of Universities Scotland's comments.

I have been clear that section 2 of the Bill is not aimed at increasing Ministerial controls but about improving the governance of the university sector. This is right and proper, and is commensurate with the assurance and accountability required for public investment of £1.6bn each year. I fully support the principle of ‘responsible autonomy’. That is why I have agreed that best practice in governance must be developed by the sector. I have also been clear that the issue of responsible autonomy is one which I will have in mind in giving consideration to whether it is necessary or appropriate for the Scottish Government to seek to amend section 2 of the Bill at Stage 2 with a view to ensuring that we get the provision exactly right.

46. The Committee asks the Scottish Government to clarify how the legislation and new code will avoid straying into inappropriate areas of university management.

As I have already indicated, I am happy to give further consideration to the terms of the provision to ensure that we get it right. I will therefore give consideration to whether it is necessary or appropriate for the Scottish Government to seek to amend section 2 of the Bill at Stage 2.

It will be for the sector to decide how this balance is best achieved in the drafting of the code but I will be clear with those drafting it that I expect to see this reflected in their final report.

WIDENING ACCESS (SECTION 3)

55. The Committee would welcome clarification from the Cabinet Secretary as to how this risk will be mitigated to protect institutions and staff from legal action in the operation of a contextualised admissions system

Widening access activity is not new and institutions already have to ensure admissions are compliant with the law, including equalities legislation and have clear and transparent policies in place. This will remain the case in the future.

60. The Committee invites the Cabinet Secretary to state whether—

• there is a need to establish a shared understanding across universities of exactly who would be considered to be part of an under-represented socio-economic group;

• there is merit in widening access to include groups who are under-represented other than as a result of their socio-economic status.

I am clear that the key measure at the national level for identifying under-represented socio-economic groups is the SIMD indicator, and under-represented socio-economic groups is the focus of the legislation.
But over and above widening access for under-represented socio-economic groups and what the legislation provides for in relation to that, negotiations on widening access between individual institutions and the SFC is also likely to identify additional indicators/identifiers specific to the institutions circumstances and mission. For example in relation to the need to target widening access activities in relation to particular vocations or the subjects they teach.

In addition, the focus of the legislation on under-represented socio-economic groups does not, of course, prevent the on-going development and adoption of best practice in relation to widening access for others persons or groups. Progress towards the achievement of Athena Swan Awards (supporting women into science) and the Buttle Awards which recognises good practice in supporting Care Leavers are good examples of progress in this area.

76. **We would welcome further detail on what the consequences would be for any university that failed to fulfil a widening access agreement that it agreed with the SFC.**

Failure to fulfil the negotiated targets of a widening access agreement would be considered as part of the overall assessment of performance. It is possible that under-performance in this regard could lead to reductions in future funding allocations, but this would be for the SFC to decide on a case by case basis and would take full cognisance of the factors contributing to under-performance.

77. **The Committee would welcome his response to the risk that some universities could adopt relatively weak widening access targets.**

The setting of widening access targets will take place through the negotiation of the widening access agreement and the broader outcome agreement. SFC will base their input to the negotiation on knowledge of the sector wide position, the mission and existing plans of the individual institution and the importance of this agenda to Ministers. Publication of outcome agreements/widening access agreements will provide transparency across the sector as well as supporting the development of best practice.

87. **The Committee welcomes this investment and seeks confirmation that this priority will continue as a core part of widening access activity in future years. The Committee also seeks further information on how widening access funding is allocated to individual institutions, including any guidance directing institutions toward access or retention focused activity.**

Widening access is ultimately about the achievement of positive outcomes for the individual and for Scotland from the Higher Education experience. Retention therefore remains a continuing priority. Widening access funding will be allocated to institutions as part of the widening access/outcome agreement negotiation process, taking account of the particular circumstances of each institution and in line with the overall priorities identified by the SFC’s Widening Access Committee.
89. The Committee agrees and notes that its recent report on the 2013-14 draft budget called for the SFC to provide an annual update on the extent to which it has delivered the priorities set out in ministerial guidance. The Committee requests that these updates be extended to cover the progress that is being made on access and retention.

As indicated in our response to the Committee’s report on the 2013/14 draft budget, my officials have agreed with the SFC the submission of an annual report setting out the success of institutions in meeting Government priorities.

I agree in principle with the Committee’s suggestion and my officials will explore with the SFC the best way of achieving this.

92. The Committee would welcome reassurances from the Cabinet Secretary that future planning of outcome agreements and widening access agreements will involve comprehensive consultation with both students and trade unions.

Students and staff will be involved in the annual process of agreeing and developing outcome and widening access agreements through the committees managing the process in each institution. In addition, NUS attend the SFC’s Widening Access Committee providing a national student perspective for the development of SFC engagement with outcome/widening access agreements.

COLLEGE REGIONALISATION (SECTIONS 5-13)

121. The Committee notes that the Griggs report’s recommendations on college reserves are still under consideration by the Cabinet Secretary. The Committee considers that it would be useful if the Cabinet Secretary could provide a response to these recommendations before Stage 2.

I understand why the Committee is interested in this matter. However, I would emphasise that the treatment of reserves is not prescribed in, nor affected by, any measures set out in the Bill. As I outlined to the Committee in giving evidence on 26 February, I think that it is imperative that public money invested in colleges is reinvested in the sector to the benefit of learners, and I welcome colleges’ growing willingness to invest their reserves in the process of change. I want the SFC to work closely with colleges to ensure our substantial investment in the sector delivers best value.

141. The Committee notes the Cabinet Secretary’s position [on the functions of regional strategic bodies]. However, in light of the SFC’s comments about possible difficulties between regional strategic bodies and assigned colleges, the Committee requests a more detailed explanation from the Scottish Government of how relationships between these two layers will work in practice.

I hope that the following is helpful:
• The Scottish Government will make a funding allocation to the SFC, along with a letter of guidance on government priorities, as is currently the case.

• The SFC will then allocate funding to regional strategic bodies in the context of government priorities and what has been set out in respective regional outcome agreements.

• Regional strategic bodies will allocate funding to their assigned colleges, agreeing with each assigned college their contribution towards the delivery of the outcome agreement.

• This will be done collaboratively, not just because that is how I expect and know leaders in the sector to work, but because the Bill would require regional strategic bodies to both (a) consult with their colleges where they consider it appropriate to do so in the exercise of their functions; and (b) collaborate with those colleges so far as consistent with a proper exercise of their functions – see new section 23J of the 2005 Act, as inserted by section 10(1) of the Bill.

• In the event that a problem of financial mismanagement is identified at a particular assigned college, the Bill proposes that Ministers would have powers to give the SFC or the regional strategic body directions about the provision of financial support (see new section 25A of the 2005 Act, as inserted by section 10(2) of the Bill).

Given the views expressed by those giving evidence, and the Committee, I wish to reflect further on whether the Bill should be amended at Stage 2 with a view to further clarifying the respective and relative roles and accountability of the SFC, regional strategic bodies and their assigned colleges.

142. On a related point, the Committee would also welcome an explanation of how the proposed new further education strategic forum will work in conjunction with the new college structure. Professor Griggs recommended the establishment of such a forum, “which would drive the sector forward and constantly review and evolve the sector in terms of fitness for purpose in a changing educational and economic world”.

The FE strategic forum is of course not a matter for which provision is made in the Bill. The remit and composition of the forum are currently under consideration. That said, Chairs, Principals and (for the time being) Regional Leads will be at the heart of whatever arrangement is put in place to drive the sector forward.

143. There are two issues that arose from the Finance Committee’s report on the Financial Memorandum that, for convenience, can be set out in this section. In line with one of the Finance Committee’s recommendations, the Committee asks the Scottish Government to provide further detail on the extent of the consultation which it held on the costs arising from the college regionalisation provisions in the Bill.
The cost estimates in the Financial Memorandum that relate to regionalisation were established using the expertise of an HR professional from the sector who is currently on secondment to the Scottish Government.

In developing estimates for the staff and non-staff costs of regional boards, my officials sought comments from a group of individuals that the then Scotland’s Colleges brought together as an informal sounding board for the college regionalisation policy proposals now reflected in the Bill.

The group included five people: four college principals (one of whom is also a regional lead) and a college chair. Papers were also copied to the Chief Executive of Scotland’s Colleges. An initial estimate of costs for Regional Boards (including staff and non-staff costs) was shared with the group. Officials also sought the views of the SFC.

It is also worth restating that the costs of regional strategic bodies were not set out in the Scottish Government’s consultation Putting Learners at the Centre¹ or the separate college regionalisation consultation paper², as the multi-college region model had not been developed at this stage (it was developed as a result of my decision that we would not force college mergers).

149. The Committee notes the explanation provided by officials. However, as the Bill will substantially change college governance structures, it invites the Cabinet Secretary’s view on whether the Bill could be amended to provide further assurance to assigned college boards on this matter [charity trustees duties].

I do not consider that the Bill requires amendment to provide any further assurance on this matter. As my officials clarified in a letter dated 6 March 2013 to the Chief Executive of Colleges Scotland, Section 66(3) of the Charities and Trustee Investment (Scotland) Act 2005 already provides that the duties of charity trustees “are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity”. The effect of section 66(3) is that a charity trustee cannot rely on section 66(1) of that Act (duty of charity trustees to act in the interests of the charity) to refuse to comply with a separate legal obligation. The corollary is that a charity trustee will not be in breach of their section 66(1) duty to act in the interests of their charity simply by complying with a separate legal obligation imposed on them.

It therefore follows that where a college board is issued with a direction by its regional strategic body, the board complying with that direction will not – even where the members do not consider what is required in terms of the direction to be in the best interests of the college – mean that the members of the board are in breach of their section 66(1) duty to act in the interests of the charity.

¹ http://www.scotland.gov.uk/Publications/2011/09/15103949/0
² http://www.sfc.ac.uk/newsinformation/Consultations/2011/Consultations_jointconsultation.aspx
162. The Committee invites the Scottish Government to explain why this requirement [to have 50% of the board with private sector experience] has been changed, given the Policy Memorandum’s statement that the wider reform will “align learning to labour market demand” and that the aim is to “make post-16 education more responsive to the needs of learners and employers”. More generally, given witnesses’ comments on boards, the Committee would welcome an explanation of the underlying principles behind the Scottish Government’s decisions on board appointment and composition.

The Report of the Review of Further Education Governance in Scotland\(^3\) recommended that members of boards be “selected using an outcome based approach to determine the skills necessary to carry out their task”.

I am in complete agreement with the Committee that close working with employers will be a crucial element of the sector’s success in the future. However, I do not believe the current provision in the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) meets the needs of boards today, as it does not acknowledge that, in addition to experience, skills are important too.

The language of the existing provision is in my view dated; the particular emphasis on “practice of any profession” in particular does not strike me as useful.

This is an important issue and one that I consider could usefully be revisited from time to time to ensure that the right balance is struck. The Bill therefore proposes Ministerial guidance on appointing members with “particular skills and experience”. I will consult the sector and stakeholders on the content of that guidance.

173. The Committee agrees with the SFC that there is a need to explain how the regional boards will meet students’ and businesses’ needs without becoming overly bureaucratic or consuming resources that would better be spent on education. The Committee invites the Scottish Government to set out how it expects this balance to be struck.

I am clear that there has to be a strong, workable safeguard against any wasteful bureaucracy in terms of the new regionalisation model, and I believe we have achieved that in terms of what is proposed in the legislation.

The Bill sets out that when making plans, regional strategic bodies must have regard to economy, efficiency and effectiveness (see proposed new section 23D(2) of the 2005 Act, as introduced by section 10(1) of the Bill). The Bill also proposes that a regional board would have to comply with any directions given to it by the SFC about the appointment of employees and their terms and conditions (see paragraph 10(4) of proposed new Schedule 2B to the 2005 Act, as introduced by section 11(2) of the Bill).

In addition, the SFC would also have powers to carry out, or secure the carrying out of, efficiency studies to improve the economy, efficiency and effectiveness of

\(^3\)http://www.scotland.gov.uk/Topics/Education/UniversitiesColleges/17135/CollegeGovernanceReview/FEGovernanceReport
regional strategic bodies (section 15 of the 2005 Act). And the SFC can use terms and conditions attached to its grants to regional strategic bodies to ensure that resources are appropriately prioritised.

Beyond this it will, of course, be for the regional strategic bodies themselves to determine how to deliver provision in their region in a way that maximises available resources.

180. The Committee seeks clarification from the Cabinet Secretary as to whether there are any plans to set out in statute – or non-statutory guidance – instructions on the delegation of powers from the university [UHI] court to the FE regional board.

In June 2012 I invited Dr Michael Foxley, Chair of West Highland College UHI, to chair a Working Group on the future structure and governance of the University of the Highlands and Islands (UHI). In my letter to Dr Foxley of 8 October I broadly welcomed the working group’s plans, which involved, among other things:

- UHI becoming the single fundable body for the Highlands & Islands, devolving authority for funding the FE element to a committee of the UHI Court, which would, in effect, discharge UHI’s responsibilities as a regional strategic body.
- the creation of a new ‘Triumvirate’ structure for UHI senior management, creating two new Associate Principal posts to provide a voice for further education on the one hand and research and specialist institutions on the other, at the centre of the UHI.

It was on the basis of this understanding of the new governance arrangements of the University that the Bill designates UHI as a regional strategic body.

As the Committee is aware, the Bill would designate UHI as the University is the legal entity. The Bill is unable to designate a committee of UHI as a regional strategic body. It is a matter for the UHI Court in accordance with its constitutional arrangements to determine matters delegated to any of its committees.

While I have no reason to doubt that UHI will follow the recommendations of the working group, let me be absolutely clear: if the arrangements in the Highlands and Islands do not match my expectations, it would be possible under the Bill for Ministers to set up alternative arrangements in the region. In particular, Ministers could make provision for UHI to no longer be a regional strategic body and could, instead, establish a regional board (see new section 7B(2) of the 2005 Act, inserted by section 8(1) of the Bill).

181. A number of provisions in the Bill do not apply to unincorporated colleges. While the Scottish Government has provided information on how unincorporated colleges will fit into plans for college regionalisation, the Committee would welcome clarity as to whether all unincorporated colleges are to become assigned colleges and how these colleges would be accountable to the university court [of UHI].
‘Unincorporated college’ is an informal term used to describe colleges that do not have a board of management under Part 1 of the 1992 Act. There are many unincorporated colleges that are privately-funded. So not all unincorporated colleges would be assigned to a regional strategic body.

While it would be possible under the Bill to assign unincorporated colleges to all regional strategic bodies – including regional boards - I have no plans at this stage to do so, other than in the Highlands and Islands.

I anticipate consulting on assigning the following colleges to UHI as the regional strategic body for the Highlands and Islands (all of which, with the exception of Argyll College, are currently fundable bodies: I understand that Argyll College is in discussion with the SFC about whether to seek fundable body status):

**Incorporated colleges**

- Perth College
- Lewis Castle College
- Inverness College
- Moray College
- North Highland College

**Unincorporated / Non-incorporated colleges**

- Argyll College
- Orkney College
- Shetland College
- West Highland College

The UHI Working Group recommended that in addition to colleges above, the following colleges would also be represented on the UHI FE committee –

- Highland Theological College
- NAFC Marine Centre
- Sabhal Mòr Ostaig.

I have agreed with Sabhal Mòr Ostaig that the college should remain a fundable body and continue to receive its FE funding directly from the SFC. Highland Theological College and NAFC Marine Centre are not fundable bodies. They would continue to receive funds through contracts they enter into with Moray and Shetland Colleges respectively.

It is open to these and any other college of further education to seek to be assigned. By that I mean that there are provisions in the Bill that would enable a college to be assigned by order to a regional strategic body. New section 7C of the 2005 Act, as inserted by section 8(3) of the Bill, provides that where a body is not a fundable body
or already assigned, the regional strategic body must propose or approve the assignation.

As the Scottish Government paper on Non-Incorporated Colleges and College Regionalisation Plans\(^4\) outlines, not being assigned to UHI in its role as a regional strategic body does not affect a college’s ability to partner with UHI to deliver higher education nor would it affect decisions of UHI as to which organisations might be represented on any of its committees.

Colleges assigned to UHI as a regional strategic body would be accountable to it through the terms and conditions of their grants (from UHI as regional strategic body).

183. The Committee seeks clarification from the Scottish Government on setup costs for UHI and whether there will funding available to allow it to meet these costs.

My officials are continuing to pursue this matter with the SFC and UHI, and I will update the Committee with a robust figure as soon as we have that. I can confirm that funding will be available to UHI for this purpose.

REVIEW OF FUNDABLE FE AND HE (SECTION 14)

198. The Committee notes the reassurances provided by the Scottish Government and the SFC. However, Universities Scotland’s criticisms were expressed in relatively strong terms and the Committee invites the Cabinet Secretary to consider whether the Bill itself requires to be amended to provide further reassurance, particularly on course provision and the number of HEIs. In making this request, the Committee notes the SFC’s statement that it “already reviews provision”, which suggests that the aim of the Bill may not be as radical as Universities Scotland fears.

I would absolutely agree with the view that this change is not as radical as US fears, but it is an important and necessary change to give the SFC an explicit power to initiate a formal review of the extent to which certain elements of further and higher education are being delivered in a coherent manner.

There is no intention for either Ministers or the SFC to direct institutions as to what they should teach or how they should teach it. To be clear, this will not change existing legislative provisions around academic freedom and institutional autonomy. Instead it will work within this existing framework.

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\(^4\) [http://www.scotland.gov.uk/Topics/Education/post16reform/hefegovernance/Plans](http://www.scotland.gov.uk/Topics/Education/post16reform/hefegovernance/Plans)
199. The Cabinet Secretary suggested that there would be a role for the Parliament in scrutinising the recommendations of any review carried out by the SFC, a position that is not clear from the Bill. The Committee would welcome clarification of whether the Bill requires to be amended to reflect this role.

I do not believe that the Bill needs to be amended to reflect this. Any review will be conducted publicly and will produce a report of its findings and the Committee or its successors would be free to choose to scrutinise any review if they considered it necessary or appropriate to do so.

200. There is a further, specific matter where the Committee would welcome clarification: section 10 of the Bill states that regional boards must monitor the performance of their colleges including “assessing the quality of fundable further education and fundable higher education provided by its colleges”. A regional board may also “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.” The Committee seeks an explanation of how these specific powers for regional boards are intended to work in practice alongside the SFC’s broader review power.

Section 14 of the Bill seeks to insert a new section 14A into the 2005 Act which would empower the SFC, with the consent of Ministers, to review the extent to which education is being provided by post-16 education bodies in a coherent manner.

In addition, and as the Committee indicates, the Bill would give regional strategic bodies particular roles in relation to quality and efficiency studies: regional strategic bodies would have a duty to monitor the performance of their colleges, which may include assessing the quality of education being provided (proposed new section 23E of the 2005 Act, to be inserted by section 10(1) of the Bill) and a power to secure the carrying out of ‘efficiency studies’ (proposed new section 23G of the 2005 Act, again to be inserted by section 10(1) of the Bill).

The power which proposed new section 14A of the 2005 Act would confer on the SFC is a broader power of review which would be exercisable independently from the roles of regional strategic bodies in relation to quality and efficiency studies. That said, the work of regional strategic bodies in relation to quality and efficiency studies may feed in to any SFC review under section 14A of the 2005 Act. By way of example, conceivably the findings of any efficiency studies conducted or commissioned by a regional strategic body might form part of the evidence gathered by SFC as part of a wider review.
DATA SHARING (SECTION 15)

215. The Committee would welcome a detailed explanation from SDS before stage 2 of how it intends to pro-actively support young people who may be at risk of disengaging with learning or training.

As this is an operational matter for SDS, my officials have asked them to respond directly to the Committee on this point. I am aware that your clerks have also brought this report to their attention.

217. There were, comparatively speaking, relatively few comments made in evidence about this provision. A number of submissions expressed support but some concerns were raised, for example that—

- the data being held by SDS may lead to possible contraventions of data protection law;

- the secondary legislation being proposed touches on ‘the learning system’ and the need to identify those who have disengaged or may disengage with learning or training. Angus Council Community Planning Partnership considered that there is a need to define what constitutes ‘learning’ and therefore the scope of any duty;

- the arrangements proposed would not improve matters for young people who enter a negative destination and choose not to engage with SDS.

218. On the first point, SDS confirmed that it was not aware of any concerns about this legislation being inconsistent with any other legislation. The Committee would welcome SDS’ or the Scottish Government’s response to the other points.

- the secondary legislation being proposed touches on ‘the learning system’ and the need to identify those who have disengaged or may disengage with learning or training. Angus Council Community Planning Partnership considered that there is a need to define what constitutes ‘learning’ and therefore the scope of any duty;

The Angus Council Community Planning Partnership contend that secondary legislation proposed under this provision will touch on ‘the learning system’ and so there would be a requirement to define what constitutes ‘learning’.

In the first instance it may be helpful to note that the Bill provision does not use the term ‘learning’. Rather it refers to ‘education and training’, both of which are readily understandable concepts. But more importantly, as envisaged by section 15(2) of the Bill, any order under section 15(1) of the Bill will specify the matters referred to in section 15(2)(a) to (c), namely:

(a) the persons who are to be required to provide information,

(b) the information, or type of information, which must be provided, and
(c) the form and manner in which it is to be provided

and so the 'scope of the duty' will be clear from the secondary legislation. Although in the Bill as introduced the section 15(1) order making power is subject to the negative procedure, in my response to the Subordinate Legislation Committee’s Report on the Bill I have indicated that I accept that Committee’s recommendation that the power ought to be subject to the affirmative procedure and that I will seek to bring forward an appropriate amendment to the Bill at Stage 2 to effect this. And so the Education and Culture Committee or any of its successors will have an opportunity to scrutinise any order under section 15(1) of the Bill in draft before it is made.

- the arrangements proposed would not improve matters for young people who enter a negative destination and choose not to engage with SDS.

Beyond the age of compulsory education (up to the age of 16), if a young person in a negative destination actively decides to disengage from support services, there is little any system can do to force that individual to take up a place in education or training. However, with the introduction of Opportunities for All, we have made a commitment to all young people between the ages of 16 and 19 who are not currently engaged in education, employment or training, that they will be offered a learning or training place.

The roles and responsibilities of this multi-agency partnership approach are set out in the Post-16 transitions Policy and Practice Framework Supporting all young people to participate in post-16 learning, training or work. This was published by the Scottish Government in November 2012 and is available at: http://www.scotland.gov.uk/Resource/0040/00408819.pdf

The provisions included within the Bill will allow us to ensure that Skills Development Scotland has the information it needs to identify young people who have dropped out of education or training or who are at risk of doing so. With partners, such as colleges and local authorities, SDS will use that information to make targeted interventions to get those young people back on track – thus seeking to improve matters for young people who have disengaged and who have chosen not to engage with SDS.

221. The Committee asked for information on the full costs to date of developing the data hub. SDS stated that it would provide further detail in due course. The Committee expects to receive this information in advance of the Stage 1 debate.

As this is an operational matter for SDS, my officials have asked them to respond directly to the Committee on this point. I am aware that your clerks have also brought this report to their attention.
226. The Committee wrote to SDS seeking clarity on the number of young people on the database, noting that there are around 625,000 people aged between 16 and 24 in Scotland. In its response SDS said it was “working on analysing and validating information related to the totality of records held”. The Committee looks forward to receiving this information as soon as possible.

As this is an operational matter for SDS, my officials have asked them to respond directly to the Committee on this point. I am aware that your clerks have also brought this report to their attention.

227. The Committee would also welcome confirmation from SDS that it captures fully data relating to part time college and university students. This was a specific issue raised in the Open University’s written evidence.

As this is an operational matter for SDS, my officials have asked them to respond directly to the Committee on this point. I am aware that your clerks have also brought this report to their attention.

Michael Russell
Cabinet Secretary for Education and Lifelong Learning
Note: (DT) signifies a decision taken at Decision Time.

Post-16 Education (Scotland) Bill: The Cabinet Secretary for Education and Lifelong Learning (Michael Russell) moved S4M-06059—That the Parliament agrees to the general principles of the Post-16 Education (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 64, Against 54, Abstentions 3).

Post-16 Education (Scotland) Bill: Financial Resolution: The Cabinet Secretary for Education and Lifelong Learning (Michael Russell) moved S4M-06018—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Post-16 Education (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
The process of regionalisation will be part of the process of widening the offer. I am glad that the member has raised that issue, because last week, I met the cross-party group on learning disability. I am sure that it would have welcomed you—the member—too. We discussed—and I have discussed this with the charities involved—additional investment that we can put in place to ensure that there are no unintended consequences. I have recently approved two schemes that will attempt to guarantee that, and I will go on attempting to guarantee that with those involved.

Neil Findlay (Lothian) (Lab): Today, I received an email from Unison, which has done a quick survey around the City of Glasgow College and identified almost three pages of courses that have been cut. The courses, which ran last year but are not running this year, are: the higher national certificate in engineering; courses in electrical engineering, mechanical engineering, sports science and sports coaching; the European computer driving licence; and additional needs courses. The list goes on and on. How does that widen access?

Michael Russell: I am not really surprised that Mr Findlay is behind Ruth Davidson in raising those points. She raised them some months ago but, unfortunately, she has not come to the chamber to withdraw them as she should have done, given that she discovered that some of those courses had not been withdrawn and that others were available in nearby colleges. [Interruption.]

The Deputy Presiding Officer (Elaine Smith): Order.

Michael Russell: The process of regionalisation is providing wider opportunities across the college arm of post-16 reform, that is precisely what the bill sets out to achieve.

Let me open up the ideas in the bill.

The bill reflects our strong belief that access to higher education should be extended to all, especially those in our most deprived communities.

Duncan McNeil (Greenock and Inverclyde) (Lab): You rightly say that the objective of the reform is to widen access to education for people in deprived areas, for example, and vulnerable people with learning difficulties. A thousand learners are in James Watt College for precisely that reason. How will we ensure that the bill will ensure the best outcomes for people with learning disabilities? How will it ensure that they are not pushed out of our colleges as an unintended consequence?

Michael Russell: The process of regionalisation...
sector and across Glasgow. It is doing precisely that.

Liz Smith (Mid Scotland and Fife) (Con): I take your point about various aspects of the issue and that we have to weigh up other things in the balance. Could you be specific? College regionalisation is on-going in any case. What specifically in the bill will widen access?

Michael Russell: There is a guarantee of widening access to higher education in the outcome agreements, and the regionalisation process will ensure better offers for every student. I would have thought that that was axiomatic.

I will continue to outline those points as I go through the bill.

Margo MacDonald (Lothian) (Ind): I thank the minister for giving way—he is taking a great number of interventions. Perhaps he should be absolutely bare-faced and honest: we will widen access to education when we have fewer poorer people. Perhaps the ball should start not in the court of people who are looking for education but in the court of those who are looking for jobs.

The Deputy Presiding Officer: Members should use members’ full names.

Michael Russell: Margo MacDonald is, as ever, wise, but the bill is about opening the door and creating the opportunity. Of course, moving people away from poverty in Scotland is important, and she and I agree exactly on how to do that, which is to have independence in Scotland.

The bill reflects our strong belief that access to higher education should be extended to all, especially those in our most deprived communities. The bill will end once and for all the perception in those communities that a top-class education is an opportunity that is designed for others. The distinguished Toronto educator, Avis Glaze, says that “poverty is not destiny”. The bill will make it clearer that in Scotland, post-16 education is for everyone with the ability, drive and ambition to pursue it.

The bill will allow us to ensure that Skills Development Scotland has the information that it needs to identify young people who are at risk of dropping out of education. It will allow us to cap tuition fees for students from the rest of the United Kingdom and impose a related condition of grant on the Scottish Further and Higher Education Funding Council, which will ensure that such students are not charged more than they can access in fee support from their own administrations. We abhor the monetisation of higher education that has been set in train by the UK Government; unfortunately, that is the reality, and this Parliament has had no alternative but to take action.

The bill will substantially improve the governance of both college and university sectors. That is right and proper, and it is commensurate with the assurance and accountability required for public investment of £1.6 billion each year.

The bill will establish the structures that are necessary to deliver the full benefits of college regionalisation. As many commentators have observed, a regional system of planning and delivery will allow a much sharper alignment of provision and economic need, which will boost the employability of learners and deliver the skills that are necessary to drive forward the Scottish economy. Finally, the bill will give the SFC an explicit power to initiate a formal review of Scotland’s post-16 educational offer, to ensure that it effectively meets the needs of learners and the economy.

I am pleased to say that the evidence presented to the committee has revealed strong support for those principles, which is in stark contrast to the impression created by some Opposition members last week. The clear message that I hear from learners, staff and institutions is that the policy objectives that we have identified are the right ones.

To take just one example, on widening access, Robin Parker of National Union of Students Scotland clearly told the committee: “The legislation must happen.” However, that should come as no surprise, because we did not arrive at the bill’s principles on our own.

In the early autumn of 2011, we embarked on a process of detailed consultation and engagement. We published “Putting Learners at the Centre” in September that year. With the funding council, we consulted on detailed proposals for college regionalisation in November. Professor von Prondzynski and Professor Griggs consulted widely during their respective, independent, reviews of university and college governance. All that has led to a constructive process full of challenge, discussion and debate, to which we have listened carefully. We have taken that on board and have made improvements, and we will go on listening and looking at those ideas and influences as we progress with the bill.

However, I do not claim that there is consensus on the detail of every provision—it would be surprising if there was. Throughout the process, I have been clear that I welcome constructive challenge, and I will go on doing so because my priority is to work with staff, students and institutions—and this Parliament—to produce the best possible bill: one that maximises benefits for learners and for Scotland.

Today we are talking about the bill’s general principles—that is our focus. Looking ahead, I
encourage all members, whether they are on the Education and Culture Committee or not, to come forward with suggestions that can help us to achieve a better bill.

I turn to some of the issues that were highlighted in the committee’s report. I noted with interest the differences that emerged. For example, some of the concerns over the provisions relating to college regionalisation are founded in perceptions of complexity. However, there is broad acceptance that a regional model of planning and delivery will achieve substantial benefits for learners, institutions and employers.

It has been suggested that, in allowing for both single and multicolleage regions, we are creating an overly complex system. However, the bill allows for those different structures because we want colleges to determine the best model for learners in their region. Ian McKay, a former college lecturer and trade union official who is now regional lead for Edinburgh, put it well in his evidence to the committee when he said:

“In a place as diverse as Scotland, it will be necessary to have a degree of variance in the way in which we exercise control over a national structure. It makes sense that there should be such variance.”—[Official Report, Education and Culture Committee, 19 February 2013; c 2026.]

An alternative approach would have meant forcing colleges to merge. We are not going to do that. Those who criticise our plans for regionalisation cannot at the same time oppose the flexibility that the bill allows.

Opposition parties have united to call for a delay to the bill, but at every stage we have answered the questions put and have addressed the issues raised, and we will go on doing so. Delaying the bill would be the wrong thing to do because college leaders are already seizing opportunities for post-16 reforms and are delivering the benefits of those reforms at an unprecedented pace.

Liz Smith: Will the cabinet secretary take an intervention?

Michael Russell: I am sorry, but I am very short of time. Perhaps I will do so in a moment.

It is college leaders who, right across the country, are presiding over the emergence of colleges of scale and distinction. I do not think that delay would serve any purpose at all. I have made clear my intention to listen to any concerns that are raised and to address those at stage 2. Colleges themselves have set timetables for change, and I will back their efforts for learners as strongly as I can.

I will also back the development of wider collaborative models. Let me make clear my support for the work that continues between the local authorities and higher education bodies in the unique venture at the Crichton campus in Dumfries. I am looking to the funding council and the institutions involved to ensure that that model and others are recognised in outcome agreements.

Widening access is another principle for which there is strong support. Let us discuss how we can get that principle into action. In 1894, John Caird, the then principal of the University of Glasgow, said:

“It is the glory of our Scottish universities that they have never been places of education for a class, that no costly arrangements render them possible for only the rich or well to do.”

However, 119 years after that remark was delivered, we still have not adequately widened access to our poorest communities—a point that Duncan McNeil just made. Almost everyone in the chamber would agree that widening access is intrinsically good. The question is not whether something should be done, but how best to do it—and, in particular, whether it is necessary to legislate. I believe that the evidence shows that we must.

I do not dispute that progress has been made. I applaud the innovative programmes that are being developed. However, there is no getting away from the fact that participation from Scotland’s most deprived areas has increased by just 1 per cent in the past nine years. That is unacceptable. We invest more than £1 billion a year in Scottish universities, and that investment must yield a return for all young Scots who have the ambition and determination to succeed, whatever their background or circumstances.

That does not mean that there should be any displacement. We do not want to increase access for one group of learners by restricting opportunities for another. By opening access in the truest sense, we have already created an additional 1,700 places in anticipation of an increase in the number of learners from deprived backgrounds. That is why we provide the Scottish funding council with £29 million every year for those activities.

Liz Smith: Will the cabinet secretary give way?

Michael Russell: No. I am sorry, but I am coming to the end of my opening speech. I will genuinely try to take an intervention later in the debate.

I turn to the issues that were raised by the committee with regard to governance. The bill will allow ministers to require institutions to comply with principles of governance that appear to constitute good practice. A code is being developed by the chairs of court, who have been consulting. It is appropriate that the committee has a role in scrutinising that code, and I am pleased
that there is going to be further evidence on it. Nevertheless, the code is not explicitly referenced in the bill and is not, therefore, a substantive part of the legislation that is under scrutiny. The scrutiny that will take place will be necessary, but it has not impeded the progress of the bill.

I have set out the principles of the bill and the benefits that I believe it will deliver for Scotland. It has been suggested by some in the chamber that none of this is necessary and that, although our intentions are laudable, legislation is not necessary or essential for their achievement. However, the bill is necessary and essential. It is necessary and essential for the Scottish businesses that are looking for the skills that they need to grow. It is necessary and essential for the ambitious learners who want to acquire the skills to enter quality employment. Above all, it is necessary and essential for the young people in our deprived communities who dream of a better life.

I move,

That the Parliament agrees to the general principles of the Post-16 Education (Scotland) Bill.

15:04

Stewart Maxwell (West Scotland) (SNP): I thank the cabinet secretary for addressing in his speech many of the issues raised in the Education and Culture Committee’s stage 1 report on the bill and for his quick response—in time for the debate—to the report. I also thank those who provided evidence to the committee, the clerks, and the Scottish Parliament information centre, which provided assistance throughout the stage 1 process.

I make it clear that I am speaking in my capacity as committee convener, which provides me with an opportunity to discuss the main issues in our report in more detail. I will also look ahead to stage 2—assuming that the bill passes stage 1.

The committee’s report sets out various areas where further information is required before we will be in a position to consider amendments. The report notes the broad and strong support for the general policy direction; it also raises a number of questions about some of the specific approaches that are being adopted.

I should say at this point that the committee was split on whether to support the bill’s general principles. The majority of members supported those, whereas others expressed concern about whether the legislation would achieve them. All members noted some concern about the specific means by which the bill would achieve some of the general principles. I will address some of those concerns and questions as I go through our views on the bill, provision by provision.

I doubt that any member is unaware of the educational, cultural and economic importance of Scotland’s higher education institutions. Our universities punch well above their weight internationally, and I believe that no Government—or party—would seek to jeopardise their world-class reputation. Although university reform should therefore be conducted with caution, the Parliament should not run the risk of being overly timid in its approach. Higher education institutions spend considerable amounts of public money, and we rightly expect to derive a public benefit in return.

A major aim of the bill is to improve university governance. The trade unions that provided evidence forcefully made the case for that, citing universities’ weakness in relation to scrutiny, transparency and widening access as reasons for reform.

The Scottish Government’s response to those perceived weaknesses is set out in section 2 of the bill. Essentially, higher education institutions are “to comply with any principles of governance or management” identified by Scottish ministers.

It is fair to say that university principals and chairs are worried that the provisions on governance may give too much power to Scottish ministers and jeopardise their institutions’ responsible autonomy. In other words, they expressed the belief that universities can best deliver public benefit when they have clear autonomy to do so. In our report, we have asked the cabinet secretary to explain whether those concerns should be addressed by amending the bill at stage 2.

While we were scrutinising the bill at stage 1, a steering group was developing a new Scottish code of good higher education governance. We understand that the code—which is due to be published in April—will become the “principles of governance” referred to in the bill.

The committee had a number of questions about the code, and in our report we have asked the cabinet secretary to explain how it will be signed off, whether it will address the issue of gender inequality on university governing bodies, and how it will avoid straying into the management, as opposed to the governance, of universities. Given that the code was not available before the end of stage 1, the committee will take further evidence on the content of the code before commencing stage 2.

I hope that everyone present agrees that our universities should be places where all those with the ability to flourish are admitted. However, it is
strikingly apparent from the evidence that we heard that some groups of people, particularly those from disadvantaged socioeconomic backgrounds, are not as well represented in university as others. The bill seeks to address that deficit.

The committee welcomed the principle of widening access and the cabinet secretary’s recent financial commitment to that policy. However, we have asked for further information from the Scottish Government.

First, we want to know how the risk that universities will adopt weak access targets can be avoided. We do not want—or anticipate—such an outcome but, to put it charitably, progress on widening access could perhaps have been a little quicker over the years. As the cabinet secretary acknowledged, universities will maintain autonomy in determining admissions. We also heard from Scottish Government officials that universities are unlikely to face financial penalties for failing to hit targets. Therefore, the committee has requested some clarification on how the bill will be made to work.

Secondly, we have asked for confirmation that the very welcome Scottish Government funding for retention activities will continue in future years, because there is not much point in widening access if the students who benefit then simply drop out of university.

Although the bill allows for the establishment of widening access agreements, what is crucial is whether the intended outcomes are delivered. We have therefore requested an annual update from the Scottish funding council on the progress that is being made on access and retention. I welcome the cabinet secretary’s comments in his reply to the committee’s report in that regard.

Much has been said inside and outside the Parliament about tuition fees. In the evidence that we took on the provision on tuition fees, the arguments that we heard were well rehearsed and were undoubtedly familiar to all members. The unions restated their opposition to tuition fees and said that students from the rest of the UK who studied in Scotland could face the highest-cost education system in the UK, but Universities Scotland challenged that evidence. It pointed out that the average Scottish fee is “spectacularly” below the average English fee, and that around 30 per cent of degree courses in England last for four years or more.

In effect, the bill puts on a legislative basis an existing agreement that Scottish institutions will cap the level of tuition fees that they charge students from the rest of the UK. The committee supported the general principles of the Scottish Government’s approach to the fees cap.

I turn to college regionalisation, which forms the most substantial part of the bill and on which we took a large amount of evidence. There was praise for the bill’s aims and the wider reform process, but several witnesses criticised the bill and the wider process. The changes that the bill proposes and the separate continuing process of college mergers will result in a significant restructuring of Scottish colleges. There will be regions with a single college—that will be the case here in Edinburgh, for example—as well as multicollege regions in Glasgow and Lanarkshire. New regional boards will be created for Glasgow and Lanarkshire, which will distribute funding and plan provision across the region. Individual colleges in those areas will be known as assigned colleges.

In the light of comments by the Scottish funding council, we particularly asked the cabinet secretary for a detailed explanation of the relationship between regional boards and assigned colleges. Specifically, the committee sought clarity on lines of funding and accountability between the two levels of governance. We also wanted to understand how regional boards will meet the needs of students and business without becoming overly bureaucratic or consuming precious resources.

The bill will also allow the funding council to review the provision of fundable further and higher education to ensure that it is provided in a coherent manner. Such a review could include consideration of the number of post-16 education bodies and of the learning and courses that they provide. The provision in question does not appear to radically alter the funding council’s existing powers in that regard, although Scottish Government officials said that it would give the funding council

"a clearer mandate to discuss with institutions evidence of, for example, unnecessary duplication that is to the detriment of learners and wider public investment."—[Official Report, Education and Culture Committee, 15 January 2013; c 1745.]

Universities Scotland criticised the proposals. It said that it was not the funding council’s responsibility to decide on the number of fundable higher education institutions and went on to set out some of the potential problems that a higher education institution could face if it were known that it was under review. Although the cabinet secretary and the funding council sought to reassure Universities Scotland, we have asked the Scottish Government to consider whether the bill could be amended to provide further reassurance to universities.

I turn to the provisions in the bill that concern data sharing. If the bill is passed, a legal duty will be placed on relevant bodies to share data with Skills Development Scotland to help it to identify
young people who have disengaged with learning or training, or who may be at risk of doing so.

Although the cabinet secretary stressed that a relatively minor change is being sought, our understanding of the provision was not at all helped by the evidence that we received. In particular, we struggled to understand how a database—or a data hub, as it was called—could identify young people who were “at risk of disengaging with learning or training”.

I had some difficulty understanding the evidence that we received from SDS. Our comprehension was not helped by the fact that the policy memorandum does not explain what the phrase means, nor does it say how many young people it could cover or exactly how they would be helped.

Although a minor change is being sought, the underlying policy is of immense importance and we took some time to disentangle the provision from the wider policy. We also asked SDS for a detailed explanation of how it will proactively support young people who may be “at risk of disengaging with learning or training”.

The committee, by majority, supports the general principles of the bill. We have taken our responsibilities at stage 1 extremely seriously and have taken evidence on all the key issues from a wide range of interested parties. As ever, their input has been invaluable and I would like to thank all those who provided written submissions or oral evidence. I restate my—and, I am sure, the committee’s—thanks to the clerks and SPICe for all their support during the stage 1 process.

Our report summarises the bill’s strengths and weaknesses. Witnesses and the committee have made it clear that greater clarity on the bill is required, and I very much welcome the cabinet secretary’s commitment to work with the committee to ensure that the bill can and will be improved at stage 2.

15:14

Neil Findlay (Lothian) (Lab): As a member of the Education and Culture Committee, I, along with my colleagues, sat through many hours of evidence on the bill, and my view on it has been shaped by what we heard from the students, staff and relevant interested parties—those who know most about further and higher education—who appeared before the committee.

As parliamentarians, we have a duty—particularly in our committee work—to interrogate and question what is brought before our Parliament. The Education and Culture Committee has done that to good effect, as is apparent to anyone who reads the committee’s report or who listened carefully to the convener’s speech.

I say at the outset—so that there is no room for misrepresentation, pretence or false indignation—that I and probably all the committee’s members support the broad aims of the bill. I certainly support the aim of improving the governance, transparency and accountability of universities, for which students and trade unionists have called. I support the reform of tuition fees for rest of UK students, for which student leaders have called. I support improvements to and the democratisation of college governance. I recognise the need to improve collaboration between colleges and universities, and I support improved data sharing to support people into employment.

I bow to no one in my support for widening access to higher education. A college education changed my life by providing me with the opportunity to enter higher education, and for many students like me it is the route to university. However, the evidence that we have heard has raised some serious concerns that strongly suggest that the bill as it stands is deeply flawed.

For example, the committee’s ability to fully comprehend the provisions on higher education governance was severely hampered. The Scottish funding council was supposed to commission a working group to develop a new and improved code of governance for universities, but instead the chair of court took it upon themselves to undertake that work and appointed a steering group. The code has been neither published nor scrutinised by the Education and Culture Committee, and that is wholly unsatisfactory.

Indeed, the group’s development of the code was heavily criticised in evidence from the University and College Union Scotland, the Educational Institute of Scotland and NUS Scotland, which complained bitterly about the lack of student and staff representation on the group. Despite the unrepresentative composition of university boards, the university chairs told the committee that “there is no particular problem with governance in Scotland to be solved.”—[Official Report, Education and Culture Committee, 19 February 2013; c 2011.]

Given that their assertion was contradicted by students and unions, I have some concerns about the steering group’s findings—whatever they may be. I am also concerned that the findings will be accepted entirely by the Government, with the result that the code “would effectively become the ‘principles of governance’”.

Professor von Prondzynski himself said that governance was overwhelmingly excellent. Those views were rightly challenged by the UCU and NUS Scotland, and if Professor von Prondzynski thinks that governance is currently excellent, that raises the question of why a new code is needed.
There is also an apparent difference of opinion between the cabinet secretary and the chair of the funding council on whether the new code would be voluntary or compulsory, which is a pretty fundamental issue. We do not know whether the new code will deal with issues such as gender equality or staff and student representation on university boards of governance.

Section 3 of the bill relates to widening access, which is a subject that is close to my heart, but many questions that were asked about that subject remain unanswered. How is the objective to be achieved? What actions are to be taken by institutions to improve access? What is the target? Which groups are to be targeted? Who will be counted in the widening access total? What rate of improvement will be deemed a success? Which initiatives have been successful, and which have failed? How are admissions staff to be protected if they apply contextualised admissions? Will there be displacement? How will access be widened with no extra funding? What is to happen if universities do not play ball?

Government officials said in evidence that financial sanctions were unlikely in the event of a failure to widen access, but only today the cabinet secretary said in his letter to the committee that financial penalties may indeed be imposed.

What about retention, which is so vital to widening access? How can we talk about widening access when the very students who—like me when I went through the system—are most likely to access higher education through college are at present being denied a college place as part-time places and adult learning provisions are slashed? What relevance does widening access have for them?

I think that we all want access to continue to be widened and for the pace to increase significantly, not least because—as we heard in evidence—some institutions are failing miserably.

However, although the bill may reinforce widening access efforts, the questions that I have raised need to be answered first, particularly those that relate to funding and displacement. In the interim, through the conditions attached to the university grant process, the Scottish funding council could tackle the issue now, which is indeed what it should be doing.

College regionalisation is another element in the bill about which there are many concerns. The committee’s report states clearly that, in the policy memorandum,

“there is very little information provided about why changes require to be made.”

There are major concerns about the complexity and bureaucracy of the proposed college landscape, which will include regional strategic bodies, regional boards with assigned colleges, regional colleges and a completely different set-up for the University of the Highlands and Islands. David Belsey, of the EIS, summed up the situation very well:

“If it’s the Government’s wish to create a nationally incoherent FE structure with a myriad of different types of colleges, governing bodies and funding mechanisms with separate regulations for each, then this Bill is the way to go about it.”

Some witnesses expressed the view that the changes to the structures and bureaucracy of colleges are simply a cover for cuts—we know that another £25 million is to be taken from college budgets. The submission from Angus Council community planning partnership stated:

“However, in practice, recent changes to college funding for school-college partnerships have already restricted the range and volume of provision available to young people. It would be unwelcome if college regionalisation compounded this by diverting time, energy and money from core functions.”

Unison argued that

“the whole thrust of regionalisation is not really about taking a regional approach. Rather, it is about delivering budget cuts”.

The Unison representative went on to say that colleges are being forced into merger because

“they are afraid that if they do not, they will be cut out after the regional boards start to distribute the funding.”—[Official Report, Education and Culture Committee, 5 February 2013; c 1953, 1957.]

There are many more issues on which clarity is needed. How will relationships between the regional bodies and assigned colleges work? Will that result in a bidding war? Will some colleges be preferred over others? Will the charitable status of colleges remain, given the increased ministerial powers and less autonomy? How will academic freedom be maintained? Will there be centralisation of courses? What will happen to local access? We have already witnessed the impact of regionalisation on local access with the closure of Edinburgh College’s construction campus at Dalkeith.

Margo MacDonald: Those are good questions, but does the member have any answers to them? It sounds to me as though they could be issues for debate.

Neil Findlay: What a fantastic question from Ms MacDonald. I just wish that she had put that point to the minister.

Stewart Maxwell: Sorry, but I do not want members in the chamber to get the wrong impression of what occurred in the committee. The member raised many of those questions—he listed them in the way that he has done today—
when the cabinet secretary gave evidence to the committee. In response, the cabinet secretary said:

“If the committee asks questions about each of the issues that you referred to, I will address them.”—[Official Report, Education and Culture Committee, 26 February 2013; c 2073.]

Why did the member not ask the cabinet secretary any of those questions when he had the opportunity?

**Neil Findlay:** The committee asked the cabinet secretary question after question after question, as did the people who gave evidence, so that is utter nonsense.

What about the strategic forum? How will that work? What are the costs of regionalisation and the projected savings? Is £50 million realistic? Is increasing ministerial powers over the appointment and removal of chairs desirable?

**The Deputy Presiding Officer:** You are in your last minute.

**Neil Findlay:** Section 14, on “Review of further and higher education”, is a provision on which Universities Scotland has raised concerns.

Finally, on section 15, following the committee’s evidence session with SDS—Mr Maxwell also alluded to this—it would be fair to say that the committee was not much further forward in understanding the data-sharing proposals, on which many questions remain unanswered.

Although we largely agree with the aims of the bill, the bill itself is badly drafted, ill defined and clumsy. It is a confused piece of legislation. Anyone who reads the committee’s report will see that. Question after question remains, so a far greater degree of clarity is needed. The NUS, Colleges Scotland, Universities Scotland, the UCU, the EIS, the chairs of university courts, college principals, Unison, the Scottish funding council and members of all three Opposition parties on the Education and Culture Committee—and, indeed, Scottish National Party members of the committee—have all raised repeated and serious questions about the bill.

**The Deputy Presiding Officer:** You must conclude.

**Neil Findlay:** I take no pleasure in saying that the bill is not fit for purpose. The Government should recognise that, withdraw the bill and come back with one that the sector can support.

15:24

**Liz Smith (Mid Scotland and Fife) (Con):** We can all agree that this is a very important time in further and higher education. There are a huge number of challenges involved in facing up to a fast-changing world and in ensuring that our colleges and universities are fit for the future as regards their competitive edge, their flexibility and their ability to adapt to the needs of an ever-increasing diversity of students.

We should not underestimate the scale of that challenge. It was quite right that the Scottish Government was mindful of whether government had a legislative role to play in assisting with meeting that challenge. The Scottish Government, in conjunction with colleges, universities and the Scottish funding council, needed to decide which policies would best deliver excellence in our institutions, would maintain and enhance their international reputations and would respond to the economic and social needs of local economies. I hope that that decision is based on building on the current successes of our institutions. If a legislative route was seen to be desirable, it would be clear in its intentions, practical and acceptable to the institutions involved.

It was against those criteria that the Scottish Conservatives set out to examine the Post-16 Education (Scotland) Bill. At the start of the process we were genuinely open-minded, largely on the basis that we had sympathy with some—albeit certainly not all—of the main policy intentions. As time has gone on, and following lengthy committee meetings examining a large amount of evidence—meetings that were ably and objectively chaired by Stewart Maxwell—we have increasingly come to the view that this is a bad bill. It is a bad bill not just because of its poor drafting; it is a bad bill because of the complete lack of clarity about the relationships between the new structures, which is particularly the case with regard to colleges. The bill has botched the balance between public accountability and autonomy, and it is a bad bill because there is so little evidence that it is needed and is able to deliver on the intentions behind it.

Alastair Sim of Universities Scotland summed it up well when he said:

“the bill has come adrift from the policy intentions.”—[Official Report, Education and Culture Committee, 19 February 2013; c 1977.]

I agree. Apart from those presentational problems, which formed a substantial part of the evidence, there are, for the Scottish Conservatives, some major policy issues with the bill, and I will consider those in the context of an increasingly competitive international situation for our universities.

Good governance is not in doubt—indeed, I do not believe that it ever was. If there was compelling evidence and serious examples of bad governance harming education and holding back our institutions, there might be a case for new legislation. However, the policy memorandum did not identify any such problems, and Professor von
Prondzynski was at pains to say that he thought that the existing structures were "excellent". That begs the question why the Scottish Government is so intent on such an unnecessary overhaul.

**Michael Russell:** The member cited Professor von Prondzynski. To be fair, she should not give the impression that Professor von Prondzynski said that everything was fine and that we should leave it at that. Professor von Prondzynski’s report is lengthy and detailed, and it makes many recommendations for improvements in governance. I am sure that the member will wish to acknowledge that.

**Liz Smith:** I acknowledge that, but the whole point is that Professor von Prondzynski was saying that there is no need for a radical overhaul, particularly—

**Michael Russell:** But change is necessary.

**Liz Smith:** Forgive me, cabinet secretary, but an overhaul is not needed, particularly not on the governance of universities. The Government’s proposals are also intent on interfering in the management of universities and the sector has asked the Government to remove that key provision.

Although I respect the views of those with a slightly different perspective, who have argued fairly on the point of social justice, I cannot find the hard evidence, regarding some of the situations to which they have referred, that the bill will deliver better education than we have now.

We are very nervous about legislating to insist on statutory requirements to have specific quotas on university courts or college boards. Apart from the complications involved, such as ensuring private sector representation on the boards of colleges that have significant links to businesses, that proposal removes the flexibility of governing bodies and their ability to reflect the diversity of our institutions, which is so important.

I will turn to the more deep-rooted concerns, specifically about the Scottish Government’s desire to have more powers over our colleges and universities, for example in extending the circumstances in which ministers could remove board members or oversee the management as well as the governance of universities. Apart from our fundamental opposition to that measure, because it threatens to undermine the autonomy of our tertiary education sector, I can see no logical evidence to move in that direction.

If the cabinet secretary cared to look around the world, he would see that those nations that are faring best in higher education in terms of academic success rates and retention rates, as measured by the Organisation for Economic Co-operation and Development, the World Bank and the Shanghai ranking, are those whose Governments are less involved rather than more involved.

Indeed, in Finland—a country whose ideas on education the cabinet secretary is always keen to promote—in 2010, state influence was specifically removed from universities because it was stifling autonomy. We will not accept that aspect of the bill, which goes too far when it comes to Government meddling in our institutions. We cannot accept that, which is why we will not support the bill at stage 1.

**The Deputy Presiding Officer:** We come to the open debate. I remind members that I cannot call them to speak unless they have pressed their request-to-speak buttons. The Presiding Officer has already indicated that members who are speaking later in the debate will have their time cut to five minutes. The members who will be affected have been advised of that. Otherwise, we will have speeches of six minutes, and I am afraid that it is a very strict six minutes.

**George Adam (Paisley) (SNP):** It is important that we ask what we want from the bill. I will talk about the issues on which we should all agree. We should agree on the principles of the bill. Some members have mentioned that we agree on certain parts, so we should work towards making the bill everything that it possibly can be. We agree on more than we disagree on, so let us not let personal politics get in the way of progress.

For me, access to higher and further education is one of the main issues. The exciting provisions in the bill are those about ensuring that, regardless of financial or social background, young people in Scotland have the opportunity to be all that they can be. To illustrate that, I will tell a short story about my grandparents, who worked in a cotton mill in Ferguslie Park in Paisley all their lives, which was not unusual for people from Paisley. I use them as an example of how things have changed and why we must adapt and work differently in the FE and HE sectors today, which is the important point.

When my dad eventually came along and went to school in Ferguslie, in what was junior modern secondary in those days, like many of his generation he was deemed at a very young age to be not clever enough to have a more complex formal education. When he was 15, he left school and was told by my gran to get himself a trade. He was lucky that, at that time, there were opportunities in the town, educationally and through apprenticeships with companies. He managed to get an apprenticeship with a local engineering firm and trained as an armature
winder. He served his time and was extremely happy in his work.

He met my mum and eventually my grandfather and mother persuaded him that he would probably be better off if he worked for himself. My grandfather, being a Paisley man who was clever and shrewd when it came to money, had stashed away quite a bit. That was the fork in the road that changed my family’s future and changed their life. It was my father’s vocational training that made the difference and that made that opportunity available to him in the 1960s.

The reason for the story is that the cotton mills are no longer in Paisley and the place where my dad served his apprenticeship is now a private housing estate. That is why I support the Scottish Government’s commitment to further and higher education and why I feel that it and the bill are important. The bill supports the premise of providing education and vocational opportunities for all our young people in today’s competitive and challenging times. The world that we live in is literally a lifetime away from the world that I spoke of earlier. I support the bill because of what it will provide for my children’s future and for the current generation of young people who are trying to make their way in the world.

That is why, for me, widening access to higher education is the most important part of the bill and something that we must strive to achieve. It is one issue on which, allegedly, we all agree. It has been said in the Education and Culture Committee that we agree on that. However, the status quo is clearly not delivering wider access. Research that was published last year by the NUS in Scotland predicted that, at the current rate of progress, it will take 40 years to achieve a fair balance of rich and poor students at Scottish universities.

Robin Parker, the president of the NUS, told the Education and Culture Committee that “The legislation must happen.” He continued:

“There are examples of good practice on widening access; they just need to be stepped up and done on a wider scale. Every university needs to do more.”—[Official Report, Education and Culture Committee, 19 February 2013; c 1985.]

In my area, the University of the West of Scotland, which I have used as an example on numerous occasions, has continued to do extremely well on access but, as Mr Findlay mentioned, we have to ensure that universities retain those students. Until now, progress on ensuring that more students from poorer backgrounds attend university has been slow. Participation among those from the most disadvantaged areas has increased by just 1 per cent in the past nine years, but some would lead us to believe that we do not need legislation to make a difference on that.

Liz Smith: We all want progress on this issue and the cabinet secretary was quite correct when he said in his opening remarks that there are different ways of doing that. Does the member accept the point that was made by the university principals that the criteria for widening access need to be as broad as possible and that a lot more progress has been made that has not been represented in some of the statistics that we have to hand?

The Deputy Presiding Officer: You are approaching your final minute, Mr Adam.

George Adam: No, I would say that 1 per cent in the past nine years is unacceptable and is why we need legislation to improve the situation.

Much has been said about university governance, but the idea of the bill is to recognise the principle of responsible autonomy and to give legislative support to a Scottish code of conduct that has been developed by the sector. As the Scottish Government continues to invest record amounts in the higher education sector, it is only right that we have the highest standards of accountability in return.

The bill supports the Scottish Government’s ambitious FE reforms, which deliver learners in the economy from 2014-15 onwards, creating efficiencies of £15 million. We should also talk about the £61 million that will be put into that sector during the next two years. Scottish colleges are on record as saying that that money will go a long way towards helping them to deliver regionalisation.

There is so much in the bill that we cannot say, as has already been said, that it is a bad bill. We have to work together and make sure that the bill is passed so that access is widened. We need to ensure that young people in Scotland can be all that they can be and that they get the opportunities that we are all striving to get for them.

15:36

Neil Bibby (West Scotland) (Lab): As Neil Findlay has already said, we can share much of the Government’s policy aims and objectives but that does not mean that the proposed legislation is justified or desirable.

Of course we support the aim of improving the education system for learners, but the question that we must ask is whether the Post-16 Education (Scotland) Bill makes that more likely to happen. I am not yet convinced that the bill makes that more likely. I will go further: I believe that, from start to finish, the bill in its current form has raised significant concerns that it could make matters worse.
There are concerns about the lack of detail in the bill about university governance and college reform, because there was a lack of meaningful consultation with institutions, trade unions, students and other stakeholders before the legislation was drafted. There are questions about whether legislation is even needed in certain areas, and there are concerns that the bill will not achieve better outcomes in widening access and improving colleges because they are being undermined by other Scottish Government policy choices.

I do not have time to concentrate on all those points, but I will focus on three areas—university governance, college reform and widening access.

I am sure that we all want to improve university governance.

Margo MacDonald: Will the member give way?

Neil Bibby: Not just now, sorry.

As we know, the bill states that institutions will have to comply with any principles of governance or management that appear to constitute good practice but, as the Education and Culture Committee report states, the bill does not specify the particular principles of governance that are to be adopted.

The Education and Culture Committee has not seen the content of the governance code, which is not expected to be published until sometime in April. The steering group that was set up to draft the code had no staff or student representation. I firmly believe that changes that will affect university governance should be developed with staff and students if we want to get it right.

We need to listen to the concerns that our universities have raised. Professor Von Prondzynski’s review of higher education helped to initiate the bill and his recent evidence to the Education and Culture Committee on the code of governance said:

“it is not yet clear what particular principles of good governance might be enforced by the legislation. Moreover, the fear has arisen that the provision could be used to apply some other unspecified set of principles of good governance, or might even at some future date be used to apply the views of particular politicians or officials.”

Margo MacDonald: Will the member give way?

Neil Bibby: I am sorry but I do not think that I will have time to make all my points.

Professor Von Prondzynski went on to describe two ways of dealing with that. One was to delay the legislation and the other was deal with it outwith a legislative framework. Neither involved voting at 5 o’clock today to proceed with the bill.

Witness after witness raised significant concerns about the college reforms that are proposed in the bill. Colleges Scotland said about the two-tier structure:

“There does not appear to be any precedent for this model”.

Susan Walsh of Cardonald College said:

“clarity is still required on how the assigned college boards will work with the regional strategic boards.”

Mandy Exley of Edinburgh College said:

“We are concerned about accountability and autonomy”.—[Official Report, Education and Culture Committee, 5 February 2013; c 1914-15.]

The Scottish Government should be listening to the weight of evidence presented to the Education and Culture Committee.

Widening access is an aim that we fully support—I am sure that we all fully support it. The debate is timely in that regard because just last week figures were published that showed that a pupil from a state school in England has more chance of going to university than a pupil from a state school in Scotland.

There are, of course, questions to be raised on university admissions policy, but questions also need to be raised about Scottish Government policy. Tinkering at the edges is not good enough. Substantial progress will not be made on widening access unless substantial investment is targeted at improving life chances in pre-16 education. This Government’s lack of prioritisation of pre-school education is incompatible with the widening access agenda, as are the massive cuts to colleges.

As the committee report states, there was little information in the policy memorandum on levels of representation or on the relative success of various initiatives. That is not surprising because, as officials admitted, there has been something like only a 1 per cent improvement over the past nine years. The policy memorandum also does not explain how the bill would improve access or the rate of improvement that is being sought by the Scottish Government.

When challenged on that point by the committee, the cabinet secretary said that he did not expect an overall target to be set. If the Government was serious about widening access, it would be serious about answering such questions. Officials even downplayed the possibility of financial penalties if universities did not meet targets—something that the cabinet secretary has now talked up. All of this is to be achieved without a new and additional budget and there will not be any displacement either. If it sounds too good to be true, it is because it probably is.

Those are not just our concerns. Concerns have been raised by a number of organisations. The
Open University, which was created by a Labour Government in the 1960s, is an institution that probably knows more about widening access than any other organisation in the UK. Like us, it supports the Scottish Government’s commitment to increase the number of students from non-traditional backgrounds but it would like to see “greater policy direction in this area”.

I can sum up my argument in five words. This bill is a mess. It is quite telling that Mike Russell has basically pleaded with members of the Education and Culture Committee to lodge amendments at stage 2 to make the bill better.

The Deputy Presiding Officer: You must close.

Neil Bibby: The bill is not in a fit state to proceed. The Education and Culture Committee has done its job in scrutinising the bill. The Scottish Government has not made a decent case, never mind a compelling case, for the bill. Therefore I join the consensus outwith the SNP in calling for the bill to be delayed and reconsidered.

15:42

Clare Adamson (Central Scotland) (SNP): I welcome the Post-16 Education (Scotland) Bill. The areas that it addresses are key to ensuring that our higher and further education sectors can meet the economic challenges ahead.

The Deputy Presiding Officer: Ms Adamson, can you pull your microphone round, please? Thank you.

Clare Adamson: Sorry. The bill is about better support for jobs and economic growth and about improving life chances, especially for our young people. It is about fundamentally changing the provision as regards skills and other forms of post-16 education by aligning learning to the labour market, and about ensuring the Scottish Government’s aspirations to improve economic participation and productivity and, ultimately, to increase the economic prosperity of our country.

It is important to remember why the reforms are necessary. The 1990s Tory model of incorporated colleges led to competition and duplication in the sector. Variations and questionable policies on college reserves resulted in £200 million being tied up and not being used for the benefit of the students and there was industrial unrest. I will quote from the EIS in that respect:

“The EIS believes that this poor financial situation stems from the funding basis of incorporation, which promoted deficit management as the norm and allowed deficits to grow... It is a matter of record that the further education sector has among the worst record of industrial relations and industrial unrest in the public sector in Scotland. While accepting that this situation relates in part to problems arising from historical funding deficits, the EIS believes it also clearly indicates poor personnel and financial management on the part of those Principals and Board members charged with those very important functions.”

That is a quote from 2004—it is from the EIS’s further education lecturers association’s response to the Scottish Executive’s consultation paper on the implementation of measures resulting from the review of governance and accountability in the FE sector.

I suggest that the Labour Party had a chance to address some of those issues and do away with that Tory model and its resulting problems, but failed to do so.

I know that members from the opposite benches have raised some concerns about where we are with regard to the bill and the matter of the governance guidance not being available. However, the committee knows that, when the guidance is published, it will be taking further evidence on it, and it will be scrutinised prior to stage 2.

There were questions about widening access agreements and what implications there were for ensuring that access is widened. However, the outcome agreements have been largely ignored by those on the Opposition benches. I suggest that the outcome agreements are key to ensuring—

Jenny Marra (North East Scotland) (Lab): Will the member take an intervention?

Clare Adamson: Labour members would not take an intervention from Margo MacDonald, so I am not prepared to take one now.

Many questions were raised about the reduction in part-time places—I think that Mr Findlay quoted Unison claims in that regard. We have to examine the issue in more detail. Mr Findlay has been on record claiming that time reductions in modern apprenticeships have somehow made them less valuable. However, in 2008-09, colleges enrolled 79,588 students in programmes that were designed to be completed in under 10 hours. Those programmes averaged five hours each, while a full-time further education student was required to study for at least 720 hours.

I note that full-time student numbers increased by 22 per cent from 2005-06 to 2011-12, and that we now have 119,448 full-time-equivalent students in Scotland—the highest level that there has ever been. Those figures come from Scotland’s Colleges’ baseline report for the academic year 2011-12.

I will say a little bit about widening access. I have spoken in the chamber before about how important education was to my family—to my father, who went back to university as a mature learner after losing his job, to my siblings and to
me. Today, I was at the launch of the roll-out of the routes to empathy initiative, which encourages young children to empathise in relationships and understand others’ emotions, with the aim of reducing violence and aggression. The launch took place in Berryhill primary school in Craigneuk, which, following Thatcher’s closure of Ravenscraig, remains one of the poorest and most socially deprived areas in Scotland. I want those children to know that higher and further education are available to them and that they have a right to them, in a Scottish climate.

Johann Lamont comes to this chamber claiming that the SNP’s constitutional agenda and the referendum in 2014 has put Scotland on hold. I regret that the better together parties also call for a delay in the implementation of the bill. As a former project manager, I know that delay costs. It creates uncertainty and leaves people in a bad place.

The Opposition parties were wrong when they called for a further delay in the implementation of the curriculum for excellence, and they are wrong to call for a delay in this bill. It is the better together parties that are putting Scotland on hold and preventing the progress of our nation.

15:48

John Pentland (Motherwell and Wishaw) (Lab): After reading all the criticisms, it is difficult to imagine how the Scottish Government can argue that the bill is fit for purpose. Indeed, it is difficult to see how it can argue that the bill is not fatally flawed or, at best, in need of a major overhaul. There has been widespread criticism of the bill—not least because of its centralisation of power in the hands of the cabinet secretary.

I will start with what might seem to be the mildest criticism in the committee’s report on the bill—until it is translated to take account of the understatement of the cabinet secretary’s allied majority on the committee. The overall conclusion states:

“The Committee has some concern”.

This is not a minor concern of the sort that would not survive the private meeting in which the report was finalised, and nor is it the sort of concern that could languish in obscurity in lesser paragraphs. The concern is too serious to be restricted to the lesser conclusions of the report, but is so great that it forms a significant part of the overall conclusion. The concerns, which are “expressed in the relevant sections of the report”.

are more about the specific means by which the bill will achieve its principles. In other words, it is not clear how it will do what it sets out to do. The report says:

“The Committee has asked the Cabinet Secretary for various pieces of information that will provide reassurance”, which could be translated as, “Captain! Our shields have failed!”

What about the “relevant sections”? On university governance, there is something fundamentally undemocratic about seeking powers to ensure compliance with principles that are not in the bill and are not yet defined or agreed elsewhere. Tony Brian of Glasgow Caledonian University noted:

“The provision seems to give future ministers the ability to choose any code of governance that they want”.— [Official Report, Education and Culture Committee, 19 February 2013; c 2013.]

The governance code, which the university chairs are drafting, will not be ready until after evidence taking on the bill, so holding back the bill would allow such failings to be addressed.

The cabinet secretary has recognised some of the shortcomings, such as a lack of gender balance in governance. Encouragement to lodge Opposition amendments at stage 2 tacitly acknowledges the bill’s weaknesses. Perhaps, in the spirit of political consensus, we should take the entire bill away for a while and overhaul it for him.

I welcome the recognition of the obstacles that face people who live in areas of high deprivation, which is a major factor in people not realising their potential. However, it seems to be unnecessarily restrictive and lacking in flexibility to have certain postcode areas as the sole indicator of deprivation. As Lead Scotland noted, that will not help other disadvantaged groups, “such as disabled students and carers”.

The cabinet secretary claims NUS Scotland support for his agenda, but I note that NUS Scotland seeks clearer legislative action, including an annual review by Parliament

“to ensure that we are on track to get to greater fair access in less than 40 years.”—[Official Report, Education and Culture Committee, 19 February 2013; c 1988.]

However, the bill and its accompanying documents shed little light on how such improvements will happen, or on the consequences for universities that fail to deliver.

Michael Russell: Will John Pentland give way?

John Pentland: No.

I have previously expressed my doubts about the motivation behind college regionalisation, and have highlighted the lack of evidence of any educational benefits. It seems to be clear that the main impetus for college reform is cost saving, with inevitable consequences for students, staff and courses. Many of the changes are already
under way in a hasty and haphazard fashion. What does the bill add to that mess?

There may be good reasons why the cabinet secretary wants more power to get rid of chairs and other board members, but without the principles that underpin such powers being explained, people will think the worst. It might have helped to allay suspicions if there had been meaningful consultation on the appointment of interim regional chairs, and wider involvement and more transparency in the appointment of board members.

I am concerned about the regional strategic bodies, which seem to have a somewhat undefined but potentially damaging scope to act as mini funding councils, thereby adding another layer of controlling bureaucracy rather than enabling bureaucracy. If we add that to the extension of powers for the Scottish Further and Higher Education Funding Council, we have a nice accumulation of power and resources that are being taken away from those who provide education.

All in all, the impact of the bill seems to be to build barriers to transparency and to concentrate power in the hands of central Government and its obedient satellites. If that is not the intention and the bill is really meant to improve the quality of education, it would be a good idea for the cabinet secretary to take it away for a while to address the committee’s concerns and to reassure it.

15:54

Colin Beattie (Midlothian North and Musselburgh) (SNP): I apologise for having a rather croaky voice, Presiding Officer.

The bill is important. I believe that the education sector is taking a serious view of the proposals and is engaging positively with the Scottish Government in seeking an effective outcome. There are still matters to be clarified, as Stewart Maxwell highlighted in his speech, but that is to be expected with such a comprehensive and necessary piece of legislation. There is clearly a requirement to cut costs in the light of Westminster’s proposed budget cut, but it is clearly possible to create efficiencies that will deliver better and more targeted services to students. That is rightly where the bill’s focus is: positive steps to create positive outcomes for students.

For me, one of the bill’s most important elements is that it will widen access for students from disadvantaged backgrounds. As someone who could have benefited from that, I welcome it. Progress has been too slow to ensure that students from poorer backgrounds attend university. In the past nine years, participation by students from disadvantaged areas has increased by only 1 per cent, which is a clear indication that the current process is not working as it should. The bill will ensure that all universities will make progress on widening access, with £29 million funding each year and 1,700 extra places.

Margo MacDonald: Colin Beattie must have had some of the same experiences as a young person leaving school and looking for a future as I had. I went on to higher education because there was a grant, or bursary; I had enough money and my mother could do without a wage. I put it to the member that exactly the same considerations exist in similar households today.

Colin Beattie: That is a good point by Margo MacDonald. Indeed, I think that she, I and others have benefited in the past in that regard.

The NUS Scotland president, Robin Parker, told the Education and Culture Committee:

“A year ago, it would have taken 40 years if things had carried on at the current rate.”—[Official Report, Education and Culture Committee, 19 February 2013; c 1988.]

He also stated that the “legislation must happen”. I would be shocked if Opposition parties wished that proposal to be put at risk.

I am pleased that a cap for RUK tuition fees is being put in place. That will help to manage the existing and inevitable marketisation of the education sector, and ensure that students are not disadvantaged and do not face fees that are above the level of the tuition-fee loan that is available to them. I note that the universities have indicated that fees are substantially lower in Scotland than they are in the rest of the UK.

Governance, both in universities and colleges, has been carefully and fully explored by the Education and Culture Committee. Liz Smith in particular made a number of thoughtful and useful contributions in that regard. Concerns have been raised about the subject of responsible autonomy and whether the Scottish Government might seek to erode the independence of education institutions. However, the bill is not about the Government taking control of universities. A Scottish code of conduct is being developed that will be given legislative support and will recognise the important principle of responsible autonomy. We are investing record amounts in the higher education sector, so it is right that we demand the highest standards of accountability.

The bill supports and reinforces plans to reform the college sector. Quite simply, regionalisation makes sense, and most education institutions support the bill. It is perhaps appropriate to quote a few of the comments that have been made in that regard. Adam Smith College stated:
“The Board … of Adam Smith College … generally supports the reform programme as it applies to Further Education”.

Edinburgh College stated:
“We are supportive of the aims of the Bill.”

North Highland College stated:
“Broadly we support the regionalisation agenda.”

Edinburgh University Student Association welcomed
“much of what is included in the Post-16 Education (Scotland) Bill.”

Families Outside said that it
“welcomes the aims of the Bill”.

East Dunbartonshire Council said that it welcomes
“the bill’s intention that educational provisions would be delivered at the local level as part of a coherent regional offer.”

From those quotations, it is clear that although some stakeholders were looking for clarification on aspects of the bill, its aims and broad approach have been welcomed and supported. I believe that the Scottish Government’s support to colleges, despite unprecedented budget cuts by Westminster, is commendable.

The 2013-14 budget will deliver an additional £61 million over two years, thereby setting the funding floor of £522 million, which colleges must welcome in the current tight financial situation. The Government is investing £2 billion over the four years to 2014-15. College resource budgets are higher than they were in every year under Labour. The fall of 4.4 per cent in the college budget in 2012-13 and 2014-15 is hugely less than the fall in comparable budgets in England, which have suffered a 15.7 per cent fall.

The scaremongering by Labour over so-called college waiting lists is reprehensible. Labour’s playing politics with our education system is wholly unjustified. Labour claimed that there were some 21,000 students on college waiting lists, despite the cabinet secretary clearly setting out the issues to do with data collection. Last week, the audit of college waiting lists that the cabinet secretary requested found that only 4 per cent of the 21,000 students are on waiting lists.

The Scottish Government is to be congratulated on introducing the bill. I look forward to the bill’s progress.

16:00
Liam McArthur (Orkney Islands) (LD): I thank everyone who gave evidence to the Education and Culture Committee, and I thank our clerks and the Scottish Parliament information centre.

I acknowledge the efforts of Stewart Maxwell, who worked hard to ensure that the committee came to as united a position as possible. On the broad policy objectives, of course, that was straightforward; there was unanimity.

Like other members, I know that widening access to our universities is essential if everyone is to have an opportunity to fulfil their potential. Progress has been made in recent years, but it has been too slow—in some cases it has been all but non-existent.

Likewise, there is no disagreement about improving the governance and accountability of our colleges and universities. The delivery of high-quality further and higher education to students of all ages, in all parts of the country and beyond, is an ambition that we all share. The fact that we can point to excellence in our colleges and universities does not mean that we can rest on our laurels, or that improvements are not possible or needed.

I think that we are agreed on the policy aims and objectives—the question is whether the bill advances those aims. To be fair to Mr Russell, I will say that in his relatively conciliatory speech he accepted the question, although I disagree with the conclusion that he drew.

Let us not forget that Parliament should seek to legislate only when necessary—when alternatives do not exist or would not deliver the outcomes that we want to achieve. During the past few months, I, like other committee members, have been left with the impression that in too many of the areas that the bill covers the evidence suggests that that test is not met. The risk of legislating “just in case” is that we put in place rigid structures that have unintended consequences.

Parliament can take great pride in having passed laws that are radical, progressive and hugely beneficial. However, we still seem to be happier to pass laws than we are to check, in due course, whether those laws are doing what was intended of them. It is not difficult to understand why that is: decreeing in law that something should or should not happen has its attractions. When we are challenged on what we have done to address a particular problem, it can feel reassuring to be able to point to new legislation. However, for the reasons that I gave, we should always question whether legislation is necessary and whether it is the best or only way of achieving our objectives.

Marco Biagi (Edinburgh Central) (SNP): Will the member take an intervention?

Liam McArthur: I will do so later, if I can. I am sorry.

Where is the evidence for statutory underpinning in this case? College regionalisation
is well under way, accelerating a process that has been going on for years and reflecting an approach that was pioneered in the Highlands and Islands. The policy should be driven by a focus on delivering the best education for learners of all ages and for the communities in which they live. It is unclear why Mr Russell feels the need to give the college sector such a hefty statutory kick up the backside.

The fact that Mr Russell is seeking powers to review course content and provision across a region seems to undermine the argument for having strategic regional boards, and offers the prospect of ministerial meddling on an unprecedented scale. His seeking expanded hiring and firing powers reinforces that impression.

On access, progress is being made, albeit that it is being made from a low base and is not nearly fast enough. The minimum income guarantee will help, as I am sure Margo MacDonald acknowledges, and fair access agreements are in place. Such agreements, along with the funding levers that ministers have at their disposal, can help to ensure that access becomes core to the mission of our universities. Indeed, that seems to be explicit in NUS Scotland’s call for

“a defined link between the public funding universities receive, and the public benefit they provide.”

Given that the Government has made it clear that it does not envisage using the financial penalties that legislative provision would offer, it is difficult at this stage to see what such provision would add.

In passing, I pay tribute to the success of the Open University, which during the past 10 years has managed to double the number of students coming to it from poorer backgrounds. The OU, in which my mother was formerly a tutor, makes the fair point that using the Scottish index of multiple deprivation risks excluding many people on lower incomes who live in less densely populated or rural areas.

On a similar theme, the Scottish children’s services coalition argues that efforts to widen access should be broadened to include children with complex needs, including learning difficulties. The committee was sympathetic to that case, although again it is debatable whether that could not be achieved through fair access agreements and targeted funding.

I appreciate that there are other issues, but I will finish on governance and section 2 of the bill. In his report, Professor von Prondzynski accepted that there has been no “systemic governance problem” in our universities. Nevertheless, the committee heard sufficient evidence of areas in which improvement should be made—not least in making governing bodies more representative. Evidence also suggests that, internationally, the best-performing universities are those that have greatest autonomy. I accept that, in using their responsible autonomy, universities must now respond to the legitimate concerns that have been raised.

The difficulty is one of timing. A code of good governance is currently being developed and may yet address the concerns that have been raised. If it does not, there would still be time to act, notwithstanding that conditions of grant and outcome agreements also remain persuasive tools that are available to ministers and the funding council.

The Scottish Liberal Democrats fully support the objectives that the cabinet secretary is pursuing. Widening access, improving the accountability of our universities and colleges and delivering the highest quality of education are sensible goals that require that changes be made. The question is whether those changes can only be delivered, or are best delivered, through the legislative measures that the cabinet secretary has proposed. Serious doubts remain on that point. Mr Russell sees himself as a great reformer, of course—that has led him to a spot of bother in the past—but I hope that he recognises the challenge that he faces in convincing Parliament, and not only his party, that his approach to achieving entirely legitimate objectives is the right one.

Given the Government’s majority, the bill will be passed at stage 1, but the task that we face at stage 2 to ensure that we do good and avoid doing harm should not be underestimated by anyone.

16:06

Joan McAlpine (South Scotland) (SNP): The Post-16 Education (Scotland) Bill has its origins in reports and reviews by Ferdinand von Prondzynski and Russel Griggs. Given the constraints of time and the wide-ranging nature of the bill, I intend to concentrate on Professor von Prondzynski’s review of higher education governance. Professor von Prondzynski’s report on higher education governance drew both support and opposition. It tended to divide people along similar lines to the expressions of support for and criticism of the bill. The professor wanted to rein in the pay of principals and make governance more transparent and open, and he made the point that our universities, many of which date back to the middle ages, have myriad governance arrangements, including a few that were founded by papal bull.

Among the eminent people on von Prondzynski’s review panel was the then rector of the University of Edinburgh, Iain MacWhirter, who was, of course, elected by and spoke for the students. Mr MacWhirter said at the time that the
proposed reforms were very much in the Scottish tradition of education. He wrote, of the phrase “the democratic intellect”, that

“There has been much debate about what George Elder Davies, who coined that phrase in the 1960s, really meant. But Professor Ferdinand von Prondzynski ... has finally discerned its settled meaning. Scotland’s universities should be seen as engines of social and cultural improvement—not just for the benefit of the individual, but for society as a whole.”

He went on to say—I fully endorse this—that the democratic intellect “means no tuition fees”. It means not allowing our universities to become finishing schools for the well off.

The bill is a continuation of the Government’s commitment to free education, which is enshrined in its proposals to widen access.

**Jenny Marra:** Given that endorsement of the professor’s report, can Joan McAlpine tell me why none of his recommendations is included in the bill?

**Joan McAlpine:** I do not know what bill Jenny Marra has been reading, because that is not the case. The University and College Union has welcomed the fact that the cabinet secretary intends that Professor von Prondzynski’s recommendations will be carried forward in the governance of universities. I am not quite sure where Jenny Marra is coming from.

Mr Russell told the committee that the von Prondzynski review should be the basis of new governance structures that arise from the bill. I welcome Mr Russell’s stated regret about the lack of student and staff representation on the steering group that is developing the Scottish code of governance and I am pleased that his statements in that regard were welcomed by the University and College Union.

It has been suggested by some members that von Prondzynski is in agreement with the Opposition parties, so it is important to go back to what his review says about universities’ governance. In the introduction to his report, he praises the considerable achievements of Scotland’s universities, but he is far from uncritical. He said:

“In the recent past ... there have been various issues that have attracted adverse publicity and prompted avoidable disputes, which indicate that there are questions to be addressed. Some of the evidence submitted to this review, speaks of concerns about the extent to which the university community of staff and students is now able to participate in collective self-governance”.

He was also extremely critical of the way in which principals are paid, even though some principals are paid far more than the Prime Minister.

The commitment to widening access is possibly the most important part of the bill. It has been welcomed by NUS Scotland, which said—as others have mentioned—that current progress means that it would take 40 years to achieve true equality of access. The principle of widening access has also been welcomed by Inclusion Scotland, Capability Scotland, the British Medical Association Scotland, the centre of excellence for looked-after children in Scotland, and by Mark Batho, the chief executive of the Scottish funding council.

Some people have questioned the need to legislate for widening access. However, Mr Batho put it very well in oral evidence to the committee when he said:

“Setting out that intention in legislation gives extra force to what already exists—namely, the outcome agreements that we are developing at the moment, which are not referred to in statute.”—[Official Report, Education and Culture Committee, 26 February 2013; c 2036.]

Michael Russell has been open-minded in seeking ways to improve the bill, and given that we all claim to support its principles, I urge Opposition parties to enter the spirit of consensus, to preserve Scotland’s democratic intellect and take it into the 21st century.

16:12

**Mary Scanlon (Highlands and Islands) (Con):** First, I remind George Adam that further and higher education is not exclusively for young people. It is a mark of its success that so many mature students have entered further and higher education. Secondly, and perhaps unusually, I truly thank Stewart Maxwell. It is very refreshing to hear an SNP committee convener give such a balanced contribution. He is not here, but I am sure that he will hear that.

I refer members to my entry in the register of interests.

As Neil Findlay did, I want to record how much I appreciate further education. I went into further education to prepare for university as a mature student and a single parent of two very young pre-school children. It was in further education that I spent 20 years lecturing in economics, prior to coming here in 1999.

I am very pleased to speak in this debate, at a time when the future of further and higher education is very prominent on the political agenda. We are now in a position to review all the evidence that has been submitted on the bill and the Education and Culture Committee’s response.
I am also pleased to speak in the debate because of my experience of further education when colleges were going through previous changes. In 1992—I do not recognise that time to be as Clare Adamson remembers it—colleges were given far greater autonomy and the ability to enjoy greater flexibility when meeting the differing needs of students. I was at the coalface at that time and I am very clear that those changes meant that our colleges could respond much better to the demands of communities and to the needs of employers, mature students, those who wanted to study part time or through distance learning, and young people.

As a lecturer at Inverness College, I tutored people who were incarcerated in prison, prison officers, people who worked on oil rigs, people who worked in different parts of the world in the oil industry and people in the most remote areas. The sector is one of success. The changes were good for our colleges and they are largely the reason for their success today. That is why it is so deeply unfair that those same colleges have ended up taking the full brunt of SNP education cuts.

I hope that, even at this late stage of the stage 1 debate, the cabinet secretary will respond to the reasonable concerns that have been raised both in committee and across the chamber. I am sure that Mike Russell would prefer to see consensus as he moves forward with the bill, rather than be isolated and see it pass simply on the SNP majority.

I want to talk about college structures and governance. In particular, I would like to look at the University of the Highlands and Islands, which is unique and not the same as FE colleges under a regional structure. In asking for some clarity around the issue, I quote from a letter from UHI’s Perth College that was sent to my colleague Liz Smith, of which the cabinet secretary also has a copy. It states:

“The highlands and islands is the only region where a university is identified as a regional strategic body for the provision of FE. This pluralistic function is untried and unique.”

What concerns me is this:

“The proposed arrangements are a very real threat to our ability to plan to meet local needs for FE and to effectively deliver the quality of HE and research required to enable UHI to succeed.”

Michael Russell: Will the member give way?

Mary Scanlon: My time has been cut; I have only five minutes.

The Deputy Presiding Officer (John Scott): I will give you a second more in which to take an intervention.

Michael Russell: I have seen the letter and I reassure the member that it is very clear, from the agreement on the structure of UHI, that the further education committee should be central to what is being done. I saw the letter only yesterday. I give Mary Scanlon the reassurance that, if the arrangements in the Highlands and Islands do not match those expectations, it will be possible under the bill to set up alternative arrangements and I will do so because the college needs that help.

The Deputy Presiding Officer: I will allow another 40 seconds.

Mary Scanlon: I am grateful to the cabinet secretary for that reassurance. I am sure that it will be heard.

My final point is on the need to legislate. Since 1999, we have had health targets, health improvement, efficiency and governance, access and treatment—HEAT—targets and other targets, and the Public Audit Committee is looking at waiting times targets. I think that we need to be very specific about targets that will be part of an outcome agreement. We need to set out precisely how those targets can be measured and what happens if the targets are not met. It is easy to say that we will have a target; it is far more difficult to measure that.

What strikes me about the debate is the consistency in the evidence that has been provided about the lack of clarity in many key sections of the bill, and the many questions about why it is needed. That does not sound like a good base for legislation in any Parliament.

16:18

Marco Biagi (Edinburgh Central) (SNP): I contribute to this debate with two hats on—as a committee substitute and as the constituency member whose constituency has the second greatest concentration of university jobs and students of any constituency in the country.

In my constituency, we have the University of Edinburgh, which we are always able to celebrate as being the best performing Scottish university in international league tables. We sometimes do not celebrate that enough because we are Scottish and do not talk about our successes. The University of Edinburgh has chosen to compete in international league tables ranked according to research excellence, teaching excellence and cosmopolitan nature, while others have chosen to do other things.

I believe that access must be fundamental to what all institutions do. A university is not fulfilling its objectives if it excludes. The University of Edinburgh has taken fantastic steps in being an early adopter of contextual admissions and in making great attempts to reach out into the local area.
No university can have an excuse for creating artificial barriers, and it is clear to me, from looking at the data, that the national status quo is not an option. It is incumbent on those who say that legislation is not necessary to say what else they would do. After all—as Liam McArthur mentioned—this is stage 1. If members agree with the bill’s general principles, it is incumbent on them to support it at this stage and then work to improve it at stage 2. I fundamentally agree with the general principle of widening access. I accept that the Conservatives have a principled disagreement and therefore I would not include them in that characterisation.

**Liz Smith:** Mr Biagi should be under no illusions: we are not against widening access.

Mr Biagi makes a good point on the advances made by the University of Edinburgh. However, it and many other universities have achieved that without legislation. Why is the legislative process so important? Why can that access not be delivered through other means?

**Marco Biagi:** I will clarify my point. I was stating that the Conservatives have a principled opposition to how autonomy is dealt with in the bill, whereas other parties that seem to have broad support for the bill’s principles are nonetheless poised to vote against it.

Targets are strong at concentrating the mind and increasing scrutiny. We must move from an inputs to an outputs model, so that we are measuring the results of each institution. I must say that the University of Edinburgh has been slightly disappointing when one looks at the SIMD measure.

That leads me—with very little time left—on to the SIMD measure issue that others have mentioned. SMID is a good base but, just as the legislation is not the last word and the issue is the flexibility that is shown and how we go on from that, we need to look further than that measure.

The average population of a SIMD zone is 803. That can contain significant diversity, especially in small settlements or in places such as Edinburgh, where there has been a deliberate attempt to pursue mixed housing approaches to planning. Students from the lowest income backgrounds are the least likely to travel. I want universities to get credit for reaching not only the hardest to reach but those who are genuinely underrepresented.

We should look beyond SIMD. We should also look at subjects in institutions. For example, medicine and law show tremendous levels of segregation by socioeconomic class. That situation has continued for many years. When I suggested that to the NUS, it was somewhat resistant because of a fear of dilution. If we looked at the NS-SEC—the national statistics socioeconomic classification—approach, we would still have a stretching target.

I ask the cabinet secretary to consider whether there is scope to amend the bill at stage 2 to introduce a process so that students at institutions are consulted when widening access agreements are being drawn up. In that way, a genuine upwards pressure would be placed on how ambitious those targets would be. Further input should also be taken from people who are in a good position to say what could be achieved in widening access.

Sometimes I wonder what would happen were I to speak to younger versions of myself about what I am doing now. The Marco Biagi of 10 years ago was a full-time student representative at the University of St Andrews Students Association. I think that we would get on well in relation to what I am doing now. I am not sure whether that is a good or a bad thing; rather than make an observation on that, I will simply sit down.

16:23

**Jenny Marra (North East Scotland) (Lab):** I associate myself with Mary Scanlon’s remarks on the impact of the bill on mature students—especially female mature students—because concerns about that have been represented strongly to me by colleges in my region.

I will focus my remarks on university governance. Professor von Prondzynski produced 17 far-reaching recommendations, which the cabinet secretary has repeatedly accepted since February last year. For governing bodies, the report advocates greater student participation, majority lay representation and the introduction of gender quotas, which is an issue that he knows that I have brought to the chamber before and which we on the Labour benches have been arguing for. The professor suggests greater inclusion in the selection process of university principals, training for governors and a distinct Scottish code of conduct, to name but a few recommendations.

When we look at the bill, we see that not one of the 17 recommendations has been introduced. I know that Joan McAlpine and, I think, the cabinet secretary, contested that point so to check, in preparing for the debate at the weekend, I tweeted Professor Prondzynski and asked him directly whether any of his recommendations are contained in the bill. He tweeted back:

“Not directly, no. But I believe there will be legislation later in the parliament.”

I suggest that the cabinet secretary commissioned the report knowing that the bill was to come forward. I am not quite sure why he wants to delay the implementation of Professor von
Prondzynski’s recommendations, given that he has accepted all of them since February last year. He might want to clarify that in his closing remarks.

Despite the fact that the cabinet secretary commissioned the professor’s report and has accepted it, all that the bill does is provide for the Scottish ministers to withhold funding from a university that does not comply with their vague idea of good governance. As was pointed out in the committee’s evidence session last month, the provision in question is too vague to scrutinise without a clear definition of good governance alongside it. In the absence of a proper definition of good governance in the bill, it is not clear when and how sanctions will be used.

To his credit, the cabinet secretary has sought to reassure the committee by commissioning a code of good governance, but I understand that that code will not be available to scrutinise until after the bill has passed through the Education and Culture Committee, on the understanding that a further bill will be produced in 18 months’ to two years’ time. It seems to me that the calls for a delay seem very sensible in view of the fact that the code of governance will not be produced soon and things will not be ready in time.

As a result, concerns have been voiced across the sector. Alan Simpson from the University of Stirling said:

“we envisage a future minister being able to impose things that may not relate to the new code ... because there is no reference to a particular code in the bill.”—[Official Report, Education and Culture Committee, 19 February 2013; c 2015.]

That sentiment has been echoed by Ferdinand von Prondzynski, who said:

“it is not yet clear what particular principles of good governance might be enforced by the legislation. Moreover, the fear has arisen that the provision could be used to apply some other unspecified set of principles of good governance, or might even at some future date be used to apply the views of particular politicians or officials.”

As I have put to the cabinet secretary previously, I would like to see gender quotas provided for in primary legislation. I would like us to enshrine in statute a student’s right to choose their governing body, and I believe that it would be progressive to enshrine the election of academic boards in our law. I think that the bill that is before us represents a good opportunity to do that.

As many of the cabinet secretary’s front-bench colleagues have told us, there is a great deal of pressure on the legislative programme in the current parliamentary session, so there might not be room for his second bill. Why does he not take the opportunity to legislate on those matters now?

Even if the cabinet secretary is unwilling to take those steps, I urge him to consider the concerns of the committee and stakeholders, and those that have been expressed during the debate, and to give us some clarity on what governance reforms he will commit to.

16:28

John Mason (Glasgow Shettleston) (SNP): As far as I can see, there has been a pretty widespread welcome for the majority of the reforms that are laid out in the bill. It is clear that the universities and the colleges are hugely important to Scotland and our people, especially our young people.

The main points of the bill are to do with governance and organisation. I am particularly interested in the colleges, as they play a key role in the east end of Glasgow and other needy parts of the country, especially among those who are most marginalised. Of course, the universities are important, too, and many of us have benefited from free university education—in my case, at the University of Glasgow. There is a balance to be struck between universities and colleges.

There is also a balance to be struck between making cost savings and avoiding duplication, which larger organisations can often do, and keeping close to neighbourhoods and having close-knit community involvement, which smaller organisations can do.

When I moved to Barlanark in the early 1990s, John Wheatley College did not have a great name, and local students would often travel further afield to attend an institution with a stronger reputation. That situation has changed dramatically, and John Wheatley College now has a very good reputation in the city and beyond. In particular, it has a strong reputation for engaging with the local community and drawing in people who might otherwise be cast adrift by society.

As a result, I was concerned when I first heard of this idea of mergers and regionalisation. Would it mean weaker links with local communities? That issue is touched on in paragraph 124 of the committee’s stage 1 report. Moreover, given that the universities were all over the papers with poor governance issues, why was it the colleges that were being reorganised?

I have to say that my concerns have been allayed to some degree. The three colleges in my area—John Wheatley, North Glasgow and Stow—have thrown themselves into merger talks with some enthusiasm and I believe that the story is similar in the south and west of Glasgow with Langside, Cardonald and Anniesland colleges. The merger consultation document, which is out
for comment, very much emphasises the opportunities.

**Neil Findlay:** Will the member give way?

**John Mason:** If the member will be brief, yes.

**Neil Findlay:** I know that Mr Mason will have discussed this with the colleges but is he aware of the number of courses that have been cut as a result of the merger process?

**John Mason:** There is some doubt about the cutting of courses—some courses have been renamed and new courses that have been introduced have not been taken into account—but I will leave that for others to deal with in a bit more detail.

Before that intervention, I was going to quote from the merger consultation document from John Wheatley, North Glasgow and Stow colleges, which states:

“The scale of the social and economic challenges we face in this part of Glasgow is different; New College is designed to meet them. Building on our past, but looking to the future, our merger offers the potential for a college that is distinctive and special. This proposal sets out how we shall make that happen.”

If members allow, I will dwell on the Glasgow situation a little bit more. We are heading towards a region with three assigned colleges, two of which will have multiple campuses away from the city centre, including in some of our most challenging areas. The other—the City of Glasgow College—is in the city centre and draws not only from all over and beyond Glasgow but internationally.

The colleges appear to be quite different animals and I am glad that, in Glasgow, there will be a regional approach with three distinct colleges. It will be a challenge for the regional board to balance the different requirements and to avoid one part dominating the others. I am glad that the Education and Culture Committee has examined the issue in paragraphs 133 to 144 of its report, and I especially agree with its recommendation in paragraph 141.

I hope that in practice there will be not only a good working relationship between the colleges but a fair degree of autonomy and subsidiarity. For example, John Wheatley College currently has two campuses, one in Easterhouse and the other in Haghill, to encourage as many students as possible to participate; even more locally, classes are run in the community itself. Some folk already travel from, say, the east end of the city to specialist courses in Clydebank or Motherwell, but doing that incurs travel and childcare costs. Indeed, that very issue is touched on in the Unison submission that members received for today’s debate; I did not agree with all of the union’s comments, but it made good points both on this matter and on the problem of territorialism.

I am not saying that we should accept the issue in the longer term in Glasgow, and I acknowledge that good work is being done to tackle it. However, if we want to engage as many people as possible and draw in those who are furthest from employment, we need to make college provision as local as we can. We need to strike a balance, but I am not saying that that will be easy.

Overall, I believe that the bill brings about a major change in the organisation of our universities and especially our colleges. I note the openness to amendments at stage 2 and look forward to seeing them.

16:33

**Liz Smith:** This has been a very good debate.

In her speech, Clare Adamson asked us to assess the stage 1 process against the criteria that the Government initially set out. If I remember correctly, she said that those criteria are whether the bill provides better support for jobs and economic growth, whether it improves students’ life chances and whether it fundamentally changes the provision of skills to link with demands in local communities. Those are important questions for the chamber.

The Scottish Conservatives have taken the process seriously and have listened very carefully to the views of a range of stakeholders right across the college and university sectors on how they see the bill in relation to those specific objectives. As the committee convener and Liam McArthur have both rightly pointed out—and as the committee report makes clear—there is no particular objection to the overall policy direction, with the very considerable exception of the increase in ministerial powers, about which there is genuine concern.

The greatest difficulty with the bill lies in the detail and, on that basis, people have come to doubt whether it is the most effective way of achieving the objectives that have been set out. Indeed, that feeling has been heightened by the Government, which almost every time it talks about colleges and universities says that they are already delivering the valuable skills training our young people and mature students need and are already beginning to take substantial steps to widen access and tackle youth unemployment.

Given that the policy memorandum and financial memorandum do not provide sufficient evidence on why the bill, as opposed to other measures, will improve education in our colleges and universities, it is important that all of us, including the cabinet secretary, reflect on that point as we move
towards stage 2. The Scottish Government has argued that the bill is necessary because of the technical and administrative underpinning that it will give to the reforms of colleges and universities. That may be correct up to a point, but I certainly do not think that we need a bill of such ungainly size, whose considerable lack of clarity has muddled matters.

On the question of college structures, which is the main focus of the bill, the committee received a substantial degree of evidence that the regional boards are a new layer of governance and that there is still some doubt as to how the funding mechanism will work or what the lines of accountability will be for meeting the financial requirements of the assigned colleges.

John Mason: Does the member agree, though, that it is better to have three separate colleges in Glasgow rather than pile them all into one?

Liz Smith: I entirely agree with what the member said about the need for diversity, but we can have that diversity only if we are absolutely clear about the lines of accountability. On that basis, the bill falls seriously short. Even the Scottish funding council seems a little unclear as to how, within a regional plan, it will appropriately apportion funds to the assigned colleges.

In that context, I ask the cabinet secretary to consider carefully the small doubt that exists about one aspect of charitable status, which relates to situations in which the trustees of a college—which, obviously, would be defined as a charity in this context—do not agree with the direction of travel being implemented by the Scottish Government and the Scottish funding council. The Office of the Scottish Charity Regulator has given a ruling that seems encouraging, but there is still a small area of doubt.

Secondly, universities and colleges have raised concerns about the powers that are to be vested in the Scottish funding council to review the number of post-16 institutions and the learning and teaching that they provide. Those concerns are very much at the centre of the wider perspective about excessive Government involvement in the further education sector, just as there were concerns expressed about Government meddling in the management and governance of universities.

I was pleased by the cabinet secretary’s response to Mary Scanlon’s question about UHI. In the case of UHI, which is obviously an exceedingly important institution given the local dimension of its delivery in many rural and remote communities, we need some clarification.

In addition to those points, there is the problem of timescales. The Scottish Government is asking us to weigh up whether the legislation is needed to improve university governance, and yet the code for that new governance, which is being drawn up by the steering committee that was appointed by the university chairs, will not be available until—if I am not mistaken—9 April. Until that time, we are left without the substantial information on which we are being asked to decide whether we need the legislation. We need that information to know whether what is currently in place would be better than what might be provided under the bill.

Let me finish on the issue of widening access, on which Marco Biagi made a very thoughtful contribution. In fact, I thought that Marco Biagi made the case for not legislating on widening access. He correctly pointed out that the University of Edinburgh and several other institutions have made widening access a key issue without the need for legislation. We should accept that some of the focus is required in schools rather than in colleges and universities.

Marco Biagi: Will the member give way?

The Deputy Presiding Officer: No, the member must finish.

Liz Smith: Otherwise, I would have taken Marco Biagi’s intervention.

In closing, let me say that the bill lacks an awful lot of necessary clarity and we are not persuaded that it will actually deliver better education, which is the most important thing.

16:39

Hugh Henry (Renfrewshire South) (Lab): There are undoubtedly times in a parliamentary process when issues of political difference need to come to the fore and when the different political parties can argue about their respective policies as they try to show the weakness in the cases put by the other parties. There are also times when we are required to do our job as parliamentarians and when we need to consider our responsibilities not just to the people we represent but to Parliament as an institution in holding Government to account.

When I was convener of the Public Audit Committee, there were a number of occasions when I was extremely critical of events that had happened when I was a minister in the previous Administration, because that was the right thing to do when the evidence presented itself. I took my responsibility as a member of that committee seriously. This is an occasion when we need to reflect on the role of committees on behalf of Parliament.

The Education and Culture Committee has attempted, within certain limits, to do a job on behalf of Parliament. The role of committees is to scrutinise, comment and criticise in cases where things are not as they should be. Unfortunately,
we can perceive a weakness in the Scottish Parliament if we compare ourselves with what happens at Westminster. We have taken pride and delight at times in criticising the inefficiencies and ineffectiveness of what happens there, yet in Westminster we see the robustness of the reports published by committees that are led by members of different political parties, who are prepared to stand up to the Government of the day and tell the facts as they really are. There are times when we need committees of this Parliament to do exactly that job. The scrutiny of the Post-16 Education (Scotland) Bill is one of those times when we need the committees of the Parliament to stand up and tell the Government where our concerns lie.

We do not disagree with the fundamental principles that have been outlined by the cabinet secretary. We do not disagree with the need to widen access. I do not disagree with the need to widen governance. When I was a committee convener, George Foulkes and I criticised the membership of college boards on a number of occasions, and we highlighted how complicit and cozy some of them were in relation to college principals, because that was the right thing to do. Some of our concern is reflected in comments that the cabinet secretary and others have made. On a number of occasions, George Foulkes and I criticised the unseemly way in which university principals had hiked their pay at a time when the pay and conditions of many members of their staff were being severely constrained. There are times when we need to tell things as they are.

Our concerns do not lie with the principles and doing the right thing—we will stand shoulder to shoulder with the cabinet secretary in trying to effect improvements where they are necessary. Our concern is about the detail of the bill. Time after time, the evidence from witnesses has shown that there are flaws and concerns with it. That does not mean ditching the bill and its never seeing the light of day again. We are saying that we should take our time to get the legislation right and ensure that it is effective. While we are arguing about that, let us use the powers that we have that do not require legislation, including those in areas such as widening access, as Liz Smith and other members have mentioned.

The debate is about a parliamentary process, not the rights and wrongs of a bill. As I have said, I agree on issues of governance and widening access. Stewart Maxwell said that Parliament should not be overtimid in its approach. That is right—but the committees of the Parliament should not be overtimid in their willingness to hold the Government of the day to account.

Stewart Maxwell: I am interested in what the member is saying, and I am trying to understand his point. Is he criticising the Education and Culture Committee’s report? I firmly believe that its report is fair and balanced, that it takes into account all the evidence that was supplied and that it takes into account both the support for the bill and some of the strong criticisms of the bill. We have done a good job in expressing all that fairly and in a balanced manner.

Hugh Henry: I did not criticise the report—if Stewart Maxwell had listened to me, he would have heard that. Where I have a difference is on the conclusion that Stewart Maxwell and the other SNP members drew in saying that the report represents support for the bill, when the evidence in the report demonstrates that that support is not there. That is where there is a need to stand up and be counted.

As Liz Smith said, the bill lacks clarity. Stewart Maxwell used the word “clarity”. If he went back to the report, he would find that word used time after time. Indeed, the report says that “greater clarity” on the bill is required. That is why we think that more work needs to be done.

George Adam gave yet another interesting history of his family. Some of the things that he said absolutely give the reason why action needs to be taken to widen access. However, that does not mean that the bill is good or that the measures in it are the right ones at this time. It does not mean that the Government should not pause and reflect on what needs to be done.

Margo MacDonald: The member says that the bill is basically good and has good intentions and that he has no criticism of certain aspects of it. We have heard about the aspects that he has criticisms of—I do not necessarily disagree with them—but what would the member say is good about the bill?

Hugh Henry: Actually, I did not say that it is a good bill; I said that the intentions and principles are good, but I share Liz Smith’s and Liam McArthur’s concerns that the bill is bad and is flawed. It is badly constructed.

We need to put in efforts to widen access. As Liz Smith said—and to repeat—we do not necessarily need legislation but, if legislation can help, by all means let us have it. If we need legislation to improve the gender balance, as Jenny Marra talked about, or to widen involvement for trade union members, by all means let us have it.

There are issues on which more work needs to be done, but the problem is that the bill as it stands has not been well constructed and all the criticisms and concerns that have been expressed have not been answered. I do not want to put the bill into the dustbin of history. However, Scottish Labour believes that, because the criticisms in the Education and Culture Committee’s report are so
substantial, the cabinet secretary is required to go away, reflect and come back to us with something that is more fit for purpose.

16:48

Michael Russell: I agree with Mary Scanlon—sorry, I mean Liz Smith. I nearly always agree with Mary Scanlon, although not today. I agree with Liz Smith that, by and large, the debate has been productive. I disagree with a great deal that has been said in it—I will come on to that in a moment—but the debate has been interesting. I thank the Education and Culture Committee and its convener for their work and I welcome the convener's speech. He and other members will be aware that I have responded today to the committee’s stage 1 report in some detail. Some of the questions that members from across the chamber have raised will be addressed in that detail.

Neil Findlay: Not many.

Michael Russell: I had hoped that the mood of the debate would continue and that I would not be hectored by Mr Findlay. Let us hope that that will happen.

Actually, I was going to address one point that Mr Findlay raised. He raised a range of questions that he said I have not answered. The committee convener fairly pointed out my comment in the Official Report when I said that I recognised those questions but Mr Findlay had not asked me them. If he wants to ask me them again, I will answer them, but at an appropriate time.

Neil Findlay: Will the member take an intervention?

Michael Russell: No—I will answer them at an appropriate time. I have lots to say and I want to make progress. However, I will answer one of those questions now, which is about the code. The member claimed that he knows nothing about the code; that there is nothing about it in the bill; and that, on that basis, the bill cannot proceed. He should know that the code development has continued apace. For example, I met Lord Smith, who has chaired the steering group, again yesterday. The group has had 18 meetings and has consulted 350 people. I believe that Lord Smith will come to the committee to talk about the code.

Indeed, the code is not referred to in the bill and I made that point earlier.

Liz Smith: Will the cabinet secretary take an intervention?

Michael Russell: No, I really have to make progress. I am sorry, but I have hardly any time.

Section 2 of the bill says:

“2 Higher education institutions: good governance

After section 9 of the 2005 Act insert—

‘9A Higher education institutions: good governance

The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice in relation to higher education institutions.”

That is clear. The code is not referred to. A code already exists and it is observed. If there is to be a new code, I am delighted that the Education and Culture Committee will look at it. However, it is not referred to in the bill and it is not part of the bill, and that is very important. The UCU made the argument that it should be in the bill and the committee members could lodge an amendment to that effect.

Liz Smith: Will the cabinet secretary give way?

Michael Russell: However, I have to make a point about governance and management, and I suspect that that is the point that Liz Smith would like to make. The phrase “governance and management" to which she took such enormous exception is a phrase from the 2005 act’s fundable bodies criteria. If Liz Smith speaks to Mary Scanlon, who is sitting next to her, she will find that Mary Scanlon voted for the 2005 act with those very words in it. If there is a requirement to change those words, I will be sympathetic to that change.

Some members have said, in essence, that the bill’s policy aims and objectives are correct. Mr Bibby and Mr Henry said it, but of course they cannot vote for the bill. Mr Henry mentioned Westminster and there is an old Westminster convention that the vote follows the voice. Stage 1 is about the general principles of the bill. In response to Margo MacDonald, Mr Henry said that the principles of the bill are good—those are the very words that he used—so, if the principles are correct, he must vote for the bill. In the circumstances, those who listed what is good about the bill but then said that they could never vote for it are in a strange position indeed.

Jenny Marra: Will the cabinet secretary take an intervention?

Michael Russell: No, I am sorry but I will not take any interventions at this stage, especially not from Jenny Marra because she said things that were not true. I hope that she will look at what she said, realise that she made a mistake and come back to correct the record. The code will be available in April and other members said that.

I have talked several times about an underpinning statute, which is why Ferdinand von
Prondzynski replied in the way that he did. He knows that and other members know it, too.

**Margo MacDonald:** Will the cabinet secretary give way?

**Michael Russell:** No—well, for the member I will.

**Margo MacDonald:** I take it that Mr Russell is giving way for age rather than for beauty.

If the minister accepts that there are flaws in the bill and the Opposition says that the bill’s intention is good, will he undertake to take out the parts that most of the Opposition agrees should be taken out because they are details, which need to be taken out of the bill?

**Michael Russell:** As ever, I am glad that I took Margo MacDonald’s intervention because she talks good sense. I said at the beginning and say again now that I am happy to discuss amendments and improvements to the bill. I suppose that I am done for if I do and done for if I don’t. When I said that at the beginning, Mr Findlay and Mr Pentland seized upon what I had said and said that I was making a desperate attempt to get the bill through. I make the commitment to members that I am keen that we make a collaborative attempt to ensure that the bill passes. That is the heart of the matter and I want members to reflect on that.

If the bill does not pass, certain things will happen. We will not get better governance or wider access; I will talk about those points in a moment. That would be very serious indeed, but that is what we are talking about. Mr Henry said in his speech that the bill is a wonderful idea, although he said at times that he is not sure that it is needed. He does not disagree with any of it but he will not back it—I am afraid that that will not wash, because no bill that comes to the Parliament is perfect. That is why we have a clear process for legislation, which allows for the improvement of bills at every stage.

The legislation process was agreed by all parties when the Parliament was established and it should be known to every member in the chamber. Members talk about a bill being withdrawn or not proceeding, or something similar happening, but that is not in the process. The procedure says that the Parliament either agrees or disagrees with the general principles of the bill and that is where we are today. What would be achieved if the bill were to be withdrawn? Nothing at all. We cannot achieve anything if there is no bill. Only amendment and progress can change the bill, yet those members who oppose it do not want to amend it and do not want it to progress.

We have heard the committee’s intention to take evidence about the code, so if that is the reason for members not supporting the bill, members know that there will be evidence at stage 2, which is possible under the process. Labour members need to remember that further delay would simply mean that the positive proposals in the bill would fail to take effect because the final stage of the bill’s progress would not take place according to the timetable that has already been agreed. Wider access, better governance, more focus on employability, essential improvements in data quality, and regionalisation would not happen. That is clearly, alas, what the Tories want. The sad reality—unfortunately I have become convinced of this today and I was getting convinced of it anyway—is that the Tories do not want the type of open access that there should be in Scotland.

**Liz Smith:** Will the member give way?

**Michael Russell:** I am sorry, I have to finish—I do not have the time. The member has had her say and I want to have my say now. That view of education is an elitist one; it is one that refuses to take the next step. [Laughter.] I am coming to Labour in a moment. I hope that Labour members will be ready for it.

That view insists that universities and colleges cannot change and cannot improve. South of the border, the Tories have been the wreckers of higher education. If they are followed today, they intend to try and wreck it north of the border with fees, more barriers for poorer students, and no change to the unaccountable system of college governance that was put in place by Margaret Thatcher. No one in Scotland will be surprised that those are the Tory attitudes. The surprise will be that Labour will back them.

There was a glimmer of hope in the Lib Dems’ position—that is not referring to Mr Rennie, who is always a glimmer of hope. Mr McArthur said that he required to be persuaded. Let me persuade him of one thing: we are open to serious amendment. If he comes forward with good ideas, we will certainly look at them. There could be a collaborative process of change and I would welcome that.

The position of the Labour Party is the most extraordinary one. I care a lot about Scottish education; I care about widening access and I care about employability. People do not have to believe in an independent Scotland to see that those issues are important. The vast majority of Labour voters believe that, too. They believe in good education, creating employment opportunities, accountability, and a single national set of terms and conditions. They believe in the general principles and the particular policies in the bill.
The NUS and the UCU have pleaded with Labour to back the bill and now the moment of choice has arrived.

Neil Findlay: Your nose is growing.

Michael Russell: Labour cannot wriggle out of it again by abstaining. It cannot abstain on the issue of widening access. It cannot abstain on the issue of employment. [Interruption.]

The Presiding Officer (Tricia Marwick): One moment, cabinet secretary. Mr Findlay, I will not have you shouting across the chamber. You have chuntered along and some of the remarks that you have been making are completely unacceptable.

Michael Russell: Labour cannot abstain on issues of better governance. There is a choice between good and bad, and that choice means making the good and necessary step of backing the bill. That is the key decision for the Labour Party today: will it address that issue? Will it put behind it last week’s fence-sitting extravaganza? Will it ignore the fatal political miscalculation of the Labour front-bench members, which has led Labour to this? Will it choose the good move rather than the bad one?

I hear Jenny Marra laughing at the prospect of wider access to education. That is a disgrace. Labour has a choice to make in a minute or so—will it let down the lecturers, the support staff, and above all the students, just as it did when it abstained on tuition fees? It is time to make that choice and that choice will tell us a lot about what Labour is today.

The Presiding Officer: That concludes the debate on stage 1 of the Post-16 Education (Scotland) Bill.

Post-16 Education (Scotland) Bill: Financial Resolution

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-06018, in the name of John Swinney, on the financial resolution to the Post-16 Education (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Post-16 Education (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.—[Michael Russell].

The Presiding Officer: The question on the motion will be put at decision time.
Decision Time

17:02

The Presiding Officer (Tricia Marwick): There are seven questions to be put as a result of today’s business. The first question is, that motion S4M-06059, in the name of Michael Russell, on the Post-16 Education (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alistair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Budge, Cecilia (Edinburgh Central) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eade, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Farrington, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Forsinard) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Jenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paton, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen Central) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Walker, Bill (Dunfermline) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguoss, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Mint, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Renwick, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Abstentions
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alison (Lothian) (Green)
MacDonald, Margo (Lothian) (Ind)

The Presiding Officer: The result of the division is: For 64, Against 54, Abstentions 3.

Motion agreed to,

That the Parliament agrees to the general principles of the Post-16 Education (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-06018, in the name of John Swinney, on the financial resolution to the Post-16 Education (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Post-16 Education (Scotland) Bill, agrees to any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament’s Standing Orders arising in consequence of the Act.
Background

1. The Subordinate Legislation Committee reported on the delegated powers in the Post-16 Education (Scotland) Bill on 19 February 2013 in its 14th report of 2013.

2. The response from the Scottish Government to this report is reproduced at the annex.

Scottish Government response

Section 4 (inserting section 9C into the 2005 Act) – Fee cap: students liable for higher education fees

3. In its stage 1 report, the Committee concluded that the negative procedure did not represent an adequate level of scrutiny for the exercise of this power, given the sensitivity of the function being exercised, and the fact that it would represent a substantially lower level of scrutiny than that applicable when setting fees for Scottish and EU students.

4. The Committee therefore recommended that the power be subject to the affirmative procedure, except in cases when the fee cap is no greater than is required to maintain the value of the amount previously set in real terms.

5. The Scottish Government accepted the Committee’s recommendation and agreed to bring forward an appropriate amendment at stage 2 to effect a change in the procedure.

Section 7 (substituting section 24 of the 1992 Act) – Mismanagement by boards

6. This power substantially expands the grounds upon which members of a college’s board of management may be removed. Given the extent of the expansion, the Committee drew the power to the attention of the lead committee.

7. In its response to the Committee, the Government stated that the power was ‘reasonable and would lead to better governance.’ However, it agreed to continue to reflect on the provision prior to stage 2 of the Bill.
Section 12 (inserting section 23N of the 2005 Act) – Mismanagement of regional boards

8. This power substantially expands the grounds upon which members of a regional board of management may be removed. Given the extent of the expansion, the Committee drew the power to the attention of the lead committee.

9. In its response to the Committee, the Government stated that the power was reasonable. However, it agreed to continue to reflect on the provision prior to stage 2 of the Bill.

Section 15(1) – Duty to provide information to Skills Development Scotland

10. This power enables the Scottish Ministers to make subordinate legislation requiring any person to provide information which that person holds about a young person to Skills Development Scotland Co. Limited (“SDS”). At stage 1, the Committee expressed concern that, as “any person” could be required to share information, the power had perhaps been drafted more broadly than was the Government’s policy intention.

11. In its response to the Committee’s stage 1 report, the Scottish Government advised that people other than those who provide education and training to young people may be required to collect and share information with SDS. Therefore, the Government is of the view that the power in section 15(1), as drafted, is necessary.

12. Furthermore, the Scottish Government stated that the use of the word “person” in the power created a level of flexibility which would ensure “that the power will remain fit for purpose in the future in what is likely to be an ever evolving education and training environment.”

13. The Government was also of the view that the power will be constrained as data may only be shared for the purposes set out within subsection (1). However, it recognises the Committee’s view that this does not substantially limit the scope of the power.

14. In its stage 1 report, the Committee observed that the exercise of the power appears likely to engage the rights under Article 8 of the European Convention of Human Rights of the persons whose personal data is shared in terms of an order under this power.

15. In its response to the Committee, the Government provided reassurance that adequate consideration will be given to Article 8 of the European Convention of Human Rights when considering any subordinate legislation made under section 15(1).

16. Finally in relation to section 15(1), the Committee recommended that, in order to ensure adequate scrutiny is carried out, the power be subject to the affirmative procedure, rather than the negative procedure as originally drafted.
17. The Scottish Government accepted the Committee’s recommendation in relation to the affirmative procedure and proposed to bring forward an amendment at stage 2 to effect the change.

Section 15(5) – Duty to provide information to Skills Development Scotland

18. In its stage 1 report, the Committee recommended that the Scottish Government revisit the drafting of Section 15(5) in order to ensure that the policy intention was unambiguously delivered. The Committee considered that it was unclear whether the power could be exercised simply to reflect any change in the name of SDS.

19. In its response, the Scottish Government informed the Committee that it would bring forward an amendment at stage 2 which would seek to make clear that section 15(5) can be exercised in consequence of a change of name, not only if and when the Scottish Government wishes to substitute a different person.

Section 15(7) – Duty to provide information to Skills Development Scotland

20. At stage 1, it appeared to the Committee that the bespoke ancillary powers provision in section 15(7)(b) duplicated the ancillary powers provision in section 17(1). The Committee accordingly recommended that the duplicated provision be omitted from the Bill.

21. The Scottish Government informed the Committee that it intended to bring forward an amendment at stage 2 to remove section 15(7)(b) from the Bill.

Conclusion

22. Unless amendments that will affect the delegated powers provisions are made to the Bill at Stage 2 the Committee will not consider it again. Members are therefore invited to make any comments they wish on the Bill at this stage.

Recommendation

24. Members are invited to note the Scottish Government’s response on the Bill and to make any comments they wish at this stage.
Annex
Correspondence from Scottish Government dated 27 March 2013

SCOTTISH GOVERNMENT

POST-16 EDUCATION (SCOTLAND) BILL

RESPONSE TO THE SUBORDINATE LEGISLATION COMMITTEE’S REPORT

INTRODUCTION

I would like to thank the Committee for their detailed consideration of the delegated powers in the Bill. We have carefully considered the Committee’s recommendations and a detailed response to each is set out below.

I hope that the Committee find this response helpful.

Michael Russell

Cabinet Secretary for Education and Lifelong Learning

TUITION FEES

Section 4 (inserting section 9C into the 2005 Act) – Fee cap: students liable for higher education fees

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<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<td>Power exercisable by:</td>
<td>order</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>negative procedure</td>
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Committee comments: The Committee does not consider that the negative procedure would represent an adequate level of scrutiny for the exercise of this power. It recommends that its exercise be subject to the affirmative procedure, except when the increase in the fee cap is no greater than is required to maintain the value of the amount previously set in real terms.

Scottish Government Response:

As the Committee is aware, proposed new section 9C of the Further and Higher Education (Scotland) Act 2005 is informed, broadly, by the Scottish Government’s policy intention that Scottish institutions should not charge full time HE students from other parts of the UK annual tuition fees at a higher level than the maximum tuition fees set by legislation which such students would be charged at institutions elsewhere in the UK. It is against that backdrop that the power in proposed new section 9C(2) is constrained by section 9C(3)(b) and that constraint is the principal reason why, in the Bill as introduced, the Scottish Government provision was made for the order making power to be subject to negative procedure.

But the Scottish Government notes the views of the Committee and, in particular, recognises the Committee’s views as set out in paragraph 18 of the Committee’s Report. The Scottish Government therefore accepts the recommendation at paragraph 20 of the Committee’s report and will seek to bring forward an appropriate amendment to the Bill at Stage 2 to implement the same.
COLLEGE REGIONALISATION

Section 7 (substituting section 24 of the 1992 Act) – Mismanagement by boards

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Committee comments: Given the substantial expansion of the grounds upon which members of a college’s board of management may be removed, the Committee draws the power in section 7 (substituting section 24 of the 1992 Act) to the attention of the lead Committee. It is otherwise content that the exercise of the power be subject to the negative procedure.

Response:

As the Cabinet Secretary for Education and Lifelong Learning explained in his evidence to the Education and Culture Committee on 26 February 2013, there is a range of circumstances in which powers concerning college mismanagement would apply [OR column 2087-2088]. Each of the ‘grounds’ in new section 24 of the 1992 Act, as substituted by section 7 of the Bill, is in our view reasonable and would lead to better governance. We note, however, that the Committee has drawn the power to the attention of the lead Committee. We will continue to reflect on this provision in advance of Stage 2.

Section 12 (inserting section 23N of the 2005 Act) – Mismanagement of regional boards

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Committee comments: . . .given the breadth of the grounds upon which the members of a regional board may be removed, the Committee draws the power in section 12 (inserting section 23N of the 2005 Act) to the attention of the lead Committee. It is otherwise content that the exercise of the power be subject to the negative procedure.

Response:

Each of the ‘grounds’ in proposed new section 23N of the 2005 Act, as inserted by section 12 of the Bill, is in our view reasonable and would lead to better governance. We note, however, that the Committee has drawn the powers to the attention of the lead Committee. We will continue to reflect on this provision in advance of Stage 2.

DATA SHARING

Section 15(1) – Duty to provide information to Skills Development Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure
Committee Comments: ...draws the power in section 15(1) to the attention of the lead Committee on the basis that it has been drafted in terms which are rather broader than the Scottish Ministers' declared policy intention, observing that it appears possible that the power as drafted could extend beyond the provision which the Ministers say they propose to make.

The Committee also observes that the exercise of this power appears likely to engage the rights under Article 8 of the European Convention on Human Rights of the persons whose personal data is shared in terms of an order under this section. It accordingly notes that it will wish to be reassured, when it comes to consider any subordinate legislation made under this power, that adequate consideration has been given to the Convention rights (in particular Article 8) and that – to the extent that Article 8 is engaged – any interference is capable of being objectively justified and is proportionate.

The Committee further recommends that, if the Scottish Ministers continue to consider it necessary to take this power in its present form, then its exercise should be subject to the affirmative procedure to ensure adequate Parliamentary scrutiny of the use of the power, in particular so that the Parliament may be reassured that the power is being used as intended and not in a wider fashion.

Scottish Government Response:

The Scottish Government continues to consider that it is necessary to take this power in its present form. Specifically it is considered necessary and appropriate to retain reference to “person” in section 15(1) of the Bill: “The Scottish Government may, by order require a person to provide information the person holds……..”.

The Scottish Government has indicated that this is necessary because, in some cases, persons other than ‘persons who are providing education and training to young people’ will collect and share data on behalf of the person providing education. And the Scottish Government would wish to be able to use the section 15(1) power to specify such persons. The use of the term “person” in section 15(1) is considered necessary and appropriate to allow for this. More generally the Scottish Government considers that the flexibility which the use of the word “person” in section 15(1) provides is a key element in ensuring that the power will remain fit for purpose in the future in what is likely to be an ever evolving education and training environment. The Scottish Government remains of the view that the power is constrained by the terms of section 15(1)(a), (b) and (c) but recognises the Committee’s view that this does not “[represent] any substantial limitation on the exercise of the section 15 power”.

The Scottish Government also acknowledges that, as the Committee highlights, exercise of the section 15(1) power may engage Article 8 ECHR and that the committee will therefore wish to be assured that adequate consideration has been given to the Convention rights (in particular Article 8) when it comes to consider any subordinate legislation made under the power.

In all of the circumstances, and particularly in light of the Committee’s comments about the breadth of the power, the Scottish Government accepts the Committee’s recommendation that the section 15(1) order making power ought to be subject to
affirmative procedure and will seek to bring forward an appropriate amendment to
the Bill at Stage 2 to effect this.

Section 15(5) – Duty to provide information to Skills Development Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure, or where relating to a
change of name, laid in accordance with section 30 of the Interpretation and
Legislative Reform (Scotland) Act 2010

Committee Comments: . . . recommends that the Scottish Ministers revisit the
drafting of this provision to ensure that it clearly and unambiguously delivers their
stated policy intentions. It therefore welcomes the Ministers’ intentions to give further
consideration to the drafting of this provision.

The Committee considers that it would be appropriate for this power to be subject to
the negative procedure. Should the power properly extend to changing the name of
Skills Development Scotland Co. Limited, then the Committee is content that such an
order would be laid in accordance with section 30 of the Interpretation and
Legislative Reform (Scotland) Act 2010, but would not be subject to any further
procedure.

Scottish Government Response:

The Scottish Government will seek to bring forward an appropriate amendment to
the Bill at Stage 2 to amend section 15 of the Bill to make clear that the section 15(5)
power to amend the reference to Skills Development Scotland Co. Limited in section
15 is a power exercisable not only if and when the Scottish Government wishes to
substitute a different person, but also simply in consequence of a change of name.

Section 15(7) – Duty to provide information to Skills Development Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure, or where relating to a
change of name, laid in accordance with section 30 of the Interpretation and
Legislative Reform (Scotland) Act 2010

Committee comments: . . . recommends that the Scottish Ministers consider
simplifying the Bill by omitting the duplicated provision in section 15(7)(b), and
welcomes their commitment to give further consideration to this matter.

Scottish Government Response:

The Scottish Government will seek to bring forward an amendment to the Bill at
Stage 2 to remove section 15(7)(b) of the Bill.
Skills Development Scotland: supplementary evidence

Skills Development Scotland (SDS) previously provided information to the Education and Culture Committee following our evidence session on the Post 16 Education (Scotland) Bill on 19 February 2013. We said we would provide further information on developmental costs of the Data Hub (‘the hub’) and the number of individuals’ records held in the hub.

We would also like to provide you with information to address a number of questions raised in the Committee’s Stage 1 report on the Bill which was published 20 March 2013, which have been referred to SDS from Scottish Government as an operational matter.

We apologise to the Committee for not supplying this information in advance of the Stage 1 debate.

Developmental Costs

221. The Committee asked for information on the full costs to date of developing the data hub. SDS stated that it would provide further detail in due course.

The Financial Memorandum of the Bill outlined a figure of £52,000 for one-off costs to provide for small Information Technology (IT) modifications to partners’ systems in order to enhance their ability to share data through the hub. Technical modifications have been necessary, as although all partners already own and maintain substantial customer data recording systems, some use incompatible systems from each other.

Our submission to the Scottish Parliament Finance Committee¹ 16 January 2013 advised that the majority of the technical work to enable multi-partner data sharing through the data hub was already in place.

In financial year 2012/13 SDS spent approximately £6,000 of the £52,000 on developing and refining technical solutions to partner systems in order to enable data sharing with local authority partners. SDS has allocated the remaining anticipated spend against financial years 2013/14 and 2014/15 to take into account the expected timescales for incorporating additional partner organisations within the data sharing community and in line with the schedule for legislation coming into force.

Costs involved in SDS initially developing the hub and maintaining it have been included within SDS’s existing core budgetary provision (ie. staff resource and technological improvements). The developmental costs of the hub were part of SDS’s core budgetary provision for FY 2012-13 aimed at supporting our delivery of our core services to young people. As of 31 March 2013 £40,154 had been spent on hardware and software and £122,734 on systems development.

Most of the preparatory work to date has related to developments in SDS’s own systems for the design, development, hosting and management of the hub facility.

The investment that SDS has made directly in the development of the hub reflects the importance we place on effective data-sharing with partners to inform our - and partners’ - service support for young people. Since SDS came into being in 2008, one of our main aims has been to work with partners, and in particular with Local Authority Education Boards, to target and assist those who are at risk of not progressing to a positive destination. The hub, and the associated data-sharing agreements which underpin its use, provide the capability to

share information with partners on a more regular and frequent basis. The information held is more up-to-date and thus of greater value and quality. It is therefore a more useful resource for staff to draw on to inform the service support we - and partners - provide directly to clients.

**Number of individuals’ records in the hub**

226. The Committee wrote to SDS seeking clarity on the number of young people on the database, noting that there are around 625,000 people aged between 16 and 24 in Scotland.

Specific questions asked in the Committee’s email of 20 February 2013:

- ‘60,000 records are to be added to the database each year, with approximately 7,000 of these records likely to be classified as ‘active’. SDS made reference to 600,000 young people being on the database “over a 10 year period”—
- ‘How many people are currently on the database? (The Committee understand that there are around 625,000 people aged between 16 and 24 in Scotland, while the database was described as being a record of every pupil in Scotland).
- ‘The Committee understands that there were around 74,000 unemployed individuals aged 16-24 between October and December 2012. Are these people currently on the database?’
- ‘What is the significance of the 10 year period referred to?’

**SDS Response**

In explaining how many records for young people are held it is important to make a distinction between the hub facility and SDS’s own internal customer records system, the Customer Support System.

Records are not permanently held in the hub but are passed through it into SDS’s Customer Support System. This holds a wide range of data that is used operationally to enable SDS staff to track the statuses of individuals in order to identify what support is most appropriate for individual customers/clients.

Our records indicate that there are 135,000 young people across years 4, 5 and 6 in our schools. There are approximately 60,000 young people in each year cohort. Approximately 55,000 pupils leave school every year and there are a further 5,000 young people in the same cohort who are not in school, such as care leavers, travellers etc. Around 60,000 individuals’ records will pass through the hub each year, to be held in SDS’s Customer Support System. SDS holds data across the 15-24 year old cohort (so covering 10 cohorts of individual client records). Based on the circa 60,000 records added for school leavers each year this gives the total mentioned of 600,000 records.

It is worth noting that, of those 600,000, not all records are “live” as many individuals will have moved into positive destinations and will not require, or want, SDS intervention or follow up. Some records are therefore in archive but can be imported into the system at any time. Those who have received support due to having Additional Support Needs will however be “live” in SDS’s Customer Support System even after a considerable amount of time so that they can be actively monitored.

Not all of the 74,000 unemployed individuals aged between 16 and 24 will pass through the data hub and be held on SDS’s Customer Support System. As previously advised, SDS is now receiving data into the hub from the Department of Work and Pensions (DWP). DWP records from those aged 18 to 19 will be passed through the hub and held on SDS’s Customer Support System. This covers circa 17,000 records.
Those aged under 18 are in SDS’s target group for case management. However for those aged 19-24 who are seeking employment, DWP is the primary case manager. Through the hub we can work with partners using a complete set of information on an individual to decide on the best support for a young person.

How does SDS intend to proactively support young people who may be at risk of disengaging with learning or training?

215. The Committee would welcome a detailed explanation from SDS before stage 2 of how it intends to pro-actively support young people who may be at risk of disengaging with learning or training.

SDS Response

Further information on how SDS intends to proactively support young people at risk of disengaging from learning or training is given below, and includes particular reference to how data obtained via the hub directly and actively supports this process.

As part of its services to provide careers advice and guidance and employability support for young people SDS makes use of a risk matrix to assess the likelihood, based on a number of factors or indicators, of young people being at risk of disengaging from learning or training. Information on the risk matrix has previously been provided to the Committee. Essentially, through the risk matrix approach SDS staff can look at information held on an individual young person’s record, which may include a number of data indicators about the likelihood of that young person being or becoming disengaged with learning, training or employment. This data informs an assessment about the level and intensity of support that young person is likely to require to achieve or sustain an opportunity or positive destination.

Approximately 3,000 young people aged 16-19 leave school each year either without an identified opportunity, or having been assessed while in school (based on multiple indicators) as potentially being at risk of disengaging in the first 6 months if an opportunity is identified for them. These young people are allocated an SDS Work Coach in the 3 month period prior to leaving school. They will have had a Career Coach in school (who will arrange a meeting for the young person with a Work Coach to ensure they do not have a gap in support).

A number of young people leave school without an opportunity by choice: they do so for a variety of reasons, not necessarily negative e.g. they may wish to take a break before making a decision; to take a gap year; or to do voluntary work. These young people are case managed by an SDS Personal Adviser, who keeps in regular touch and ensures advisory and guidance support is accessible when they need it.

Around 4,000 of those young people “at risk” who do obtain an opportunity after leaving school will generally leave that opportunity within 6 months of starting. An SDS Career Coach (who initially will have helped place them obtain that opportunity) will case manage these young people until they have remained in their opportunity for 6 months; if the Career Coach identifies problems preventing the young person from engaging with their opportunity, they will ensure they are allocated a Work Coach for more intensive support.

Many young people will start a college course and complete their course, but may not have an identified opportunity on leaving. Making use of updated partner data (from colleges, in this case) received through the hub and passed through into - and held on - SDS’s Customer Support System, SDS staff will identify such young people (flagged through a number of data indicators) as being at risk of disengaging with learning or training. These young people will
be actively contacted by a Career Coach to offer support in identifying a fresh opportunity and then tracked to ensure that they remain in that opportunity.

In the university sector, university careers services, through AGCAS, support their own early leavers for a year after leaving, but may be referred to SDS if the university is outwith their home area. However SDS will itself be made aware that young people have dropped out of university through the information received through the hub from SAAS.

How does the data hub support this process?

In order to meet the needs of every young person in Scotland, regardless of geography, it is essential that data sharing is both robust and that information is shared consistently amongst partners. In the absence of legislation, the basis for data sharing between partners has been through voluntary data sharing agreements; where partners have been able to opt out of or give reduced priority to data sharing.

SDS therefore welcomes the data sharing provisions in Section 15 of the Post 16 Reform Bill as regardless of economic conditions, there will be a mandatory requirement on partners to share data with SDS and all partners will have a mutual understanding of the legal position in relation to data sharing. Legislative underpinning will improve data quality and thus help ensure holistic support for young people requiring careers and employability support.

The hub complements ongoing work that partners are undertaking to enable multi-partner data sharing for the benefit of young people. The concept of the creation of a national Data Hub to bring together relevant partner information to ensure all partners had more complete and comprehensive information on individuals, was identified by the Scottish Government in 2008. The purpose of the hub was to ensure that data sharing would provide all partners with better quality client and customer records, as a basis for them to work together to deliver appropriately targeted customer support to achieve more positive outcomes for individuals.

The hub provides a facility that allows a variety of data from a variety of partner sources to be captured, sorted and uploaded into SDS’s Customer Support System. This provides a richer, more comprehensive and higher quality client record for individual young people, that can be used by SDS and (through the hub) SDS’s partner agencies to understand what support is required by individuals and allocate services accordingly.

In 2011, a National Reference Group was established to provide oversight for data governance and coordinate the work around the hub. The Group is chaired by the Scottish Government: the Group’s membership includes SDS, Local Authority 16+ Co-ordinators and Local Authority Education Department representation. The remit of the group is to develop a partnership hub, housed and hosted by SDS but collectively owned by all the partners, which will allow for comprehensive sharing of data on young people.

The main benefit of having a more comprehensive and up-to-date set of information for young people was to give all delivery partners access to the information to determine the service support needs of the young people concerned and thus to provide, collaboratively, the most appropriate support to help each young person achieve an opportunity in education, employment or training on leaving school.

The first phase of activity (2011 to date) has included information sharing between Local Authority Education Departments (who collate data from their schools), and SDS. The Group has agreed what information these partners will input to the hub, and, importantly, their reporting requirements from the hub.

Before the hub existed, the customer tracking system which SDS had in place received only annual data downloads from Local Authority Education Departments on all young people as
they entered year 3 of secondary education. The SDS system held basic information on schools attended, gender, ethnicity, health and additional support for learning for individual young people. Careers Advisers used this information to identify those requiring targeted support. SDS did not share the information held on its system with education authorities on inputs and outcomes of SDS interventions with individuals. With the introduction of the hub, SDS and the education authority can regularly share data to deliver a better service to individuals at risk of disengaging with learning or training.

When young people leave school (approximately 55 - 60,000 per year, as indicated above), SDS records their destination and completes a School Leaver Destination Return (SLDR) within a 4 week period in October each year to show an individuals’ actual destination, followed by a second SLDR in March to check sustainability of the destination.

The second phase of importing data through the hub involves the collation of information from colleges, universities and the Department for Work and Pensions (DWP). These partners have been invited sit on the National Reference Group, where reports required by each partner will be agreed.

The establishment of the hub has significantly improved the way data can be shared between partners. Improvements made are both technical, related to IT systems, and practical/procedural. Data sharing agreements are in place with all Local Authority Education Departments in order to ensure that data sharing is a two way process, with information on SDS interventions being passed through the hub and therefore visible to Local Authority Education Departments. This information is shared on a monthly basis.

The key advantages of the hub are that the reports generated on a regular basis enable a more comprehensive and current record of individuals’ statuses to be maintained than was previously possible. This helps staff responsible for supporting those individuals most at risk of disengaging (or already disengaged) in making better decisions about the most appropriate support for those individuals to achieve a positive outcome.

**Capture of data relating to part time college and university students**

**227. The Committee would also welcome confirmation from SDS that it captures fully data relating to part time college and university students. This was a specific issue raised in the Open University's written evidence.**

This information is not presently captured or shared through the hub; it is not provided by colleges (or universities) through the hub. The primary purpose of the hub is to ensure all partners can successfully engage with those young people aged 16-24 who do not have an opportunity in education, employment or training (who are in a ‘negative destination’). A by-product is that the hub receives - and SDS (in CSS) captures and holds - extensive information on those who are in education, employment or training (a ‘positive destination’). Part time learning may be undertaken by those already in an opportunity/positive destination (eg. in full or part-time employment), where college study would not be considered as their primary ‘destination’.

Skills Development Scotland
April 2013
Headline points

- Concerns over allowing a self-regulatory approach to the putting together of the code appear to have been justified.

- The proposed code has ignored outright many recommendations from the independent review of higher education governance led by Professor Ferdinand von Prondzynski, and significantly watered down others.

- The code includes no provision at all for staff or student representation in decisions regarding the remuneration of principals.

- There is only a vague requirement for staff and students to be consulted on the appointment and appraisal of principals.

- The code recommends that the four ancient universities disregard their legislative duty to have rectors chair the governing body, despite an explicit understanding that the code would not be dealing with matters relating to legislative change.

- The need for fairer balancing of governing bodies is nowhere near as explicit in the code as recommended by the von Prondzynski review.

- ‘Compliance’ with the code is to be regulated by the institutions themselves, and the code makes no requirement for institutions to make changes to, or improve, governance.

Process and outcome of the codes development

When it was announced that the Committee of Scottish Chairs (CSC) would be undertaking the development of the proposed code, NUS Scotland raised serious concerns. Chief among these was the concern at the system of self-regulation being adopted, and the potential for a weakened code as a result, which would now seem to have been a very real one.

While the annexe to the code shows a number of consultation meetings taking place at all Scottish universities – involving staff, students, members of governing bodies, and senior management – we would question the impact of these meetings on the final code. As highlighted by staff and students, there are doubts around how much weight was given to their views in developing the code.

As we have stated in previous evidence, we are wholly supportive of university governance being underpinned by the principle of ‘responsible autonomy’. However, we have often felt that this balance was tipped firmly to the side of autonomy, with a lesser focus on responsibility. We believe that developing a much more transparent and democratic form of university governance is vital to ensuring that institutions are demonstrating genuine public benefit for the public funding they receive, and we do not believe this code will achieve this effectively.
From the beginning of this process we understood that the role of the Chairs was not to rewrite the original von Prondzynski report, but to find a way to take the report’s recommendations and apply them across the sector through the development of a code. What this code does instead is to cherry pick the recommendations it supports – though in many cases it waters them down – and ignore many others.

Requirements for legislative change

From the outset of the process of developing this code it was made clear that the chairs would not be dealing with those matters which required legislative change. We accepted this on the understanding that a second Scottish Government Bill would deal with these matters in the near future. However, in one recommendation the Chairs clearly stray in to this territory, and recommend to universities that they ignore, if not act against, existing legislation.

In the case of the four ancient universities, legislation provides that the elected rector is responsible for chairing court. The proposed code, however, recommends that universities ignore this provision.

It was no secret that the Chairs were against the majority decision of the von Prondzynski review in recommending elected chairs. In the code, the chairs are explicit in their dislike of the idea, and we believe they have acted outside their remit in attempting to entirely disregard the recommendation, and current legislation.

How the code differs from the recommendations of the von Prondzynski review

In 2011, the Scottish Government commissioned an independent review of higher education governance, chaired by Professor Ferdinand von Prondzynski and involving staff, student, and university representatives. The report of this review, published in 2012, made 17 recommendations for the future of university governance.

Below, we have detailed the differences between these recommendations and the proposed code. We have left out of consideration those recommendations requiring legislative change, as these were not within the remit of those developing the code.

1. von Prondzynski recommended: Staff and students should be involved in the appointment (including being members of interview panels) and appraisal of principals.

NUS Scotland’s position: We fully supported the recommendation for both the appointment and appraisal of principals to fully involve staff and students, including having students as full members of interview panels. We believe it is important to

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ensure that any appointee enjoys the confidence of staff and students, as something which is vital to the success of the institution.

Student representatives are recognised as having unique skills and knowledge which are important for the institution, as evidenced by their inclusion on governing bodies. These skills and knowledge would be equally useful and applicable in recruitment and appraisal of principals.

What the code says: The proposed code stops short of what von Prondzynski recommended. It includes a vague recommendation that appointment and appraisal should include ‘consultation’ with staff and students, which could be widely interpreted, and fails to offer significant or meaningful representation.

2. von Prondzynski recommended: Remuneration panels should include staff and student members.

NUS Scotland’s position: Having staff and student representatives as full members of remuneration panels would result in a greater diversity, balancing opinions and stakeholders; this was something also recommended by the Hutton Review of Fair Pay in the public sector².

The review found that university principals had the highest pay ratio in the entire public sector, earning 15.35 times the salary of the lowest paid in their institutions. Follow-up research by NUS Scotland found that in Scotland, this increases to 16.10 times the salary of the lowest paid. There are 88 individuals at Scottish universities who earn more than the First Minister (£140,000), and only two university principals who earn less than this.

What the code says: Not only does the proposed code not go as far as the von Prondzynski report recommended, and require institutions to include staff and student members on remuneration panels, it makes no reference at all to staff and students in its discussion of remuneration, other than to make note that remuneration panels should be careful not agree severance packages which staff and students might find excessive.

3. von Prondzynski recommended: Meetings of governing bodies should be held in public (with exceptions only for confidential or commercially-sensitive matters).

NUS Scotland’s position: NUS Scotland urged the Chairs to open up the proceedings of governing bodies, requiring institutions to hold open meetings, as this could go some way to improving transparency. This would be not only for non-member staff and students, but the wider community too.

We recognise that there may be those who feel unnerved by the idea of public meetings for fear that it would stifle debate and mean that important decisions were taken elsewhere, behind closed doors. However, we feel that if this were the case, it

² Hutton Review of Fair Pay in the public sector, Will Hutton, 2011
would indicate a much deeper issue with governance, and would paint a particularly negative picture of any institution choosing this route.

**What the code says:** What is provided for in the code stops far short of this, and places no requirement on institutions to do anything other what is already considered best practice.

4. **von Prondzynski recommended:** The governing body chair should receive reasonable remuneration and expenses should be made available to lay members in lieu of lost wages.

**NUS Scotland’s position:** While chairing stops short of a full-time role, it is entirely right that no candidate is dissuaded from putting themselves forward for the role, or committing a reasonable amount of time, because it is entirely unremunerated. Similarly, there is a strong case to be made for ensuring lay members are reimbursed for expenses incurred, including lost wages.

The alternative is to continue with the status quo where chairs and lay members come from a particular type of background – financially secure, often retired, and predominantly from business. We do recognise concerns around remuneration of chairs, and the relationship this could create between chair and institution, however, we would argue that if the chair is appropriate (and appropriately independent) for the position, then these concerns should not be borne out.

**What the code says:** The code makes no provision for specific remuneration of chairs, and instead applies a vague catch-all for potential remuneration for any independent member, again with no requirement. Instead it sets out considerations the board should have, applying a negative process.

5. **von Prondzynski recommended:** Governing bodies should always have a lay member majority. Senior management attendance (other than the Principal) should be restricted to necessary agenda items.

**NUS Scotland’s position:** Too often, senior managers will make up a majority of those in attendance at meetings, and as such the majority of conversation. While we recognise they are unable to vote at these meetings, in practice governing bodies rarely vote, and in most cases executive attendees do retain full rights to speak to agenda items. It is vital that the lay members, and staff and student representatives, are those who set the tone and direction of meetings.

**What the code says:** The proposed code does not limit senior management to attending only when there are specific agenda items they need to speak to, but provides only that their number should not ‘normally’ exceed independent members.

6. **von Prondzynski recommended:** Each governing body should be required to ensure that at least 40% of its membership are women and that its membership reflects the principles of equality and diversity.

**NUS Scotland’s position:** At present women are hugely underrepresented on boards, despite them making up more than 50% of the university student population,
and just fewer than 50% of university staff. Across Scotland, 74% of governing body lay members are men, just 26% are women. Even more worrying, looking at the chairs of governing bodies, there are three ‘Lords’ and two ‘Sirs’ yet not a single woman chair. The code presented a unique opportunity to radically address this disparity, and do much more to ensure governing take their equality and diversity responsibilities seriously.

What the code says: Instead, it provides for a vague recommendation that the governing body should ‘develop appropriate goals and policies in regard to the balance of its independent members’, which we do believe goes far enough to address the chronic underrepresentation of women on governing bodies.

Compliance with, and ownership of, the code

As we have already noted, when this process began, we were vocal in our disappointment at the self-regulatory approach being taken, with the CSC undertaking the work in isolation, with no staff or student representation on the group. To now go beyond this, as the code proposes, and have an entirely self-regulatory system for ‘compliance’ would be a step too far.

Ultimately, if institutions want to genuinely prove their ‘responsible autonomy’ then there is no place for non-compliance and continued self-regulation, particularly following a process which has allowed institutions to develop a code they wish to comply with, as opposed to one they should. Therefore, it is vital that there is a robust system of compliance with the code, backed up by appropriate legislation.

Furthermore, there is a real and pressing need to ensure that ‘ownership’ of the code is such that it balances the needs of all stakeholders. Our preferred option would be for the Scottish Funding Council (SFC) to ultimately ‘own’ the code, which we believe is necessary should it become – as we wish to see, and as referenced within the Post 16 Education Bill – a condition of grant, with regular engagement on its content, and potential development or alteration, with relevant stakeholders.
Steering Group on Scottish Code for Good Higher Education

Introduction

The draft Scottish Code of Good Higher Education Governance was published on 16th April 2013. It was developed by a Steering Group, chaired by Lord Smith of Kelvin, and followed the Review of Higher Education Governance chaired by Professor Von Prondzynski.

It is widely accepted that the current system of governance in Scottish universities is good, and the development of a new code is largely to ensure continuous improvement.

The draft Code is ambitious in seeking to meet Professor Von Prondzynski’s recommendations and in setting out new standards across a wide range of aspects of university governance. It will become a key element in the relationship between the Scottish Funding Council and universities. Institutions will be required to follow the Code, as a condition of public funding, on a “comply or explain” basis.

The draft Code is currently the subject of a further period of consultation, during which the Steering Group will consider any evidence that is forthcoming. It is anticipated that a final Code will be published during the summer.

The Steering Group believes that when the final Code is implemented, which could be as soon as August 2013, Scotland’s university sector will take a significant progressive step, building substantially on historic good governance across the sector and making our universities more representative, democratic and accountable than ever before.

Building a Code on evidence

The draft Code is built on evidence gathered during a substantial consultation exercise, which included:

- 78 separate meetings with stakeholder groups held at university campuses across Scotland with staff, students, union representatives, lay governors and senior management.
- Input from the five major unions recognised by universities in Scotland.
- 12 written submissions including those from staff and student unions, CBI Scotland, the Royal Society of Edinburgh and individuals.

In total, more than 360 individuals were directly involved in consultation meetings, the majority of whom were staff, students and union representatives.

The structure of consultative meetings in each of Scotland’s 19 higher education institutions was determined by the institutions themselves. Details of the programme of meetings have been published on the Steering Group’s website: http://www.scottishuniversitygovernance.ac.uk/meetings/
The resultant draft Code is now the subject of a further period of consultation, which will close on 11th June, 2013. Following this period, the Steering Group will meet to consider the further evidence received and will then publish the final Code for implementation by all Scottish higher education institutions from August 2013.

A Code requires precision and clarity in the language used and, where there are appropriate sections in the existing CUC Code that are fit for our purpose, we have adopted these. In other areas, we have explored new concepts and measures to enhance university governance. For instance, the draft Code:

- Enhances the obligation of the governing body to protect academic freedom, specifically stating that: “The governing body should regularly review its policies relating to compliance with its statutory and other duties, including the defence of academic freedom..., to ensure that they conform to good practice”

- Introduces new requirements to secure the active involvement of staff and student members on the Nominations Committee, specifically, “Appointments of the Chair, and of Members appointed by the governing body, shall be managed by a Nominations Committee, normally chaired by the chair of the governing body and which includes at least one staff and one student member of the governing body”

- Requires that equality and diversity are important considerations of governing bodies, through a goals-based approach; specifically that: “The governing body shall establish appropriate goals and policies in regard to the balance of its independent members in terms of equality and diversity, and regularly review its performance against those established goals and policies”;

- Sets out key considerations for universities wishing to remunerate their lay members, in the interests of enabling participation by members from diverse backgrounds. Specifically, the code states that: “Before any decision to remunerate is taken, the governing body should consider:
  - the provisions of charity law;
  - the implications of the decision for the division of responsibilities and overall relationship between the governing body and the executive
  - the public service and philanthropic ethos which applies generally among HE governors; and
  - the need to be explicit about time commitment and to apply a formal process of appraisal and performance to the remunerated governor(s)

- Introduces new requirements to secure the involvement of staff and students in the process for appraising the performance of the Principal and introduces new requirements for clarity and transparency of Remuneration Committee decision-making and the publication of salary information of senior staff, with full and open reporting of decisions to all court members. The code specifically states that, “the policies and processes used by the Remuneration
Committee shall be determined by the governing body, and the Committee’s reports to the governing body shall provide sufficient detail to enable the governing body to satisfy itself that the decisions made are compliant with its policies.

- Furthermore, “The remuneration committee should identify those posts in the senior team which are regarded as forming the senior executive team, and it should publish the salaries of this group of staff by salary band”, and “in assessing the performance of the Principal views should be sought from staff and student members of the governing body as well as independent members”

- Introduces new requirements to secure the involvement of staff and students in the process for selecting chairs of governing bodies specifically, over and above the requirements relating to membership of the nominations committee itself. The draft Code says: “When selecting a new chair, a full job specification including a description of the attributes and skills required, an assessment of the time commitment expected and the need for availability at unexpected times shall be produced. In developing such a job description, arrangements shall be put in place to consult staff and students before it is finalised”

- Ensures that university courts take a more strategic approach to creating governing bodies which meet primary responsibilities and which are representative of Scottish society as a whole. The code states that: “There shall be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence. The governing body shall draw up and make public a full evaluation of the balance of skills, attributes and experience required for membership of the governing body, which shall inform the recruitment of independent members of the governing body. The membership of the governing body shall be regularly assessed against this evaluation”

- Enhances the openness and transparency of the proceedings of governing bodies including the publication of agendas before meetings and a breadth of broader engagement with the community within and beyond the campus. Specifically, the code states that: “The proceedings of the governing body shall be conducted in as transparent a manner as possible, and information and papers restricted only when matters of confidentiality relating to individuals, the wider interest of the Institution or the public interest demands, including the observance of contractual obligations. The governing body shall also ensure that the Institution has in place appropriate arrangements for engaging with the public and the wider communities which it serves”

- Ensures that governing bodies have a clear majority of independent lay members within their membership, to support the full participation by staff and student members, and will identify one lay member who will improve accountability by providing a means by which members might raise concerns about the chair, and lead appraisal the chair’s performance once a year. The
code states specifically that: “The governing body shall have a clear majority of independent members, defined as both external and independent of the Institution”, and “The governing body should appoint one of its independent members as a sounding board for the chair and to serve as an intermediary for other members who might wish to raise concerns about the chair. Led by the independent member so appointed, the members of the governing body should meet without the chair present at least annually to appraise the chair’s performance.”
University and College Union Scotland

Preamble
UCU Scotland has 6,500 academic and academic-related members in Scottish higher education institutions (HEIs). This written evidence on the Draft Scottish Code of Good HE Governance represents our initial view on the draft code, representing views of UCU members in Scotland, across many varied institutions, including Pre and Post 92 HEIs, as well as members in a small specialist institution.

Introduction
UCU believes that the draft code is written by managers for managers, which is perhaps unsurprising, considering the lack of staff and student involvement in the steering group and code development, and given the background of the consultants who provided the Secretariat to the Steering Group. The union dismisses the claims that the draft code will transform accountability and transparency, as we do not see this that this draft code makes any significant or fundamental changes to the status quo. There is no mention in the draft code of places on governing bodies for trade union representatives, which was a recommendation from the Von Prondzynski Report. This is despite the fact that currently some universities have places on their governing bodies for non-academic trade union representatives. Indeed, there is no mention in the document of trade unions anywhere other than in the annex listing meetings held.

Despite the warm words in the draft code press release about staff and student representation, UCU does not believe this draft code is fit for purpose. It fails to deliver any major reforms of governance structures, and the inclusion of staff and students within the draft code is minimal. UCU has given evidence of major and widespread concerns of staff on the stewardship of our universities, when we submitted responses to the Review of Higher Education Governance, in our response to the code consultation, and in previous evidence to this Committee. These major concerns cover many universities and are fully listed but have been ignored. We stated that the code development process was flawed from the start and it has resulted in a faulty draft code.

The main purpose of the code is to implement the Report of the Review of Higher Education Governance chaired by Professor Ferdinand von Prondzynski where possible, but this draft code has failed to fully implement any of those proposals. We continue to call for the full implementation of the Review, and for this code to put into practice those recommendations which do not require legislation.

The Von Prondzynski report set out a definition of governance in universities which is:

- effective stewardship of the university to secure its sustainability over the medium and long term;
- safeguarding the mission of the university and the services it provides for the public benefit;

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1 Pg 10 UCU Response to Review of Higher Education Governance
• securing the proper and effective use of public and other funds; and
• ensuring stakeholder participation and accounting to the wider society for institutional performance.

We believe that this draft code fails this definition.

Purpose and Main Principles of Governance

The principles listed in the draft code do not reflect the stewardship of a public educational body and could be applied to any public or indeed commercial bodies. While we welcome the principle of appropriate participation of key constituents, including students and staff, we note the reference to “appropriate” suggests limited participation at the discretion of the governing body or management. Our main point is that this lack of participation has led to ill informed decisions by governing bodies Error! Bookmark not defined. who have not been privy to the full facts. UCU believes that a governance code should deliver recommendations to improve the management and governance of universities in Scotland; restore the confidence of staff in the governing bodies; and strengthen the autonomy, democracy and collegiality of Scottish higher education institutions.

This document does not address the Von Prondzynski recommendations.

Main Principles

These paragraphs largely outline the status quo rather than providing a fresh underpinning for democratic and transparent governance of our higher education institutions. Though they talk of participation of staff and students that already occurs in most institutions, it is the selection and election of staff and union representatives that is key, and this is not addressed in the draft Code. These staff governors should be representative of all staff, whereas presently many staff representatives on governing bodies from the Senate or academic body represent the management view. Further, there is no proposal to increase representation of staff in important committees which make decisions on the appointment and appraisal of the Principal, on appointments to the governing body, and on remuneration for senior management.

Representation

Union representatives are the only staff and students that have the knowledge to provide this view without fear of recrimination. Yet unions do not feature at all in the code.

Presently governors do not have the required balance of skills, as our analysis has shown2 most lay governors are from management backgrounds and do not represent the diverse community in our universities. Von Prondzynski’s Report made a number of recommendations on developing more diverse governing bodies, which are largely ignored by this draft code.

2 Table 1: Lay representation on governing bodies from a managerial background, ibid
Targets
Many of the principles use inappropriate business jargon about performance indicators and targets but neglect the main purpose of universities which is to educate and develop knowledge. While we agree that universities should be accountable for public and private funding, their raison d’être is to provide learning and knowledge, and so all the other criteria should flow from this. If done appropriately in a collegiate manner then the university will be responsive to the needs of its learners, staff and the wider community, and will provide an ethical lead. Performance indicators are now developed through Outcome Agreements with the Funding Council, but this process is neglected in the draft code, even though this is now one of the most crucial elements of the role of governing bodies.

Equality
It is odd that equality legislation is not mentioned given an institution’s duty of care for students. Similarly, the alarming inequalities in the makeup of governing bodies is not addressed by the draft code.

Chairs of Court
While we welcome the proposed increased democracy in choosing chairs of governing bodies, it is not the election that was recommended by the Governance Review Report. Further, in five institutions the Rector is already elected by students to chair the Court. There is a danger that this new draft actually dilutes the important role of the Rector as the elected chair of the governing body in some HEIs. This cannot be changed without amendment of the Statutes and Act of Parliament.

We agree with the Governance Review that chairs should be elected. Further, the present nomination committees for court membership tend to be dominated by both the senior management team and existing lay members from the business community which leads to similar people being appointed. UCU recommends that staff and student representatives should be included on the appointment committees. This will increase transparency of the appointments process and allow for a broader view to be taken in selecting and appointing candidates.

Secretary of Court
We have called for a fully independent secretary who is responsible to the whole body not just the chair. The code proposes to give even greater managerial power to this role which increases the conflict of interest. UCU believe it is critical for staff to be able to contact lay members of Court without difficulty through an independent secretary. At the moment, this contact varies across HEIs, but in some cases the only contact available is through a Court administration office, which can present difficulties due to this conflict with the management roles.

Communication
Communication regarding decisions is crucial to the whole university community. Therefore it is surprising that only half the universities have the minutes of governing body meetings up to date on their web pages. A further seven either do not publish the minutes at all or have failed to keep them up to date by over a year. In some
cases key decisions taken by Courts are viewed as “Reserved Business” and relevant papers and minutes of these items are not published or available to staff involved. The proposals in the draft code do not address this issue of transparency and inclusion; they are essentially the status quo.

**Conclusion**

University governing bodies must continue to be seen as purpose-designed, collegial institutions, not as clones from a business-corporation template. We believe there should be a much enhanced involvement of staff and trade union governors, and more stable input from student representatives. Staff and students are those with direct access to the university community. Such representatives should be encouraged to brief lay governors about campus views and concerns rather than be made to feel that the proper business of a governing body is only what senior management wants to have discussed and endorsed.

UCU believes that the code should lead to improvements in the management and governance of universities in Scotland, restore the confidence of staff in the governance of universities, and strengthen the autonomy, democracy and collegiality of Scottish Universities. This in turn should mean that the university management undertakes proper and thorough consultation with staff and unions. It should also contribute to the reform of universities envisaged by the government. This draft code fails to meet these objectives. It does not even recognise new developments within university governance such as outcome agreements. We therefore question the ability of the draft code to increase democracy but also the suitability of the code for the present governance process.
The EIS welcomes this opportunity to give written evidence to the Education and Culture Committee on the draft Scottish Code of Good HE Governance, although it is disappointed not to have the opportunity to give evidence to the Committee in person on 7 May 2013.

The EIS is the largest educational trade union in Scotland with around 60,000 members in schools, colleges and universities across Scotland. The EIS is the sole union recognised for academic staff at five Scottish HEIs and shares recognition at a number of other HEIs. The EIS is the only education union in HE that makes all policy decisions here in Scotland.

The draft Scottish Code of Good HE Governance (henceforth, the draft code) describes itself as a set of main principles supported by guidelines and examples of good practice and subsequently states that governing bodies will, wherever possible, comply with the Code. The draft code also states; Given the diversity of Scottish Higher Education Institutions it is possible that certain of the principles can be met by means different to those envisaged in the guidelines.

The stated aim of the draft code (which is reflected in the explanatory notes to the Post-16 Education Bill currently before Parliament) is, “The Scottish Funding Council will require Institutions to follow the Code as a condition of a grant of public funding.”

The EIS does not believe that the draft code is fit for this purpose as it is merely a set of general principles with a few examples of good practice, with vague statements of openness, transparency and accountability - their vagueness means that it will be difficult to show whether HEIs meet these “requirements” or not. This is not a document that can meaningfully be used as a condition of public funding as the Post-16 Education Bill suggests.

Further, the draft code’s “comply or explain” mechanism is flawed and will prevent the document from being a true condition of public funding. This undermines a key tenant of the Post-16 Education Bill. Ultimately it may force Ministers or the SFC to use another measure to determine good HE governance – a provision already available within the current draft of the Post-16 Education Bill.

The draft code does offer some recommendations that are a small evolution of the Committee of University Chairs (UK) Governance Code of Practice (henceforth, the UK code) and could potentially marginally improve governance, but the vagueness of the code, its voluntary nature and its ‘comply or explain’ nature fundamentally undermines the draft code and its aims.

The failure of the Steering Group to include staff or student representatives led to a group without diversity, which in turn led to a draft code that simply meets the needs
of its narrow group of members. This flaw fundamentally undermines the draft code. The irony that the Steering Group espouses diversity in governing bodies’ membership but was fatally undermined by its own lack of diversity is not lost on the EIS.

The EIS is disappointed with the draft code as it seems to simply reinforce the lack of accountability of universities and consolidate existing power structures. The EIS shares the principle of responsible autonomy – but does not believe that the draft code will promote responsible autonomy.

The EIS sets out specific areas of concern below and has made several suggestions as to how the draft code must be improved if it is to be a meaningful document and fit for purpose as a condition of public funding for a HEI.

<table>
<thead>
<tr>
<th>The preface of the draft code states that the draft code seeks to:</th>
<th>EIS comments and response to the draft code</th>
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<tbody>
<tr>
<td>a. enhance the obligation of the governing body to protect academic freedom</td>
<td>It is a legal requirement for all HE governing bodies to protect academic freedom as defined in the 2005 Further &amp; Higher Education Act (Scotland). The Code does not go beyond this – and does not go as far as the Prondzynski Review’s recommendations on Academic Freedom. In short, the draft code adds nothing new on this.</td>
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<td>b. introduce new requirements to secure the active involvement of staff and student members on the nominations committee</td>
<td>This is new as the UK code simply specifies at least three lay members (which could include staff and students). However: • Staff is not defined – it may be a non-independent member of the court such as the Vice Principal. • The draft code does not provide “requirements”, merely guidelines. To be requirements then these recommendations need to be binding. Staff should be defined as “elected staff representatives” and non-independent staff should be excluded.</td>
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<tr>
<td>c. require that equality and diversity considerations are a key part of building</td>
<td>This is new, although the UK code states; There should be a balance of skills and</td>
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<td>the membership of governing bodies, through a goals-based approach</td>
<td>experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence.</td>
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<td>d. require governing bodies to regularly review progress on diversity of membership and to put in place associated broader measures to support court members with caring responsibilities;</td>
<td>This is new, although arguably it is seeking to meet the principle of making reasonable adjustments under (and arising from) the Equality Act (2010)</td>
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<td>e. set out key considerations for universities wishing to remunerate their lay members, in the interests of enabling participation by members from diverse backgrounds;</td>
<td>This is already set out in paras 2.29 and 2.30 of the UK Code. The draft code recognises this as it refers readers to the CUC (UK) guidance for further information. (p23)</td>
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<td>f. introduce new requirements to secure the involvement of staff and students in the process for appraising the performance of the Principal;</td>
<td>The draft code’s “requirements” in this regard are set out on page 12: “Furthermore, in assessing the performance of the Principal views should be sought from staff and student members of the governing body as well as independent members.” This suggestion seems vague and opaque – and excludes student/staff representatives from the Committee looking at appraising the Principal. Staff members should exclude non-independent staff members of the governing body – e.g. Vice Principals etc. To make this suggestion work – students and staff should be part of the appraisal committee or at least part of the formal evidence gathering session.</td>
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<tr>
<td>g. introduce new requirements to secure the involvement of staff and students in the process for selecting chairs of governing bodies;</td>
<td>This is a small step forward and to be welcomed. Staff should be defined as elected staff representatives. The voluntary nature of the code undermines the term “requirements”.</td>
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<td>h. introduce new requirements for clarity and transparency of remuneration committee decision-making and the publication of salary information of senior staff, with full and open reporting of</td>
<td>The SFC already requires information on senior staff salaries to be published. The UK code (para 2.50) requires information to be shared with the governing body.</td>
</tr>
<tr>
<td>i. ensure a strategic approach to consideration of the breadth of skills and attributes required by courts, to seek to meet these through the active promotion of lay membership across the breadth of Scottish society and to ensure that all members receive effective induction and training programmes</td>
<td>body – as opposed to “court members” in the draft code – which seems more accountable.</td>
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| Much of the nominations process for new governing body members is covered in the UK code (paras 2.51 to 2.54) Induction is covered in para 12 of the UK code and also para 2.25 of the UK code: *It is the responsibility of the chair of the governing body, working with the secretary as appropriate, to ensure that all members of the governing body, when taking up office, be fully briefed on the terms of their appointment and be made aware of the responsibilities placed on them for the proper governance of the institution. They should receive copies of background documents at the time of their appointment. These could include:*  
* a copy of this guide  
* the institution’s annual report, audited financial statements, and financial forecast  
* the overall strategic plan, and strategy documents covering areas such as learning and teaching, research, widening participation and estates  
* notes describing the institution’s organisational structure  
* the rules and procedures of the governing body.  
It is important for governing bodies to provide an induction or briefing session for new members, to explain their responsibilities, the function of the governing body and other organisations within HE, and the strategic objectives of the institution. | This is covered by UK code (para 2.5): *The agenda and supporting papers should be circulated in advance and the decisions* |
of broader engagement with the community within and beyond the campus; and


The breadth of broader engagement is too vague to respond to – although the EIS agrees in principle.


k. ensure that governing bodies have a clear lay majority within their membership, to support the full participation by staff and student members and to identify a lay member who will improve accountability by providing a route for other members who might wish to raise concerns about the chair, and to lead an annual appraisal of the chair’s performance.


The clear majority of lay membership is enshrined within the UK code para 10 (Part 1):

The governing body shall have a majority of independent members, defined as both external and independent of the institution.

The Chair’s annual appraisal is new to the draft code and welcomed in principle, although the proposed method of appraisal seems missing.

The appraisal of governors receiving remuneration is covered in para 2.29 (Part II) of the UK code.

Further EIS points on the draft code:

1. The draft code makes one improvement to the UK code which is not highlighted in the preface’s bullet points; that the governing body will review its effectiveness “normally not less than every three years”, it is not less than every 5 years in the UK code. The EIS welcomes this improvement. However the EIS believes that internal reviews of governing body effectiveness should occur every year – and should inform the annual appraisal cycle for the Chair, remunerated lay governing body representatives and the Principal.

2. The EIS welcomes the principle that the Scottish Funding Council (SFC) will require Universities to follow the (final) draft code as a condition of a grant of public funding, however the Universities also state that the code “can be met by means different to those envisaged in the guidelines” – which is far too vague and devalues the code.

According to the code, universities will treat the (draft) code’s recommendations – which may be a condition of SFC funding - on a “comply or explain basis”:

“Accordingly the Code is issued on a “comply or explain” basis. This approach is widely accepted as the most suitable means of achieving good governance in an effective and transparent way. It is expected that governing bodies will, wherever possible, comply with the Code. Institutions should report in the corporate governance statement of their annual audited financial statements
In reality, therefore, the idea that SFC public funding for a particular HEI is linked to the HEI satisfying the draft code is likely to be difficult. Let us consider Academic Year (AY) 2014-15, the SFC gives University of Poppleton £300m on condition that it satisfies the draft code and its Outcome Agreement for AY2014-15. The University of Poppleton does not meet some parts of the draft code – but makes an explanation as to why not in its AY2014-15 Annual Report – which would be shared with the SFC by 31 December 2015 and publicly published in early 2016. It is difficult to see how the University of Poppleton is accountable for its failure to meet the draft code in such circumstances or how its funding for AY 2015-16 relied on meeting the draft code the year before.

The draft code makes no mention of how the SFC (or the government) examines the explanation or can claw back any funding. In other words, the “comply or explain” does not meaningfully increase accountability or make the code enforceable. For this flawed “comply or explain” mechanism alone – the draft code is unfit for its purpose of being an implied part of the Post-16 Education Bill i.e. a condition of public funding.

3. The EIS has made several submissions outlining how effective university governance should improve the quality of university management – and that the two should not be considered mutually exclusive. One recommendation that the EIS made to the authors of the draft code was that the Principal should not be a member of court and that the number of senior university staff at present at governing body meetings in ex officio (usually as non-members) should be minimised or eliminated entirely. The EIS had suggested that senior university managers (i.e. key officers) only attend the items for which they have an input. The draft code states (p28):

“It is desirable for the effective conduct of meetings that key officers are in attendance to offer guidance and advice. However, the number of those in attendance should be constrained so as not to dominate the business of the governing body and normally should not exceed the number of independent members present.”

The use of the caveat “normally” undermines this recommendation.

According to the draft code, independent members should make up not less than half of the governing body – e.g. 13 of the 25 maximum. The EIS believes that the draft code’s permission for up to 13 “key officers” to be present at meetings – in addition to the Principal and up to 12 other non-
independent governing body members — will dominate governing body meetings, and runs contrary to the stated aim.

4. The draft code suggests that governing bodies should determine their own quorum; however, the EIS believes that no governing body meeting should be quorate unless there are 50% or more independent members present.

5. Every Scottish University (except UHI) has recognised trade unions as representing the views of staff — yet the draft excludes the recognised voice of staff from governing bodies. This is contrary to the conclusions of Prondzynski’s Report. Further, the draft code makes no mention of how many staff representatives should be identified or whether they must be elected.

6. The draft code refers to the role of “chairs” of the governing bodies and the role of “rector” in four universities. An overlap is identified between these two roles within these four Universities but no meaningful guidance is given to remedy these overlaps — this will not lead to consistent governance or promote good practice.

7. Universities Scotland has called the draft code “a progressive code which would set Scotland’s universities at the leading edge of accountable governance amongst all of Europe.”

The EIS shares the principle of responsible autonomy in line with the Salamanca Declaration, issued during the creation of European Universities Association (EUA) in 2001, holding “autonomy with accountability” as its first principle. The EUA Autonomy Scorecard gives UK HEIs the highest autonomy score within the European Union — which makes Universities Scotland’s claim difficult to understand — as high levels of autonomy inherently imply independence and lack of accountability to external bodies.

The EIS, therefore, finds it difficult to believe that the draft code would put Scottish Universities at the leading edge of accountable governance, although it would accept that the draft code would put Scottish Universities at the leading edge of autonomous governance — entirely free from democratic accountability.
University Student Association Presidents

We are writing to you, as representatives of university students across Scotland, in your capacity as Chair of the Education and Culture Committee. We understand that the committee will be taking additional oral evidence on the proposed ‘Scottish Code of Good HE Governance’, ahead of Stage 2 of the Post 16 Education (Scotland) Bill. In order to better inform the committee’s view of the proposed code, we would like to highlight our deeply held concerns with its process and outcome.

Many were unanimously supportive of the original review of university governance undertaken by Professor Von Prondzynski. As student representatives we have long recognised the need to ensure transparency and accountability in decision making and that students and students’ associations are fully and properly involved in the decision making – at all levels – of university governance, as genuine and meaningful partners. The recommendations of Von Prondzynski would have taken us closer to achieving that.

What we have, instead, been presented with is a proposed code which would appear to largely ignore the recommendations of the Von Prondzynski report.

Where Von Prondzynski recommended very clear actions and outcomes relating to student representation, and explicitly called for their greater involvement in many ways, the proposed code stops far short of these. Most of Von Prondzynski’s recommendations have disappeared in a sea of ambiguity.

When it was announced that the Chairs themselves would be taking forward the development of the code, many were concerned at the apparent and extreme self-regulation which this appeared to give rise to. However, we were willing to go along with its work, in the hope of being properly consulted, with our views carried forward. Quite simply, we do not think we have been listened to.

The Chairs have pointed to the ‘consultation’ exercises that they undertook, at every University across Scotland, and the number of staff and student representative involved. However, we do not think that quantity of these visits should become a misnomer for their quality, or indeed the end product. It is clear from the code that our views were not given the same weight as others, not least the senior management of the various institutions.

We would like to make clear that we feel let down by the proposed code. Where the Von Prondzynski report gave us hope that student representation and partnership between university management, governing bodies, and students would be improved and codified, instead we have more of the same. Far from the code being ‘the most progressive in Europe’ it is one which pays only lip service to student representation and this consultation that the Chairs have undertaken has treated the views of students as the most extreme case of tokenism.
Ultimately, because of what we view as shortcomings in both the process and the outcome, we simply cannot accept the code in its current form. As UCU have made clear in their public response to the code, they do not feel that staff have been properly listened to during the process, and we would agree from the student perspective.

We hope that the committee would reflect on whether the aims and intentions of Von Prondzynski have been met, and use the additional evidence session to question just how this code differs from what exists now.

Carla Fyfe, Student president, Glasgow Caledonian University Students Association
Anne-Claire Deseilligny, Student President, Aberdeen Students Association
William ‘Mocko’ Mohieddeen, President, University of Abertay Dundee Students’ Association
Katrina Paton, President of UHI Students Association, Ceann-suidhe UHISA, Moray College UHI
Garry Quigley, President, Students' Association of University of the West of Scotland
Sam Gibbs, Union President, University of Stirling Students’ Union
Malcolm Moir, President, University of Strathclyde Students’ Association
James McAsh, EUSA President, University of Edinburgh
Tom Zanelli, Student president, Napier Students Association
James Harrison, President, Students' Representative Council, University of Glasgow
Mike Ross, President, Heriot-Watt University Student Union
Present:

George Adam    Clare Adamson
Colin Beattie  Neil Bibby
Neil Findlay (Deputy Convener)  Stewart Maxwell (Convener)
Joan McAlpine  Liam McArthur
Liz Smith

Also present: Jenny Marra

**Post-16 Education (Scotland) Bill:** The Committee took evidence on the Bill and the draft Scottish code of good Higher Education governance from—

- Professor Ferdinand von Prondzynski;
- Professor Russel Griggs OBE;
- Robin Parker, President, NUS Scotland;
- Mary Senior, Scottish Official, University and College Union Scotland;
- Lord Robert Smith of Kelvin, Chair, and Simon Pepper, Committee Member, Steering Group on Scottish Code for Good Higher Education.
On resuming—

Post-16 Education (Scotland) Bill: After Stage 1

The Convener: The next item is an oral evidence session on the Post-16 Education (Scotland) Bill and the draft Scottish code of good higher education governance. We will take evidence from two panels this morning, and I welcome to the committee our first panel: Professor Russel Griggs OBE.

Professor, you should be sitting beside Professor Ferdinand von Prondzynski, who I am told is on his way—his train was delayed. If you do not mind, we will just kick off and he will, I hope, join us shortly.

I begin with a general question. You wrote your report on further education some time ago. Now that the bill has gone through stage 1, what is your view of the process that has led from your report to the current bill that is before Parliament?

Professor Russel Griggs: I am delighted to be here this morning to give evidence. I will answer that question in a number of ways.

When you sit down to do these reviews, it is a wonderful place to be because you can just think and say what you want in many ways. However, anyone who has done such reviews must understand that at some point they have to go back to the world of politics, where there are different nuances and ways of doing things.

I was asked recently what I thought of the bill, and my answer would be that it is okay. Like all these things, I do not think that anyone who has ever written a review has ever had everything—100 per cent of it—transferred into legislation.

With regard to the key areas, such as the need to move towards a better structure guided by a strategic forum with a bigger asset base for regions to build their educational provision, I am satisfied with the direction in which the bill has gone. The committee might be surprised to hear that I would have done some of that work more quickly, as I do not think that some of it has gone as fast as it needed to go. I would probably have been less flexible than the bill has been on some of the arrangements for colleges coming together, but I understand that there are political and other reasons why the approach in the bill has been taken.

I still think that we have a way to go in figuring out what we mean by outcomes. There is a lot of work for the Scottish Further and Higher Education Funding Council in getting outcomes down to a simple thing. If you want to turn dirty water into clean water coming out of a pipe, you test the water coming out of the pipe, not what goes on inside the pipe. There is still an awful lot of testing of what goes on inside the pipe rather than looking at the outcome, so there is more work to be done in that regard.

The strategic forum needs to focus on some of the issues that I set out in my review, such as looking at where the college sector goes. To go back to the point that I made in the very last paragraph of my report, we cannot just say, “This is how it is and this is how it will be for ever.” The bill is there to set out a platform on which everything else can be built, and I am content that it has started to move that process forward.

Liz Smith: Professor Griggs, you said that you are a bit concerned about some of the outcomes. Obviously, post-16 is designed to deliver better outcomes. Can you give us a bit of detail about your concern?

Professor Griggs: My concern is about the length of the outcomes. To me, there is still far too much detail about the “how”. If you take an outcome as the “what”, it must be the college or college board that runs the “how” to achieve that “what”, because there are many ways of getting from A to B.

The point that I made in my review is that we must give college boards the flexibility to have a short list of quite clear outcomes for what they are achieving but not make them hidebound by restrictions that do not allow them to be flexible, which they might have to be because of their local community or the type of student that they have.

In the work that the funding council has done to date—although the year 2 outcomes are better than the year 1 outcomes—I still feel that there is too much concentration on certain aspects. The situation varies from one college having a two-page outcome agreement to others having very long ones. My concern is about the amount of detail that the funding council still asking about in the middle around key performance indicators that are to do with the “how” rather than the “what”. 

Liz Smith: Sorry, but I am a bit confused. I was not talking about outcome agreements but about the bill, because the outcome agreements are there in any case, irrespective of legislation. Can you be specific about how the bill could be improved?

Professor Griggs: I am fine with the bill but, as you know, I have spent a lot of my life worrying about how bills will work in practice through regulation. I am happy with the bill in terms of outcomes, but I am still concerned about how the funding council will take them into consideration, as it will ultimately have to create the outcomes.
Liz Smith: It is the outcome agreements that you are concerned about.

Professor Griggs: Correct.

Liz Smith: Right. On another theme, it was put to us by a couple of college principals when we took evidence that they were slightly envious of the university sector having a new code of governance. Would it be good to have that in the college sector too?

Professor Griggs: That is for the strategic forum to decide. I hope that the strategic forum will consider what things need to be common and done as a national standard. I would have no problem with a college code of governance, but it is up to the forum to consider whether it wants that.

Liz Smith: You said that the bill is okay, but that implies that certain things could perhaps be better. Do you think that having a code of governance would improve the college sector?

Professor Griggs: It depends. The question goes back to my point about outcomes, because it depends how restrictive the code of conduct would be and whether it was sensible restriction. I am not trying to avoid the question, but the answer depends on how you write something. If the code of conduct gave people a guideline or way of getting to whatever they want to do, without prescribing how to achieve it, that would be okay.

The Convener: I will interrupt proceedings to welcome Professor von Prondzynski to the meeting. I am glad that the train got you here eventually—thank you very much for coming along this morning.

Neil Findlay: Professor Griggs, saying that the bill is okay, is probably one of the more positive comments that we have had about it. I think that we are likely to see a large number of amendments to the bill because of how it stands at the moment. A number of people have said that the bill should be delayed or taken away and brought back again. What is your comment on that?

Professor Griggs: I made the point in my opening remarks that, in many ways, we are having to wait too long for bits of the bill. Let me take my own position as an example. I am retiring as chairman of Dumfries and Galloway College, but we cannot look for my replacement until the legislation is passed. A number of other colleges will face a similar situation. If we are going to move on to a new type of governance of further education across Scotland, the sooner we move to it the better, because things are being held back just now. We have gone less quickly than I would have liked in some respects. I watched the evidence session to which Neil Findlay alluded, and I am not sure that I would agree with the argument of the person concerned.

Neil Findlay: Are you saying that you could not appoint someone under the existing rules?

Professor Griggs: We could.

Neil Findlay: Either you can or you cannot.

Professor Griggs: But they would be appointed only up to the point of the legislation, which means that they would then have to go through another process.

Neil Findlay: As is the case with any legislation, surely.

Professor Griggs: But we are talking about September or October. Are you sensibly telling me that I should employ a chair for two months to get to September?

Neil Findlay: Well, that is the opinion that you are expressing. Some of us would express the opinion that it would be better to delay the bill and get it right.

The Educational Institute of Scotland has stated: “The complexity of the proposed structure will confound all but employees and public policy experts.”

The cabinet secretary said that the structure is quite simple. If you agree with the EIS’s view, do you agree that that is a problem in itself? If you agree with the cabinet secretary’s view, can you explain the structure in a simple, quick way so that we can get our heads round it?

Professor Griggs: My structure was quite simple: we would move to 13 regional boards. The cabinet secretary has chosen, for his own reasons, to make the arrangement more flexible and to allow people to do things quite differently. I hope that there will be a bigger move over the coming years towards a more regional structure. Every piece of evidence that I have seen, both in this country and elsewhere, has shown benefit in cases where colleges have come together in a bigger community. I have not seen one example where such a move has shown disbenefit.

Neil Findlay: We are starting to see the practical implications of what is happening in colleges, particularly in Edinburgh, with an example that the committee has discussed several times—the closure of Edinburgh College’s construction section at its Midlothian campus. Is that a positive outcome for the students of that area?

Professor Griggs: If the board of the college has considered how to use its assets properly to give the best education to the people in the area and has decided that it wants to put the construction part in location A rather than B, and if
that is the correct thing to do, I have no issue with it.

**Liam McArthur:** You spoke earlier about the lack of powers in the bill, and you used the analogy of a pipe and trying to turn dirty water into clean water. I take it from that that your impression is that there is too much of an inclination in the bill, either through ministerial powers or through the Scottish Funding Council’s powers, to keep opening up the pipe and micromanaging the process so that whatever emerges at the end accords with the objectives that have been set.

**Professor Griggs:** I would go back to the situation before the bill was introduced. There has always been a concern in the college sector about the amount of information that the funding council and other organisations collect and about the reason for collecting it. I have not been clear to college boards why the funding council and others collect some of it. I agree with you that we still have concerns that we are being asked for things that do not really affect outcomes and are just bits of micromanagement.

I understand, in essence, why some of those things have to happen. We all have to work within financial guidelines. There are instances, however, where that becomes restrictive or we end up using limited resources do things for which nobody really sees the necessity. I still have concerns in that regard.

To be fair to the funding council, I said in my review that it would find it a big challenge to move towards an outcome-based framework. By its essence, the funding council is a bank and a data collection organisation. The council is experiencing a challenge in moving towards that framework as quickly as it can. Year 2 has been better than year 1, but a bit of work is still needed.

**Liam McArthur:** You refer to the role of the funding council as that of a bank and a data collection operation. There is a view that the funding levers are significant in both the further and higher education sectors and that they perhaps offer the best way to achieve the outcomes that we seek—as opposed to overlaying either ministers or the funding council with specific powers or responsibilities. Do we have the balance right? Does that reflect what your report sought to achieve?

**Professor Griggs:** I repeat that there is a way to go. The funding council is trying to move towards that approach—struggling would be the wrong word. There are still inconsistencies in how things are managed in different regions of Scotland, but the situation is getting better.

To answer your question directly, I think that there is still a way to go. The process must involve a greater focus on allowing boards to use the flexibility that they might need to adapt to the situations in their respective geographical areas, which could make the learning outcomes different from elsewhere. It is also a question of how boards get there.

11:30

**Liam McArthur:** So you would share the concern that has been expressed about there being a regional board that will presumably take a strategic view of a region while, at the same time, the funding council retains certain powers over course provision across the same region. Does that not represent a duplication of effort in some respects?

**Professor Griggs:** Yes, and the strategic council needs to sort the issue out across Scotland to ensure that there is a consistent approach.

**The Convener:** Professor von Prondzynski, how well do you think the draft code, which has now been published, reflects your review group’s work?

**Professor Ferdinand von Prondzynski:** There are a number of complex questions to address. First, what is a code of good governance actually for and what do we expect it to do? It might be worth saying that I do not think that it should be a substitute for legislation, and I have to say that I did not read the code from the viewpoint of whether it had covered all the points raised in the review of higher education governance, which I chaired. A code of good conduct is largely about ensuring that certain key principles of governance—integrity, transparency, legitimacy and openness—are upheld and sustained in higher education institutions, and I would have looked at the code with that in mind.

The code is not yet perfect—there are some amendments that could be made to it and I know that a process is under way to allow people to make such proposals—but on the whole it meets the objectives of a code of governance. It is good in that it is accessible and is written in language that is likely to be easily applied and it observes and maintains the main principles of good governance that I outlined. In that respect, it is not at all bad and is well worth supporting.

Although I know that the code has been criticised by some people, including members of my higher education governance panel, and although I understand some of those criticisms, I think that on the whole most of the issues that have been identified as not having been met in the code are probably issues that should be covered in legislation anyway.

**The Convener:** Thank you for that.
Liz Smith: The code has been quite heavily criticised; indeed, those involved with the open letter that we received say that they cannot support the proposed code in its current form and have put forward their reasons. Do you think that those criticisms are a bit strong?

Professor von Prondzynski: I understand the particular points that my colleagues on the panel wanted to make. My own view is that the code could still be amended in certain relatively containable aspects and that, with those amendments, it would meet such a code’s objectives.

Liz Smith: As I understand it, the consultation period runs into June. By that time, you envisage that amendments will be made to the code that will make everyone happy.

Professor von Prondzynski: I am not in charge of the code and cannot say what amendments will be made after the consultation period ends, but things that I would think might improve the code could easily be incorporated into it without their changing the code’s overall purpose and structure.

Liz Smith: With regard to timescales, would you have preferred the process for amendments to have been completed by the time we had reached stage 2 of the bill?

Professor von Prondzynski: I suppose that it would have made it easier to assess the contents of the code’s final form and that we do not have such an opportunity at the moment. In some ways, the answer to your question is yes, but this is where we are.

The Convener: Perhaps you might be able to clear something up for me. If the draft code in whatever form becomes the Scottish code, what will happen to the UK code? Given that the two codes do not exactly overlap point for point, what will be the status of the UK code post the implementation of the Scottish code?

Professor von Prondzynski: They do not overlap and, in fairness, it should be said that the draft Scottish code goes further than the code that was adopted by the committee of university chairs.

That latter code is a voluntary code put forward by university chairs across the UK. It is expected that universities would abide by it, but there is no framework in which they can be compelled to do so. We do not yet quite know how everything will play out in Scotland, but I am assuming, particularly in light of the bill, that there will be a statutory framework in which at least a comply or explain provision, which is also contained in the draft code, would also apply to Scottish universities. In other words, the status of the Scottish code will be greater or more effective than the existing UK-wide code.

I am sorry—I did not answer the question that you asked. In the circumstances you describe, convener, I would regard the UK code as having been superseded by the Scottish code and no longer applying to Scotland.

The Convener: None of it?

Professor von Prondzynski: No.

Neil Findlay: In the letter that we received from three of the five members of your committee, they state:

“The chair, and we three, were in agreement on all the proposed measures and, in particular, that they should be taken as a whole package if they are to have the greatest possible effect in making Scottish Higher Education more transparent, democratic and publicly accountable.”

Three out of the five are saying that in the letter; given that you wrote the report, I am assuming that four out of five are saying that overall. If the report as a whole were implemented, would it make Scottish universities more democratic, accountable and transparent than what has been proposed in the code of governance?

Professor von Prondzynski: As I said a moment ago, the report that we issued last year cannot be completely implemented by a code of good governance, no matter what is in that code, because there are recommendations that we made in the higher education governance review that can be implemented only by legislation; they could not be implemented by a code.

To that extent, the complete implementation of the review will require legislation beyond the bill. As I understand it, the Government has indicated that it intends to introduce legislation on higher education governance more generally at some point in the present parliamentary session. I would expect that to be necessary in order to implement fully the recommendations of the governance review.

Neil Findlay: The letter says that the code “ignores many of the recommendations of the von Prondzynski report that it could have addressed, and actively countermands others.”

Do you agree with that?

Professor von Prondzynski: It does not contain some of the recommendations that we made but, as I said a moment ago, I do not think it could contain all of them because some of the recommendations would require legislation.

As for countermanding, there is a framework in the code for the appointment of chairs of governing bodies that is not in line with the recommendation made in the review. However, that was one of our recommendations that
requires legislation. In all fairness to the group that drafted the code, I do not think that it could have made that recommendation in the code; it would have been too difficult to implement by that route. If that recommendation were to be implemented, it would require legislation.

We all need to be aware of the fact that the code is just one part of a process, although it is a very important part. We recommended in our review that there should be a code of good governance for higher education and therefore the code is at least potentially an implementation of that recommendation. However, it cannot complete the picture.

I would prefer to say that one ought to look at the code by asking whether what it contains improves the governance position in terms of integrity, transparency and openness. We should not get too hung up on whether all the recommendations of the higher education governance review are contained in it. As I said, I am still of the view that some of the recommendations would require legislation.

Neil Findlay: Was it a mistake for the university chairs to decide to set up their own group to review the code without any representation from students, employees in the sector or trade unions?

Professor von Prondzynski: As I understand it, the process was that the chairs made an offer to run with the process of drafting a code and that there were subsequent discussions between the chairs—

Neil Findlay: I asked whether you thought it was a mistake.

Professor von Prondzynski: There were subsequent discussions between the chairs and the cabinet secretary, and I imagine that the process that ensued was the result of those discussions.

It is difficult for me to answer your question. I have been in favour of an inclusive approach to the management of this agenda, and that approach has been reflected in the higher education governance review and other statements that I have made. However, at the same time, we have a draft code, and I think that we need to look at what is in it and how appropriate it is.

Neil Findlay: Is your specialism the law or politics?

Professor von Prondzynski: My academic specialism?

Neil Findlay: Yes.

Professor von Prondzynski: I was a lawyer.

Neil Findlay: That does not surprise me, I am afraid, given the answers that we have received from you today.

Liz Smith: When you appeared before us some time ago, Professor von Prondzynski, you said that there was nothing radically wrong with governance in Scottish universities. At the time, I think that most committee members agreed with that point. What is not good about governance in Scottish universities now that requires not only a new code but further legislation? You did not indicate that that was the case when you appeared before us previously.

Professor von Prondzynski: The review that we submitted last year was quite clear on that point. We recommended a higher education statute and a code of good governance. That has been my position throughout the process. I apologise if I was ever ambivalent about that, because I did not intend to be.

You are absolutely right to quote me as saying that, on the whole, Scottish universities have conducted themselves extremely well—indeed, they are very successful institutions in the global higher education system. That is not a matter for dispute.

When it comes to governance and related matters, it is important that there should be a high degree of public trust and confidence. It is not just a case of me putting my hand on my heart and saying that my university applies the highest standards of governance if that is not clearly visible and is not accepted with confidence by those who observe what we do.

It was clear to us when we conducted our research and listened to evidence before we produced our report that there were large sections of stakeholder bodies with an interest in higher education that were not satisfied that good practice was definitely being applied in higher education. Although we did not conclude that there was a serious, fundamental problem, we took the view—which I still take—that it is important that there should be a high level of public confidence, which needs to be expressed in transparency and openness of procedures. I believe that the recommendations that we made will help the university sector to gain that sense of confidence.

Liz Smith: Thank you for putting on the record the fact that concerns were raised. Could you provide us with some evidence that was given to you that the current governance arrangements in Scottish universities do not deliver as good an education as they should?

Professor von Prondzynski: For a start, we looked at a number of submissions and took evidence from a number of people. I do not think that the substance of that evidence was that there
was something deficient in the provision of Scottish higher education—and it should be noted that it was not really in our remit to look at that. Rather, there was a suspicion, on occasion, that the way in which universities operated excluded parts of the university body and that significant parts of the higher education community, or stakeholders, did not have access to decision making or understand how decisions were made. The evidence that we received on that is public—it can be read.

We did not make a judgment about whether those comments were objectively justified; we just noted that such views were expressed. When that is the case, it is important that we have a system in which there is seen to be integrity and transparency and that the public can have confidence that that is the case.

Liz Smith: I totally accept that that is essential when it comes to accountability and transparency. What I am driving at is that one of the key issues is whether improving that delivers a better university sector. I am not clear that there is a great deal of evidence about that.

11:45

Professor von Prondzynski: The issue is not specific to universities. It is like asking whether there should be high standards of corporate governance in the corporate world. Society generally has accepted that there needs to be a high level of accountability and appropriate integrity of conduct, and that needs to be the case whether or not it can be proven that it has an impact on performance. Apart from anything else, there is always the risk that defective integrity and transparency will produce a problem at some point in the future.

Liz Smith: Do you accept that a key part of this discussion for us is the decision whether to legislate? It is perfectly possible to have transparency and accountability without legislating. The committee has to decide whether we need to legislate to get accountability and transparency or whether the same outcome can be provided through updating the existing code.

Professor von Prondzynski: We made 40-odd recommendations in our report. If you accept them as good recommendations, you must accept that some of them will require legislation—they cannot be implemented in any other way.

Liam McArthur: My question follows on from Liz Smith’s questions. We have received evidence that the international comparisons suggest that the responsible autonomy model has generally delivered better results. The Shanghai table was referred to as evidence of that. How do you square what you have just said with the concerns in the sector that the move towards legislating in a number of areas will inevitably undermine that responsible autonomy? You have a role in the sector and I presume that you have a horse in this race.

Professor von Prondzynski: In the “Report of the Review of Higher Education Governance in Scotland”, we agreed with that and reinforced the point that an autonomous system of higher education with autonomous institutions is an important ingredient in a successful sector. There is nothing that we recommended or that I would have wanted to recommend that would run counter to that.

As you say, there are global rankings and lots of other evidence to suggest that institutions in systems that have a high degree of autonomy perform best. That does not mean, however, that the public should take no interest in how institutions perform. Integrity and proper conduct need to be maintained even within an autonomous system, and—as I said a moment ago—that is not specific to higher education. We think that of the corporate sector, banking and all sorts of other autonomous sectors of the economy that need to apply high standards of good conduct. The situation is the same in higher education and universities.

The recommendations that we made were not calculated to overturn the idea of institutional autonomy, particularly institutional autonomy as regards strategic direction and conduct. Rather, they were intended to ensure that institutions conduct their business in such a manner that they are seen to be behaving to the highest ethical standards in a way that is visible to all the stakeholder bodies.

Liam McArthur: I concur with that. However, do you not accept the argument that an updated code that is further improved before it is finally settled on later in the summer and the funding levers that the funding council has at its disposal are sufficient to deliver a sector that is transparent and accountable but has the responsible autonomy to deliver not just in a national context, but in an international context?

Professor von Prondzynski: As in all these things, it is a matter of finding the right mix. Those things that can adequately be contained in a code should be contained in a code and should not be in legislation. That is why we recommended that there should be a code of good governance. A number of our recommendations would most appropriately be contained within that code.

Nevertheless, in higher education, as in other sectors, there is a need for some legislative grounding. There is already legislation; we are not recommending that legislation should be
introduced as a complete innovation in the system. In fact, one of the reasons why we recommended that there should be a higher education act is that the current legislation is complex.

A number of different statutes, some of them hard to understand, apply to different institutions. We think that simplification would help the sector. However, legislation at some level is necessary. We would not say that banking or corporate affairs could be handled just by codes of good governance and good practice; some legislation is necessary to underpin society's expectations of how those sectors operate. Higher education is no different. We were not recommending—and I am not recommending now—that the legislation should be intrusive or that it should undermine institutions' autonomy or flexibility of action. Those sorts of standards would also be applied in assessing any legislation that comes forward.

The Convener: Thank you. I welcome to the committee Jenny Marra, who has joined us briefly.

Jenny Marra (North East Scotland) (Lab): Thank you, convener. I apologise to the clerks and my colleagues for not giving prior notice.

I want to put a question to Professor von Prondzynski on his governance review and recommendation on gender quotas for university governing boards. Why was that recommendation made in your report?

Professor von Prondzynski: We made that recommendation because practice within the sector is pretty uneven. Some universities perform better than others on gender balance and diversity on governing bodies, and some universities could perform much better. I came to Aberdeen from Ireland where there was a statutory obligation to have a 40 per cent gender balance on governing bodies. That system worked well. As part of gaining the confidence of wider society, it is important for universities to show that the composition of their governing bodies reflects that of society. Clearly, we are not doing that if few women—and occasionally none—are on such governing bodies. I stand by the recommendation that we made. I think that it was a good one, although it could not be introduced easily by a code. Introducing gender quotas would probably require legislation, because if they were just in a code that would be open to legal challenge.

Jenny Marra: How easy would it be to legislate for that?

Professor von Prondzynski: I am not sure whether that is a legal or a political question. It would be possible to do so from a legal point of view; there are illustrations from other sectors of how to do it.

Jenny Marra: I have one final point. You said that the gender balance on a governing board should reflect wider society. Can you tell me a bit about the impact that a better gender balance would have on the institution itself?

Professor von Prondzynski: Occasionally there is a risk—outside the issue of gender imbalance or lack of diversity on governing bodies—that the particular range of skills and expertise available to governing bodies from their membership is limited, typically to particular aspects of economic activity. If greater diversity, including gender balance, were to be introduced and successfully implemented on governing bodies, the range of economic activity would be significantly widened and therefore the expertise and advice available to the governing body would be much more balanced.

Joan McAlpine: I concur with both Ms Marra and Professor von Prondzynski that gender balance is a good thing. You have a legal background, professor, and it strikes me that equality legislation is reserved to Westminster. If there was an attempt by this Parliament to legislate along those lines, would that not be ultra vires?

Professor von Prondzynski: That would depend on how the particular provision was framed. For example, if legislation was introduced that indicated that gender-based decisions would have to be made in relation to particular positions on a governing body, that would be a problem and I suspect that it would not succeed. However, if a statutory obligation was placed on governing bodies to maintain an overall gender balance, not specific to any particular appointment to the governing body, my advice would be that that should be in line with the legal framework. That was how it was in the system that I came from.

Neil Findlay: The group set up to review the code has seven members and two advisers, and only one of them is a woman. Do you think that we have a real challenge in getting the message across to those people?

Professor von Prondzynski: Probably, yes. I should say that the panel that I chaired was very aware of that issue during its deliberations. We were aware that we were an all-male group, and that that was not ideal.

Colin Beattie: A recurrent theme in your report is representation of students and staff, but the draft code seems to have watered that down considerably. Is it an area in which legislation is required? I would not have thought so, but is it a grey area?

Professor von Prondzynski: No. In that case, the code could usefully be amended. I agree with the point that is implied in your question, and our
recommendation in the review was that remuneration committees, nomination committees and bodies of that kind should contain staff and student representatives. That remains my view. It would be helpful if the code stated that.

**Colin Beattie:** The code could reflect that without any legislation.

**Professor von Prondzynski:** I believe so, yes.

**Neil Bibby:** You mentioned earlier that the code was not yet perfect, and you have just given one example of where you would like to see changes. What other areas fall short of your recommendations? Should there be amendments to the references to, for example, meetings in public; the role of students; consultation with staff and students; the abolition of, or transparency around, bonuses; details of how staff and students—

**Professor von Prondzynski:** Some of those issues probably do not fall under the code. For example, things such as remuneration and bonuses would have to be handled differently. I am not sure whether those things require legislation, but I am not sure that they are an issue for the code.

The main issue with the code is the one that I have just mentioned about staff and student representation. That should be provided for on decision-making bodies, particularly those that are relevant to appointments and remuneration, and ideally the code should say that.

The other points that I would have identified are more minor and technical. I do not have them in front of me, so I am not in a position to go through them in detail. For me, the issue that we have just mentioned is the fundamental one; the others are more technical in nature.

**Neil Bibby:** The code has been described as having been written by managers for managers and there is a view that students and staff should be much more involved in the Government’s arrangements. The code has been drafted by the chairs of university courts. You say that the code should be amended. Do you expect it to be?

**Professor von Prondzynski:** Among the recommendations in the review was that remuneration committees, nomination committees and all bodies of that kind should contain staff and student representatives. That remains my view. It would be helpful if the code stated that.

**Neil Bibby:** You mentioned earlier that the code was not yet perfect, and you have just given one example of where you would like to see changes. What other areas fall short of your recommendations? Should there be amendments to the references to, for example, meetings in public; the role of students; consultation with staff and students; the abolition of, or transparency around, bonuses; details of how staff and students—

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**Professor von Prondzynski:** The code was drafted under the direction of university chairs; it was not drafted by them. You will have other opportunities to explore that. The chairs had no direct impact on the drafting of the code. A steering group was set up for that, which had representation that went well beyond the chairs. In that sense, I do not think that the code was drafted by managers for managers, not least because chairs are not managers—I am, but chairs are not. I can understand politically why that comment was made, but it is probably not a fair one.

The code reflects two things: one is having a higher level of accountability, transparency and predictability in systems; and an important element is that the code is presented in an accessible way. In that sense, it is better than any other code that I am aware of, some of which are written in quite an opaque way. The defects that you have outlined are not particularly reflected in the code, which is not to say that there is nothing that can be improved. Indeed, the steering group that presided over the code’s drafting took that view, because it has opened up the code to consultation and submissions.

12:00

**Neil Bibby:** Do you stand by all your recommendations in the report?

**Professor von Prondzynski:** In the higher education review report?

**Neil Bibby:** Yes.

**Professor von Prondzynski:** Yes, I do. There is only one that I have been persuaded might not be ideal, and I mention it because it is relevant to the code and our recommendations in that regard.

We recommended—at the time, I strongly believed that this was correct—that meetings of governing bodies should be held in public. That is still the ideal scenario, but I understand the point that people have made in response to that recommendation, which is that if such meetings were held in public, the willingness of governing body members to be critical of university management would probably be compromised. If they did not want to do it as a result, an element of monitoring and control might disappear.

I have been persuaded that that argument might carry some weight but, apart from that, I stand by everything that we said in the review.

**Neil Bibby:** You can see why there would be concerns about holding meetings behind closed doors that are not open to scrutiny.

**Professor von Prondzynski:** Yes, and it is important that such meetings should take place with the highest level of openness and transparency possible. For example, the agenda for any meeting should be publicly available before the meeting takes place, so that people know what is going to be discussed. There should be proper open publication of documents and minutes, and opportunities for people outside governing bodies who are aware of what will be discussed to make submissions so that their input can be taken on board.

The highest level of openness and transparency is always good, and ideally I would like meetings to be held in public. If I had not been persuaded by
the argument that it might shut down some of the discussion, I would still prefer that option, but people have made that point to me with some force, and I understand it.

**Neil Findlay:** You have given a skilful and lawyerly performance this morning—

**Professor von Prondzynski:** I do not take that as a compliment. [*Laughter.*]

**Neil Findlay:** You can take it as you will.

I find it difficult to see how you can stand by your report while saying that you support the code that has been developed, which dismisses so much of what your report contains. I find that difficult to follow.

**Professor von Prondzynski:** Would you give me an example of something that the code dismisses that was in our report?

**Neil Findlay:** We have only a few minutes—I could give you a list. My colleague Neil Bibby mentioned a number of things, such as representation, the agenda issue and meetings in public—we could go on and on. They are all in there.

**Professor von Prondzynski:** Yes, but I have agreed with the one example that you gave, where I think that there should be a change. The other points that you have mentioned are all for legislation.

**Neil Findlay:** I refer you to the letter from three of the five members of your group, which covers the points that have been made. Is there no contradiction between standing by your report and supporting the code that has emerged?

**Professor von Prondzynski:** No—there are a number of issues that will require legislation, as I have said. I remain in favour of that; it will need to be done, and I believe that the Government intends to do it. Therefore, I do not believe that there is a contradiction between my support for the review that I chaired and my support for the code, bearing in mind that I have said that some adjustments to the code would be desirable.

I never expected that the code would implement the higher education governance review; that is not what a code of good governance is supposed to do. I expected that, in the spirit of that review, it would introduce a framework of good practice in governance. Aside from some specific points that are open to amendment, I would say that, on the whole, the code does that.

**Neil Findlay:** Do you think that there is any merit in delaying the bill?

**Professor von Prondzynski:** Staying on the point that you raised, which is relevant to the bill, I believe that it is important given what the bill says about the principles of good governance that what those principles are should be known before the bill becomes law. In other words, there should be no ambiguity about which principles of good governance the act—if the bill is passed—supports.

If in the process of finalising the code we get a code that the Government accepts is appropriate—which is the Government’s decision—and if it is clear to which principles the bill refers, the timing issue is no longer significant. If, on the other hand, we do not know to which principles of good governance the bill is referring, it might be more of an issue.

**The Convener:** To clarify that point, if the bill stays as it is and refers to the code, and the code is the current UK code, would that cause any problems?

**Professor von Prondzynski:** The bill currently includes a provision that would

“require the institution to comply with any principles of governance or management which appear to the Scottish Ministers to constitute good practice”.

That raises the question of what those principles of governance or management are. My point is that the reference needs to be clarified, and in the bill rather than in any accompanying commentary.

If that were a reference to the Committee of University Chairs code, I am not entirely sure that I would necessarily regard it as the most appropriate thing, given that we have said that there should be a specific Scottish code. The Scottish system of higher education is now significantly different from the English system, and it is appropriate that there should be specific guidelines of good governance for Scotland, which is why we made that recommendation in the review.

There is an ambiguity about that particular section of the bill, which probably needs to be sorted.

**Joan McAlpine:** A particularly distinctive aspect of Scottish higher education is the election of rectors by the student body to chair the court. In the University and College Union’s submission, it suggests that the new draft of the code dilutes the important role of the rector as the elected chair of the governing body. Do you share its concerns?

**Professor von Prondzynski:** My reading of the code—I might need to read it again—did not lead me to that conclusion. If I recall correctly, the code recognises the rectors as having the right to chair governing bodies within those universities that have rectors.

As you know, we have recommended in the review that chairs of governing bodies should be
elected. I stand by that as I believe that it is the correct way forward, although I also believe that that cannot be implemented in the code of governance; it really requires legislation.

With regard to the system that exists at present—recognising that elected chairs are currently not part of it—what the code says is not bad. The problem at present is not only that the majority of the institutions do not have elected chairs of governing bodies, but that they have processes for appointing chairs that are occasionally quite opaque. It is difficult to see how appointments are made and the extent to which the processes involved are open. The evidence is, overwhelmingly, that chairs come from within the existing governing body, as distinct from there being external input.

The recommendations in the code—if we assume for a moment that we are not, or not yet, in a situation in which chairs are elected under a statutory regime—are an improvement on the position that currently exists. I would not be critical of that, but it does not change my view that our recommendation for elected chairs in the report that we submitted last year was correct.

Joan McAlpine: So it is an improvement, but not enough of one?

Professor von Prondzynski: For me, it is not the end of the road.

The Convener: I thank the witnesses for coming along this morning. We appreciate your time in coming to the committee.

12:09
Meeting suspended.

12:12
On resuming—

The Convener: Our next panel of witnesses will also give evidence on the Post-16 Education (Scotland) Bill but particularly on the draft Scottish code of good higher education governance. I welcome to the meeting Robin Parker, president of NUS Scotland; Mary Senior, Scottish official, University and College Union Scotland; and Lord Smith of Kelvin, chair, and Simon Pepper, committee member, from the steering group on the Scottish code for good higher education. Thank you for coming and giving evidence to the committee.

I will begin by asking Lord Smith to outline how his group went about taking recommendations from Professor von Prondzynski's review and recommendations from others in coming up with the new draft code.

Lord Smith of Kelvin (Steering Group on Scottish Code for Good Higher Education): We took von Prondzynski's report on higher education and employed two consultants to consult people in universities. We visited every higher education institution; saw 360 people in 80 meetings; and split those meetings into individual discussions with management, principals and so on, unions, staff and students, all of which are listed at the back of our report. At the end of that process, we sifted the evidence, had four meetings and reached our conclusions, which I think faithfully represent the evidence that we had gathered.

The Convener: Before we get into some of the detail, I wonder whether I can very briefly take you back to the consultation process. In oral evidence heard earlier in the year and in written evidence that we received for this meeting, the committee heard some criticisms of the process; indeed, some witnesses felt that they had not been properly consulted, that the meetings were short and shallow and that they did not have the opportunity to make a proper input into the process. How would you respond to those criticisms?

Lord Smith: I largely reject them. There were, I think, 80 meetings over a period of four or five months, which is an awful lot to pack in. Those who undertook the consultation saw people in different groups at each university and, depending on the number of people who were being seen, they had probably anything between half an hour and an hour for each meeting. Several hours were spent at each university, which was quite a commitment for the people undertaking that work. I do not think that we could have done much more. We did not see unions as a group or body; to do so, we would have had to have seen principals, chairs of court and a whole lot of other people.

As I have said, the work was undertaken by the consultants. We sifted their evidence very carefully, and Elish Angiolini, Simon Pepper and I as well as the three chairs of court challenged them on it. If people are saying that they were badly treated at the time, I have to tell you that I have no evidence of that. I have reports of all the meetings that took place, and we sifted through them very carefully. We consulted widely on this.

The Convener: Given that some of the criticisms have come from the unions and staff members in universities, I wonder how Mary Senior responds to those comments.

Mary Senior (University and College Union Scotland): When I gave evidence in February, I raised concerns about the whole process. I said that meetings were fairly short and were not
minuted and I expressed concern that when trade unionists were invited to give evidence they had to do so alongside other groups of individuals. In other words, there was no meeting with trade unionists alone to allow them to express views from a staff perspective.

Those concerns have been borne out in the draft code before us. As our written submission makes clear, the University and College Union is very concerned that the draft code does not truly reflect many of the recommendations in the von Prondzynski report, which was the result of a more inclusive process, or many of the concerns that the UCU raised with the consultants who met us.

The Convener: Do you accept Professor von Prondzynski’s evidence this morning that he did not expect all his report’s recommendations to have been covered in the code and that, in fact, some of them should be covered in legislation?

Mary Senior: Many of the recommendations in the von Prondzynski report could be encompassed in the draft code. I was interested to hear his observations on the recommendation about meeting in public, which we think is very important and embodies the principles of openness and transparency. It makes board or court members more accountable and ensures that officials or managers who make recommendations thoroughly test any proposals that they might bring to meetings. Holding meetings in public does not prevent difficult decisions from being taken; it just ensures that they are taken in a more inclusive and transparent way. Trade unions know that governing bodies have to take difficult decisions, but if we are able to test such decisions and take the views of staff and students, we can get to a better place in the institution in question.

Neil Findlay: As chair of the steering group, Mr Smith, did you express any concern about the lack of women, students or employee and trade union representation on your group?

Lord Smith: I took what I was given. Sometimes that is not a great thing, but I was given one woman, three independents—including me—and three chairs of court. That is the team I was given to play with.

Neil Findlay: But could you not—

Lord Smith: What? Have refused to serve?

Neil Findlay: It is glaringly obvious to everyone else that the group was lacking certain people.

Lord Smith: That is a different question.

Neil Findlay: Well—

Lord Smith: It is a different question. I note that there was no principal on the group, as there had been in the earlier higher education report, and there were no unions or students on it, although students had been represented before. Ferdinand von Prondzynski, who chaired the earlier group and stood by his recommendations, came to our meeting in Glasgow and presented at length; we spent about an hour and a half with him.

Sure, I could have turned round and said, “You’ve given me an inferior team here. There are people missing.” However, we had at least one woman. By the way, she gave a very good account of herself. I do not know whether you know her, but she is a redoubtable lady, so we certainly had plenty of input there.

It is not impossible for independents to understand things such as women’s representation. A lot of the things that we pushed in our draft report are about having more student representation and more female representation. I would be very disappointed if the code did not lead to a lot more of that when people work out their plans and build their goals into their future plans.

Neil Findlay: Following on from what you have just said about who was missing, I note that the UCU said:

“...We stated that the code development process was flawed from the start and it has resulted in a faulty draft code.”

You implied just now that you might agree with some of that comment, given that what you were given—

Lord Smith: No, we had one—

Neil Findlay: Excuse me, but let me finish. You have expressed concerns here about what you were given, so would it not have been better if the group developing the code had been more inclusive and had included more stakeholders?

Lord Smith: First, I did not say that I was not satisfied with what I was given. You asked me whether I should have turned round and said that, but I did not. I was given a team that I think was a good one. We went out and consulted in a very detailed way: 360 people were asked questions in every institution. The team came back with that evidence and there were enough of us with completely independent minds to sift through it. I think that what we have brought out is a very progressive code.

Simon Pepper (Steering Group on Scottish Code for Good Higher Education): As an independent member of the steering group, I reassure the committee that the membership of the steering group does not represent any kind of bias. I was invited to participate and I accepted the invitation. My understanding of the logic behind the composition of the group was that it had to comprise some university chairs because they would be taking responsibility for the code’s implementation. They have no sectional interest;
their interest is in general good governance of the universities.

The independents have no conflict of interest, and to have included any representatives of sectional interests on the steering group would, ironically, have been a breach of the principles of good governance that we are supposed to be promoting. I think that if you look at it in that way, you will see that the group had a fair composition. If any of us might be guilty of bias, I suppose that I would be the candidate for that, because my background is as a rector elected by students. When I was a rector, I was certainly a strong champion of students’ interests. However, I do not think that anyone will criticise me for having exercised a prejudice in the proceedings. I hope that the committee is reassured about the composition of the group, because it has more rationale to it than perhaps meets the eye.

Colin Beattie: In drawing up the code, you took into account both Professor von Prondzynski’s review and the UK code. The implication is that you took the best from both to create the new code. However, there are a number of issues in Professor von Prondzynski’s review that you do not seem to have addressed. For example, Professor von Prondzynski said earlier that he felt very strongly about the inclusion of student representatives and staff representatives, but that aspect seems to have been completely watered down and taken out. What was the reason for that?

Lord Smith: Just to be clear, you are saying that we said that there were to be no student and staff representatives where?

Colin Beattie: I did not say that. I said that what Professor von Prondzynski proposed has been watered down.

Lord Smith: I do not believe that to be true. I think that the code is very progressive. We asked people to produce goals and we said specifically that a nominations committee must include a student representative and a staff representative. We said that, when deciding on appointing chairs of court and principals and appraising a principal, students and staff must be taken into account, which is far removed from where we are today. I would hope that the levels of aspiration are serious when it comes to the female to male balance on boards and so on. I hope that people come up with decent percentages, on which they deliver—and that, if they do not, the Scottish funding council, the court of public opinion, peer pressure and people living in the community will see that the universities are not complying.

Colin Beattie: When you took the UK code into account, did you take any advice as to what the status of that code would be versus the Scottish code, particularly with regard to issues relating to the UK code that are not carried forward into the Scottish code?

Simon Pepper: We did not have our attention drawn to that issue, but our understanding is that the Scottish code that has been proposed does not go back on any commitments in the UK code. Indeed, we have identified a dozen or so examples where our code is a progression on the UK code. If there are issues where there appears to be some kind of gap, with the CUC code imposing more stringent requirements than we have, we would like to know about that and reflect on it.

Colin Beattie: I think that the UK code covers one or two things that are not explicitly covered in the Scottish code, for example estate management, student unions, health and safety and so on.

Simon Pepper: That was not drawn to our attention, and we would need to reflect on the matter if there is indeed a gap in those areas. Perhaps that was behind the convener’s earlier question to Professor von Prondzynski about the relationship between the two codes.

The Convener: I take you back to the point about the involvement of staff and students. Professor von Prondzynski recommended that staff and students should be involved in the appointment and appraisal of principals, which should include membership of interview panels. The draft code says that staff and students should be consulted. I think that you said that they should be taken account of. Those are not necessarily the same things.

Lord Smith: We say that there should be staff and student membership of the nominations committee, which should come from the main court, if you like. There absolutely should be one of each on the nominations committee and two of each on the court. That is an absolute recommendation.

When we get into the realms of remuneration, it gets slightly tricky. We consulted on the issue, and some student representatives were a bit concerned about their position and whether they could act on a remuneration committee, or remco. If I were the principal of a university, I would allow both staff and student representatives on a remco. However, we are not in a position to force that.

There will be situations where a staff member may feel that it would be difficult or embarrassing to comment. A union representative sitting on a remco might find it difficult to act as a member of that committee and to forget about their position outside. It is quite a difficult role. I have been on many boards where people are in effect representatives of organisations and find it difficult
to leave that at the door. There absolutely should be influence by students and staff.

I feel quite passionately about this. I know that I am going on about it, but you can shut me up in due course, convener. The role of chancellor is no role at all—it is purely ceremonial at the University of the West of Scotland, but we have a number of outlying campuses in places such as Hamilton, Dumfries and Ayr, and indeed Paisley. I have seen the effect that we have in those areas. For example, if our university was not present in Dumfries, the effect on the economy would be catastrophic. Youngsters in such places will not go to Glasgow to go to university. They feel that Glasgow is quite alien to them. Of course, being a Glaswegian, I object to that proposition, but they find it quite difficult to move to the big smoke to go to university.

If people are in that position, we have to reach out to communities, to councils and to local youngsters. That is why staff and students should be mightily represented and listened to at all universities, particularly those that provide real pastoral care.

12:30

The Convener: Thank you for that. I will bring in Robin Parker now, because the NUS written evidence clearly shows that you are extremely concerned about what seems to be a lack of direct input from both students and staff.

Robin Parker (National Union of Students Scotland): I thank the committee for having me along. The first words that I want to point to are not from the NUS; they are from the letter from the presidents of the student associations. As regards the consultation, they said:

"we do not think that quantity of these visits should become a misnomer for their quality, or indeed the end product."

It is important to note that we remain focused on the end product. The process has been led by the chairs and therefore it is rightly perceived as a self-regulation process. In terms of where governance goes next, we cannot continue with such a self-regulation process. The process needs to fully belong to the entirety of the higher education sector, which includes the staff and students who participate and who make higher education what it is.

To provide a bit of clarity on the specific points about staff and student involvement, the draft code points to

"the involvement of staff and students"

in the nominations for the appointment of the chairs. That is a small step forward, but the code does not address the point about having two students on all university courts. Some university courts have two students and some do not. However, that is a matter for legislation, because the membership of university courts is dealt with through legislation.

The big oversight is in the appointment of principals. The draft code merely says that staff and students should be consulted, unlike the von Prondzynski report, which says that they should be full members of the interview panel. As this process has demonstrated, being consulted is not necessarily the same as being involved.

Mary Senior: Robin Parker has highlighted important points. When Lord Smith made his comments a wee while ago, he indicated how he would act and it was good to hear that. However, we need a strong code of governance because staff have not felt that they have experienced strong, fair and transparent governance. That is why it is important that the von Prondzynski report recommendations are encapsulated where possible in the draft code.

In some ways, I find it quite insulting that there is a view that trade unions cannot play full and meaningful roles on courts and governing bodies. Indeed, the von Prondzynski report recommendations are for two student members of the court, two staff members and one trade union representative from academic staff unions and one from support staff unions. That is because the unique role that trade unions can play in governing bodies has been recognised. Trade union representatives can say things and represent views in a different way from ordinary staff members.

It is concerning that that important point has not been recognised at all in the draft code. Indeed, the draft code does not use the words "trade union"—it does not really recognise that trade unions exist in our higher education institutions. The only time that "trade union" appears is in the annex that talks about the meetings that have taken place. We need to grapple with that issue because trade unions can play important roles on governing bodies and that recommendation seems to have been watered down.

We also have concerns relating to the current rectors of a number of universities. Currently, rectors are elected by students—in Edinburgh, they are also elected by staff—and rectors chair the governing body. In the draft code, that role seems to be taken away from them in that rectors would not automatically chair the governing body. They could be considered for chairing the governing body, but that would not automatically happen. We felt that that was a real step backwards, because von Prondzynski recommended that all chairs of governing bodies be elected, and perhaps even by a broader
constituency than just students and staff. The recommendation in the draft code is a step back in that respect.

The Convener: I would like to go back to Lord Smith and try to nail the issue about the election process and what is and is not recommended in the draft code. In the current situation, there is an automatic chairing of the court by the rector in some institutions. Is that being taken away?

Lord Smith: Absolutely not. However, having reread the draft code, I think that we have to change the language that we have used there. I ask Simon Pepper to comment on that, as he was a rector.

We were concerned about confusion. There were students who voted for a rector and thought that that rector would chair all manner of things, but that simply was not so in some cases. In order to be honest with the electorate, if nothing else, we are saying, "For goodness' sake, if there is a chair of court, tell people what that chair does and what the rector does, and be up front about that when people are going for election."

Simon Pepper has been there.

Simon Pepper: The legislation, which is from the 19th century, provides for the rector, who is elected by the students or, in the case of the University of Edinburgh, by the students and the staff, to preside at meetings of the court. I do not think that, in the entire history since then, there have been many rectors who have agreed to undertake all the functions of the chair that are now described in the code of governance. Individual institutions have always made their own negotiations with incoming rectors, who have been of various kinds. They have ranged—to use the recent Glasgow experience—from somebody who was in prison in Israel for the entire period of his rectorship, to, currently, a former leader of a UK political party. Rectors arrive with different capacities and degrees of willingness to engage.

The code is trying to say that, before someone proceeds very far, they should make it entirely clear where they agree that the role of rector starts and finishes and where the senior lay member, governor, convener or whatever the person who is appointed by the governing body is called takes over and undertakes the remainder of the chairing functions that are described in the code. It is important that all those functions are covered. We felt that the code would be derelict in its duty if it did not draw attention to a potential conflict there or confusion at least.

Lord Smith: I assure the committee, Robin Parker and Mary Senior that there will be a rewrite of the section in question, because it was absolutely not our intention to undermine rectors.

The Convener: Thank you very much for that. That is helpful.

Simon Pepper: I would like to go back to the question about specific nominations of representatives of particular interests who should have places on particular committees.

The Convener: Briefly, please.

Simon Pepper: The whole steering group entirely agrees with the principle that inclusion and participation should be maximised. There is no question at all about that, and I think that Lord Smith has already made that point. The issue is how the principles are put into practice.

One option, which is fair enough, would be to specify or prescribe exactly which members of which committees should come from which sources. Another option, which we have favoured, is to say that the really important things are the values, the sense of collegiate—I think that Mary Senior used that word—responsibility and behaviour, and how a sharing of the governing body's corporate responsibility works. We all know that good governing bodies work best because they inculcate a shared culture of collective responsibility. Our feeling is that, together, the measures that we have introduced—some people have said that each measure might be quite small—represent a significant advance on what is currently required under the CUC code.

We are sure that the result will be a significant change in the culture of the management of governing bodies and the sorts of outcomes that our colleagues are looking for: more inclusion and more significant consultation, which are perhaps better achieved that way than by mechanistic appointment of certain quotas in certain places.

Liz Smith: It is my understanding that, when you published your new code, Professor von Prondzynski was quite complimentary about the vast majority of it, albeit that he flagged up some key issues that he wanted to address. Is that your understanding too?

Lord Smith: That is my understanding. I would not want to quote the man, but he did write to me to say:

"I am genuinely very impressed. I think you have done a really good job in capturing many of the key elements of our HE governance report ... the code is well written and accessible. It is also practical, in that it will allow institutions to be effective and decisive as well as demonstrating integrity and accountability."

I know that there are quite a number of small points that he wants to guide us on. I am sure that we will take those on board, because they will improve the language of the code. The most glaring example is the one about rectors. The impression that was given was not what was
intended, but if that was the message that came across, it is plain wrong and we have to change it.

Liz Smith: Given that the consultation period on the new code is running until June, do you believe that you could work with Professor von Prondzynski to improve the existing new code—if I can call it that—so that it will be better?

Lord Smith: Yes. We might not go 100 per cent of the way—we took an awful lot of evidence. He has already written to me privately about a number of the issues raised and I do not think that there is anything that I could not persuade the committee to go along with.

Liz Smith: Mr Parker, Lord Smith has just suggested that there does not seem to be a huge difference between the von Prondzynski version and the new code. You are saying that you definitely cannot support the proposed code in its current form. There seems to be a slight mismatch there.

Robin Parker: In the evidence from NUS Scotland we were quite clear about which matters and which issues we think have not been addressed in the draft code. It is welcome that Lord Smith has picked up on the point about rectors, which has addressed one of our points. I hope that the same approach can be taken on our other points. For example, we could find some way to involve staff and students in interview panels for principals. That should be made clearer—it is a tangible recommendation that would help.

Issues around remuneration have to be picked up. Von Prondzynski recommended that staff and students should be involved on remuneration panels, but the draft code just glosses over that. All universities in Scotland continue to receive a large amount of public funding. It is not surprising at all that the public and indeed MSPs are asking about remuneration, given that 88 members of staff in universities receive greater remuneration than the First Minister. That seems to be going far too far and something needs to be done to tackle the issue. We have made one proposal. The code could clearly go further than it does at the moment to tackle that issue.

Exactly the same point applies to fair gender representation on governing bodies. The code does not even mention the issue; it talks more generally about diversity and equality. Of course we want all forms of diversity and equality to be taken account of. Our university governing bodies should reflect the staff who work in the universities, the students who study in them and the wider public whom they serve. It is incredibly important that much more significant and tangible steps be taken. The code needs to go as far as possible in tackling those issues. Gender equality is a particular issue. Given that not a single woman chairs a university court in Scotland, we need tangible steps to be taken to tackle that issue.

Liz Smith: I accept what you say. I do not necessarily agree with every single point you make, but there is still time to consult. Is it your hope that at the end of the three or four weeks—or however long it is until the consultation period is finished—you will have come closer together?

Robin Parker: All the points that we are making address what needs to happen for the higher education sector to maintain its autonomy. If the sector does not tackle remuneration and the other issues that I have outlined, I expect that the political process will clarify things. If the code does not tackle remuneration, I would not be surprised if MSPs introduced amendments. That would be the right thing to do.

12:45

Liz Smith: Is it your understanding that it would be helpful to the committee and the Parliament for the consultation period, and the information from it, to be complete before we finally agree?

Robin Parker: The timescales run closely together. The most important thing is for the legislation to make it clear how the code will update itself and how the process will continue. Experience indicates that the code cannot be led in the main by the chairs themselves because that is far too much of a self-regulation role. We need a system that ensures that staff and students are involved in the maintenance of the code and that there is appropriate public involvement.

Liz Smith: We need to decide next week on our approach to stage 2, particularly on governance. It is not helpful to us that there is still some dubiety about how things will move together in the consultation period.

Robin Parker: Indeed.

The Convener: To be clear, MSPs will not be able to amend the code because it will not be in the statute. You said that we could amend it, but that is not actually the case.

Robin Parker: I meant that the bill should make it clear that the maintenance of the code should involve staff and students, and it should ensure that the code belongs to the sector. I think that that would be possible.

Liam McArthur: To follow up on that, if I get you right, you were not advocating an increase in the First Minister's salary.

On timeframe, you listened to Professor von Prondzynski acknowledge that, although he stood by all his recommendations, he always expected
some of them to be implemented through legislation. It has already been indicated that some changes will be made, not only in relation to rectors but in relation to staff and student involvement in the appointments process—he was strong on that in his evidence. He envisaged the other aspects coming through in the legislation anyway, so do you not see the potential for reaching agreement on an updated code with a focus on the amendments to the legislation that you, the UCU and others feel are necessary?

Robin Parker: I do not have Professor von Prondzynski’s legal expertise, but it seems to me that, on diversity and equality on boards—particularly in relation to gender and remuneration—the code could go a lot further. The letter that I put together with Iain Macwhirter and Terry Brotherstone, which committee members will have seen, finishes:

“We continue to hope, and expect, that the full recommendations of the Review will be implemented as an integrated package whether that is through legislation or through a combination of legislation and the revised Code.”

Liam McArthur: That suggests that there is more scope for agreement on a further improved, updated code than was, perhaps, evident from some of the public statements that were made immediately after the code came out. Is that a fair comment?

Robin Parker: From my point of view and that of the students whom I represent, those are really significant deficiencies in the code. The question is whether those points will be addressed.

Mary Senior: I welcome the discussion that we have had today and the fact that Lord Smith has indicated that there can be changes, but I will be deeply concerned if you tell us to go away and reach agreement because the NUS and the trade unions will not be involved after this point. We will make our written submission to the chairs of court by the deadline, which I think is 11 June, but are we just then to hope that they will take on board our recommendations? We do not really know that they will do that.

The UCU wrote to Lord Smith back in September, asking to meet him, and today is the first time that we have met him. Professor von Prondzynski indicated his concerns about the timescales, and the committee has a difficult decision to make, but we are deeply concerned that the bill will refer to a code or principles that we are not happy with.

We had a tremendous opportunity to put together a meaningful code that would make a difference. I am concerned that what we have got is no significant change to what already happens. As I said, we have had a useful discussion today, but I am not sure whether, in the short time that we have, there is a process for us to reach agreement. I am not trying to be difficult, but that is my concern. My members would be concerned if what we have here is what they are going to get in August. That is also the holiday period, and we need further scrutiny of the draft code.

The Convener: We have made some helpful progress on rectors. I thank Lord Smith for that. However, Robin Parker has raised the issues of interviews and remuneration. I saw you scribbling down some notes, Lord Smith. Do you have any views that you want to express at this point, given that you have been so helpful on rectors?

Lord Smith: It is not necessarily a concession.

The Convener: No, but I noticed you making notes.

Lord Smith: Simon Pepper may want to speak on both those subjects.

Simon Pepper: Without getting down into the detail, which might take some time, I do not think that the evidence that the committee has received comprises the full response to the on-going consultation. We look forward to hearing the supporting arguments behind some of the points that have been made today—indeed, we look forward to hearing any other points that people want to raise. The group’s doors are open for suggested improvements, and we genuinely want to listen. I hope that we can close the gap that we heard about earlier.

There is another issue. In the end, whether we are moving far enough with the new code will be a matter of judgment for Parliament and the committee. We would claim that we are moving significantly further and that the changes that we have made—not least the fact that the code will be compulsory, which was not the case in the past—will cause a major shift in the culture of governing bodies in Scotland. If, in three to five years, the code is to be reviewed anyway in light of the experience of its early years, that is another safeguard. The proof of the pudding is in the eating, and if the pudding turns out not to be as expected it can always be adjusted in years to come.

Our firm advice is that the code will lead to the sort of changes that are being sought without being too prescriptive—we are confident about that. It should be borne in mind that we are talking about a very diverse sector with a variety of ways of operating.

Lord Smith: It should also be about continuous improvement. One of the clauses in the draft code states that boards should look at themselves every year, but that is too cosy. Every three years, there should be an externally facilitated look at how they are performing. We need to watch them. If the
code is in place in August, we should give peace a chance. However, if it is not working, something else must be done.

Neil Bibby: I have a couple of questions. One of the recommendations was that meetings should be held in public, which is different from what Professor von Prondzynski put in his report. He said that he changed his mind, given the implications for staff. However, we have just heard the UCU say that it is keen to have all meetings in public and that meetings should not be held behind closed doors. What is your view on that?

Lord Smith: Our consultation received an overwhelming response against doing that. We have tried to say, “Look, you are part of a community, so when you talk about making changes you have to publish your agenda and your minutes, and you have to consult people.” By “people” I mean not just the university, but the surrounding district, as it were—stakeholders and people outside. The overwhelming evidence was that public meetings should not be held. There are examples: in Luxembourg, there was what amounted to a supervisory board; and in other areas, the process had to be abandoned because people would not criticise other people in front of witnesses and so on.

I know that in politics you people do this all the time; the process is absolutely open. Perhaps the higher education environment is more precious, but I would not like many of my private sector board meetings, for example, to be held in public. We can have a lot of discussion and argument behind closed doors and hope that we will present a united face. To do that with management and the court challenging people in public might be very difficult. However, we have gone as far against the consultation as I feel that we can. We have said that agendas and minutes should be published so that people can have their say. There is an argument for holding an absolutely open meeting once a year or so and seeing whether that works. If the effect of that is to drive the real decisions underground, we will not have made any progress. That is our concern.

Robin Parker: I want to take us back briefly to the starting point as to why we need all these improvements in governance. The issue partly relates to the fact that there are still, quite rightly, hundreds of millions of pounds of public funding going into universities in Scotland. That means that there has to be a much more democratic and transparent approach to governance than there is in the private sector. The driver for all this is how we can increase that transparency. That is where the proposal to hold meetings in public comes from.

On the question whether there should be a compulsory code, one of the things that Mr Pepper said jarred slightly. The presumption so far from the committee of Scottish chairs has been that the code would be voluntary, on a comply-or-explain basis. It is very important, for a number of reasons—not least the fundamental principle that huge amounts of public funding go to Scottish universities—that the code should be a condition of grant with which universities have to comply. That is particularly the case when we are talking about publishing agendas and minutes of meetings, not all of which are published at present. If we are setting the bar that low, there has to be an expectation that universities will comply. If there is too much flexibility, issues will disappear in a sea of ambiguity, as it has been described elsewhere. Things need to be clear and tangible, otherwise they will not happen.

Simon Pepper: I want to respond to the comply-or-explain point. For me, that is not an option to opt out; it is an option for an institution to explain how it is meeting the code’s requirements perhaps in a way that is different from that prescribed in the code. That does not weaken the principle. It is up to the judges—the external scrutineers, the SFC or whoever—to say whether they are satisfied, if the method that an institution chooses to comply with the code differs from that prescribed in the code. I hope that that is reassuring.

Lord Smith: It should be a condition of grant from the SFC. That is another point on which I agree.

On the comply-or-explain principle, the SFC has to use its discretion when institutions explain why they have not done something. I guess that that is where the ambiguity comes in. For instance, if a small, narrowly based institution—or, indeed, a larger institution that has a lot of private money coming in—feels unable to go the whole way on the issue, that might be difficult. The SFC should police the situation so that the institution does not get the money unless it complies.

The Convener: Thank you. That was helpful.

Neil Bibby: We have heard concerns about the draft code from the UCU, the EIS, the NUS, student presidents and three out of the five members of the von Prondzynski review. My question is for Mr Pepper and Lord Smith. Why is there that level of concern about the code?

13:00

Lord Smith: You can read the evidence that they have given. They are concerned about, for example, union representation on various committees and stronger staff representation on, say, the remuneration committee.
I have been inundated with people writing to me and phoning me to say that they think that the code is workable, well researched and easily understandable and will actually work. I imagine that some university courts are wondering just exactly what they are going to make of it because—I know that Robin Parker and Mary Senior do not agree with me—it will push them further.

**Simon Pepper:** I agree. If I was in the shoes of the critics to whom Neil Bibby referred, I would be doing exactly the same. I would want to push the issue as far as I could. However, they slightly underestimate the force that the package of measures that we are introducing will have. I am very confident that it will cause a major change. We know that some universities have looked at the draft and are saying that they will have pull their socks up, and that is what we are looking for.

**Neil Bibby:** You say that the code is workable and that you have had positive feedback about it, and I do not doubt that for a minute. However, although we hear you say that, we also hear evidence from unions and people involved in the von Prondzynski review who are concerned about the code. Can you see why we might be reluctant to proceed with the code if there is no consensus or if there are two different opinions and a stalemate? I do not want to misquote von Prondzynski, but he talked about establishing the general principles before proceeding, but we do not have a finalised code and we do not have consensus in the sector.

**Lord Smith:** I am not a politician so I do not understand how you deal with legislation—I do not understand all that. The code has been arrived at by honest people doing as much research as they can. There has been no establishment stitch-up, as someone described it. As a boy from Maryhill, I did not know that I had arrived in the establishment, but perhaps I have progressed a lot since I left Maryhill. People who know me know that I do not get pushed around.

I honestly believe that we arrived at the code by genuinely looking at the evidence. If it is not good enough, if people are not complying with it, or if the SFC does not apply pressure, it will have to be revisited. We took 19 recommendations and we completely accepted them in what we believe is the right way, subject to a bit more negotiation. Issues such as the Privy Council and the others that require legislation still have to be dealt with elsewhere, but we have done our best with the 19 recommendations that we thought we could apply.

The code could be in place by August. If it is not working shortly thereafter, people will know that. I do not know how long legislation on these things takes, but the whole thing might well be delayed. I hope that we get something workable.

**Lord Smith:** I cannot help you with the legislation. If you believe that there is no agreement and you have to make a decision next Tuesday—hey, I do not know where you need to go from there. I think that I have indicated that Ferdinand von Prondzynski has fed several areas to us that we can accommodate, although they are relatively minor. You have heard what we think about the rector issue, which will require a complete rewrite. You have heard that we will look again at some areas. I believe that we have already dealt with the issue of membership of nominations committees. I will follow that through and see what it means for interview panels and so on because I do not know if I quite understand the issue. The remuneration committee issue is more difficult, but I will look at it.

I am quite happy to engage in some conversation about the code but I do not particularly want to meet all the unions in one block and then find that the chairs and then the staff who are not in unions need to see us, because I will never be able to deliver the thing in June.

**Neil Bibby:** You mentioned that you have been in dialogue with Professor von Prondzynski and that you are taking on board what the unions are saying. In the past two hours, we have not mentioned the Cabinet Secretary for Education and Lifelong Learning, who I understand will have the power to sign off the code. Have you spoken to him? Has he given his views?

**Lord Smith:** I have had a couple of conversations with him. We always have to be careful when quoting a politician, but I understood him to say that he was happy with a lot of the code although he felt that the language was not aspirational enough. He was very concerned about the rector issue, and he wanted to look at the remuneration area more. There are some pretty common themes coming through.

I think that we have dealt with the rector issue, and as for the aspirational language, I will look at it again. I have said on the record that I will be bitterly disappointed if the code does not move the needle quite a bit on percentages and the genuine involvement of females, students and staff in opening up higher education governance a bit more. However, it is up to the higher education establishment to set the goals. If the code does not move the needle, someone else will have to pick up the issue and take it forward.

**Neil Bibby:** Who initiated the contact with the cabinet secretary? Did he approach you?

**Lord Smith:** I actually cannot remember. I think that he got in touch with me, but it does not matter. He had not heard anything, and I simply wanted him to know that we were looking seriously at the
issue. Is it improper for the cabinet secretary to be in touch with me?

The Convener: Some people seem to think that it is, Lord Smith, but there you go.

Are there any other questions?

Neil Findlay: I have one final point. Mary Senior suggested that she had written to you but there had been no engagement. As always, I am trying to be conciliatory. Is it possible that that could happen?

Lord Smith: It is logistics, apart from anything else. I know that if I do not answer a question straight, you will call me a lawyer, and I am not a lawyer.

Neil Findlay: I would not insult you that much.

Lord Smith: If I have direct dialogue with the unions only, what happens then? Do I have to go back to the chairs of court and those who are not members of the unions?

Neil Findlay: Come on—we are talking about a significant group of the people who form the academic backbone of these institutions. Surely you must speak to those people directly.

Robin Parker: One of the principles set out in the code that is recognised by everyone is that staff and students should be involved at every level of the process. How that happens is complicated for staff and the UCU would like to see it go further, but staff and students have always been involved in universities’ governing bodies. We should be taking that principle to the next level when deciding how the code is decided on and maintained.

Lord Smith: Mr Findlay, I have heard what you have to say, so let me take it away and we will see what we can do about having a direct dialogue, as long as it does not wreck the whole timetable and consultation in other areas. I am sorry, but I do not want to give you a direct answer right now. However, I have heard you loud and clear.

The Convener: Thank you.

I thank all the panel members for coming along this morning. We appreciate your giving up your time to assist us with our discussion of the draft code.

13:08

Meeting suspended.
Post-16 Education (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 16
Sections 17 to 19
Schedule
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Liz Smith
12 In section 2, page 1, line 18, leave out <or management>

Michael Russell
7 In section 2, page 1, line 18, leave out <Scottish Ministers> and insert <Council>

After section 2

Jenny Marra
13 After section 2 insert—

<Higher education institutions: gender quotas>

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AD Higher education institutions: gender quotas

The Scottish Ministers must, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to ensure that the proportion of both men and women on that institution’s governing body is at least 40 per cent of the membership of the body.”>

Section 3

Liam McArthur
1 In section 3, page 1, line 23, leave out from <terms> to end of line 4 on page 2 and insert <a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with a widening access agreement.>

Neil Findlay
14 In section 3, page 1, line 25, after <group> insert <, or persons having any protected characteristic,>
Mark Griffin
15 In section 3, page 2, line 4, leave out <specify> and insert <approve>

Liam McArthur
2 In section 3, page 2, line 6, leave out <specified by> and insert <proposed by the institution and agreed with>

Liam McArthur
3 In section 3, page 2, line 8, leave out <belonging to socio-economic groups> and insert <with one or more socio-economic characteristics>

Neil Findlay
16 In section 3, page 2, line 9, after <groups> insert <, or persons having any protected characteristic,>

Marco Biagi
17 In section 3, page 2, line 10, at end insert—

<( ) Before specifying any actions under subsection (3) in relation to any particular higher education institution, the Council must consult—

(a) the institution;
(b) the representatives of any trade union which the institution recognises or which otherwise appears to the Council to be representative of its staff; and
(c) the institution’s students’ association.>

Mark Griffin
18 In section 3, page 2, line 10, at end insert—

<( ) When formulating a widening access agreement, each higher education institution is obliged to consult with—

(a) the representatives of any trade union which the institution recognises as representative of its staff; and
(b) the institution’s students’ association.>

Liam McArthur
4 In section 3, page 2, line 11 leave out <a socio-economic group is> and insert <persons with a socio-economic characteristic are>

Neil Findlay
19 In section 3, page 2, line 11, after <is> insert <, or persons having any protected characteristic are,>
Liam McArthur
5  In section 3, page 2, line 13, leave out <in that group> and insert <with that characteristic>

Neil Findlay
20 In section 3, page 2, line 13, after <group> insert <or having that protected characteristic>

Joan McAlpine
8  In section 3, page 2, line 13, at end insert—

<(  ) The Scottish Ministers 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 this section.”.>

Neil Findlay
21 In section 3, page 2, line 13, at end insert—

<(  ) For the purposes of this section, a reference to a protected characteristic is to be taken as a reference to those characteristics listed in section 4 of the Equality Act 2010 (c.15).”.

Marco Biagi
22 In section 3, page 2, line 13, at end insert—

<9BA Regular review of widening access

(1)  The Council must regularly review the impact the provisions of section 9B of this Act have had in relation to widening access to higher education by—

(a) persons belonging to any socio-economic group considered to be under-represented in such education;

(b) persons belonging to any other group which may reasonably be considered to be under-represented in such education.

(2)  On completing a review under subsection (1), 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.

(3)  For the purposes of subsection (1) “regularly” means a period of time which does not exceed three years since the last review under subsection (1) was conducted.

(4)  The first review under subsection (1) must be completed within the period of three years beginning on the day the Post-16 Education (Scotland) Act 2013 receives Royal Assent.”.>
After section 3

Neil Findlay

23 After section 3, insert—

Duties of the Council in relation to good governance: duty to consult

In section 22 of the 2005 Act, after subsection (1) insert—

“(1A) The Council must, in the exercise of any of its functions under section 9A of this Act, consult the persons listed in subsection (1B).

(1B) The persons referred to in subsection (1A) are such—

(a) representatives of trade unions which appears to the Council to be representative of the staff of higher education institutions;

(b) representatives of students’ associations representing higher education students;

(c) representatives of businesses;

(d) other persons,

as the Council considers appropriate.”.

Section 4

Michael Russell

9 In section 4, page 2, line 33, after <attending> insert <in an academic year>

Neil Findlay

24 In section 4, page 2, line 35, at end insert—

Before making an order under this section, the Scottish Ministers must require the Council to ensure that any fundable post-16 education body to whom a payment is likely to be made has established appropriate arrangements for—

(a) attracting applications from prospective students who belong to groups which are under-represented in higher education;

(b) providing financial assistance through grants, bursaries and scholarships with the purpose of removing barriers to entry and progression in such education for students belonging to such groups;

(c) making available to students and prospective students information about financial assistance available to them; and

(d) promoting equality of opportunity in such education.

Neil Findlay

25 In section 4, page 3, line 2, leave out <in any particular academic year>
Liz Smith
26 In section 4, page 3, line 3, leave out from <which> to <course> in line 5 and insert <, as prescribed in any enactment, payable in respect of any course of education>

Neil Findlay
27 In section 4, page 3, line 6, leave out <during that year>

Liz Smith
28 In section 4, page 3, line 6, at end insert insert <, whether payable by the person attending the course of education elsewhere in the United Kingdom or by any other person or public authority.>

Section 6

Liz Smith
29 In section 6, page 5, line 16, after <board> insert <; and>
   ( ) the principal of the college.>

Liz Smith
30 In section 6, page 5, leave out line 20

Liz Smith
31 In section 6, page 5, leave out lines 29 and 30

Liz Smith
32 In section 6, page 6, line 2, at end insert—
   <( ) other members appointed by the board; and>

Liz Smith
33 In section 6, page 6, line 3, leave out lines 3 and 4

Liz Smith
34 In section 6, page 6, line 5, leave out <if appointed under sub-paragraph (3),>

Liz Smith
35 In section 6, page 6, leave out lines 6 to 8

Liz Smith
36 In section 6, page 6, line 8, at end insert—
The board of a college which is not a regional college in exercising its functions shall comply with any principles of governance which appear to the Scottish Ministers to constitute good practice in relation to the board of a college which is not a regional college.

Liz Smith

37 In section 6, page 6, line 26, leave out <or (e)>

Liz Smith

38 In section 6, page 6, line 27, leave out <or (d)>

Section 7

Liz Smith

39 In section 7, page 7, line 24, after <board> insert <(other than the principal of the college)>

Liz Smith

40 In section 7, page 7, line 25, leave out <or (e)>

Liz Smith

41 In section 7, page 7, line 26, leave out <or (d)>

Section 9

Liz Smith

42 In section 9, page 10, line 36, at end insert—

<( ) the requirement that its colleges comply with any principles of governance which appear to the Scottish Ministers to constitute good practice in relation to assigned colleges.>

After section 9

Liam McArthur
Supported by: Liz Smith

43 After section 9, insert—

<Other regional strategic bodies: terms and conditions of funding
After section 12B of the 2005 Act, inserted by section 9, insert—

“12C Other regional strategic bodies: terms and conditions of funding
(1) The Council may, under section 12(2), when making a payment to any other regional strategic body under section 12(1), impose a condition requiring the regional strategic body to comply with any principles relating to its governance structure, or its administrative arrangements when allocating funds to any of its colleges, which appear to the Council to constitute good practice in relation to the allocation of funds by regional strategic bodies.

(2) In this section, reference to any other regional strategic body is a reference to a body specified in Part 2 of Schedule 2A.”.

Section 10

Liz Smith
44 In section 10, page 15, line 27, leave out <require> and insert <request>

Liz Smith
45 In section 10, page 15, line 29, leave out <requirement> and insert <request>

Liz Smith
46 In section 10, page 15, line 32, leave out <requirement> and insert <request>

Liz Smith
47 In section 10, page 16, line 7, leave out <requirement> and insert <request>

Liz Smith
48 In section 10, page 16, line 10, leave out <requirement> and insert <request>

Liz Smith
49 In section 10, page 16, leave out lines 26 and 27

Liz Smith
50 In section 10, page 16, line 28, leave out <requirement> and insert <request>

Liz Smith
51 In section 10, page 16, line 29, leave out <falling within subsection (9)>

Liz Smith
52 In section 10, page 16, line 30, leave out <requirement> and insert <request>

Liz Smith
53 In section 10, page 16, leave out lines 31 to 35
Section 11
Liz Smith
54 In section 11, page 18, leave out line 21

Liz Smith
55 In section 11, page 19, line 16, after <bankrupt;> insert—
<(  ) is under 16 years of age;>

Section 12
Liz Smith
56 In section 12, page 24, line 27, leave out <or (e)>

Section 13
Liz Smith
57 In section 13, page 25, line 10, leave out <or, as the case may be, (e)>

After section 13
Liz Smith
Supported by: Liam McArthur
58 After section 13, insert—
<Terms and conditions of college funding

Terms and conditions of college funding
After section 9A of the 2005 Act, inserted by section 2, insert—

“9AA Regional colleges: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional college under section 12(1), require the regional college to comply with any principles of governance which appear to the Scottish Ministers to constitute good practice in relation to regional colleges.

9AB Regional boards: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional board under section 12(1), require the regional board to comply with any principles of governance which appear to the Scottish Ministers to constitute good practice in relation to regional boards.”.>

Liam McArthur
59 After section 13, insert—
<Terms and conditions of college funding

Terms and conditions of college funding

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AC Other regional strategic bodies: good governance

The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to any other regional strategic body under section 12(1), require the regional strategic body to comply with any principles of governance which appear to the Scottish Ministers to constitute good practice in relation to regional strategic bodies.”.

Section 14

Joan McAlpine

11 In section 14, page 27, line 4, at end insert—

<14B Review of fundable further and higher education: Dumfries and Galloway

(1) The Council must from time to time review the arrangements for the delivery of fundable further and higher education in the Dumfries and Galloway local authority area and report to the Scottish Ministers.

(2) When conducting a review under subsection (1), the Council must consult—

(a) The Crichton Foundation,
(b) The University of Glasgow,
(c) The University of the West of Scotland,
(d) Dumfries and Galloway College,
(e) Dumfries and Galloway Council,
(f) The Open University,
(g) SRUC (Scotland’s Rural College).

(3) The Scottish Ministers may by order modify the list of persons in subsection (2).”.

After section 14

Marco Biagi

60 After section 14, insert—

<The Council: exercise of functions

The Council: exercise of functions

In section 20 of the 2005 Act, after subsection (1), insert—

“(1A) In exercising its functions, the Council is to have regard to—

(a) the desirability of enabling, encouraging or increasing participation in fundable further and higher education by persons belonging to socio-economic groups which are under-represented in such education; and
(b) the desirability of promoting collaboration and the sharing of good practice with and between post-16 education bodies in relation to the matters described in paragraph (a).”.

Liam McArthur
61 After section 14, insert—

<The Council: duty on widening access

The Council: duty on widening access

After section 19 of the 2005 Act, insert—

The Council: duty on widening access

“19A Duty on widening access

The Council must make arrangements to ensure that work is undertaken to research, identify and formulate good practice in those actions that are best designed to enable, encourage or increase participation in fundable higher education by persons with a socio-economic characteristic which is under-represented in such education.”.

Section 15

Liam McArthur
62 In section 15, page 27, line 30, leave out <negative> and insert <affirmative>

Schedule

Liz Smith
63 In the schedule, page 30, line 6, leave out <Except where sub-paragraph (2D) applies,>

Liz Smith
64 In the schedule, page 30, line 10, leave out <Except where sub-paragraph (2D) applies,>

Liz Smith
65 In the schedule, page 30, leave out lines 13 to 16

Liz Smith
66 In the schedule, page 30, line 28, leave out <at the time of appointment>

Liz Smith
67 In the schedule, page 30, line 30, leave out <before the member’s period of appointment ends>

Liz Smith
68 In the schedule, page 30, line 41, after <bankrupt;> insert—
<(   ) is under 16 years of age;>

Liz Smith
69 In the schedule, page 31, leave out lines 33 and 34

Liz Smith
70 In the schedule, page 31, leave out lines 37 to 40

Michael Russell
10 In the schedule, page 35, line 6, at end insert—
   <(   ) omit the word “fundable”;>

Liam McArthur
6 In the schedule, page 35, leave out lines 9 to 13
1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Higher education: governance**
12, 7, 23

**Higher education governing bodies: equalities**
13

**Widening access to higher education**
1, 14, 15, 2, 3, 16, 4, 19, 5, 20, 8, 21, 60, 61, 6

*Notes on amendments in this group*
Amendment 1 pre-empts amendments 14 and 15

**Widening access agreements: consultation**
17, 18

**Widening access: review**
22

**Fee cap for higher education: academic years**
9, 25, 26, 27, 28

**Fee cap for higher education: conditions**
24

**Colleges: boards of management**
29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 54, 55, 56, 57, 63, 64, 65, 66, 67, 68, 69, 70

**Colleges: governance**
42, 43, 58, 59
Colleges: staff and property transfers
44, 45, 46, 47, 48, 49, 50, 51, 52, 53

Review of further and higher education: Dumfries and Galloway
11

Duty to provide information to Skills Development Scotland: parliamentary procedure
62

Minor and technical amendments
10
Present:

George Adam Clare Adamson
Colin Beattie Neil Findlay (Deputy Convener)
Mark Griffin (Committee Substitute) Stewart Maxwell (Convener)
Joan McAlpine Liam McArthur
Liz Smith

Also present: Michael Russell (Cabinet Secretary for Education and Lifelong Learning) and Marco Biagi.

Apologies were received from Neil Bibby.

**Post-16 Education (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 12, 7 and 9.

The following agreements were agreed to (by division)—

17 (For 5, Against 2, Abstentions 2)
8 (For 6, Against 1, Abstentions 2)

The following agreements were disagreed to (by division)—

13 (For 2, Against 7, Abstentions 0)
1 (For 4, Against 5, Abstentions 0)
14 (For 2, Against 7, Abstentions 0)
15 (For 3, Against 6, Abstentions 0)
2 (For 4, Against 5, Abstentions 0)
3 (For 4, Against 5, Abstentions 0)
16 (For 2, Against 7, Abstentions 0)
18 (For 2, Against 7, Abstentions 0)
4 (For 4, Against 5, Abstentions 0)
19 (For 2, Against 7, Abstentions 0)
5 (For 4, Against 5, Abstentions 0)
20 (For 2, Against 7, Abstentions 0)
21 (For 2, Against 7, Abstentions 0)
23 (For 2, Against 7, Abstentions 0)
24 (For 3, Against 6, Abstentions 0)
25 (For 2, Against 7, Abstentions 0)
26 (For 4, Against 5, Abstentions 0)
27 (For 2, Against 7, Abstentions 0)
28 (For 4, Against 5, Abstentions 0)
Amendment 22 was moved and, no member having objected, withdrawn.

Section 1 was agreed to without amendment.

The following provisions were agreed to as amended: Sections 2, 3 and 4.

The Committee ended consideration of the Bill for the day section 4 having been agreed to.
On resuming—

Post-16 Education (Scotland) Bill: Stage 2

The Convener: I welcome members back. Today, we start our stage 2 consideration of the Post-16 Education (Scotland) Bill. I welcome to the committee Mike Russell, the Cabinet Secretary for Education and Lifelong Learning, and his accompanying officials. Officials are, of course, not allowed to participate in the formal proceedings. I also welcome Marco Biagi, who has joined us because he has amendments that he wishes to speak to later on.

Everyone should have with them a copy of the bill as introduced, the first marshalled list of amendments, which was published on Friday, and the first groupings of amendments, which sets out the amendments in the order in which they will be debated. We will not go beyond section 4 of the bill today.

There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. All other members with amendments in the group, including the cabinet secretary, if relevant, will then be asked to speak to them. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching my eye or the clerks’ attention.

If he has not already spoken on the group, I will invite the cabinet secretary to contribute to the debate just before we move to the winding-up speech. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up.

Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press the amendment, I will put the question on it. If a member wishes to withdraw their amendment after it has been moved, they must seek the committee’s agreement to do so. If any committee member objects, the committee will immediately move to a vote on the amendment.

If any member does not want to move their amendment when it is called, they should say, “Not moved.” Please note that any other MSP may move such an amendment, if they so desire. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.
Only committee members are allowed to vote. Voting in any division is by show of hands. It is important that members keep their hands in the air until the clerks have recorded the vote.

As the committee is required to indicate formally that it has considered and agreed each section of the bill, I will put a question on each section at the appropriate point.

Section 1 agreed to.

Section 2—Higher education institutions: good governance

The Convener: Amendment 12, in the name of Liz Smith, is grouped with amendments 7 and 23.

Liz Smith: One of the central issues in the debate about the bill is that of ensuring that the universities are able to maintain what they have defined as responsible autonomy—namely, full accountability and transparency when it comes to the use of public money, but also the ability to decide for themselves, without Government interference, how best to maintain the academic structures that will continue to deliver the exceptionally high standards of higher education to which Scotland is accustomed, and which have ensured that Scottish universities have maintained their competitive edge when measured against universities in the rest of the world.

That academic freedom is one of the key principles that have underpinned the university system in Scotland for hundreds of years and is the one that the university sector has identified as being the reason for its success. When the committee heard from four university principals, they made it plain that that academic freedom was a core part of the flexibility that is required to lead the field in research, innovation and knowledge exchange, all of which are increasingly regarded as the key components against which universities are measured.

The point is rightly made, too, that the most successful higher education systems around the world are those in which Government is less rather than more involved. Therefore, it does not seem to make much sense for Scotland to move in the opposite direction, by extending considerably the principles of good governance with which institutions must comply. Ministers would retain the ability to impose on the council a condition of grant that requires institutions to comply with principles of good governance, but amendment 7 would mean that it was a matter for the council—rather than ministers—to determine what those principles were.

The amendment—there will be similar amendments during the stage 2 process—addresses the concern to which Liz Smith has just alluded. There has been no intention to interfere in the responsible autonomy of universities, although there will always be different definitions of the words “responsible” and “autonomy” and how those link together. Throughout the process, we have made it clear that the intention is for governance to be improved but not interfered with. I have listened carefully to the concerns that have been expressed by members of the committee and in wider evidence. Amendment 7 strikes the appropriate balance between respecting the sector’s autonomy from ministers and delivering an appropriate level of assurance on a significant level of public funding.

In that spirit, I am happy to support Liz Smith’s amendment 12, and to remove the word “management” from proposed new section 9A of the 2005 act. The university sector has expressed concerns about the word and that its inclusion...
would allow ministers to interfere in the day-to-day operation of institutions, but that was never the intention—clearly, that would be undesirable. The word was included historically, from the 2005 act, and with the intention of capturing the high-level strategic management issues that are more akin to governance than what is ordinarily understood by the word “management”. Again, I have listened carefully to the sector’s concerns and to the committee, and we accept that we should not take any risk. If there is a view that there could be interference, we should drop the word, and I am glad to do so.

I support the principle that underlies amendment 23. It is right and proper that the funding council should consult staff and students in exercising the functions under new section 9A of the 2005 act. Indeed, I have made that case throughout the extensive consultation process on the current code that the university chairs are developing, and I will lodge amendments to a range of provisions in the bill that will strengthen the position of consultation. The need for consultation is particularly clear should the committee vote in favour of amendment 7, which would transfer the power to identify what constitutes the principles of good governance from ministers to the council. The council would benefit from ensuring that it consults widely.

I have no problem with the objective, but amendment 23 is not necessary for its achievement. Consultation on the development of a revised code would be a critical part of any future development in the area, but as the provisions in the bill do not set out any parameters for developing such a code, I do not believe that a more explicit consultation duty is required or desirable in this instance.

I have said to the committee before, I have said in the chamber, and I confirm now that my clear expectation is that any governance code must be developed by sector leaders working closely with staff, students and all other interested parties. The level of consultation that is undertaken in developing a code would be one of many factors that the funding council would look at in determining whether any future code was accepted as good practice, and the existing powers in the 2005 act already enable the council to consult on such matters.

I invite the committee to support amendments 7 and 12 and urge Neil Findlay not to move amendment 23 on the ground that the matter is covered adequately elsewhere and is fully supported by the spirit of the bill.

Neil Findlay: I support amendments 12 and 7 for the reasons that Liz Smith and the cabinet secretary have set out.

Amendment 23 seeks to ensure that there is a duty on the funding council to consult when the principles of good governance are being developed. That would mean consultation with the stakeholders who make our higher education institutions the success that they are—namely, the relevant staff through their trade unions, students, the business community and other appropriate stakeholders. Throughout the process, we have heard about problems between those groups and a lack of or, indeed, problems with consultation in developing the current code. The amendment would go some way towards resolving those problems and ensuring that consultation takes place when the principles of good governance are being developed, amended or changed. By explicitly referring to that in the bill, we would make it clear that we are serious about those issues.

I will be moving amendment 23.

Liam McArthur: Amendment 12 looks relatively minor but is nonetheless an important improvement in providing reassurance about the limitations on the scope for interference in the running of our higher education institutions, and I welcome the cabinet secretary’s indication that he will support it.

In turn, I will support amendment 7. Colleagues and the cabinet secretary will be aware of my concerns from the outset about the extent to which the bill will increase the scope of ministers to meddle in too many aspects of how our universities and colleges function. In many respects, those concerns remain.

However, I welcome Mr Russell’s important self-denying ordinance, which improves section 2. It makes it clear that higher education institutions will be required to comply with standards of good governance as a condition of grant, as the cabinet secretary indicated, but in a way that better reflects the principle that universities should not be the subject of political direction, as Liz Smith said.

On amendment 23, last week we heard from Lord Smith and Simon Pepper, who defended the draft code of governance that has been produced and the process that gave rise to it. However, it was accepted that the draft code can and must be improved before it is finally agreed and that lessons must be learned about how revisions may be made to the code in future. Like the cabinet secretary, I expect those things to happen. Although I sympathise with the frustrations that we all share that have given rise to Neil Findlay’s amendment 23, I am not inclined to support it.

George Adam: I, too, back Liz Smith’s amendment 12. After some of our discussions with
and evidence from the university sector, it has become quite clear that in future there could be cabinet secretaries or ministers who want to tinker with day-to-day management. Knowing the current cabinet secretary, I know that that would be the furthest thing from his mind—he is a busy individual; however, I think that future proofing the bill is the best bet. I understand that the word “management” was used so that we could capture high-level strategic management in the process, but it is quite important that it is taken out at this stage, so that the bill is future proofed and so that we do not have any misunderstandings further down the line.

Clare Adamson: On amendment 23, although I share Liam McArthur’s concerns, Professor von Prondzynski was absolutely clear that we want a more inclusive system of operation. In his evidence, the cabinet secretary has stated that the amendment is unnecessary because the funding council will be required to collaborate with a wide range of bodies in exercising its functions. Indeed, the list of bodies is wider than that proposed in amendment 23. We should take that as a reason why amendment 23 is unnecessary at this stage.

The Convener: As no other members wish to contribute, I will make a short contribution.

I very much agree with Liam McArthur’s comments on the three amendments in group 1. I support amendment 12 for the reasons that Liz Smith laid out eloquently when she moved the amendment. I support amendment 7, in the name of the cabinet secretary. Making the SFC responsible for identifying principles of good governance is a welcome move. As the cabinet secretary and Liam McArthur have said, we have learned a lot about the consultation process and the code, and I, too, agree that amendment 23 is unnecessary.

I call Liz Smith to wind up and press or withdraw her amendment.

Liz Smith: Thank you, convener. I thank the cabinet secretary and members of the committee for their support for amendment 12. A very important balance must be struck, which is captured in the phrase “responsible autonomy” even if the definitions are slightly difficult.

Clearly, Scottish ministers must account for a large sum of public money. At the same time, to leave the word “management” in would be contentious, as “management” could involve interference in the day-to-day running. That would be totally unacceptable, not only to the sector but for lots of different reasons, given the social and economic changes in Scotland.

It is very clear to me, from the evidence that we have had over a long period, that the greatest success of Scottish universities is responsible autonomy, which, over time, has improved. I also believe that the strength of the university sector lies in its flexibility. We should be in no doubt that flexibility is an extremely important part of how Scottish universities are able to maintain their outstanding record, not just in the United Kingdom but across the international community. The change is very important and I am very pleased that the committee agrees with that.

I am happy to support amendment 7 on the basis that the temptation for ministers to interfere in some of the decisions will be removed—or, more accurately, reduced—which is welcome.

I turn to amendment 23. On the question of governance, I am nervous about writing too much on the face of the bill that could be restrictive and hinder some of the flexibilities within governance. There are issues about how students and staff would be able to act when it comes to the democratic decisions that are required, but those can be addressed in the new code. Therefore, I am not inclined to support amendment 23.

I press amendment 12.

Amendment 12 agreed to.

Amendment 7 moved—[Michael Russell]—and agreed to.

Section 2, as amended, agreed to.

After section 2

The Convener: Amendment 13, in the name of Jenny Marra, is in a group on its own. Jenny Marra is not present, but I understand that Neil Findlay will speak to and move the amendment.

Neil Findlay: Unfortunately, Jenny Marra is stuck in the Justice Committee at the moment.

Less than a year ago, Scottish Labour led a debate on the introduction of gender quotas for all public bodies because of the chronic underrepresentation of women on them. The debate mentioned von Prondzynski’s recommendation to improve the situation in university governing bodies, and we were supportive of that. At the time, the debate focused on the gender breakdown in university courts, and the situation has not improved greatly. At the moment, at the University of Aberdeen there are 20 men and five women on the court, and at Scotland’s Rural College there are 14 men and one woman on the court. The numbers are very low indeed. Only the Glasgow School of Art appears to have a majority of women on its court. Clearly, there is a problem.

In his evidence, Ferdinand von Prondzynski said:

“We made that recommendation because practice within the sector is pretty uneven. Some universities perform
better than others on gender balance and diversity on
governing bodies, and some universities could perform
much better. I came to Aberdeen from Ireland where there
was a statutory obligation to have a 40 per cent gender
balance on governing bodies. That system worked well. As
part of gaining the confidence of wider society, it is
important for universities to show that the composition of
their governing bodies reflects that of society. Clearly, we
are not doing that if few women—and occasionally none—
are on such governing bodies. I stand by the
recommendation that we made.”—[Official Report,
Education and Culture Committee, 7 May 2013; c 2323.]

He referred to his work in Ireland, where that
approach succeeded. The boards of governing
bodies need to reflect the society that they serve.
Professor von Prondzynski believes that that could
be achieved, and we believe that as well.

I move amendment 13.

Clare Adamson: I find myself agreeing almost
completely with Mr Findlay, which is quite an
unusual situation for me to be in. However, we
differ in one respect. Under the Scotland Act 1998,
we do not have constitutional competence over
egalities issues. Therefore, putting what is
suggested into the bill would make it a problem for
the bill to comply with the provisions of that act.
Although I fully support Jenny Marra and the
Labour Party in seeking to address the gender
imbalance, I do not think that the amendment is
the way to do it at this stage.

Liam McArthur: I have referred to the evidence
that we received last week and it was
acknowledged that our university governing
bodies’ performance in respect of the diversity of
their make-up needs to improve significantly.

Lord Smith was unequivocal in setting out his
expectations about what needs to happen over the
next few years and, likewise, Simon Pepper
pointed to the compulsory nature of the code of
governance and what he felt would be

“a major shift in the culture of governing bodies in
Scotland.”

Of course, both argued that once the new code is
in place the process should be given time to
happen, but there will be general scepticism that
without more radical measures excuses can
always be found to do the bare minimum if
anything at all. That is why Jenny Marra’s
amendment 13 is very helpful. I share some of the
anxieties that have been expressed about the
operation of such a quota system, not least with
regard to how it would reflect multi-year
appointments and the composition of existing
bodies, but I am in no doubt that drift and dither
cannot be allowed to happen in this area.
Amendment 13 offers an opportunity for
Parliament to make clear its expectations about
what is required to achieve the diverse and
representative reflection of the talents that we
want to govern our higher education institutions.

As I have said, I have some concerns about
how such a quota system might work and will
listen carefully to what the cabinet secretary has to
say. However, Jenny Marra’s lodging of this
amendment at stage 2 has the benefit of giving us
a little time to find out whether and how this kind of
approach can be made to work. Even if Parliament
does not agree to the amendment at this stage, it
will send an unambiguous signal to the sector.

As Simon Pepper acknowledged last week,

“The proof of the pudding is in the eating”.—[Official
Report, Education and Culture Committee, 7 May 2013; c
2342.]

What is abundantly clear is that the ingredients in
this pudding need to change significantly.

Liz Smith: I, too, agree with the general tone of
the comments and share the view that this
important issue must be raised. It is quite clear
that it is a significant issue in some although by no
means all universities.

I have to say, however, that I am very nervous
about having a 40 per cent target quota; I do not
find that helpful for a variety of reasons.
Universities Scotland itself has made it plain why
such an approach could be restrictive and have
certain unintended consequences. Like Liam
McArthur, I think that the new code of governance
will result in a culture shift and, given the
importance of that, I will not support amendment
13.

Michael Russell: I very much thank Jenny
Marra for lodging amendment 13 and Mr Findlay
for moving it. During its evidence sessions, the
committee heard a number of valid concerns that I
share entirely about the lack of diversity in
university governing bodies. Indeed, I highlighted
the issue at stage 1 and said that I would come
forward with further thoughts on the matter.

The governing bodies of universities and
colleges must properly reflect society and the
institutions they govern. I stand to be corrected if
members want to look at the full detail, but I think
that only one college body—Kilmarnock College—
has a majority of women; and Mr Findlay is also
right to say that only Glasgow School of Art comes
anywhere close to having any sort of balance. As I
think the universities themselves are beginning to
accept, some university courts are really
disgraceful in this regard. Overall, representation
in the sector is around 30 per cent, but we should
and must do better.

In my discussions on the code of governance—
and as I believe Lord Smith mentioned last
week—I have made clear to the universities my
hope that this area will be developed in a redrafted
code, and I will reflect the matter in my guidance
to colleges on future appointments.
Jenny Marra has lodged similar amendments to recent bills on police and fire reform and civil justice. Although they were rejected, we have considered the matter in considerable detail and, although I cannot support amendment 13 as it stands, I support bringing forward a provision that reflects the principle behind it. We have explored the feasibility of the kind of approach suggested by Jenny Marra and have found a number of serious legal issues that we must consider further. In particular, as Clare Adamson is right to point out, equal opportunities are, unfortunately, reserved. We think that setting absolute quotas for the membership of men and women of a governing body would not be within the Scottish Parliament’s legislative competence and if the bill were to contain such a provision it would be ultra vires, which itself would create great difficulties.

That said, over the coming weeks I want to explore the issue further with the Minister for Commonwealth Games and Sport, who has responsibility for equality issues, and I encourage Jenny Marra and others to come forward to discuss the matter with ministers. There will be a willingness to have that discussion to ensure that we find for stage 3 an amendment that keeps us within devolved competence—alas—but which signals our very clear intention to make progress on improving diversity and equality in governance structures.

We have moved a considerable distance on this issue over the past few months. I urge Neil Findlay not to press amendment 13 but also urge him, Jenny Marra and other committee members to enter into that dialogue. There is a sincere intention to put something legal into the bill; unfortunately, this particular amendment would not be competent but we are desperate and desperately keen to find the right method of doing this. What we have at the moment is not good enough.

11:30

Neil Findlay: I wish to press amendment 13, although we will, of course, engage with the cabinet secretary should it not proceed.

When Professor von Prondzynski was asked about the issue by Joan McAlpine, he said:

“That would depend on how the particular provision was framed. For example, if legislation was introduced that indicated that gender-based decisions would have to be made in relation to particular positions on a governing body, that would be a problem and I suspect that it would not succeed. However, if a statutory obligation was placed on governing bodies to maintain an overall gender balance, not specific to any particular appointment to the governing body, my advice would be that that should be in line with the legal framework.”—[Official Report, Education and Culture Committee, 7 May 2013; c 2324.]

Therefore, I will certainly press the amendment.

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 13 disagreed to.

Section 3—Widening access to higher education

The Convener: Amendment 1, in the name of Liam McArthur, is grouped with amendments 14, 15, 2, 3, 16, 4, 19, 5, 20, 8, 21, 60, 61 and 6. If amendment 1 is agreed to, I cannot call amendments 14 and 15 because of pre-emption.

Liam McArthur: I will speak to amendment 1, but I will also touch on the other amendments in the group. I apologise in advance for taking a little time to do so, given the number of amendments in the group.

There were many disagreements at stage 1 about a range of issues. In the end, that resulted in the Government being unable to persuade any members but its own that the bill is able or in fact necessary to achieve the lofty ambitions that have been set for it. However, members will recall that the committee was united in supporting the general policy objectives, primary among which is the need to accelerate and extend the process of widening access to our higher education institutions. The cabinet secretary seemed to accept that consensus during the stage 1 debate, at least in his opening remarks.

I believe that there is a broad-based and genuine consensus on the issue, and with good reason. For example, few would dispute that, although some progress has been made on extending access, it has been painfully slow and started from a base that was hardly a beacon of progressiveness even in these islands, let alone internationally. Much more needs to be done, and some institutions are rightly under more pressure than others to up their game.
Of course, progress can be achieved only with the universities working closely in collaboration with colleges, schools and other partners. However, the onus will rightly be on universities to demonstrate that progress is being made. How do we help to achieve that? For my part, I still believe that the funding levers that are at the disposal of ministers through the Scottish Further and Higher Education Funding Council provide the most persuasive and effective tool if used in conjunction with beefed-up access agreements. I struggle to see what more is achieved through the statutory powers that Mr Russell seeks. However, in recognition of the parliamentary arithmetic, I believe that it is important that we make the provisions as workable as possible to reflect the evidence that we heard at stage 1.

In that regard, amendments 1 to 5 would make a number of important changes that I hope colleagues will support, although I appreciate that Neil Findlay, Joan McAlpine and Mark Griffin have sought through different means to achieve similar outcomes in certain respects.

One concern that we heard at stage 1 is that the Government’s approach to widening access lays too much emphasis on the Scottish index of multiple deprivation. Although the index is critical, that approach seems to the committee to risk overlooking those from deprived backgrounds who live in more affluent areas as well as other underrepresented groups. That point was made forcibly in a letter to the Scottish Government last month from 12 charities representing a wide range of such groups.

My amendments would make the new power specific to widening access agreements and would clarify the respective roles of the minister, the funding council and individual institutions. The amendments would make the institution, rather than the funding council, the initiator in proposing the content of access agreements. That would reflect best practice and certainly would not diminish the potential for the council to agree only to those agreements that it believes are sufficiently rigorous and ambitious.

Finally in relation to the amendments in my name, and before turning to those of colleagues, I will say a little about amendment 61. I appreciate that the minister may feel that there is already an ample body of research and other evidence to inform widening access agreements and to determine what is or is not likely to work most effectively. Nevertheless, in the light of the glacially slow progress made in this area over the years, I think that an argument can be made that good practice either is not being shared as widely as it should be or is perhaps not as good as we might imagine. Either way, my amendment 61 seeks to address that apparent shortcoming.

I turn to my colleagues’ amendments in this group. I appreciate that Neil Findlay is motivated by very much the same concerns. He, too, seeks to protect the interests of underrepresented groups, albeit in a more explicit fashion. I can see some problems with such a prescriptive approach, but I will listen to what he and the minister have to say before making up my mind on those amendments. I recognise that my amendment 1 will pre-empt Mr Findlay’s amendment 14 and Mark Griffin’s amendment 15.

Joan McAlpine’s amendment 8 seems to have the same policy intention as some of the early changes that I have proposed, although it perhaps does not allow enough flexibility in ensuring that different access agreements reflect the needs and deficiencies of specific institutions.

Finally, although I have a great deal of sympathy with Marco Biagi’s amendment 60—not least in its acknowledgement of the need for collaboration between universities and colleges in achieving meaningful improvements in widening access—it appears to ignore, or at least downplay, the role of the school sector in, if nothing else, helping to raise the ambition and the expectations of those we wish to see going to university in greater numbers.

I apologise that I have spoken at length on this group of amendments. I will attempt to make up for that in future groupings. However, this is a crucial area of the bill and we are some way from getting it right.

I move amendment 1.

The Convener: I call Neil Findlay to speak to amendment 14 and to other amendments in the group.

Neil Findlay: Although we see amendment 1 as an improvement on what is in the bill, amendment 14 seeks to widen access and add those with protected characteristics to the SIMD 20 group. Amendment 14 would enable, encourage or increase the participation of a range of people covered by the Equality Act 2010, which lists the following characteristics:

“age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.”

Amendment 14 is supported by a range of disability groups that have been very active in the issue and by the National Union of Students and others. We know that disabled people in particular struggle to access higher education and that, when they do so, they have difficulty in completing their studies. Widening access should be about what it says on the tin. Including the groups mentioned with the SIMD 20 group would assist disabled people in particular to access and complete courses.
Amendments 16, 19, 20 and 21 seek to maintain consistency throughout the section. Amendment 21 clarifies the protected characteristics to which I have referred and refers to the relevant provision, namely section 4 of the 2010 act.

We need to ensure that access is widened in all our institutions and that the usual excuses for failure are not simply trotted out.

The Convener: I call Mark Griffin to speak to amendment 15 and to other amendments in the group.

Mark Griffin: I agree with many of Liam McArthur’s points on amendment 1, and so I support that amendment. In the event that that amendment falls, I will move amendment 15 because, in relation to the section on widening access to higher education, I feel that an access agreement should be drafted by the institution and that the Scottish ministers should approve that draft rather than specify it themselves.

The Convener: I call Joan McAlpine to speak to amendment 8 and to other amendments in the group.

Joan McAlpine (South Scotland) (SNP): I regard the provisions on widening access as a very important step on the road to making much-needed progress on the issue. However, as I listened to stage 1 evidence, it seemed clear that the provisions in section 3 were often interpreted as targeting only those captured by the SIMD measure. I whole-heartedly agree with those who thought that the provisions had to be wider than that in order to be successful.

The purpose of amendment 8 is to make it absolutely clear that the provisions allow ministers to identify any group of people sharing a social or economic characteristic that is underrepresented to be the focus of efforts to increase participation. I believe that providing that clarification will help to ease the minds of stakeholders who are concerned about the limitations of the SIMD measure.

On Mr Findlay’s amendments, I understand Mr Findlay’s proposed approach to extend the definitions to protect all characteristics. Although I support the principle behind it, I do not think that it is appropriate in this section of the bill.

The Convener: I call Marco Biagi to speak to amendment 60 and other amendments in the group.

Marco Biagi (Edinburgh Central) (SNP): Thank you, convener. It is good to be back at the committee—however briefly.

Amendment 60 draws from the discussions that have been had about the need to provide support for best practice in widening access. Although there have been calls from certain stakeholder organisations to create a widening access unit, whether in statute or otherwise, I feel that an independent body along the lines of the English equivalent would be unnecessary in Scotland because that English equivalent was set up as a result of £9,000 per year tuition fees that we do not have here. However, there is value, as Liam McArthur has touched on, in having such a body of research and evidence so, rather than establishing an entirely new quango, I propose in amendment 60 that the Scottish funding council should take on board that duty.

The Scottish funding council is established, respected and independent. In the current Further and Higher Education (Scotland) Act 2005 that defines its roles, three key aims are set out: teaching, research, and a coherent system of higher education.

Section 20 of the 2005 act, which amendment 60 seeks to amend, is entitled:

“Council to have regard to particular matters”.

The section includes a long list of issues that the council has to take into consideration in its activities, including

“skills needs in Scotland; ... issues affecting the economy of Scotland; ... social and cultural issues in Scotland ... sustainable development ... The ... United Kingdom context; and ... international context”

and

“educational and related needs”.

I therefore think that section 20 of the 2005 act, after subsection 1, would be an appropriate place to insert a reference to widening access.

Paragraph (b) of subsection 1A that amendment 60 seeks to insert into section 20 of the 2005 act draws on the language that has already been used in the National Library of Scotland Act 2012 in giving the National Library of Scotland a duty to promote collaboration and knowledge sharing within its sector.

The Convener: Do any other members wish to contribute at this stage?

Liz Smith: I once again put on record the Scottish Conservatives’ support for the principle of widening access, which we believe is important not just for intrinsic educational reasons but for social and economic reasons—our parliamentary record substantiates that claim.

Our views differ considerably from the views of others on how the widening access agenda is best achieved. The last thing that we consider desirable or indeed necessary is greater stipulation about which groups should be offered places. In particular, we fail to see why there has to be a
legislative underpinning when it is clear that the university sector believes that the outcome agreements can work just as well—indeed, I think that they are already doing so.

We have sympathy for amendments 1 to 5 that have been moved by Liam McArthur, but I have slight reservations about amendment 61. I also have some sympathy with some of the concerns that have been expressed about narrowing the measures. The SIMD 20 and 40 measures are far too narrow and we have taken on board a lot of what has been said on that. However, some of the other amendments are unduly overprescriptive policies that would have unintended consequences. I believe that they could be detrimental to universities’ flexibility and could lead to considerable bureaucratic legislation in the future. On that basis, I will not support the other amendments.

Colin Beattie: The provisions on widening access are one of the most important parts of the bill, and I do not think that anyone around the committee table would disagree on the social and economic imperatives that drive that. A lot of the amendments in this group are perhaps driven by commendable intention. However, I have concerns that some of them would dilute or water down the effective implementation of widening access and that, in some cases, they would constrain choices.

Amendment 1 removes the ability of ministers to set an any widening access agenda by identifying underrepresented socioeconomic groups on which the efforts to widen access could be focused. The question would be one of how to target people. The amendment puts too many constraints on the Government.

Amendment 15 reduces the role of ministers in determining what an access agreement would look like, as ministers must approve a description of any such agreement. It is not clear at what stage ministers would do so. There is vagueness about that.

Amendment 2 goes a bit further than simply clarifying that agreements are negotiated. It puts the institutions concerned into the driving seat and allows them to submit proposals to the SFC on what actions it should take. The role of the SFC would be somewhat diminished to reaching agreement on proposals, rather than taking a proactive role in specifying to institutions what should be achieved.

Amendments 3 to 5 appear to be an attempt to deal with concerns over focusing on postcode areas. The amendments might prevent that from happening, but the provisions would then not be focused on any particular group. The difficulty with that approach is that it makes it difficult explicitly to target specific underrepresented groups.

I support amendment 8 from Joan McAlpine.

There seems to be some concern as to whether amendments 14, 16 and 19 to 21 are within the legislative competence of the Scottish Parliament, as equal opportunities are reserved. They introduce the concept of “persons having any protected characteristic”, which seems to dilute the widening access provisions that the bill is trying to introduce. As things stand, section 3 is targeted at increasing participation among the people who are most underrepresented, which includes those from deprived socioeconomic backgrounds. Given the questions about whether those five amendments are within the Parliament’s legislative competence and the question of diluting widening access itself, I do not support them.

Amendment 6 seems to be a technical amendment, and I am not clear why it is necessary. I do not think that that has been clearly explained.

I support amendment 60 from Marco Biagi. Amendment 61 appears to be much narrower in scope than amendment 60, in that it provides only for certain work to be undertaken, presumably by a specific person or group, rather than outlining the important broader principle of encouraging general collaboration across the tertiary education sector, as amendment 60 does. I do not think that amendment 61 works, and I would not support it.

George Adam: I back a lot of what my colleague Colin Beattie has said. I have concerns that Neil Findlay’s amendments might dilute the primary focus on people from disadvantaged backgrounds. It is a sheer emotional thing for me. I have the constituency containing the council ward with the area at the bottom of the list for multiple deprivation. Young people in that area should have the opportunity to be everything that they can be in life. Education can be the pathway out of poverty for many of them.

For me, that is the most important part of the bill. We could argue all day about the type of Scotland that we want in future, but we all want what is best for our constituents and for young people in Scotland. We must not dilute the idea of giving people from areas such as Ferguslie Park in Paisley the opportunity to access higher education.

Clare Adamson: In reflecting on the comments that have been made, I think that the intentions of the members who have lodged amendments are clear. I will support Joan McAlpine’s amendment 8, because it clearly gives the minister flexibility in
driving the widening access agenda. I will give a specific example from my experience on the Equal Opportunities Committee. Being a Gypsy Traveller is not a protected characteristic and Gypsy Travellers would not fall into any of the areas, but they are underrepresented. Amendment 8 gives the cabinet secretary an opportunity to look at such areas. Flexibility is key.

**Michael Russell:** Widening access is a very important area, and it is right that it is debated at some length. All the amendments in the group seek to bring new thinking to the debate, but at the end of the day there has to be a decision about how we widen access against the backdrop of a failure to make the progress that I believe society in Scotland has wanted to make for many years. We have to have absolute clarity about what we are going to achieve.

I will go through the amendments as briefly as I can. The cumulative effect of amendment 1 would actually be to restrict the roles and powers of ministers relating to wider access. It would only allow ministers to impose a condition on the council to require institutions to comply. All the other powers would be negated. The amendment would remove ministers’ ability to identify particular groups in respect of which efforts to increase participation should be focused.

In a similar vein, amendments 15 and 2 would diminish the role of ministers in determining what a widening access agreement should look like. Indeed, amendment 2, by removing the funding council’s power to specify the actions that institutions need to take, would put institutions in the driving seat when it comes to developing widening access agreements.

I regard amendments 1, 15 and 2 as undesirable as I believe that they would substantially diminish the effectiveness of the new section. Members might want to reflect that the lack of progress in widening access over the past decade means that it is essential that someone drives the agenda faster than the institutions have driven it themselves, and it is right that ministers should be the ones to do that. The status quo has not delivered any significant improvements to access in the past 10 years, so a new approach with a greater level of challenge is essential to drive progress. What Liam McArthur proposes with amendment 2 appears to be some form of self-regulation whereby institutions decide for themselves what should be done and simply require the SFC to sign off those proposals. That is not good enough.

Amendments 3 to 5 appear to be targeted at focusing section 3 on individuals rather than groups. I accept that there is some merit in that idea. It is important that the provisions are flexible enough not to exclude individuals whom we would wish the provisions to help but who do not readily fit into typical socioeconomic groups. However, the difficulty with amendments 3 to 5 is that they go too far the other way. The focus would be only on individuals, meaning that widening access agreements could not identify and target priority groups in which participation is low.

Joan McAlpine’s amendment 8 achieves similar aims but without those difficulties. It provides a helpful clarification that the widening access provisions are not intended to focus solely on people who are captured by the Scottish index of multiple deprivation, important as that measure undoubtedly is. The amendment makes it explicit that ministers can require the council to focus on any group of people who share a social or economic characteristic and who are underrepresented in higher education. Clare Adamson made that point well. The amendment makes it clear that the scope of the provisions may extend beyond groups geographically defined by SIMD to capture, for example, people with low incomes even if they reside in more affluent areas, and other groups. I am happy to support amendment 8.

I thank Neil Findlay for lodging amendments 14, 16 and 19 to 21 as it has allowed us to have this important and wide discussion. I strongly support the principle that those with protected characteristics should be adequately represented in our higher education sector, and I believe that the bill will ensure that they are. However, there are certain difficulties with the amendments. Equal opportunities are a reserved matter. We have just discussed the issue in relation to gender inequalities. As such, I suspect that there will be real issues with the competence of the Scottish Parliament to legislate in this area.

There are also policy reasons for not supporting the amendments. New section 9B of the 2005 act, which is inserted by the bill, has a sharp focus on the people who most need our help to access higher education—people from deprived socioeconomic backgrounds. All the evidence that we have clearly demonstrates that that is the area in which Scotland’s problems with access primarily lie. It is therefore right that the bill’s emphasis is on those people who most need our help. There is a risk that significantly extending the groups to be captured by the provision would dilute the effectiveness of our primary policy objective to get people from deprived backgrounds into higher education. Amendment 8 does not do that.

Amendment 6 seeks to remove an amendment to the 2005 act that makes it clear that ministers cannot impose terms and conditions on the funding council relating to the admission of students, except with regard to the widening access provisions. However, the effect of the
amendment would be to prevent ministers from exercising their powers in relation to widening access under the new section 9B(1) and 9B(2). That is consistent with the overall approach in Liam McArthur's amendments, but it is inconsistent with the approach that we not only are committed to but need to take.

Amendments 60 and 61 appear to be similar, but there are fundamental differences between them. The principles underlying amendment 60 are consistent with the prominence that we are seeking to place on widening access and the significant progress that we need to see on that. Establishing widening access is a key matter that the funding council must have regard to in the exercise of its functions, and that will help us to achieve that progress.

Widening access would sit rather neatly with the key matters that are set out in section 20 of the 2005 act to which the council must give regard: skills needs, issues affecting the economy and social and cultural issues in Scotland, as well as the education and related needs of students. However, there are technical issues with amendment 60 that require to be ironed out. It does not make it clear whether it is ministers or the council who are to identify the particular socioeconomic groups to which the duty is related. In addition, if the amendment is to relate to further education, it should probably also capture collaboration with or between regional strategic bodies. Furthermore, there are some consistency issues with the general duty to encourage collaboration placed on the council by section 22(8) of the 2005 act that require to be considered.

I do not necessarily object to the principle of Liam McArthur's amendment 61 but, in practice, it is narrower in scope than amendment 60. Amendment 61 simply provides for the funding council to ensure that the work is done to develop widening access. I assume that that work would be done by a specific person or group rather than through the application of the broader principle of the council promoting collaboration, but that is not clear. Amendment 61 could also be interpreted as something broadly similar to the function discharged by the Office for Fair Access in England, which exists to mitigate the difficulties caused by the introduction of tuition fees. That is not a problem that exists in Scotland.

I invite the committee to reject amendments 1, 15, 2, 14, 16, 19 to 21, 23 to 26 and 61 and to support amendment 8. I ask Marco Biagi to withdraw amendment 60 on the understanding that I will return with a similar amendment at stage 3. I am happy to discuss the matter with him as we develop that amendment.

Liam McArthur: I am conscious that I have had more opportunity to speak on this group of amendments than I get in some debates in the chamber. I will be as brief as I can.

As I have indicated, I appreciate what Neil Findlay is looking to achieve through his amendments. He is absolutely right about the range of underrepresented groups whose interests must be uppermost in our minds as we progress the provisions in this part of the bill. However, I share some of the concerns about the prescriptive nature of his amendments as drafted.

I thank Mark Griffin for his support for my amendment; I will return the compliment by supporting his amendment—although I think it unlikely that either of our amendments will be passed. I suspect that, if that were to happen, I suspect that we would be in uncharted territory.

Joan McAlpine was right in saying that the evidence that we heard at stage 1 was that the bill failed to capture the broader range of underrepresented groups that need to be addressed as part of the widening access agenda. I am happy to support her amendment 8.

It is certainly good to have Marco Biagi back. During the earlier part of this year, when flight delays were affecting my constituency, his attendance record at this committee was better than my own. However, although I have sympathy for his amendment 60—as I have said—I have concerns about the extent to which it glosses over the role that the school sector has in promoting the widening access agenda. That is perhaps something that can also be picked up on as the amendment is developed ahead of stage 3.

I thank Liz Smith for her comments. I share her concerns about the legislative underpinning that is felt to be necessary to the provisions. However, at this stage, there is scant evidence that the access agreements are having the effect that we would all wish to see. The funding levels remain critical in ensuring progress is made.

12:00

Colin Beattie talked in disparaging terms about putting universities in the driving seat on access agreements. I have no objection to universities being in the driving seat, albeit with the funding council having oversight and only agreeing to access agreements that are robust, rigorous and ambitious enough to meet our objectives.

George Adam is absolutely right that we should not lose sight of the desire to widen the scope of the widening access provisions and the socioeconomic factors.

In his remarks, the cabinet secretary seemed to have an issue with the diminishing of the role of ministers, and it would appear that the self-
denying ordinance in amendment 7 will be the exception rather than the rule. He also talked about putting institutions in the driving seat: obviously he was operating from Colin Beattie’s script. He has the funding levers to achieve much of what we wish to achieve. I appreciate his concerns about amendment 61 so I am inclined to not move that and throw my support behind the approach taken by Marco Biagi.

I think that covers all the points that have been raised. I will press amendment 1.

The Convener: I remind members that, if amendment 1 is agreed, amendments 14 and 15 will be pre-empted.

The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 14 moved—[Neil Findlay].

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 14 disagreed to.

Amendment 2 moved—[Liam McArthur].

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 2 disagreed to.

Amendment 3 moved—[Liam McArthur].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 3 disagreed to.

Amendment 16 moved—[Neil Findlay].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 16 disagreed to.

The Convener: Amendment 17, in the name of Marco Biagi, is grouped with amendment 18. I call Marco Biagi to move amendment 17 and to speak to the other amendment in the group.

Marco Biagi: Amendment 17 focuses on the process of developing the widening access agreements, which will be important for taking forward our desired direction of travel on widening access. Given the importance of considering higher education institutions as broad learning communities, the process of developing the agreements should involve input from all sectors of those communities, including the staff and students as well as the institution’s governing body. In that way, we will be able to ensure that the widening access agreements are not only better designed but the subject of wider ownership within the institution. Amendment 17 would also rescue some of the sense of Liam McArthur’s amendment 2, in that the amendment will ensure that there is consultation with the institution.

Although amendments 17 and 18 attempt to do broadly the same thing, I draw a distinction between them in two areas. First, amendment 17 places the duty to consult on the SFC rather than on the individual higher education institution, which should already have established consultative procedures for the involvement of staff and students. Secondly, amendment 17 focuses on those trade unions that are recognised by the council rather than those that are recognised by the individual institution. Given the status of industrial relations, it would probably be better for the long term if the council approached unions that were generally representative of the staff body rather than only those that were formally recognised by the institution.

I move amendment 17.

Mark Griffin: Amendment 18 seeks to work towards the same principles as amendment 17, so I agree with most of what Mr Biagi said. However, where amendment 18 differs is that, in drafting the widening access agreement, the focus would be on the individual institution rather than with the council. Therefore, the institution would be under an obligation to consult representative trade unions and its students association. That is why I will move amendment 18.

Michael Russell: On amendments 17 and 18, I am happy to support the principle that an element of consultation with the staff and students of institutions should be injected into the process of widening access agreements.

Although I support that underlying principle, I have difficulty with amendment 18 because it would place the duty to consult on the institutions as opposed to the funding council in formulating a widening access agreement. Although in practice the widening access agreements will be the result of negotiation between the council and institutions, new section 9B—as we know from our previous debate—makes it clear that it is ultimately for the funding council to specify what actions an institution must take based on those negotiations. Therefore, it is more appropriate that the duty to consult is placed on the council, given that the council has the authority to specify what actions an agreement should contain.

Amendment 17, in the name of Marco Biagi, navigates a course through those difficulties. Therefore, I invite the committee to support amendment 17 and to reject amendment 18.

The Convener: I call Marco Biagi to wind up and to indicate whether he will press amendment 17.

Marco Biagi: I am content to press amendment 17.

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Abstentions
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 2.

Amendment 17 agreed to.

Amendment 18 moved—[Mark Griffin].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 18 disagreed to.

Amendment 4 moved—[Liam McArthur].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 4 disagreed to.

Amendment 19 moved—[Neil Findlay].

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 19 disagreed to.

Amendment 5 moved—[Neil Findlay].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 5 disagreed to.

Amendment 20 moved—[Joan McAlpine].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 20 disagreed to.

Amendment 8 moved—[Joan McAlpine].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.
Amendment 8 agreed to.
Amendment 21 moved—[Neil Findlay].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.
For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 21 disagreed to.

The Convener: Amendment 22, in the name of Marco Biagi, is in a group on its own.

Marco Biagi: Amendment 22 aims to ensure that there is a regular review of widening access. The first review would occur up to three years after the bill receives royal assent, and reviews would subsequently take place at three-year intervals.

The principle of having regular reviews is common in legislation. The Graduate Endowment Abolition (Scotland) Act 2008 includes a commitment to review the act’s effect on widening access. In other areas, where large-scale changes or major policy initiatives have been undertaken, such reviews are—broadly speaking—commonplace.

The stage 1 debate focused on whether widening access agreements will work. Based on that concern, I think that there is a space for a requirement to produce an analysis at regular intervals that will allow MSPs, stakeholder bodies and all others to take stock of progress.

I recognise that there may be technical issues, not least because the amendments that have already been agreed have affected key terms in my amendment, but I will proceed.

I move amendment 22.

Liam McArthur: I welcome amendment 22. There is no doubt that successive Governments have struggled to make the sort of progress on widening access that we wish for. As Marco Biagi says, it is sensible to keep under review any legislative changes that we make in that area.

Universities Scotland has raised concerns about such a statutory provision and whether it would duplicate what happens already or what is set to happen. As with amendment 17, I have some concerns that amendment 22 does not necessarily reflect the wider role and responsibility of other aspects of the education sector in delivering on our widening access objectives. Nevertheless, I support the policy intention behind the amendment, and I am happy to vote for it subject to further refinement.

Liz Smith: Although the policy intention is fine, amendment 22 is unnecessary because review already takes place in the context of the outcome agreements. The amendment could be restrictive, as anything to do with widening access in schools, which is perhaps one of the most important policy areas that we have to deal with, would be outwith its jurisdiction. For that reason, I will not support the amendment.

Michael Russell: Amendment 22 raises important issues and has clear value, and I thank Marco Biagi for lodging it. The purpose of section 3 is to empower ministers in providing funding to the funding council to impose conditions relating to widening access to higher education for underrepresented socioeconomic groups in order to stimulate what we need, which is substantial progress. It makes sense that we should periodically review whether that progress is in fact being made. Indeed, the importance of rigorously evaluating progress is such that the question arises of whether we ought to review the position with regard to widening access for all underrepresented groups more expansively.

Given the way in which the amendment has been drafted, it would not require a comprehensive overall review of widening access. Instead, it would place a duty on the funding council to review and report at least every three years only on the impact of new section 9B of the 2005 act. That is important, but it should not be the end of the story. A broader review of access
could fulfil that function while assessing the overall national picture. For example, we should ask whether there are groups for which participation is falling, whether there are emerging priorities and where we can best focus our efforts and resources in future. Those are the sorts of issues that a more general review could tackle, which the review that is proposed in amendment 22 would not address.

Having given the matter a great deal of consideration, I intend to lodge an amendment at stage 3 that would place a duty on the funding council to review access in a more expansive and significant way. I ask Marco Biagi to withdraw the amendment—

Liam McArthur: Will the cabinet secretary take an intervention?

Michael Russell: Am I allowed to take an intervention? I am willing to take one.

Liam McArthur: I am breaking with tradition. Liz Smith and I made the point about the wider responsibility of the education sector as a whole in delivering on widening access objectives, and you have picked up that theme in a number of debates on the issue. What will you put in the amendment that you will seek to lodge at stage 3 to capture that wider responsibility?

Michael Russell: I am happy to take that away as an issue to consider—whether we can capture that, whether the funding council’s role can be seen as being wider than simply dealing with the bodies that it funds and whether it could draw in that issue.

If we agreed to amendment 22, we would end up with a narrow review. Liz Smith is quite right to argue that the origins of many of the issues of wider access lie elsewhere. I have spoken about the issues at the school gate that we need to address. I am happy to include those points and to return, if I can, with a more comprehensive stage 3 amendment. I am also happy to have conversations about the matter.

Marco Biagi: Based on that assurance from the cabinet secretary, I am happy to withdraw my amendment.

Amendment 22, by agreement, withdrawn.

Section 3, as amended, agreed to.

After section 3

Amendment 23 moved—[Neil Findlay].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
The amendments would therefore not achieve their stated aim. All that they would do would be to constrain ministers’ power under proposed new section 9C of the 2005 act to set the cap in such a way that fees for any course at a Scottish institution did not exceed the highest fees that would be payable by the person if they attended any course elsewhere in the UK. That could include courses longer than four years. The amendments would actually weaken the protection for rest-of-UK students that we have built into the bill’s provisions. I am sure that that was not Mr Findlay’s intention, but that would be the effect of his proposals.

I am aware of the concerns that Universities Scotland has raised in relation to the aspect of the bill that amendments 26 and 28, in the name of Liz Smith, seek to address, and I have looked again at the detail of the drafting in the light of those concerns. I am satisfied that the bill as drafted does not allow for the ambiguity that is claimed.

I would consider stage 3 amendments that helped with the matter in any sense, but the proposed changes under Liz Smith’s amendments would introduce ambiguity to an already clear provision. I therefore cannot accept them—I would have accepted any such suggestion if it really clarified matters, but the bill is clear enough, and the amendments leave, and indeed increase, ambiguity.

I ask the committee to reject amendments 25 and 27, in the name of Neil Findlay, and amendments 26 and 28, in the name of Liz Smith.

I move amendment 9.

**Neil Findlay:** Rest-of-UK students in Scotland have some of the highest fees in the whole of the UK, and we appear to have legislated for a market in education through the introduction of variable fees. There are no minimum standards, protections or safeguards for RUK students, and there is no provision to address fears around fair access or the lack of it for the poorest RUK students.

The provision in the bill is to set the maximum amount chargeable by Scottish institutions to RUK students, linked to the maximum amount that they would be liable to pay in any given academic year elsewhere in the UK. That means that, due to the four-year degree structure in Scotland, we now have potentially some of the most expensive higher education fees in UK countries.

The amendment would, as a bare minimum, reduce the fee cap to ensure that the cost is faced across the entire degree and is equalised between Scotland and the rest of the UK, not just across academic years. Amendment 27 simply follows on from that.

**Liz Smith:** Generally speaking, I am content with the policy intentions of the section. However, I remain slightly concerned that the wording in this section does not avoid a possible interpretation that the fees charged by Scottish universities to Wales-domiciled students would have to be at the maximum of the Welsh university rate. Amendments 26 and 28 are designed to ensure absolute clarity on that. I am not convinced that that clarity exists just now.

**George Adam:** The debate on this issue rests on the fact that fees exist in the rest of the UK—although that debate is not for today. As the cabinet secretary suggested, these arrangements are a necessary evil at this stage. I cannot accept amendments 25 and 27, because they would undermine the arrangements that are in place already to protect our UK students. The cabinet secretary also said that there does not appear to be an average degree in the UK, given that degrees vary between three and five years. On the whole, amendments 25 and 27 could make matters even more difficult.

**Michael Russell:** I want to repeat two points that I made earlier. First, Liz Smith’s amendments introduce additional ambiguity. I remain open to any suggestion that might come from the sector, Liz Smith or elsewhere for an amendment that would decrease ambiguity. We should not be adding ambiguity to the bill at this stage. Secondly, I ask Mr Findlay not to press his amendments. They are not sensible, as they would make the situation worse for students from the rest of the UK.

I press amendment 9.

**Amendment 9 agreed to.**

**The Convener:** Amendment 24, in the name of Neil Findlay, is in a group on its own.

**Neil Findlay:** Amendment 24 would require institutions to provide bursaries to students from low-income families from the rest of the UK so that they could afford the fees and increased living costs of coming to study in Scotland. We do not want low-income and working-class students from the rest of the UK to be put off from applying to universities such as St Andrews and Edinburgh because they have higher fees. Amendment 24 would ensure that students choose the institution and course that is right for them, rather than choose the price that is right for them.

I move amendment 24.

**Liam McArthur:** If the provisions that are set out in amendment 24 are not in place, they certainly should be. I share the view of NUS Scotland that the absence of an equivalent in Scotland of the Office for Fair Access is an unfortunate weakness in the arrangements north
of the border. Indeed, in the light of Universities Scotland’s claims about the relative spending on bursaries north and south of the border, it is interesting to note that the level of participation at university among those from more deprived backgrounds appears to be better—and certainly is improving faster—down south than it is in Scotland. I will listen with interest to what the cabinet secretary has to say, but I think that the amendment is well made.

12:30
Michael Russell: I agree with some—if not all—members of the committee that the monetarisation of higher education has produced wrong and damaging consequences and should be rejected, and amendment 24 indicates the same. I am aware of the issue that Mr Findlay seeks to address. I have spoken to NUS Scotland a number of times about its concerns in that area, and we have developed and implemented proposals.

I believe that the proposed change is unnecessary, for two reasons. First, the proposals to improve access that we have set out elsewhere in the bill will create a framework in which universities will create opportunities for all learners who wish to pursue higher education in Scotland. In particular, the evidence that we have seen suggests that our universities are already delivering extremely competitive and helpful bursary packages for rest-of-UK students, and the amendment would therefore add additional complexity and bureaucracy where it is not necessary.

Secondly, the offers from our institutions compare favourably with those of their competitors, which has helped them to achieve significant increases in applications from students of all backgrounds from elsewhere in the UK. The Office for Fair Access that exists south of the border was established to mitigate a policy that I believe was wrong, and which we do not have in Scotland.


The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 24 disagreed to.

Amendment 25 moved—[Neil Findlay].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 moved—[Liz Smith].

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 26 disagreed to.

Amendment 27 moved—[Neil Findlay].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 27 disagreed to.

Amendment 28 moved—[Liz Smith].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Findlay, Neil (Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 28 disagreed to.

Section 4, as amended, agreed to.

The Convener: That ends today’s consideration of the bill at stage 2. At next week’s meeting, we will consider amendments to the remainder of the bill. The deadline for lodging amendments is this Thursday at noon.

12:34

Meeting suspended.
Post-16 Education (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 16 Schedule
Section 17 to 19 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 5

Michael Russell

72 In section 5, page 3, line 24, at end insert—

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

( ) the college’s students’ association;>

Neil Bibby

156 In section 5, page 3, line 34, at end insert—

<( ) In fulfilling its duty under subsection (1), a regional college must seek to make provision, so far as it is practicable for the regional college to do so, that supports economic and social regeneration in the locality of the regional college.>

Neil Bibby

157 In section 5, page 3, line 34, at end insert—

<( ) In fulfilling its duty under subsection (1), a regional college must seek, so far as it is practicable for the regional college to do so, to promote social inclusion and cohesion in the locality of the regional college.>

Neil Findlay

131 In section 5, page 4, line 7, leave out from <must,> to <functions,> in line 8 and insert <must>

Neil Bibby

158 In section 5, page 4, line 12, at end insert—

<( ) the community planning partnership for the area in which the regional college is situated;>
In section 5, page 4, line 12, at end insert—

<( ) the community health partnership for the area in which the regional college is situated;>

In section 5, page 4, line 12, at end insert—

<( ) transport providers in the area in which the regional college is situated;>

In section 5, page 4, line 22, at end insert—

<( ) The Open University;>

In section 5, page 4, line 23, at the beginning insert <The>

In section 5, page 4, line 30, at end insert—

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

( ) the regional college’s students’ association;>

In section 5, page 4, line 36, at end insert—

<( ) The Open University;>

In section 5, page 4, line 37, at beginning insert <The>

In section 5, page 5, line 2, at end insert—

<23BA 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 Scotland;

(b) issues affecting the economy of Scotland; and

(c) social and cultural issues in Scotland.

(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) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which, following consultation with the Council, 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.

(6) For the purposes of subsection (1)(b) and (c), “issues” means issues which, following consultation with the Council, 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.

Section 6

Michael Russell
77 In section 6, page 5, line 5, leave out <12> and insert <15>

Liz Smith
Supported by: Michael Russell

29* In section 6, page 5, line 9, at end insert—

<( ) the principal of the college;>

Neil Findlay
132 In section 6, page 5, line 11, leave out <among their own number> and insert <the recognised trade unions>

Neil Findlay
133 In section 6, page 5, line 13, leave out <among their own number> and insert <the recognised trade unions>

Liz Smith
30 In section 6, page 5, leave out line 20
Liz Smith
Supported by: Michael Russell
31 In section 6, page 5, leave out lines 29 and 30

Michael Russell
Supported by: Neil Findlay
79 In section 6, page 5, line 32, leave out <7 nor more than 10> and insert <13 nor more than 18>

Michael Russell
80 In section 6, page 5, line 35, at end insert—
"<( ) the principal of the college;>

Neil Findlay
134 In section 6, page 5, line 36, leave out <a person> and insert <two members>

Neil Findlay
135 In section 6, page 5, line 37, leave out <among their own number> and insert <the recognised trade unions>

Michael Russell
81 In section 6, page 6, line 1, leave out <a person> and insert <two persons>

Liz Smith
32 In section 6, page 6, line 2, at end insert—
"<( ) other members appointed by the board; and>

Neil Bibby
163 In section 6, page 6, line 2, at end insert—
"<( ) a person appointed by the board who appears to it to be representative of the community in which the college is situated;>

Liz Smith
33* In section 6, page 6, line 3, leave out from beginning to <body:> in line 4

Michael Russell
Supported by: Neil Findlay
82 In section 6, page 6, line 3, leave out <no fewer than 4 nor more than 6> and insert <other>

Michael Russell
83 In section 6, page 6, line 4, leave out from <and> to end of line 8
Liz Smith
34 In section 6, page 6, line 5, leave out <if appointed under sub-paragraph (3),>

Liz Smith
35 In section 6, page 6, leave out lines 6 to 8

Liz Smith
136 In section 6, page 6, line 8, at end insert—

< ( ) The board of a college which is not a regional college in exercising its functions shall comply with any principles of governance which appear to the Council to constitute good practice in relation to the board of a college which is not a regional college.>

Marco Biagi
164 In section 6, page 6, line 11, leave out from <such> to end of line 13 and insert <the representatives of any trade union recognised by the college or which otherwise appears to the board to be representative of the staff of the college.>

Michael Russell
84 In section 6, page 6, line 19, at end insert—

< ( ) 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 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.>
Liz Smith
37 In section 6, page 6, line 26, leave out <or (e)>

Liz Smith
38 In section 6, page 6, line 27, leave out <or (d)>

Section 7

Michael Russell
165 In section 7, page 7, line 10, leave out <exercise any of their other functions> and insert <discharge any of their duties>

Michael Russell
166 In section 7, page 7, line 14, leave out <a relevant funding body> and insert <the Council>

Michael Russell
167 In section 7, page 7, leave out lines 19 to 22

Liz Smith
Supported by: Michael Russell
39 In section 7, page 7, line 24, after <board> insert <(other than the principal of the college)>

Liz Smith
40 In section 7, page 7, line 25, leave out <or (e)>

Liz Smith
41 In section 7, page 7, line 26, leave out <or (d)>

Neil Bibby
168 In section 7, page 7, line 29, at end insert—
   <( ) A person removed under subsection (3)(a) may appeal to an independent review panel to be established by the Scottish Ministers to decide such appeals.>

Section 8

Michael Russell
169 In section 8, page 8, line 36, leave out from <regional> to <assigned> and insert <Council>

Michael Russell
170 In section 8, page 9, line 2, leave out <a regional strategic body> and insert <the Council>
In section 8, page 9, line 14, after <relates> insert (except any not already established)>

Michael Russell

In section 8, page 9, line 14, at end insert—

<( ) 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;

( ) the students’ associations of the colleges to which the order relates;>

Michael Russell

In section 8, page 9, line 19, at end insert—

<( ) The Council may, whenever it considers appropriate, review whether a college
which is assigned by order under subsection (2) is a body for which there are
suitable provisions, procedures and arrangements of the type described by or
under section 7(2).

( ) 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.>

Section 9

Liz Smith

In section 9, page 10, line 36, at end insert—

<( ) the requirement that its colleges comply with any principles of
governance which appear to the Council to constitute good practice in
relation to assigned colleges.>

After section 9

Liam McArthur

Supported by: Liz Smith

After section 9, insert—

<Other regional strategic bodies: terms and conditions of funding

After section 12B of the 2005 Act, inserted by section 9, insert—

“12C Other regional strategic bodies: terms and conditions of funding
The Council may, under section 12(2), when making a payment to any other regional strategic body under section 12(1), impose a condition requiring the regional strategic body to comply with any principles relating to its governance structure, or its administrative arrangements when allocating funds to any of its colleges, which appear to the Council to constitute good practice in relation to the allocation of funds by regional strategic bodies.

In this section, reference to any other regional strategic body is a reference to a body specified in Part 2 of Schedule 2A.”.

Section 10

Michael Russell

138 In section 10, page 12, line 4, at beginning insert <monitoring or>

Michael Russell

139 In section 10, page 12, line 11, at end insert—

<( ) 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.>

Neil Bibby

172 In section 10, page 13, line 5, at end insert <; and

<( ) any relevant economic and social regeneration plans prepared for the localities in which its colleges are situated.>

Neil Bibby

173 In section 10, page 13, line 11, at end insert <; and

<( ) regeneration in the localities in which its colleges are situated.>

Neil Bibby

174 In section 10, page 13, line 11, at end insert <; and

<( ) reducing social exclusion in the localities in which its colleges are situated.>

Liz Smith

140 In section 10, page 13, line 36, at beginning insert <by means of its assigned colleges>

Neil Bibby

175 In section 10, page 14, line 1, at end insert—

<( ) each community planning partnership for the areas in which its colleges are situated;>
In section 10, page 14, line 1, at end insert—

( ) each community health partnership for the areas in which its colleges are situated;

In section 10, page 14, line 1, at end insert—

( ) transport providers in the areas in which its colleges are situated;

In section 10, page 14, line 11, at end insert—

( ) The Open University;

In section 10, page 14, line 12, at beginning insert <The>

In section 10, page 14, line 21, at end insert—

( ) 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;

( ) the students’ associations of its colleges;

In section 10, page 14, line 22, at end insert—

( ) each community planning partnership for the areas in which its colleges are situated;

In section 10, page 14, line 27, at end insert—

( ) The Open University;

In section 10, page 14, line 28, at beginning insert <The>

In section 10, page 14, line 41, at end insert ; and
In exercising its duties under subsection (6), a regional strategic body must in particular promote collaboration to ensure access to fundable further education and fundable higher education for persons who are considered to be socially excluded or who have any protected characteristic within the meaning of section 4 of the Equality Act 2012 (c.15).

Liz Smith  
141 In section 10, page 15, line 11, at beginning insert <by means of its assigned colleges>

Liz Smith  
44 In section 10, page 15, line 27, leave out <require> and insert <request>

Liz Smith  
45 In section 10, page 15, line 29, leave out <requirement> and insert <request>

Liz Smith  
46 In section 10, page 15, line 32, leave out <requirement> and insert <request>

Neil Findlay  
142 In section 10, page 16, leave out lines 5 and 6

Liz Smith  
47 In section 10, page 16, line 7, leave out <requirement> and insert <request>

Liz Smith  
48 In section 10, page 16, line 10, leave out <requirement> and insert <request>

Liz Smith  
143 In section 10, page 16, line 13, at beginning insert <by means of its assigned colleges>

Neil Findlay  
144 In section 10, page 16, leave out line 23

Liz Smith  
49 In section 10, page 16, leave out lines 26 and 27

Liz Smith  
50 In section 10, page 16, line 28, leave out <requirement> and insert <request>

Liz Smith  
51 In section 10, page 16, line 29, leave out <falling within subsection (9)>
Liz Smith
52 In section 10, page 16, line 30, leave out <requirement> and insert <request>

Neil Findlay
145 In section 10, page 16, line 30, at end insert—
<( ) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer of staff under this section whether or not they would so apply apart from this subsection.> 

Liz Smith
53 In section 10, page 16, leave out lines 31 to 35

Michael Russell
91 In section 10, page 16, line 36, leave out subsection (2)

Section 11

Michael Russell
92 In section 11, page 18, line 2, leave out <12 nor more than 18> and insert <15>

Michael Russell
93 In section 11, page 18, line 5, at end insert—
<(aa) subject to sub-paragraph (3A), the chairing member of each of the board’s colleges;>

Neil Findlay
146 In section 11, page 18, line 7, leave out <among their own number> and insert <the recognised trade unions>

Neil Findlay
147 In section 11, page 18, line 9, leave out <among their own number> and insert <the recognised trade unions>

Colin Beattie
71 In section 11, page 18, line 10, at end insert—
<( ) the chairing member of each college assigned to the regional strategic body; and>

Michael Russell
94 In section 11, page 18, line 11, at beginning insert <up to 9>
Neil Bibby
181 In section 11, page 18, line 11, after <board> insert <, including one member who appears to it to be representative of the communities in which the board’s colleges are situated>

Michael Russell
95 In section 11, page 18, line 17, at end insert <; or
( ) the chief officer of the board.>

Michael Russell
96 In section 11, page 18, line 17, at end insert—
<(3A) A person is disqualified from being part of the board in pursuance of sub-paragraph (2)(aa) if the person has previously been removed from the board under section 23N.> 

Liz Smith
54 In section 11, page 18, leave out line 21

Michael Russell
97 In section 11, page 18, line 26, at end insert—
<( ) Before issuing guidance under sub-paragraph (5), the Scottish Ministers must consult—
(a) any regional board to which the guidance relates;
(b) the board of management of any college of further education which is, or which the Scottish Ministers consider likely to be, assigned to the regional board by order under section 7C;
(c) the local authority for any area in which such a college is situated;
(d) the students’ association for each such college;
(e) the representatives of any trade union which is recognised by any such college 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.>
Neil Findlay

In section 11, page 19, line 5, at end insert—

<(  ) all trade unions recognised by its colleges;
(  ) the students’ associations of its colleges; and>

Marco Biagi

In section 11, page 19, leave out lines 6 and 7 and insert—

<(  ) in the case of rules about elections in pursuance of paragraph 3(2)(b), the
representatives of any trade union recognised by one or more of its
colleges or which otherwise appears to it to be representative of the staff
of its colleges; and
(  ) in the case of rules about elections in pursuance of paragraph 4(3), the
students’ associations of each of its colleges.>

Liz Smith

In section 11, page 19, line 16, after <bankrupt;> insert—

<(  ) is under 16 years of age;>

Michael Russell

In section 11, page 20, line 2, at end insert—

<(  ) a member appointed in pursuance of paragraph 3(2)(aa) is to hold office
until the person ceases to be a chairing member of any of the board’s
colleges;>

Michael Russell

In section 11, page 20, line 15, leave out <member of any of the institutions mentioned> and
insert <person of the type described>

Michael Russell

In section 11, page 20, line 33, after <member> insert <(except for a member appointed in
pursuance of paragraph 3(2)(aa))>

Michael Russell

In section 11, page 21, line 14, at end insert—

<(  ) Sub-paragraph (4) does not apply in relation to a member appointed in
pursuance of paragraph 3(2)(aa).>
Neil Findlay

149 In section 11, page 21, line 18, at end insert—

<( ) Before determining the terms and conditions for any employee under sub-
paragraph (1), the board must consult any body established by the Scottish
Ministers for the consideration or negotiation of terms and conditions of
college staff.>

Neil Bibby

183 In section 11, page 21, leave out line 26 and insert—

<( ) arrangements to enable any person employed by the board to join or
continue to be a member of an existing pension scheme.>

Neil Bibby

184 In section 11, page 22, line 11, after <otherwise> insert <(or, in particular, considers that such
participation would give rise to a material conflict of interest)>

Neil Bibby

185 In section 11, page 22, line 14, after <board> insert <(except during any part of a meeting when
the appointment of board members is considered)>

Neil Bibby

186 In section 11, page 22, line 16, after <(9)> insert <and to the requirement that the board secures
adequate insurance provision for its activities>

Colin Beattie

187 In section 11, page 22, line 23, at end insert—

<( ) forming or promoting (whether alone or with another) companies under
the Companies Act 2006.>

Neil Bibby

188 In section 11, page 22, line 26, after <property> insert <or any other matter>

Section 12

Michael Russell

189 In section 12, page 24, line 23, for <exercise any of its other functions> substitute <discharge any
of its duties>

Liz Smith

56 In section 12, page 24, line 27, leave out <or (e)>
Section 13

Liz Smith

57 In section 13, page 25, line 10, leave out <or, as the case may be, (e)> 

After section 13

Michael Russell

150 After section 13, insert—

<Further education institutions: good governance

Further education institutions: good governance

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AA Further education institutions: good governance

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1) to a college of further education which is a fundable post-16 education body, require it to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.

(2) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional strategic body under section 12(1), require it—

(a) to comply with any principles of governance which appear to the Council to be appropriate in relation to such a body; or

(b) to impose, when making a payment to any of its colleges under section 12B(1), a condition requiring the college to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.”

Liz Smith

Supported by: Liam McArthur

151 After section 13, insert—

<Terms and conditions of college funding

Terms and conditions of college funding

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AA Regional colleges: good governance

The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional college under section 12(1), require the regional college to comply with any principles of governance which appear to the Council to constitute good practice in relation to regional colleges.

9AB Regional boards: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional board under section 12(1), require the regional board to comply with any principles of governance which appear to the Council to constitute good practice in relation to regional boards.”.

Liam McArthur

152  After section 13, insert—

<Terms and conditions of college funding

Terms and conditions of college funding

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AC  Other regional strategic bodies: good governance

The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to any other regional strategic body under section 12(1), require the regional strategic body to comply with any principles of governance which appear to the Council to constitute good practice in relation to regional strategic bodies.”.

Section 14

Michael Russell

190  In section 14, page 26, line 1, leave out from first <fundable> to end of line 19 and insert <-

( ) any aspect of the funding or provision of fundable further education or fundable higher education (generally or in particular areas); or>

Michael Russell

191  In section 14, page 26, line 28, at end insert—

<( ) When conducting a review, the Council must consult—

(a) the governing body of any post-16 education body and any regional strategic body to which the review relates;

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

(c) any body which appears to the Council to be representative of trade unions in Scotland;

(d) the students’ association of any post-16 education body to which the review relates; and

(e) any body which appears to be the Council to be representative of the interests of students of post-16 education bodies generally.>

Michael Russell

192  In section 14, page 26, line 36, leave out <a report of the review to the Scottish Ministers> and insert <the Scottish Ministers, and any post-16 education body and regional strategic body to which the review relates, with a report of the review>
Joan McAlpine

11 In section 14, page 27, line 4, at end insert—

<14B  Review of fundable further and higher education: Dumfries and Galloway

(1) The Council must from time to time review the arrangements for the delivery of fundable further and higher education in the Dumfries and Galloway local authority area and report to the Scottish Ministers.

(2) When conducting a review under subsection (1), the Council must consult—

(a) The Crichton Foundation,
(b) The University of Glasgow,
(c) The University of the West of Scotland,
(d) Dumfries and Galloway College,
(e) Dumfries and Galloway Council,
(f) The Open University,
(g) SRUC (Scotland’s Rural College).

(3) The Scottish Ministers may by order modify the list of persons in subsection (2).”>

After section 14

Marco Biagi

60 After section 14, insert—

<The Council: exercise of functions

The Council: exercise of functions

In section 20 of the 2005 Act, after subsection (1), insert—

“(1A) In exercising its functions, the Council is to have regard to—

(a) the desirability of enabling, encouraging or increasing participation in fundable further and higher education by persons belonging to socio-economic groups which are under-represented in such education; and

(b) the desirability of promoting collaboration and the sharing of good practice with and between post-16 education bodies in relation to the matters described in paragraph (a).”>

Liam McArthur

61 After section 14, insert—

<The Council: duty on widening access

The Council: duty on widening access

After section 19 of the 2005 Act, insert—

The Council: duty on widening access

“19A Duty on widening access
The Council must make arrangements to ensure that work is undertaken to research, identify and formulate good practice in those actions that are best designed to enable, encourage or increase participation in fundable higher education by persons with a socio-economic characteristic which is under-represented in such education.”

Section 15

Michael Russell

103 In section 15, page 27, line 8, after <to> insert <The>

Michael Russell

104 In section 15, page 27, line 16, at end insert—

<(2A) The Scottish Ministers may, by order, require The Skills Development Scotland Co. Limited to provide information it holds about a young person to such persons who provide education or training to young persons as may be specified in the order.

(2B) Such an order may specify—

(a) the information, or type of information, which must be provided, and

(b) the form and manner in which it is to be provided.>

Michael Russell

105 In section 15, page 27, line 17, at the beginning insert <The>

Michael Russell

106 In section 15, page 27, line 21, leave out from second <by> to end of line 25 and insert —

(a) by replacing the references in subsections (1), (2A) and (3) to the person to whom information is to be provided in pursuance of subsection (1) and who may be required to provide information in pursuance of subsection (2A) with references to such other person as they consider appropriate, or

(b) where that person changes its name, by modifying references to that person in subsections (1), (2A) and (3) to reflect that change of name.>

Michael Russell

107 In section 15, page 27, line 27, leave out from <and> to end of line 29

Michael Russell

108 In section 15, page 27, line 30, leave out subsection (8) and insert —

<( ) An order under subsection (1) or (2A) is subject to the affirmative procedure.

( ) An order under subsection (5)(a) is subject to the negative procedure.>

Liam McArthur

62 In section 15, page 27, line 30, leave out <negative> and insert <affirmative>
In the schedule, page 29, line 13, at end insert—

< ( ) In section 3—

(a) in subsection (6), after “Act” insert “and the Further and Higher Education (Scotland) Act 2005”;

(b) after subsection (6) insert—

“(7) Before making regulations under subsection (6), the Scottish Ministers must consult—

(a) the boards of management to which the regulations relate;

(b) any regional strategic body for a college of further education which has such a board;

(c) the students’ association of each such college;

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

(e) the Council;

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

(g) the representatives of any trade union which is recognised by a board of management to which the regulations relate or which otherwise appears to the Scottish Ministers to be representative of its staff;

(h) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland; and

(i) any other person appearing to the Scottish Ministers as likely to be affected by the regulations.”.>

In the schedule, page 29, line 13, at end insert—

< ( ) In section 5—

(a) in subsection (1), after “situated” insert “, the persons mentioned in subsection (1A)”,

(b) after subsection (1) insert—

“(1A) Those persons are—

(a) the Council; and

(b) where the proposal is to exercise the power under section 3(1)(b) or (c) or 44 of this Act—

(i) the board of management of the college or colleges concerned;

(ii) any regional strategic body for such a college;
(iii) the representatives of any trade union which is recognised by any such board of management or which otherwise appears to the Scottish Ministers to be representative of its staff;

(iv) the students’ association of each such college.”.>

Michael Russell

111 In the schedule, page 29, line 27, at end insert—

<( ) In section 60—

(a) in subsection (1), after second “Act” insert “or which falls within subsection (2A)”;

(b) after subsection (2) insert—

“(2A) An order falls within this subsection if it is made under section 3(5) of this Act and makes provision other than provision varying the maximum or minimum number of members of a board of management established in pursuance of Part 1 of this Act.

(2B) An order falling within subsection (2A) is subject to the affirmative procedure.”.>

Michael Russell

112 In the schedule, page 29, line 33, leave out <(2I)> and insert <(2H)>

Liz Smith
Supported by: Michael Russell

63 In the schedule, page 30, line 6, leave out <Except where sub-paragraph (2D) applies,>

Liz Smith
Supported by: Michael Russell

64 In the schedule, page 30, line 10, leave out <Except where sub-paragraph (2D) applies,>

Liz Smith
Supported by: Michael Russell

65 In the schedule, page 30, leave out lines 13 to 16

Michael Russell

113 In the schedule, page 30, line 18, at end insert—

<( ) The principal of a college is to vacate office on ceasing to be the principal.>

Michael Russell

114 In the schedule, page 30, leave out lines 28 to 30

Liz Smith

66 In the schedule, page 30, line 28, leave out <at the time of appointment>
Liz Smith
67 In the schedule, page 30, line 30, leave out &lt;before the member’s period of appointment ends&gt;

Michael Russell
115 In the schedule, page 30, line 32, leave out from &lt;omit&gt; to &lt;college,”&gt; and insert &lt;for the words from “such” to “purpose” substitute “—

(a) in the case of the chairing member of the board of a regional college, the Scottish Ministers;

(b) in the case of any other member of the board a regional college, the board;

(c) in the case of any member of the board of a college which is not a regional college, the regional strategic body.”;&gt;

Liz Smith
68 In the schedule, page 30, line 41, after &lt;bankrupt;&gt; insert—

 &lt;( ) is under 16 years of age;&gt;

Liz Smith
Supported by: Michael Russell
69 In the schedule, page 31, leave out lines 33 and 34

Michael Russell
116 In the schedule, page 31, line 34, at end insert—

 &lt;5C Paragraphs 5A and 5B do not apply in relation to the principal of the college.&gt;

Michael Russell
117 In the schedule, page 31, line 36, leave out from &lt;for&gt; to end of line 40 and insert &lt;for “paragraphs 12 and” substitute “paragraph”&gt;

Liz Smith
70 In the schedule, page 31, leave out lines 37 to 40

Neil Findlay
153 In the schedule, page 32, line 1, leave out &lt;paragraph 16A&gt; and insert &lt;paragraphs 16A and 16B&gt;

Michael Russell
193 In the schedule, page 32, leave out lines 3 to 12 and insert—

 &lt;“16A The appointment of a principal of a college which is not a regional college, and the terms and conditions of such an appointment, have effect only if approved by the regional strategic body for the college.”;&gt;
Liam McArthur

194 In the schedule, page 32, line 4, leave out from first <regional> to end of line 5 and insert <board of the college on such terms and conditions as the board thinks fit.

   (2) The principal of a regional college is to be appointed by the board of the regional college on such terms and conditions as the board thinks fit.”,

Neil Findlay

154 In the schedule, page 32, line 5, at end insert—

   “16B Before determining the terms and conditions for any employee under subparagraph (1), the board must consult any body established by the Scottish Ministers for the consideration or negotiation of pay and conditions of college staff.”,

Liam McArthur

195 In the schedule, page 32, leave out lines 7 to 11

Michael Russell

118 In the schedule, page 32, line 33, at end insert—

   <Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

   In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, after the cross-heading “Offices” insert—

   “The chairing member of the board of management of a college of further education which is designated as a regional college by order under section 7A of the Further and Higher Education (Scotland) Act 2005

   The chairing member of a regional board established by or in pursuance of section 7B of that Act”,

Neil Bibby

196 In the schedule, page 32, line 33, at end insert—

   <Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

   In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, after the italic cross-heading “Offices” insert—

   “The chairing member of the board of a college which is not a regional college and is assigned by order under section 7C(1) of the Further and Higher Education (Scotland) Act 2005 (asp 6)”,

Michael Russell

119 In the schedule, page 33, line 13, at end insert—

   <( ) In section 7(2)(h), for “fundable” substitute “post-16 education”.”,>
120 In the schedule, page 33, line 28, leave out <for> and insert <authorising the Scottish Ministers to make arrangements for, or otherwise providing for,>.

121 In the schedule, page 33, line 37, at end insert—

<(3A) But such an order may not make provision in pursuance of subsection (3)(b) under which a person appointed to a board of management is to hold office otherwise than as if appointed under paragraph 3(2)(a) or (e) or, as the case may be, 3A(2)(a) or (d) of schedule 2 to the 1992 Act.>

122 In the schedule, page 33, line 38, leave out <(3)> and insert <(3A)>

155 In the schedule, page 35, line 5, after <9A> insert <, 9AA>

10 In the schedule, page 35, line 6, at end insert—

<(  ) omit the word “fundable”>.

Liam McArthur
6 In the schedule, page 35, leave out lines 9 to 13

123 In the schedule, page 36, line 24, leave out from <after> to end of line 26 and insert <, for “the fundable bodies; or” substitute “post-16 education bodies and regional strategic bodies;

(aa) any body which appears to the Council to be representative of trade unions in Scotland; or”,

(  ) in paragraph (b), for “fundable bodies” substitute “post-16 education bodies generally”>.

124 In the schedule, page 36, line 26, at end insert—

<(  ) in subsection (5)—

(i) at the end of paragraph (f) insert “; and

(fa) The Skills Development Scotland Co. Limited”,

(ii) omit paragraphs (g) to (i),

(  ) omit subsection (6),

(  ) in subsection (7), for “subsections (5) and (6)” substitute “subsection (5)”>.
Michael Russell

125 In the schedule, page 36, line 35, leave our from <25(1)> to <education”> and insert <25—

(a) in subsection (1)—

(i) for first “fundable” substitute “post-16 education body or regional strategic”,

(ii) omit second “fundable”,

(b) after subsection (1) insert—

“(1A) A direction made under subsection (1) in relation to any of a regional strategic body’s colleges may, in particular, require the Council to provide such financial support to the regional strategic body as may be specified in the direction (subject to such terms and conditions as may be so specified).”,

(c) in subsection (2), for the words from second “the” to “concerned” substitute “—

(a) the Council;

(b) the body to which the direction relates; and

(c) where that body is assigned to a regional strategic body by an order made under section 7(1), the regional strategic body”. >

Michael Russell

126 In the schedule, page 37, line 15, at end insert —

<(baa) an order under section 7B(2)(a) which establishes a regional board;

(bab) an order under section 7B(2)(b) which adds or removes an entry (but not including an order which removes an entry relating to a body which has been closed, wound up or has otherwise ceased to exist);>

Michael Russell

127 In the schedule, page 37, line 17, leave out <or> and insert—

<(bba) an order under section 9C(2) (other than an order which does no more than increase the amount specified in a previous order by an amount that is no greater than the amount which the Scottish Ministers, having had regard to any retail price index, consider is required in order to maintain the value of the previously specified amount in real terms);”>

Michael Russell

128 In the schedule, page 37, line 17, at end insert—

<(  ) after paragraph (c) insert “; or

(ca) an order under paragraph 18 of schedule 2B (other than an order which does no more than vary the minimum number of members of a regional board or vary the maximum number of members which may be appointed in pursuance of paragraph 3(2)(c)),”>
129 In the schedule, page 38, line 14, at end insert <; and

( ) any reference (other than in sections 23A and 23C) to the locality in which fundable further education or fundable further education is provided does not include reference to any such education which is provided by way of distance or open learning.”.>

Michael Russell

130 In the schedule, page 38, line 14, at end insert—

<Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) In the definition of “further education institution” in paragraph 15 of the Protection of Vulnerable Groups (Scotland) Act 2007, after “(asp 6)” insert “or a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act”.”>
Post-16 Education (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

Consultation, collaboration, etc.
72, 131, 158, 159, 160, 73, 161, 75, 164, 84, 85, 86, 140, 175, 176, 177, 87, 178, 179, 89, 141, 143, 97, 148, 182, 109, 110, 123, 124

Regional college functions
156, 157, 162

Minor and technical amendments
74, 76, 88, 90, 103, 105, 119, 120, 121, 122, 10, 129, 130

Membership of college and regional boards
77, 29, 132, 133, 30, 31, 79, 80, 134, 135, 81, 32, 163, 33, 82, 83, 34, 35, 37, 38, 39, 40, 41, 92, 93, 146, 147, 71, 94, 181, 95, 96, 54, 55, 98, 99, 100, 101, 102, 184, 185, 56, 57, 112, 63, 64, 65, 113, 114, 66, 67, 115, 68, 69, 116, 117, 70

Notes on amendments in this group
Amendment 33 pre-empts amendment 82
Amendment 83 pre-empts amendments 34 and 35
Amendment 114 pre-empts amendments 66 and 67
Amendment 117 pre-empts amendment 70

College governance
136, 137, 43, 150, 151, 152, 155

Mismanagement
165, 166, 167, 168, 91, 189, 125

Assignation of colleges
169, 170, 171
Performance monitoring
138, 139

Regional strategic bodies: exercise of functions
172, 173, 174, 180

Staff and property transfers
44, 45, 46, 47, 48, 144, 49, 50, 51, 52, 145, 53

Employee terms and conditions
149, 183, 153, 193, 194, 154, 195

Notes on amendments in this group
Amendment 193 pre-empts amendments 194 and 195

Regional boards: general powers
186, 187, 188

Review of further and higher education
190, 191, 192, 11

Duty to provide information to Skills Development Scotland
104, 106, 107, 108, 62

Notes on amendments in this group
Amendment 108 pre-empts amendment 62

Power to vary board size: parliamentary procedure
111, 126, 127, 128

Public appointments
118, 196

Amendments already debated

Widening access to higher education
With 1 – 60, 61, 6
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

16th Meeting, 2013 (Session 4)

Tuesday 21 May 2013

Present:
George Adam     Clare Adamson
Colin Beattie      Neil Bibby
Neil Findlay (Deputy Convener)   Stewart Maxwell (Convener)
Joan McAlpine     Liam McArthur
Liz Smith

Also present: Michael Russell (Cabinet Secretary for Education and Lifelong Learning) and Marco Biagi.

Post-16 Education (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division): 72, 73, 74, 161, 75, 76, 162, 77, 29, 31, 79, 80, 81, 83, 164, 84, 166, 167 and 39.

The following agreements were agreed to (by division)—
82 (For 8, Against 1, Abstentions 0)
165 (For 7, Against 2, Abstentions 0)

The following agreements were disagreed to (by division)—
156 (For 4, Against 5, Abstentions 0)
157 (For 4, Against 5, Abstentions 0)
131 (For 2, Against 7, Abstentions 0)
158 (For 4, Against 5, Abstentions 0)
159 (For 4, Against 5, Abstentions 0)
160 (For 4, Against 5, Abstentions 0)
132 (For 4, Against 5, Abstentions 0)
133 (For 4, Against 5, Abstentions 0)
30 (For 4, Against 5, Abstentions 0)
134 (For 4, Against 5, Abstentions 0)
135 (For 4, Against 5, Abstentions 0)
32 (For 4, Against 5, Abstentions 0)
163 (For 2, Against 7, Abstentions 0)
33 (For 4, Against 5, Abstentions 0)
136 (For 4, Against 5, Abstentions 0)
37 (For 4, Against 5, Abstentions 0)
38 (For 4, Against 5, Abstentions 0)
40 (For 4, Against 5, Abstentions 0)
41 (For 4, Against 5, Abstentions 0)
168 (For 3, Against 5, Abstentions 1)
The following amendments were pre-empted: 34 and 35.

The following provisions were agreed to as amended: sections 5, 6 and 7.

The Committee ended consideration of the Bill for the day section 7 having been agreed to.
On resuming—

Post-16 Education (Scotland) Bill: Stage 2

The Convener: Welcome back. Item 2 is day 2 of our consideration of the Post-16 Education (Scotland) Bill at stage 2. We aim to consider all the remaining amendments today, if at all possible.

I welcome to the committee Mike Russell, the Cabinet Secretary for Education and Lifelong Learning, and his accompanying officials. I also welcome Marco Biagi.

I hope that everyone has with them a copy of the bill, the second marshalled list of amendments and the second list of groupings of amendments.

We will begin by—

Neil Findlay: Convener, can I raise a few points before we begin, if that is possible?

The Convener: No, it is not. We are in the middle of stage 2 consideration. What are your points about?

Neil Findlay: They are about the procedure that we will be going through today. Given the volume of amendments that we have to consider and the timescale for doing that, I find the position that we are in unsatisfactory.

As parliamentarians, we have a duty to scrutinise legislation properly and to hold the Government to account for its decisions. In effect, we have just two more weeks to go through more than 150 amendments. In my view, that is neither possible nor desirable.

Let me use as an example the group of amendments on the membership of college and regional boards. As I understand it, the person who moves the lead amendment will be expected to refer not just to their own amendment, but to the many others in that group—I think that there are another 56 amendments in the group—in a single contribution. That is a ridiculous situation to be in. It is an insult to the committee and to Parliament.

Is that the way in which you intend to proceed, given the multitude of amendments that have been lodged for consideration?

The Convener: Thank you for those comments. As I said, I do not think that they are relevant to what we are about to do. If you wish to make a complaint about parliamentary procedure, you should take it up with the appropriate committee and the parliamentary authorities.

I know that you are a relatively new member of Parliament, but this is the normal procedure that we go through. It is the procedure that has been gone through on every bill that I have come across over the past 10 years. It is the normal, routine process at stage 2. It is not unusual in any way. During my time in Parliament, we have dealt with a substantially greater number of amendments to a bill at stage 2 in exactly the same way.

If you have a problem with the parliamentary process, you should take it up with the relevant parliamentary authorities.

I now move to—

Neil Findlay: Convener, if I might respond—

The Convener: No, I am sorry, but I intend to move on.

Neil Findlay: That is disappointing. I will take the matter up with the parliamentary authorities.

The Convener: That is what I suggested that you do, because this is not the appropriate place to raise such issues.

Section 5—Regional colleges

The Convener: Amendment 72, in the name of the cabinet secretary, is grouped with a number of other amendments.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): It is clear that there are a lot of amendments to be considered at this meeting and at a subsequent meeting, if it takes place, but the bill is a highly technical bill and some of the amendments relate to small changes in wording that affect a number of provisions, although the intention is summed up in a single amendment.

Consultation and collaboration are an important part of the fabric of the bill. There are a number of amendments to the consultation and collaboration provisions. Some seek to strengthen the existing requirement, while others seek to build consultation and collaboration into newly proposed provisions. I hope that all the amendments will be welcomed by the committee, because they are genuinely intended to expand consultation and collaboration.

Amendments 84 and 97 deal with statutory consultation before ministerial guidance on appointments is issued. It is important that the appointments guidance is developed with the
benefit of the sector’s knowledge and experience. It was always my intention to consult before issuing the guidance. In requiring that ministers must consult before issuing guidance, amendments 84 and 97 place such consultation on a statutory footing.

Amendments 72 and 86 deal with relevant trade unions and student associations. The views of college staff and students are a key consideration in any decision to designate a college as a regional college or to assign it to a regional strategic body. Amendments 72 and 86 will ensure that the statutory consultation that is required before ministers make an order that designates a college as a regional college or which assigns it to a regional strategic body includes consultation with relevant trade unions and student associations.

In amendment 110, we are responding to concerns that the Scottish Trades Union Congress helpfully raised about the consistency of consultation requirements. Amendment 110 specifies particular persons that the Scottish ministers are required to consult, in addition to the education authority for the area in which the college is, or is to be, situated, before making an order to establish a new college, to close a college, to merge two or more colleges or to designate a further education college as a higher education institution.

11:30

In all cases, ministers will have to consult the Scottish Further and Higher Education Funding Council. Apart from orders that establish a new college—as there will be no college to consult—there will be a requirement to consult the college, any regional strategic body, the relevant trade unions recognised by the college or representative of its staff, and the student association.

Amendments 161 and 178 develop a helpful suggestion made by the Educational Institute of Scotland in its written evidence at stage 1 that the general consultation and collaboration duties for regional colleges and regional strategic bodies should include obligations to consult and seek to collaborate with the unions. I agree with the EIS, and indeed the amendments reflect that there is value in requiring regional colleges and regional strategic bodies to consult and seek to collaborate with student associations.

Amendments 73, 75, 87 and 89 make clear that regional colleges and regional strategic bodies have obligations to consult and collaborate, including obligations to consult and seek to collaborate with the Open University, which is an important body to do that with.

Amendment 123 tidies up section 22 of the Further and Higher Education (Scotland) Act 2005, on the SFC’s consultation and collaboration duties, so that the post-16 education body and regional strategic body labels, for which the bill makes provision, are used. It also adds any body that appears to Scottish ministers to be representative of trade unions in Scotland—as matters stand, that is likely to be the STUC—to the list of persons in section 22(2) with whom the SFC must consult when it considers it appropriate to do so in the exercise of its functions. The other persons are trade unions representative of staff for post-16 education bodies or regional strategic bodies and a body of persons representative of students in post-16 education bodies, which is likely to be the National Union of Students Scotland.

Amendment 124 tidies up section 22(5) of the 2005 act by updating the persons listed there.

Amendment 109 amends the regulation-making power in section 3(6) of the Further and Higher Education (Scotland) Act 1992, which is broadly a power for ministers to make regulations to prescribe requirements that boards of management of incorporated colleges must comply with in discharging their functions, to reflect that the bill will confer functions on incorporated colleges through amendments to the 2005 act. It will also require ministers to consult those listed in the amendment before regulations can be made, for which the 1992 act currently makes no provision.

Amendment 85 is another tidying-up amendment. It makes clear that although ministers will, before making an order under proposed new section 7C of the 2005 act to assign a college to a regional strategic body, be required to consult the college concerned, they will not be required to do so where the college does not exist. I suppose that it is a metaphysical amendment. In particular, the amendment acknowledges that the order in question could, in principle, be a combined order, made in exercise of both the power in proposed new section 7C and the power to establish a new incorporated college.

I am happy to support Marco Biagi’s amendments 164 and 182. I agree that it is important that there is a specific requirement to consult trade unions and student associations on election rules for staff members on both college and regional boards and student members on regional boards.

I am very sympathetic to Neil Findlay’s amendment 148, but it serves the same purpose as amendment 182. Amendment 182 is framed in a way that is consistent with the rest of the bill, which amendment 148 is not, so I ask Neil Findlay
not to move amendment 148. The point is covered.

I thank Neil Findlay for lodging amendment 131. It is important for regional colleges to consult appropriately. However, in my view, that is already achieved by the way in which proposed new section 23B(3) of the 2005 act is framed. It provides that

“A regional college must, where it considers it appropriate to do so in the exercise of its functions, consult”.

Amendment 131 would have the effect of removing the notion of

“where it considers it appropriate to do so in the exercise of its functions”.

I do not support that approach, because I think that, fundamentally, it is appropriate that a regional college has the discretion to consider whether consultation is appropriate.

Amendment 131 also has a technical deficiency, in that although it would place a regional college under a duty to consult persons listed in proposed new section 23B(3), it would mean that no provision was made for the purpose—the why—of that consultation or for when such consultation was required. Both matters are addressed in proposed new section 23B as drafted. Amendment 131 therefore would give rise to uncertainty on what was required of a regional college.

Amendment 131 would also unintentionally introduce an inconsistency in what is required in terms of consultation on the part of regional colleges under proposed new section 23B on the one hand, and regional strategic boards under proposed new section 23J on the other. Therefore, I cannot support amendment 131.

Liz Smith’s amendments 140, 141 and 143 reflect the position of Scotland’s Colleges that regional strategic bodies should consult college trade unions via the assigned college, on the basis that the college is the employer of the college staff. Technically, the amendments would mean that when regional strategic bodies consult relevant trade unions in circumstances required by the new sections, they would do so by means of their assigned colleges. I think that that scenario is simply not workable. Colleges play many valuable roles, but speaking on behalf of college trade unions is not one of them. I am confident that the unions agree with that point.

College trade unions will be key stakeholders of regional strategic bodies and it is important that those bodies consult and collaborate with them. That will not interfere with the college’s role as the employer of college staff and the negotiation frameworks that they will have in place. For those reasons, I cannot support the three amendments in Liz Smith’s name.

I turn to Neil Bibby’s amendments. Amendments 158 and 175 would require regional colleges and regional strategic bodies to consult community planning partnerships; amendments 159 and 176 would require them to consult community health partnerships; and amendments 160 and 177 would require them to consult transport providers. Amendment 178 would further require regional strategic bodies to seek to collaborate with community planning partnerships. It is always the case when specifying lists of consultees that a judgment must be made on where the line should be drawn. The bill as introduced reflects our view that regional colleges and regional strategic bodies ought not to be required to consult or seek to secure the collaboration of community health partnerships or transport providers, although there is nothing in the legislation that would prevent such consultation should the relevant bodies deem it appropriate.

Amendments 158, 175 and 178 relate to the interface with community planning partnerships. The Government will consult this summer on a draft community empowerment and renewal bill, which will deal with how public bodies should engage with and support community planning. That seems to be a more appropriate vehicle for considering the matter, as it would ensure a consistent approach to those important issues across public bodies in Scotland. I therefore do not support amendments 158, 175 and 178.

I move amendment 72.

The Convener: Thank you very much. I call Neil Findlay to speak to amendment 131 and other amendments in the group.

Neil Findlay: Thanks, convener. The bill has been a mess from day one and has been criticised by numerous stakeholders, including college and university students, lecturers, support staff and many trade unions, including the EIS, the University and College Union, Unison and the National Union of Students. The bill appears to have been badly thought out from the start as well as being badly drafted. At best, it is a shoddy piece of work; at worst, it is an utter shambles. Professor Griggs probably gave it the most enthusiastic endorsement when he said that it was “okay”.

Weeks ago, Scottish Labour called for the bill to be withdrawn or delayed. With every dozen amendments that the cabinet secretary submits, we are more and more convinced that that was the right call. This is the first time that I have had to sit through parliamentary proceedings on a substantive piece of legislation, and it has not been a very edifying experience. The bill is not so much being amended as almost completely rewritten. That is not my understanding of what the stage 2 process should be about. We have now
had almost 200 amendments to the bill, most of which have come from the cabinet secretary—the situation is absurd.

In moving amendments 131 and 148, I will also speak to the other amendments in the group.

Amendment 131 would ensure that consultation with regional colleges was carried out as a matter of course rather than when considered appropriate. Consultation should be inclusive and regarded as a good thing, and amendment 131 would remove the discretionary element. Amendment 140 would ensure that there was consultation with trade unions and student associations before changes were made to election rules. Again, we see that as a positive thing.

Amendment 172 would extend consultation to stakeholders before a regional college was created. It is good for trade unions and student associations to be included in the bill as proper consultees, so we support amendment 172. On amendments 158 to 160, CPPs and CHPs should be consulted in relation to local regeneration and regional changes. Transport issues are very important, so we think that transport providers should be consulted. On amendment 73, the bill as introduced appears to have forgotten all about the Open University, which seems to confirm the rather shoddy nature of the bill’s drafting.

We support amendment 161. Regional colleges should seek to secure collaboration with trade unions and student associations.

Amendment 75 again refers to the Open University. Skills Development Scotland is not referred to accurately in the bill as introduced, which seems rather remarkable.

I am wading through my papers. Amendment 164 would ensure consultation with trade unions and staff representatives when election rules are being amended. It is similar to amendment 148.

Amendment 84 would ensure that Scottish ministers consult before issuing guidance on appointments. That is welcome, but the amendment again illustrates the point that the Scottish Government did not put such a provision in the bill as introduced. That appears to be a problem, but we support the amendment.

Amendment 85 is a tidying-up amendment, which we support.

Amendment 86 would extend the list of stakeholders to be consulted before colleges are assigned. Again, the amendment illustrates that the Scottish Government did not consider at the beginning the need to fully involve and consult trade unions and student associations.

We have questions about amendment 140, which appears to allow regional strategic bodies to consult trade unions through assigned colleges. I know that some trade unions have concerns about that, and we need clarity on what it would achieve.

Amendments 175 to 177 would extend the list of stakeholders to be consulted—I have already mentioned that—and we support them.

Amendment 87 is another tidying-up amendment. The provision was omitted at the beginning of the process.

Amendment 178 also relates to trade unions and student associations. We think that that provision should have been included in the bill as introduced.

Neil Bibby will expand on amendment 179, which is on regional strategic bodies securing the collaboration of community planning partnerships for local regeneration.

Amendment 89 is another of the tidying-up amendments that relate to the Open University and SDS. There appears to be an inconsistency all the way through.

Amendment 141 relates to regional strategic bodies consulting trade unions. We have the same questions about that amendment and amendment 143 as we have about amendment 140. Liz Smith might be able to clarify the position.

We support amendment 97, as it will ensure consultation with the listed stakeholders before guidance on appointments to regional boards is issued. That is to be supported.

Amendment 182 is similar to amendment 148, to which I have already spoken. We will see how matters proceed when it comes to the vote.

I am almost halfway there, convener.

We support amendment 109, which will ensure consultation by ministers before regulations on the requirements with which boards must comply are made.

Amendment 110 is on the requirement to consult before the power to open, close or merge a college is used. Again, we question why that provision was not considered when the bill was drafted. However, we support amendment 110.

Amendment 123 is consequential to the amendments that relate to consultation before regulations are made. It is just a follow-on from amendment 109.

I have finished, convener.

The Convener: Thank you. I remind members that they should move amendments only when invited to do so. It is not necessary to move them at other times.
Neil Bibby: I echo Neil Findlay’s comments about the number of amendments. It appears that the bill is being rewritten.

Section 5 is on consultation and collaboration. My amendments 158 to 160, 175 to 177 and 179 are aimed at ensuring that colleges benefit the local economy and continue their vital aim of meeting the needs of the communities in which they are situated. Colleges play a hugely important role in helping the Scottish economy but what is missing from many parts of the bill is recognition of the essential role that they play in their communities and regions.

The purpose of amendments 158, 175 and 179 is to ensure that colleges fully engage with community planning partners in their areas. Community planning partners should be consulted by colleges. Colleges are a vital part of the community and should work with community planning partners where possible. As well as meeting the local community’s general needs, it is vital that colleges meet the local area’s economic needs. Engagement with community planning partners will help colleges to play a role in local regeneration and social inclusion. That relates to other amendments that I have lodged, which we will discuss later.

We must recognise that many colleges provide opportunities not just to young people but to older learners; they give many people a second chance in life.

Amendments 159 and 176 seek to ensure that colleges engage and work with community health partnerships. Unfortunately, many of the communities in which colleges are situated have high levels of health inequality. It is important that colleges consult community health partnerships and, where possible, work with them to resolve issues where there is an overlap between health and education services.

Amendments 160 and 177 would ensure that transport providers are consulted by and work with colleges. They are important amendments, particularly given the regionalisation agenda. We hear increasing concerns about the prospect of courses not being available at local colleges due to their being moved to other campuses in the region. We have heard about services being cut in Dalkeith and moved to the other side of Edinburgh. In my area—the West Scotland region—I hear concerns about the possibility of a lack of transport for people wanting to travel from Clydebank to Greenock. Such a situation would be very problematic indeed.

I would prefer courses to be retained at their present location. However, if they are to be moved to different parts of the region, there must be engagement with transport providers to ensure adequate transport provision for staff and students between college campuses. That is necessary in relation to the regionalisation agenda. Even if that agenda was not happening at the same time as the bill, it would make sense to consult and work with transport providers that serve local colleges.

I support the cabinet secretary’s amendments 73, 75, 87 and 89 to include the Open University, and amendment 72 to include trade unions and student associations as stakeholders. Amendment 131, in the name of Neil Findlay, which states that colleges “must” consult, is important. We must reinforce the importance of consultation.

The wording in amendments 161 and 178 is similar to that in amendment 72, although it emphasises collaboration.

Marco Biagi’s amendment 182 and Neil Findlay’s amendment 148 are on consultation with unions when election rules are being amended. I support Neil Findlay’s amendment; if it is not agreed to, I will support Marco Biagi’s amendment.

Amendments 84, 97, 109, 110, 123 and 124 all relate to wider consultation by ministers. If we are requiring colleges to consult, it is vital that we ask the same of the Scottish ministers.

Amendment 86, in the name of Mike Russell, will require colleges to consult trade unions and student associations. As Neil Findlay said, such a provision should have been in the bill as introduced.

I am not sure of the impact of amendment 140, in the name of Liz Smith, on negotiations with unions. Unions need to be consulted directly by the body that makes decisions and should not have their views represented through a third party.

George Adam: We keep being told that provisions that are the subject of amendments should have been in the bill as introduced, and Mr Findlay will probably say the same about amendment 161, which is in my name. However, I am a relatively new MSP and this is democracy in action, as far as I am concerned. This is what we do. We consult, we look at what is available and we work with partners to ensure that we have a bill that can deliver. That is what has happened. It is not that there was nothing there, as some Labour members have suggested.

Amendment 161 would enable regional colleges and regional strategic bodies to consult and collaborate with trade unions and student associations. The issue came up in the EIS’s written evidence. It is probably a good idea to amend the bill in that way, partly because of the evidence that has come through. We have gone through the process, as is proven by my lodging the amendment.
Marco Biagi (Edinburgh Central) (SNP): I echo what George Adam said. It is a sign of the success of the parliamentary process that bills can be improved so effectively.

Amendments 164 and 182, in my name, are concerned with the election of members to boards. At stage 1, the STUC said:

"Before varying the rules for the election of student and staff members, the board should have to consult trade unions and student representatives. The Bill should be amended to take account of this."

Amendments 164 and 182 aim to do that in a way that is in keeping with the language and terms used in the rest of the bill.

Liz Smith: The key issue for me is to ensure effective consultation and collaboration through an approach that is agreed rather than imposed. Colleges expressed concern that some aspects of the bill could lead to new structures being put in place, when nothing about the existing structures is regarded as particularly inadequate. We are in danger of putting duties on colleges that are unnecessary or do not need legislative underpinning.

In light of that, I lodged amendments 140, 141 and 143, which are designed to clarify the consultation procedures by ensuring that regional strategic bodies would consult trade union representatives via the recognition and procedural arrangements of their assigned colleges. It is important that the consultation process is agreed by all stakeholders—that is part of the nature of the bill, so we need to tidy up the bill considerably in that regard.

I note the cabinet secretary's comment about the metaphysical nature of amendment 131. I am glad that he clarified the matter, because I could not work out exactly what the amendment was intended to do. I was also in a little doubt as to the implications of amendment 85, not least because I am not sure of its effect on the day-to-day running of a college, which is a concern.

I do not have particular concerns about some of the other amendments in the group, because I think they help make that collaboration and consultation process a little more effective. However, I have concerns about amendments 164 and 182, because I am not entirely sure why they are necessary. There would be implications for some of the groups concerned if we were to be restrictive.

Liam McArthur (Orkney Islands) (LD): I expressed concerns before now about the bill putting unnecessary and excessive powers into ministers' hands. However, I think that there will be opportunities to debate that later this morning. A number of amendments in this group address concerns that we raised at stage 1 on improving the quality and breadth of consultation with a number of key stakeholders as well as staff, employee representatives and the wider community. I welcome the inclusion of the Open University. Positive steps are being taken in this group of amendments.

Michael Russell: I clarify that I am happy to support amendments 164 and 182. Essentially, they would ensure that staff and students are consulted on election rules. If there is no such consultation, we are not entirely sure what the rules will look like when they come forward. It is about broadening the consultation process, which is why I support Marco Biagi's amendments 164 and 182.

The amendments in this group are designed to improve the consultation process. There is always scope to improve a bill, which is why stage 2 is so important. A range of bodies have come forward between stage 1 and stage 2 to suggest improvements. Indeed, I examined very closely the evidence given at stage 1 so that I was able to make improvements to the bill. The only person whom I asked to talk to about improvements to the bill who came forward with not a single improvement was Mr Findlay. I regret that, because the opportunity exists for Labour to participate in the process.

With that in mind, I press amendment 72.

Amendment 72 agreed to.

The Convener: I call amendment 156, in the name of Neil Bibby, which is grouped with amendments 157 and 162. I call Neil Bibby to move amendment 156 and to speak to the amendments in the group.

Neil Bibby: The reason for amendments 156 and 157 is to ensure that colleges support economic regeneration and social inclusion and cohesion in their area.

At a time of such high youth unemployment, it is vital that our colleges play a key role in supporting young people into work, which is what amendment 156 aims to ensure. Colleges are essential in the fight to tackle youth unemployment. They also support older learners who want to retrain for employment to get a second chance in life, as we discussed earlier, and they support economic and social regeneration in our communities.

Scotland's needs in terms of colleges are important, but what is missing from the bill is a specific regional focus. Different regions face different challenges and have different needs and priorities. A regional focus allows for a tailored approach to the different challenges that each area faces.

There has been a focus on widening access to higher education, but we need to ensure that
social inclusion is also promoted in further education. That is what amendment 157 is about. Learners might face challenging circumstances, so we need to ensure that colleges do all they can—and continue the good work that they already do—to encourage people from disadvantaged backgrounds to take advantage of the opportunities in training and retraining that are available at their college.

12:00

The widening access agenda should be a priority in our colleges and should promote social inclusion and cohesion in the communities that those colleges serve. We should also take account of access for groups that are protected under the Equality Act 2010.

Amendment 162, in the name of Joan McAlpine, seeks to offer some clarity in the bill on what regional colleges must have regard to. I would welcome that clarity, but I have some concerns that the amendment could be unduly restrictive, and I believe that colleges are already taking account of many of the points that it addresses.

Amendment 162 mentions the need for colleges to have regard to the United Kingdom context. I believe that a careful balance must be struck in that respect with the need—which I mentioned earlier—for regional colleges to have a regional focus. We are part of the United Kingdom, and I question whether the balance is right on that front. Many people from our colleges go to work in the rest of the UK, whether we like it or not, and I am not sure that a requirement simply to have regard to the UK context gets the balance right.

I move amendment 156.

Joan McAlpine: Amendment 162 inserts a new section into the 2005 act that would require a regional college to have regard to certain matters in exercising its functions. Those matters include skills needs in Scotland, issues that affect Scotland’s economy, social and cultural issues in Scotland, the desirability of sustainable development, and the United Kingdom and international context.

The amendment’s purpose is to recognise the importance of the new regional structure and to ensure that, in moving to that new structure, regional colleges do not become insular or consider only their own interests while ignoring the bigger national picture. In response to Neil Bibby’s comments, the amendment’s inclusion of the UK context makes that clear. It is very outward looking.

The Government has already made provisions to address the issue in the bill in respect of regional and strategic bodies, but to my mind the requirement holds just as true for regional colleges. Amendment 162 therefore seeks to give regional colleges similar duties to have regard to a range of matters, including national skills needs and economic, social and cultural issues in Scotland. It also places a legal duty on regional colleges to have regard to educational and related needs, including—importantly—support needs.

Liam McArthur: I do not have a problem with the policy intention of any of the three amendments, although I share some of Neil Bibby’s scepticism about whether we need to be quite as prescriptive as amendment 162 appears to be. I certainly understand that regional colleges—and indeed regional boards—ought to take those things into consideration, but I am not entirely sure that they need to be set out in the text of the bill.

Liz Smith: I share the policy intentions. If there is one measurement of colleges’ success, it lies in dealing with social inclusion and reaching out to students who do not come from the traditional college background. I am content with amendments 156 and 157. I am not particularly against amendment 162—it is probably a little prescriptive, and whether or not it is actually required is a matter for our judgment.

Clare Adamson: I generally support the stated intentions of all the amendments. However, I have concerns about amendments 156 and 157.

In the Central Scotland region that I represent, the Lanarkshire colleges have quite a complex arrangement. There are quite different and geographically dispersed localities, and we have had a merger of two colleges, with independent colleges in the region as well. I find it difficult to see how amendments 156 and 157 would address that situation and enable a regional view of what is happening to be taken, particularly in that region. I will be interested to hear the cabinet secretary’s comments on those two amendments.

Neil Findlay: When I met the head of a college recently, social inclusion was the main issue that she wanted to speak to me about. I think that we should put that consideration into the bill; it would be a positive move.

We have some questions on Joan McAlpine’s amendment, but it is largely to be supported because it refers to skills, issues affecting the economy, social and cultural issues and all the rest of it. We support the three amendments in the group in that they add to what we already have.

Colin Beattie: I find amendment 131 a wee bit confusing. It requires a regional college to consult—
The Convener: Sorry, Colin. We are not discussing amendment 131. We are discussing amendments 156, 157 and 162.

Colin Beattie: Apologies.

The Convener: I call on the cabinet secretary.

Michael Russell: Amendment 162 gives regional colleges similar duties to those of regional strategic bodies to have regard in the exercise of their functions to a range of matters including national skills needs; economic, social and cultural issues; and the wider context in which they find themselves. That is positive.

The amendment places a legal duty on regional colleges to have regard in the exercise of their functions to the educational and related needs including the support needs—that is an important part, which has not been mentioned—of those who may become or are students of those colleges, so it underpins the expectations and the delivery. It is an important amendment in that regard.

I support the principle behind amendments 156 and 157, but they need to be looked at more carefully in the context of the overall drafting of the bill. This might not be the best place to include the commitment that we should make to economic and social regeneration, and social inclusion and cohesion. We can make that commitment, and it will be a useful addition to the bill. I am in favour of improving the bill through the democratic process, and this is an example of where two useful amendments have come from an Opposition member. However, they need to be better integrated into the bill.

I make a genuine offer. If Mr Bibby is willing to work with us, we will take away amendments 156 and 157 and look at them, and there will be a stage 3 amendment that does exactly what they intend to do but within the context of the bill. That is perfectly possible and feasible. I make that commitment to the committee because the amendments represent an important extension of what we are trying to do, and that is helpful to us.

I support amendment 162. I would like Mr Bibby not to press amendment 156 and not to move amendment 157. I make a commitment that we will work with him—I will do the same thing later when we come to another amendment on the matter—so that we can include the idea and ensure that it will work.

The Convener: I call on Neil Bibby to wind up and tell us whether he will press or withdraw amendment 156.

Neil Bibby: I welcome what the cabinet secretary said about the importance of including the items in the bill. It is vital to support our colleges, but we should also consider the Scottish Government’s wider economic strategy and the need to tackle poverty. Improving social inclusion is one of the main priorities in that strategy, so I would have been surprised if that support had not been given.

I intend to press amendment 156 and move amendment 157, but if they are not supported I will certainly welcome the opportunity to work with other parties to ensure that the items are placed in the bill at a later date.

The Convener: The question is, that amendment 156 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 156 disagreed to.

Amendment 157 moved—[Neil Bibby].

The Convener: The question is, that amendment 157 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 157 disagreed to.

Amendment 131 moved—[Neil Findlay].

The Convener: The question is, that amendment 131 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 131 disagreed to.

Amendment 158 moved—[Neil Bibby].

The Convener: The question is, that amendment 158 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 158 disagreed to.

Amendment 159 moved—[Neil Bibby].

The Convener: The question is, that amendment 159 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 159 disagreed to.

Amendment 160 moved—[Neil Bibby].
by way of distance or open learning. That is what the amendment achieves.

Amendment 130 will ensure that changes in funding arrangements will not remove colleges from the scope of the Protection of Vulnerable Groups (Scotland) Act 2007. Amendment 119 will replace a reference to "fundable" body with "post-16 education" body, which is the new term introduced by the bill to describe all publicly funded colleges and universities.

12:15

On amendments 121 and 122, Neil Findlay sought assurance during stage 1 that there would be no ministerial role in the board appointments of staff and student members. We clarified then that there would be no ministerial role in such appointments and that, as now, there would be no elections for those members. That was always the policy intention, but the bill currently provides the possibility for an order-making power that would in fact allow for ministers to appoint board members, including staff and students. The provision does not require or specify a ministerial role in that regard, but it does not explicitly debar the possibility. I think that it is best explicitly to debar the possibility, which is what amendments 121 and 122 will do.

Amendment 10 will remove the word “fundable” from section 9(11) of the 2005 act. The amendment is appropriate, given the intention that assigned colleges will in due course not be fundable bodies and so the limitation should apply to them, too.

Amendment 120 will enable ministers to be given powers to continue with or remove members of college boards administratively in connection with the coming into force of an order to designate a college as regional or to assign a college to a regional strategic body.

I move amendment 74.

The Convener: No other members have indicated that they wish to speak to the amendments. I presume that the minister does not need to wind up.

Michael Russell: I think that that would be pushing it.

Amendment 74 agreed to.

Amendment 161 moved—[George Adam]—and agreed to.

Amendments 75 and 76 moved—[Michael Russell]—and agreed to.

Amendment 162 moved—[Joan McAlpine]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Colleges: boards of management

The Convener: The next group is on membership of college and regional boards. Amendment 77, in the name of the cabinet secretary, is grouped with amendments 29, 132, 133, 30, 31, 79, 80, 134, 135, 81, 32, 163, 33, 82, 83, 34, 35, 37 to 41, 92, 93, 146, 147, 71, 94, 181, 95, 96, 54, 55, 98 to 102, 184, 185, 56, 57, 112, 63 to 65, 113, 114, 66, 67, 115, 68, 69, 116, 117 and 70.

If amendment 33 is agreed to, amendment 82 will be pre-empted. If amendment 83 is agreed to, amendments 34 and 35 will be pre-empted. If amendment 114 is agreed to, amendments 66 and 67 will be pre-empted. If amendment 117 is agreed to, amendment 70 will be pre-empted. It might also be worth making the point that members may, but need not, speak to every amendment in the group.

I call the cabinet secretary to move amendment 77 and to speak to all amendments in the group.

Michael Russell: Clearly, this issue is at the very heart of the bill, given the interest shown in lodging amendments. The membership of college and regional boards is one of the key issues that is addressed by the bill. In my view, the package of Government amendments will improve the arrangements that are set out in the bill. That is the purpose—I remind members again—of this part of the process.

Government amendments 80, 82, 83 and 112 to 117 are best viewed as a package that will establish that principals of regional and assigned colleges will be ex-officio members of their college boards. As it stands, the bill offers flexibility on that issue, as was the intention in the Griggs report. We regarded it as properly a matter for the board itself to determine whether the principal should be a board member.

However, I accept that it became clear during stage 1 that there are strong concerns in the sector over the potential consequences of principals not being automatic board members. There are strong arguments on both sides of the issue, and I have carefully considered both. On balance, I have been persuaded that the best course is to remove any doubt about the membership of principals, even though that goes against the Griggs recommendations.

I am pleased that Liz Smith agrees with that conclusion, given that her amendments 29, 31, 34, 36, 39, 63 to 67, 69 and 70 aim to achieve the same objective. I am therefore happy to support amendments 29, 31, 39, 63 to 65 and 69, given that I would have lodged identical amendments if Liz Smith had not got there first. I ask the committee to support Government amendments 80, 82, 83 and 112 to 117 and invite Liz Smith not
to move amendments 34, 35, 66, 67 and 70, on the basis that their purpose is already achieved by the amendments for which I have indicated support. Those two groups essentially go together and produce the effect on which I think we would all agree.

Amendments 71, 93, 96, 98, 99, 101 and 102 concern assigned college chairs being members of regional boards. That takes forward the theme of board membership and ensures that the college chairs would be members of the relevant regional board. The University of the Highlands and Islands working group has already recommended that for the arrangements at UHI. The university is taking that forward, although we will consider other details of that later today.

The success of regionalisation in multicolege regions will depend on the close working relationship with the regional strategic body and its colleges. That should be reflected in the composition of the regional board. I thought that the issue might be covered in guidance, but I am happy to take forward Colleges Scotland’s recommendation that that be in the bill. That is another example of an organisation coming forward with suggested improvements that are welcome.

I thank Colin Beattie for lodging amendment 71. He is correct to identify the issue, but the point of his amendment is achieved by Government amendment 93 and I therefore ask him not to move amendment 71.

Amendment 81 means that assigned college boards will have two student members, which will create parity with the arrangements for student membership of regional colleges and regional boards. The amendment ensures that there is healthy student representation on boards throughout the college sector, and I know that it will be warmly welcomed by student associations throughout the country.

Amendments 32 and 33, in the name of Liz Smith, have the cumulative power of appointing the members of an assigned college board, which in effect removes the power of the regional strategic body and hands it to the college. My difficulty with that is that it subverts the clear hierarchy that is required to exist in multicolege regions in order for regionalisation to work. It is clear that regionalisation can work only if there is a body in each region that is ultimately responsible for the funding and coherence of education in that region. In single college regions, the position is very straightforward: the regional college is the accountable body. However, our decision not to force college mergers allows for the possibility of multicolege regions. The existence of those regions necessitates the creation of a pre-eminent body that is ultimately responsible for the effective distribution of funding and the coherent delivery of education. The arrangements for appointments to assigned college boards are a consequence of that hierarchy.

There are also strong reasons for opposing amendments 32 and 33, given that they essentially mean that assigned college boards would be self-appointed; I do not think that that would be good governance. I therefore invite the committee to reject the amendments.

Similar issues arise in relation to Liz Smith’s amendments 30, 37, 38, 40, 41, 54, 56 and 57. The purpose of those amendments seems to be to remove any role for ministers in the approval or appointment of the ordinary board members of assigned colleges, regional colleges and regional boards in all circumstances. Although I am sure that that is Liz Smith’s intention, it is the polar opposite of the improvements that we seek to make to the college sector’s governance arrangements. The amendments would see the sector proceed with self-appointed and self-perpetuating boards. I cannot think of any other examples of public sector boards that operate in that fashion; it does not represent good governance.

Moving on to the proposals for assigning colleges to regional strategic bodies, it is clear that several such colleges—for example, City of Glasgow College—will be institutions of significant size and importance. I have listened carefully to the view of the sector that a board size of between seven and 10 members, as currently provided for in the bill, might not be enough to ensure that those large institutions are most effectively governed, in terms of both manpower and skills base. Amendment 79 will therefore increase the minimum and maximum number of members of the board of management of such colleges to 13 and 18 respectively.

In a similar vein, amendments 77 and 92 would increase the minimum size of regional college boards and regional boards from 12 to 15. The primary driver is that there has to be an adequate balance between places that are reserved for specific members—for example, students and staff—and those who are there because of their specific skills. Should the committee accept amendments 77 and 92, that would create parity across the sector in terms of the maximum size of college boards.

Amendment 94 caps the number of regional members that can be appointed by the board at nine. If one thinks about it, this is another consequential amendment. It is important that the significant number of additional prescribed board members does not unbalance the board. Amendment 94 ensures that the size of a regional board does not become unmanageable, since the
board can never be more than the number of prescribed members, plus a maximum of nine people who are appointed by the regional board for their skills. Should there be an imbalance between prescribed members and those who are appointed by the board, we would be able to increase the minimum size of boards by laying an order under the negative procedure.

Amendments 55 and 68, in the name of Liz Smith, would place a minimum age of 16 on board members across the college sector. I do not regard those amendments as necessary. There are numerous examples of public bodies whose boards do not set a minimum age for their members, and that has not presented any difficulties at all. The Scottish funding council itself, the Scottish Police Authority and the National Library of Scotland are all bodies that do not do that.

Amendment 134 would increase the number of staff members on assigned college boards from one to two. Amendments 132, 133, 135, 146 and 147 would replace the election of staff members on college boards and regional boards by staff who are elected by recognised trade unions. I agree that it is important that the role of unions is recognised in governance structures, but I am not yet persuaded that staff can have no direct role in electing staff members, and I cannot support the amendments as drafted. However, I can give an assurance that there will be at least two staff members on all incorporated college boards and regional boards. I wish to reflect further on whether they are appointed by means of an election involving all staff, by means of trade union nomination or by means of something that mixes the two. I will return with amendments at stage 3. On that understanding, I ask the committee to reject amendments 132 to 135, 146 and 147.

Amendments 163 and 181 would require an assigned college board and a regional board to include a community representative. It is important that boards are able to draw on members with a wide range of skills and experience. Someone with experience in the community that a college serves would be vital to the board’s work. However, that is best left to guidance. Ministers have power under the bill to issue guidance. I will consult on that guidance to ensure that we get it right in the context of all the sorts of people we need to deliver an effective governing body.

Regarding Neil Bibby’s amendments 184 and 185, one of the key functions of the regional board is to plan college provision across the region. In my view, it is correct that principals of assigned colleges have a right to attend meetings of the regional board in order to provide that board with professional advice on curriculum and other learning matters. Paragraph 13 of new schedule 2B to the 2005 act, as inserted by the bill, already recognises that there may be occasions on which the principal should be excluded from participation. Amendments 184 and 185 seek to constrain the discretion of the chair and to have participation decided on a case-by-case basis. Under existing principles of administrative law, the chair would be expected to act reasonably. That seems to be sufficient. On that basis, I ask the committee to reject those two amendments.

I hope that amendments 95 and 100 will be controversial—sorry, I mean uncontroversial. I am sure that members here could make anything controversial, but I hope that those two amendments will be uncontroversial. They are designed to eliminate the possibility of the chief officer of a regional board also being the chair of that board. It is obvious why that is undesirable. That would clearly undermine the ability of a board to hold the chief officer to account if he or she were also the chief officer of that board.

I move amendment 77.

Liz Smith: The cabinet secretary is correct in saying that this group of amendments deals with the heart of the bill in many respects. This is also the area of the bill that has caused the greatest difficulty, not least because there has been a considerable lack of clarity in a number of areas of drafting. There have been considerable issues about the size and membership of college and regional boards and their general working practices.

Amendments 29, 31, 34, 35, 39 to 41, 63 to 67, 69 and 70 relate to the right of the college principal, whether in a regional or assigned college setting, to be on the board as a result of his or her office. That is in line with what I believe the college sector perceives to be good governance, and I am pleased that the cabinet secretary has intimated his intention to recognise that. When the cabinet secretary sums up, will he confirm which of amendments 34 and 35 he wishes me not to move, given that they have the same purpose? I either misheard him or he did not read out quite the right numbers.

There is an issue around the practicalities as far as the principal is concerned. It would be difficult for the principal of a college to be excluded from the board, not least because we are trying to ensure greater strategic co-ordination. There is a practical issue there, as well as the principle of good governance.

Amendment 29 designates the principal as an ex-officio member of the board. Amendment 31 is consistent with principals being on the board. Amendment 34 removes reference to the principal being appointed to an assigned college board and
instead being a member of the board by right of position.

12:30

Amendment 35 removes reference to the principal being appointed to the board in certain capacities. Amendments 37 and 38, in line, will determine only the appointment of the chair rather than that of the other board members. Amendment 39 prevents ministers from removing a principal from the board, which is consistent with amendment 29. Amendments 40 and 41 limit the power of ministers to remove or replace board members to exclude the principal of a regional or assigned college.

Amendments 30, 32, 33, 37, 38, 54, 56 and 57 should be seen in the context of amendments 136, 137 and 151, which relate to the introduction of a code of governance for regional colleges, regional strategic bodies and the assigned colleges. They propose to limit the ministerial powers of appointment and removal to determine any terms and conditions of appointments to the chair only, similarly for assigned colleges to limit the ability of the regional board to approve other board appointments in the same way.

Amendment 30 removes the ability of Scottish ministers to approve the appointment of the remainder of the board. Amendment 32 allows the other board members in the assigned college to be appointed by the board itself. Amendment 33 removes the requirement for other members of assigned college boards to be appointed by the regional strategic body. Amendments 37 and 38 limit the powers of ministers over boards' terms and conditions to the chair only for the regional and assigned colleges. Amendment 54 removes the ability of ministers to approve the appointment of the remainder of the board and amendments 56 and 57 do the same in the context of the other non-ex-officio members of the board.

Amendments 55 and 68 restore a minimum age of board membership to 16. On the advice of the sector, I deem that to be an appropriate age to take on the relevant responsibilities and liabilities for many of the issues in college management, which include financial matters.

Amendments 66 and 67 remove reference to the principal's appointment to the board being distinct from their appointment as principal and amendment 69 removes references to the principal's appointment to the board as being distinct from their appointment as principal. Amendment 70 removes reference to their conduct at the board if not a member.

I refer to Colin Beattie's amendment 71 with regard to the assigned college chair being on the regional board by right of position, in terms of amendment 93. Unless there is a compelling reason for the wording change, I assume that the college chair would not then have that ex-officio status on the regional board by definition so I am minded to support amendment 71.

I have concerns that amendment 96 further extends ministerial powers on board appointments. In section 24 of the 1992 act, paragraph 7 of the schedule has been repealed. Under those provisions, a person was not eligible for appointment to any college board if they had already been removed from office on another college board by the secretary of state. Amendment 96 would restore some of those repealed powers.

Amendments 112 and 128 allow ministers to make changes to the provisions in respect of the regional boards' constitution functions or administrative arrangements. However, as far as I can see—unlike amendment 112—amendment 128 is not subject to the affirmative procedure. Instead, it is subject to negative procedure. I have concerns about that.

Amendment 171 allows the Scottish funding council to review the fundable bodies to check that they are compliant with section 7(2) of the 2005 act. It provides that the Scottish funding council must have regard to the suitability of the body that it is providing funding to, with particular consideration being given towards governance arrangements, financial procedures and complaint and grievance procedures. Amendment 171 applies equally to UHI and the other strategic bodies. It provides the power of review only and it would not allow for change of the structure of regional strategic bodies. However, it may be introduced as particularly relevant to UHI to allow for a review if there is concern that it is not best serving the colleges.

Amendment 187 gives regional boards the powers to form and promote companies. As I understand it, the purpose of that is to allow for joint ventures or spin-out companies from the boards. I am a little cautious about the intention of that amendment but I will wait to hear other evidence.

Neil Findlay: Amendments 132 to 135, 146 and 147 all relate to trade union representation. Amendments 132 and 133 ensure that staff representation is drawn from the trade unions at the college. Staff are an essential component of any successful college and should have representation from lecturing and non-lecturing unions. As they are key stakeholders, we think that that is appropriate.

Amendments 134 and 135 seek to ensure that the boards of assigned colleges will, like regional colleges, have staff representatives drawn from
the relevant trade unions. In that respect, the amendments are similar to amendments 146 and 147 and we see such moves as beneficial to the operation of colleges as a whole.

Although we support amendment 77, which seeks to increase the minimum number of board members from 12 to 15, we wonder why it has been lodged and where the demand for such a move has come from. Perhaps the cabinet secretary will address that issue when he winds up on this group.

As for amendment 29, which refers to the principal of the college sitting on the board, it appears that this might have been an oversight in the original bill. After all, there is no real reason why that should not happen and we support such a move.

Amendment 30 seeks to delete the requirement for Scottish ministers to appoint the appointment of other board members. It appears that that was a step towards centralisation too far even for the cabinet secretary, and I think that the amendment is a good move.

Amendment 31 appears to be a tidying-up amendment to ensure that principals are approved by ministers. I have to say that, given the complexity and the number of amendments that we are dealing with, I think that we are getting a bit tied up in knots over all this stuff.

Amendment 79 seeks consistency by ensuring that assigned colleges have the same number of board members as regional colleges. We also support amendment 80, which seeks to allow principals to be appointed to the board of an assigned college. As amendment 81 is similar to amendments 134 and 135 in my name, I hope that the cabinet secretary will support them.

Amendment 32 seeks to allow the appointment of other board members to the board of an assigned college to ensure that the position is the same as that with regional colleges, which, again, is good for the sake of consistency. Neil Bibby will cover amendment 163 when he speaks to this group of amendments.

Amendment 33 seeks to remove the strategic body's power to appoint other board members, with the purpose of giving colleges the autonomy to appoint board members other than staff and student reps. In proposing to delete paragraph 3A(3) of schedule 2 to the 1992 act as inserted by section 6 of the bill, amendment 83 seeks to allow principals to be the chairs of boards, and we would not support such a move. Amendments 34 and 35 also relate to the issue of allowing principals to be the chairs of boards, to which I have just referred.

With regard to amendment 136, we agree with the concept of an FE governance code for assigned colleges and look forward to its being issued in due course. I have already addressed the issue that is covered in amendments 37 and 38, which seek to delete the power of Scottish ministers to appoint other board members.

Amendment 39 seeks to remove the power of Scottish ministers to remove the principal of a college. Such a move makes sense; after all, if colleges are seen to be mismanaged, we would still want someone to try to improve the situation.

Amendment 40 seeks to remove the power of ministers to replace board members after they have been removed. If board members have been appointed by a college, why should their replacements be appointed by ministers?

Finally, amendment 91 seeks to delete the power of Scottish ministers to intervene if assigned colleges' financial affairs have been mismanaged. That clarifies the role of Scottish ministers and regional strategic bodies but, again, it should have been made clear in the original bill.

Neil Bibby: On amendments 163, 181, 184 and 185 in my name, I have already spoken today about the importance of colleges meeting the needs of the communities in which they are situated. As has been said, a great deal of concern has been expressed about what the regionalisation agenda might mean for local courses and colleges. Specifically, people are worried about cuts in provision and are concerned that colleges might work less with and for the local community.

In amendments 163 and 181, I propose that colleges have at least one member whom they feel is representative of the local community, to ensure that college boards maintain a community focus. The amendments are reasonable, given that they would ensure that the views of the local community would be heard in the college boardroom.

Amendments 184 and 185 relate to participation at board meetings. Amendment 184 adds a line about circumstances that would give rise to a material conflict of interests. An example of that could be to exclude a principal from a discussion on setting his or her salary. I listened to what the cabinet secretary said about the chair having discretion, but I think that more clarity is required, as is required for amendment 185, on whether the principal should not in any circumstance attend board meetings that appoint board members.

I will try to speak to some of the other 53 amendments. On Mike Russell's amendment 77, I support the increased membership of regional boards to between 15 and 18 members, although that obviously has to go alongside the increase in staff representation.
I support Liz Smith’s amendment 29, which allows the principal to sit on the board, although I do so with the caveat that I mentioned earlier.

On Neil Findlay’s amendments 132 and 133, I support the move that would recognise the trade unions that represent the majority of either support or teaching staff.

I support Liz Smith’s amendment 30, which deletes the requirement for ministers to approve other board members. Why should the minister feel the need to approve those members? That is a case of centralisation going too far. I also support Liz Smith’s amendment 31, which is a tidying-up amendment.

I support Mike Russell’s amendment 79, which provides that assigned colleges will have the same number of board members as regional colleges.

I support Neil Findlay’s amendment 134, which ensures that there will be two staff representatives on the board of a college that is not a regional college, and his amendment 135.

I am pleased that the cabinet secretary recognises, in amendment 81, the same problem: namely, that if boards are going to increase in size, staff representatives should increase, too. Again, trade unions that represent a majority of teaching and support staff should be represented on boards.

I support Liz Smith’s amendment 32, which allows for other board members to be appointed to assigned colleges so that they are the same as regional boards.

Liz Smith’s amendment 33 deletes the power of regional strategic bodies to appoint other members of the board. That amendment recognises the concern that regional strategic bodies may have too much power, at the expense of the autonomy of assigned colleges.

I support amendment 82, in the name of Mike Russell and supported by Neil Findlay, which would increase the number on the boards of assigned colleges so that they have parity with regional colleges. I echo Neil Findlay’s comments on the FE governance code.

I have one last point. When the cabinet secretary sums up I would welcome clarification, if possible, about whether vacancies for board members will be publicly advertised.

Colin Beattie: Quite simply, amendment 71 inserts a provision for the chairs of the assigned colleges to be members of the regional college boards by right of position. Members are probably aware that the bill says that boards should have between 12 and 18 members. The regions that would be affected by the amendment would be Glasgow and Lanarkshire, which have no more than three constituent assigned colleges each. Therefore, that should not have an impact in terms of having to change the overall numbers on the board.

I lodged amendment 71 as a probing amendment; I have noted the cabinet secretary’s response and will reflect on that.

Liam McArthur: As I said at the outset, I remain concerned at the level of interference that ministers have, in terms of both board appointments and the operation of the boards. As with the first group of amendments, the amendments in this group address concerns about collaboration and consultation. I think that the cabinet secretary was right to point to a to-ing and fro-ing of arguments about whether principals should automatically be members of boards. Like Liz Smith, I happen to think that, for a good number of reasons, the argument for what has been proposed—to formalise that role—was undoubtedly stronger, and I am glad that it looks as if we are set to do that.

12:45

The amendment that seeks to restrict the ability of ministers to remove a college principal addresses some of the concerns that were raised with us at stage 1. Likewise, I support the amendments that will remove the requirement for ministers to approve members of regional boards. Even Russel Griggs, when he gave evidence to us, implored us to focus on what came out at the end of the pipe rather than on every decision that led up to that point.

In relation to lowering the age limit, I hear what the cabinet secretary says about practice in other areas, but I am bound to say that the arguments that he used to resist the amendment in question are similar to those that many members of the committee have used in questioning whether it is appropriate to put such powers in the bill rather than leave it up to the college sector to take decisions that best reflect the needs of the communities and others that it supports. I look forward to hearing what the cabinet secretary says when he winds up.

George Adam: I have some sympathy with amendments 132, 133, 135, 146, 147 and 134, but I find the drafting quite clumsy and I think that there might be a better way of approaching the issue in the future. There are questions to do with whether the people concerned would be elected or staff-appointed members, and whether staff members who are non-union members would be represented. As someone who is a trade unionist, I know that that is a bit of an issue.

I have an issue with amendment 163, because it says “representative of the community”. How do
we define what that means in the regional areas? Would we go out on to the street and say, “You’ll do—you’re on the board”? I think that that amendment is rather clumsy as well. There might be a better way of addressing the issue.

Michael Russell: The discussion has been wide ranging and has included many issues. I will address some of the detail point by point.

Liz Smith asked about Colin Beattie’s amendment. Government amendment 93 has the same purpose as that amendment and I think that it would achieve the same thing, which is why I asked Mr Beattie not to move his amendment. Essentially, he got there just before we did, just as Liz Smith got there just before we did on a range of other amendments.

Liz Smith: If I may intervene, that was not what I was asking for clarification on. I am sorry—I misheard you.

Michael Russell: I am just about to give you the clarification that you requested, but you did mention that.

Liz Smith: Yes, I did.

Michael Russell: Government amendment 93 will have the same effect as amendment 71, which is—I say this with the greatest respect to Mr Beattie—technically deficient, in that it refers to “the regional strategic body” when it should refer to the regional board. I am sure that Mr Beattie will reflect on that, regardless of whether he moves the amendment.

The amendments that I asked Liz Smith not to move were amendments 34, 35, 66, 67 and 70. I said that I was happy to support amendments 29, 31, 39, 63 to 65 and 69, but perhaps that is giving too much detail.

Mr Findlay asked where the issue of principals on boards had come from and suggested that there was some sort of deficiency in that regard. I pointed out that Russel Griggs raised the issue. It was discussed at considerable length at a variety of meetings and has been discussed in committee. On balance, it seemed that the right thing to do was to move in the direction that has been proposed, which is what I am trying to do.

The issue of board numbers has been discussed by a number of boards—it was discussed with me most recently by the City of Glasgow College. It relates to the Glasgow and Lanarkshire regional boards, particularly the Glasgow one, which will be a very large-scale regional board. In the circumstances, it seemed sensible to move on that.

Liz Smith’s amendments on the way in which boards are nominated would lead us back to the bad old days, if I may say so, when college boards were self-appointed and self-perpetuating. I believe that the trade unions did not want that to be the case. I cannot imagine that supporting her proposals would do anything other than continue those arrangements, and it would seem wrong to do so. The bill takes a different approach—a balanced approach, which we have developed by listening to the sector.

I can confirm to Mr Bibby that the guidance will say that vacant board positions should be advertised, so there will be plenty of opportunities. When we look later at how those things happen, it will be absolutely clear that the process is open and transparent, much more so than the process that has existed to date and been in place for 20 years.

Amendment 77 agreed to.

Amendment 29 moved—[Liz Smith]—and agreed to.

Amendment 132 moved—[Neil Findlay].

The Convener: The question is, that amendment 132 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 132 disagreed to.

Amendment 133 moved—[Neil Findlay].

The Convener: The question is, that amendment 133 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 133 disagreed to.

Amendment 30 moved—[Liz Smith].

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 30 disagreed to.

Amendment 31 moved—[Liz Smith]—and agreed to.

Amendments 79 and 80 moved—[Mike Russell]—and agreed to.

Amendment 134 moved—[Neil Findlay].

The Convener: The question is, that amendment 134 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 135 disagreed to.

Amendment 81 moved—[Mike Russell]—and agreed to.

Amendment 32 moved—[Liz Smith].

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 32 disagreed to.

Amendment 163 moved—[Neil Bibby].

The Convener: The question is, that amendment 163 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 163 disagreed to.
The Convener: I remind members that, if amendment 33 is agreed to, I will be unable to call amendment 82 because of pre-emption.

Amendment 33 moved—[Liz Smith].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 33 disagreed to.

Amendment 82 moved—[Michael Russell].

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McAlpine, Joan (South Scotland) (SNP)

Against Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 82 agreed to.

The Convener: I remind members that, if amendment 83 is agreed to, I will be unable to call amendments 34 and 35 because of pre-emption.

Amendment 83 moved—[Michael Russell]—and agreed to.

The Convener: Amendment 136, in the name of Liz Smith, is grouped with amendments 137, 43, 150 to 152 and 155.

Liz Smith: On college governance, I begin with the same principle that I spoke to last week when we debated governance in the university sector. There is a need for an effective balance between accountability for public money, which is proportionately greater in the college sector than in the university sector, and responsible autonomy, which is a phrase that is now used just as much in colleges as it is in universities. Colleges fully accept the need for some Government direction, but not to the extent that it interferes with college management or seeks to undermine the flexibility and autonomy that colleges have enjoyed since 1992.

On that basis, there has been concern about the Scottish Government’s desire to have greater powers over colleges, particularly in relation to approving board appointments beyond that of the chair. Two of the college principals who attended committee gave substantial evidence expressing a wish, which they believe is widely shared by the sector, to have a code of governance similar to what there is for the university sector. They want the code to be agreed between the sector, the Scottish funding council and the Scottish Government, rather than being imposed. They also want the condition of grant funding to be adherence to a code of good governance as drawn up by all stakeholders.

Amendments 136 and 137 are designed to ensure that there is compliance with an agreed code of governance. Amendment 151 is designed to ensure that it is the Scottish funding council rather than ministers that is given the authority to decide on what can be defined as good governance. If it was the other way round, there would be a danger of ministerial interference.

I move amendment 136.

13:00

Liam McArthur: Last week, of course, we debated the importance of good governance in universities. It is self-evident that we should look to do the same in our colleges. Variations in the details of the respective codes may be entirely appropriate, but I see no reason why the ways in which we hold the governing bodies of our colleges and universities to those codes should vary.

As a result of the amendments in the group, the code would—and should—be developed in close co-operation with staff, students and other stakeholders, as well as the funding council and ministers, of course. Along with the amendments relating to board membership that we have just considered, there is an opportunity with this group of amendments to allay some of the fears about the extent of ministerial control that is being sought and which could be subsequently imposed.

I very much support Liz Smith’s amendments 136 and 137 in that regard, and her amendment 151 makes adherence to the code by regional
colleges and boards a condition of grant. Amendments 150 and 155, in the name of the cabinet secretary, appear to look to achieve much the same outcomes. I prefer the approach in Liz Smith’s and my amendments in the group, but I will listen with interest to what the cabinet secretary has to say.

Amendments 152 and 43, in my name, reflect specific concerns in the area that relate to the way in which the University of the Highlands and Islands is structured and operates and how the bill’s provisions are likely to interact with that. Members will recall the letter that we received from the chairs of Inverness College, Moray College and Perth College of the UHI earlier this month, which detailed their concerns. The college chairs reminded us of the UHI’s unique structure. There are nine colleges; six of them are incorporated, two are run by local authorities, including Orkney College, and one is internally funded. Whatever their differences, all those colleges are invaluable to the communities in which they are based, and no other region comes close in scale to the Highlands and Islands. Although the colleges are already impressively networked, each campus provides a critically important engine for the local economy and community and offers opportunities for tailored skills development and genuine lifelong learning.

As things stand, the Highlands and Islands will be the only region in Scotland to be managed by a non-FE body, with the UHI court being designated the regional strategic body for delivery of FE in the region and the FE board being a sub-committee of the court. That presents potential difficulties for both future funding and governance structures. The amendments in my name are an attempt to reflect and address those concerns, although I appreciate that further refinement of their wording may be required and that part of the solution might lie outwith amending the bill. Nevertheless, I believe that a solution needs to be found.

Amendment 43 looks to put in place safeguards that will ensure that FE provision is considered separately from HE provision in the UHI by representatives from the colleges and that moneys that flow from the funding council for FE reach their intended destination. I believe that that would honour a commitment that the cabinet secretary gave to the UHI colleges that there would be a double lock to ensure that FE provision remains fully safeguarded in the colleges.

Amendment 152 picks up that theme. It acknowledges the UHI’s specific needs and leaves open the option of establishing an FE committee of the UHI court, although there are possible pitfalls there in the cost implications and the problems with scarce resources being further diverted away from the front line in Orkney and elsewhere in the region. I know that the cabinet secretary shares many of the concerns that I have expressed, and I look forward to hearing what he has to say and to seeing whether the amendments in my name offer at least a possible way forward in that regard.

Michael Russell: At stage 1, Colleges Scotland made representations that, as with the HE sector, governance principles should be developed for the college sector and that college bodies should be required to comply with those principles as a condition of grant. That was a helpful suggestion, and I am very happy to support a code of governance for the FE sector. I understand that Colleges Scotland intended adherence to such a code to replace the ministerial role in appointment, whereas I intend them to sit alongside each other. We have just discussed board appointment matters, of course.

Amendment 150 and consequential amendment 155 draw on the HE governance provisions that are contained in proposed new section 9A of the Further and Higher Education (Scotland) Act 2005, which we debated last week, and mirror them for college sector bodies. I make the point to Liz Smith that the similarity is strong between the powers in the college and university sectors. Indeed, they mirror each other, and that is intended.

Amendment 150 will insert new section 9AA into the 2005 act, which will allow ministers to impose conditions on the funding council to require certain bodies in the college sector to comply with such principles of good governance as the funding council determines constitute good practice. The bodies in question are colleges that will continue to be funded directly by the funding council, regional strategic bodies—both regional boards and the UHI—and assigned colleges. If ministers imposed a relevant condition, it would be for the funding council to identify the principles with which the bodies must comply. Again, that is an arm’s-length arrangement, which I know Liz Smith is particularly keen to see—it is there in the amendments. I invite the committee to support amendments 150 and 155.

Amendments 136, 137, 43, 151 and 152, from Liz Smith and Liam McArthur, relate to a code of governance for the FE sector. There is consensus that the principles of good governance ought to apply. However, we should not lose sight of the fact that some colleges—Newbattle Abbey College and Sabhal Mòr Ostaig—are not regional and will continue to be funded directly by the funding council. Such principles should be applied to them as well, and it would be inconsistent of us not to do that.

Amendment 43 concerns a regional strategic body that is not a regional board. In other words,
that would currently cover the UHI. The amendment would require the UHI to comply with any principles relating to its governance structure or its administrative arrangements when allocating funding to any of its colleges. There is concern in the college sector that the university might not deliver the recommendations that were agreed by the UHI working group in October. I certainly agree with Mr McArthur on many of the issues that are involved.

Amendment 43 seeks to address those concerns, and I am grateful to Mr McArthur for lodging it. However, on its effect, I do not consider it appropriate that, in the case of the UHI alone, governance principles should extend to “administrative arrangements when allocating funds”.

In other amendments, we have of course tried to avoid administration and management becoming confused with governance. In those circumstances, the wording of amendment 43 is problematic.

I am in no doubt whatever that the UHI must deliver the agreed governance structure. I pay tribute to those in Perth College UHI and elsewhere who have brought the matter to members’ attention. If I am not sufficiently reassured on that point within the next few weeks—that is, by stage 3—I will lodge an amendment to achieve that end. I give that commitment to Mr McArthur and Liz Smith. It is a vital point. There have been enough problems with the issue over a period and we need to resolve it once and for all within the structure. I make that commitment, but the wording of amendment 43, which has been discussed with members of the regional board and others, is not sufficiently accurate or precise to achieve the aims in the way that we wish to achieve them. I am happy to work with Mr McArthur and Liz Smith and with Highlands and Islands members who are concerned about the issue to get the approach absolutely correct.

I am sympathetic to the aims of amendments 136, 150, and 151. However, amendments 136 and 151 do not cover bodies that would continue to be funded directly by the funding council, and the differentiation that would be achieved by amendment 152 is not necessary. It would be possible for the funding council to identify different principles for different regional strategic bodies, but regional strategic bodies will already have such powers to impose conditions under proposed new section 12B(2) in the 2005 act.

I believe that amendments 150 and 151 in my name will achieve our aims on a regional code of governance and are sufficient. On the amendment that specifically addresses the UHI issues, I give my commitment that, before stage 3, we will resolve the issue with the members involved and others so that there is absolute clarity on the structure. As Mr McArthur said, that is set out in the recommendations of the working group and has been accepted by the UHI, but there is still considerable concern that it has not been properly implemented.

Neil Bibby: I support amendments 137, 43, 150, 151, and 152.

On the issue of governance, I want to briefly put on record the importance of transparent external audit. I understand that, since 2000, external audit reports have had to go to the Auditor General for Scotland. Given the importance of good governance, it is clear that we need high standards of external audit. I just wanted to put that on record and to seek reassurance from the cabinet secretary, perhaps at a later point, on the importance of external audit, whether that be in the code of governance or whatever.

The Convener: I call Liz Smith to wind up the debate and to say whether she wishes to press or withdraw amendment 136.

Liz Smith: I thank the cabinet secretary for his concern about these very real issues. We as a committee were struck by the points that were made very forcefully about having a good code of governance in the college sector, which I think should mirror what goes on in the university sector. I am therefore grateful to the cabinet secretary in that regard. I hear what he says about the UHI situation. We have all been burdened with letters and emails from people in colleges within UHI who feel that we have not quite got things right. I hear what the cabinet secretary says about working together on that. I will press amendment 136.

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 136 disagreed to.
Amendment 164 moved—[Marco Biagi]—and agreed to.

Amendment 84 moved—[Michael Russell]—and agreed to.

Amendment 37 moved—[Liz Smith].

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 37 disagreed to.

Amendment 38 moved—[Liz Smith].

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 38 disagreed to.

Section 6, as amended, agreed to.

Section 7—Colleges: mismanagement

The Convener: We come to section 7. Amendment 165, in the name of the cabinet secretary—

Liam McArthur: Convener, it would be helpful if you could indicate when we are looking to stop. I was under the impression that we were stopping at quarter past 1.

The Convener: We were originally thinking of going to half past 1. I had hoped to stop earlier, but we are going to go to half past 1. We will certainly stop at the end of section 7.

Neil Findlay: Some of us are taking part in the debate this afternoon, and we obviously hope to have something to eat before we do that. Would you consider finishing at quarter past 1 to give us time to prepare for the debate and take in some nourishment?

The Convener: The committee is able to and entitled to carry on at this time. I appreciate the difficulties that members face, which is why I am saying that we will complete consideration of section 7. We will mostly be voting on amendments; there is very little to debate in this section, except for two amendments, so I hope that we will be very quick.

Neil Findlay: Is it in order to move a motion to finish earlier?

The Convener: It is not.

Amendment 165, in the name of the cabinet secretary, is grouped with amendments 166 to 168, 91, 189 and 125.

Michael Russell: I shall be as brief as possible. Amendments 91, 125, 166 and 167 all relate to the provision made about the position of the Scottish funding council in the context of mismanagement of colleges and, in the case of amendments 91 and 125, higher education institutions and regional strategic bodies as well.

During stage 1, stakeholders and committee members raised concerns about a perceived complexity and a lack of clarity about the accountable hierarchy linked to the new college regionalisation arrangements. Those concerns were very much focused on multicollege regions and included concerns about the accountability arrangements for assigned colleges and the Scottish funding council’s role in them.

I said at stage 1 that I would reflect on the matter further. I now propose amendments with the aim of making the accountability arrangements in respect of bodies’ roles and responsibilities as clear, straightforward and workable as I can. Amendments 169 to 171, which we will cover in the next group, are also relevant to that aim.

The bill as introduced would give ministers powers to issue directions to the Scottish funding council or regional strategic bodies in the event of financial mismanagement. The principal substantive effect of amendments 91 and 125 will be to alter what the bill as introduced provided for in relation to ministerial powers of direction in cases of mismanagement, so as to remove ministers’ power to issue directions to a regional strategic body in the event of financial
Amendments 91 and 125 will otherwise have the effect that the provision for ministerial powers of direction will be made in consolidated form in section 25 of the 2005 act as amended by the bill, rather than in section 25 and new section 25A of that act, the latter of which the bill as introduced would have inserted. The amendments will remove the provision that would have inserted section 25A into the 2005 act and instead provide for more extensive amendment of section 25.

Amendments 166 and 167 will alter the terms of new section 24 of the 1992 act, on mismanagement by incorporated colleges’ boards of management. In the bill as introduced, new section 24 of the 1992 act would have provided that one of the grounds on which ministers would be empowered by order to remove any or all of the members of an incorporated college’s board of management for reason of mismanagement would be that the SFC, in the case of a regional body, or a regional strategic body, in the case of a college assigned to it, had informed ministers that it took the view that the college was no longer a body that satisfied the fundable body criteria that are set out in section 7(2) of the 2005 act.

Amendments 166 and 167 will change that position, so that it will be for the SFC only to decide whether any college, regional or assigned, no longer meets the fundable body criteria. Provision will no longer be made for a regional strategic body to have that role in relation to one of its assigned colleges. I hope that the benefit of that is clear. That clarifies where the power lies.

At stage 1, stakeholders and committee members expressed concern about the scope of the provisions in the bill that would confer on ministers order-making powers to remove members of incorporated college boards of management and regional boards. I have reflected on that. One of the grounds on which ministers were to be empowered to remove board members was a failure to properly exercise functions, which I accept could allow ministers to intervene in a wider than desirable range of circumstances.

Amendments 165 and 189 will remedy that by narrowing that ground for removal so that it is framed in terms of a failure on the board’s part to “discharge any of its duties”, rather than the wider concept of functions. Amendments 165 and 189 strike a more desirable balance between allowing boards the autonomy to get on with the job and enabling intervention when something goes wrong.

I do not think that Neil Bibby’s amendment 168, to provide for a right of appeal for persons removed from an incorporated college board for reasons of mismanagement, is necessary or desirable. I absolutely agree that the exercise of ministerial powers to remove board members should be subject to appropriate scrutiny and challenge, but it must be understood that ministers will not be able to exercise the powers whenever they please.

Ministers will be able to exercise the powers only when the specific circumstances set out in new section 24(1) of the 2005 act apply. The powers will be exercisable by order subject to negative procedure, which will provide scope for parliamentary scrutiny. Of course, an individual who was removed could seek to challenge the order by means of a petition for judicial review, should they consider that there are grounds to do so. Taking account of all those factors, I believe that there is already adequate scope for scrutinising and challenging the exercise of the powers.

I move amendment 165.

Neil Bibby: The reason for amendment 168 is to allow an independent appeal panel to review a decision to remove a board member. Some sort of safety mechanism should be in place. If a member of staff is removed, they have the right to appeal, so it is reasonable that a board member should have the same right if they are removed by the cabinet secretary. I would expect the cabinet secretary to think that that was reasonable and I am disappointed that he does not.

The fact is that the cabinet secretary’s judgment could or would be called into question in certain circumstances. Given his reported comments to members of the college profession that, if he had had the power to remove them, he would have done so, his judgment has been called into question previously.

In taking evidence, we heard concerns about the level of ministerial control so, although I hope that the cabinet secretary’s judgment will be sound in such situations, I also hope that members will support amendment 168 to allow an independent appeal panel to review decisions to remove board members. That would reassure people who might find themselves in that position.

The cabinet secretary says that the amendment is not necessary or desirable, but I think that a former board member in such a position would find the provision necessary and desirable. The aim behind having the option of a judicial review, which would be a costly and time-consuming exercise,
might be best supported by my amendment to have an independent review panel.

**Michael Russell:** In winding up, I simply repeat what I have said. My amendments will give the funding council greater responsibility and remove the ministerial function. In those regards, they meet all the objections that I have heard to date. Mr Bibby’s amendment is technically questionable and, in terms of what needs to be done, it would not work at all.

**Neil Findlay:** Will the cabinet secretary take an intervention on that?

**Michael Russell:** No, I have finished summing up.

**The Convener:** The question is, that amendment 165 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- McArthur, Liam (Orkney Islands) (LD)
- Smith, Liz (Mid Scotland and Fife) (Con)

**Against**
- Bibby, Neil (West Scotland) (Lab)
- Findlay, Neil (Lothian) (Lab)
- McArthur, Liam (Orkney Islands) (LD)
- Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 7, Against 2, Abstentions 0.

**Amendments 166 and 167 moved—[Michael Russell]—and agreed to.**

**Amendment 39 moved—[Liz Smith]—and agreed to.**

**Amendment 40 moved—[Liz Smith].**

**The Convener:** The question is, that amendment 40 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Bibby, Neil (West Scotland) (Lab)
- Findlay, Neil (Lothian) (Lab)

**Against**
- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

**Amendment 40 disagreed to.**

**Amendment 41 moved—[Liz Smith].**

**The Convener:** The question is, that amendment 41 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Bibby, Neil (West Scotland) (Lab)
- Findlay, Neil (Lothian) (Lab)
- McArthur, Liam (Orkney Islands) (LD)
- Smith, Liz (Mid Scotland and Fife) (Con)

**Against**
- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

**Amendment 41 disagreed to.**

**Amendment 168 moved—[Neil Bibby].**

**The Convener:** The question is, that amendment 168 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**Liz Smith:** Convener, I indicated that I wanted to speak to that amendment. I just wanted to ask for a little clarification when it comes to stage 3.

**The Convener:** You cannot do that during the vote, obviously. I am sorry, but I did not see you indicate.

**Liz Smith:** I indicated to speak.

**The Convener:** I apologise—I did not see you indicate.

**For**
- Bibby, Neil (West Scotland) (Lab)
- Findlay, Neil (Lothian) (Lab)
- McArthur, Liam (Orkney Islands) (LD)

**Against**
- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- Smith, Liz (Mid Scotland and Fife) (Con)

**Abstentions**
- Smith, Liz (Mid Scotland and Fife) (Con)
The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 168 disagreed to.

Section 7, as amended, agreed to.

The Convener: That ends consideration of stage 2 amendments for today. We will return to the remaining amendments next week.

Meeting closed at 13:24.
Post-16 Education (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1 to 16
Schedule
Section 17 to 19
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 8

Michael Russell

169 In section 8, page 8, line 36, leave out from <regional> to <assigned> and insert <Council>

Michael Russell

170 In section 8, page 9, line 2, leave out <a regional strategic body> and insert <the Council>

Michael Russell

85 In section 8, page 9, line 14, after <relates> insert (except any not already established)>

Michael Russell

86 In section 8, page 9, line 14, at end insert—

< ( ) 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;
( ) the students’ associations of the colleges to which the order relates;>

Michael Russell

171 In section 8, page 9, line 19, at end insert—

< ( ) The Council may, whenever it considers appropriate, review whether a college which is assigned by order under subsection (2) is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).
( ) 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.>
Section 9

Liz Smith

137 In section 9, page 10, line 36, at end insert—

< ( ) the requirement that its colleges comply with any principles of governance which appear to the Council to constitute good practice in relation to assigned colleges.>

After section 9

Liam McArthur

Supported by: Liz Smith

43 After section 9, insert—

<Other regional strategic bodies: terms and conditions of funding>

After section 12B of the 2005 Act, inserted by section 9, insert—

“12C Other regional strategic bodies: terms and conditions of funding

(1) The Council may, under section 12(2), when making a payment to any other regional strategic body under section 12(1), impose a condition requiring the regional strategic body to comply with any principles relating to its governance structure, or its administrative arrangements when allocating funds to any of its colleges, which appear to the Council to constitute good practice in relation to the allocation of funds by regional strategic bodies.

(2) In this section, reference to any other regional strategic body is a reference to a body specified in Part 2 of Schedule 2A.”.>

Section 10

Michael Russell

138 In section 10, page 12, line 4, at beginning insert <monitoring or>

Michael Russell

139 In section 10, page 12, line 11, at end insert—

< ( ) 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.>

Neil Bibby

172 In section 10, page 13, line 5, at end insert <; and

< ( ) any relevant economic and social regeneration plans prepared for the localities in which its colleges are situated.>
In section 10, page 13, line 11, at end insert <; and

< ( ) regeneration in the localities in which its colleges are situated.>

Neil Bibby

In section 10, page 13, line 11, at end insert <; and

< ( ) reducing social exclusion in the localities in which its colleges are situated.>

Liz Smith

In section 10, page 13, line 36, at beginning insert <by means of its assigned colleges>

Neil Bibby

In section 10, page 14, line 1, at end insert—

< ( ) each community planning partnership for the areas in which its colleges are situated;>

Neil Bibby

In section 10, page 14, line 1, at end insert—

< ( ) each community health partnership for the areas in which its colleges are situated;>

Neil Bibby

In section 10, page 14, line 1, at end insert—

< ( ) transport providers in the areas in which its colleges are situated;>

Michael Russell

In section 10, page 14, line 11, at end insert—

< ( ) The Open University;>

Michael Russell

In section 10, page 14, line 12, at beginning insert <The>

George Adam

In section 10, page 14, line 21, at end insert—

< ( ) 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;

( ) the students’ associations of its colleges;>
Neil Bibby

179 In section 10, page 14, line 22, at end insert—

<( ) each community planning partnership for the areas in which its colleges are situated;>

Michael Russell

89 In section 10, page 14, line 27, at end insert—

<( ) The Open University;>

Michael Russell

90 In section 10, page 14, line 28, at beginning insert <The>

Neil Bibby

180 In section 10, page 14, line 41, at end insert <; and>

<( ) In exercising its duties under subsection (6), a regional strategic body must in particular promote collaboration to ensure access to fundable further education and fundable higher education for persons who are considered to be socially excluded or who have any protected characteristic within the meaning of section 4 of the Equality Act 2012 (c.15).>

Liz Smith

141 In section 10, page 15, line 11, at beginning insert <by means of its assigned colleges>

Liz Smith

44 In section 10, page 15, line 27, leave out <require> and insert <request>

Liz Smith

45 In section 10, page 15, line 29, leave out <requirement> and insert <request>

Liz Smith

46 In section 10, page 15, line 32, leave out <requirement> and insert <request>

Neil Findlay

142 In section 10, page 16, leave out lines 5 and 6

Liz Smith

47 In section 10, page 16, line 7, leave out <requirement> and insert <request>

Liz Smith

48 In section 10, page 16, line 10, leave out <requirement> and insert <request>
Liz Smith
143 In section 10, page 16, line 13, at beginning insert <by means of its assigned colleges>

Neil Findlay
144 In section 10, page 16, leave out line 23

Liz Smith
49 In section 10, page 16, leave out lines 26 and 27

Liz Smith
50 In section 10, page 16, line 28, leave out <requirement> and insert <request>

Liz Smith
51 In section 10, page 16, line 29, leave out <falling within subsection (9)>

Liz Smith
52 In section 10, page 16, line 30, leave out <requirement> and insert <request>

Neil Findlay
145 In section 10, page 16, line 30, at end insert—

<( ) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer of staff under this section whether or not they would so apply apart from this subsection.>

Liz Smith
53 In section 10, page 16, leave out lines 31 to 35

Michael Russell
91 In section 10, page 16, line 36, leave out subsection (2)

Section 11

Michael Russell
92 In section 11, page 18, line 2, leave out <12 nor more than 18> and insert <15>

Michael Russell
93 In section 11, page 18, line 5, at end insert—

<aa) subject to sub-paragraph (3A), the chairing member of each of the board’s colleges;>
Neil Findlay

146 In section 11, page 18, line 7, leave out <among their own number> and insert <the recognised trade unions>

Neil Findlay

147 In section 11, page 18, line 9, leave out <among their own number> and insert <the recognised trade unions>

Colin Beattie

71 In section 11, page 18, line 10, at end insert—

<( ) the chairing member of each college assigned to the regional strategic body; and>

Michael Russell

94 In section 11, page 18, line 11, at beginning insert <up to 9>

Neil Bibby

181 In section 11, page 18, line 11, after <board> insert <, including one member who appears to it to be representative of the communities in which the board’s colleges are situated>

Michael Russell

95 In section 11, page 18, line 17, at end insert <; or

( ) the chief officer of the board.>

Michael Russell

96 In section 11, page 18, line 17, at end insert—

<(3A) A person is disqualified from being part of the board in pursuance of sub-paragraph (2)(aa) if the person has previously been removed from the board under section 23N.>

Liz Smith

54 In section 11, page 18, leave out line 21

Michael Russell

97 In section 11, page 18, line 26, at end insert—

<( ) Before issuing guidance under sub-paragraph (5), the Scottish Ministers must consult—

(a) any regional board to which the guidance relates;

(b) the board of management of any college of further education which is, or which the Scottish Ministers consider likely to be, assigned to the regional board by order under section 7C;

(c) the local authority for any area in which such a college is situated;
(d) the students’ association for each such college;
(e) the representatives of any trade union which is recognised by any such college 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.

Neil Findlay
148 In section 11, page 19, line 5, at end insert—

<(( )) all trade unions recognised by its colleges;
(() the students’ associations of its colleges; and>

Marco Biagi
182 In section 11, page 19, leave out lines 6 and 7 and insert—

<(( )) in the case of rules about elections in pursuance of paragraph 3(2)(b), the representatives of any trade union recognised by one or more of its colleges or which otherwise appears to it to be representative of the staff of its colleges; and
(() in the case of rules about elections in pursuance of paragraph 4(3), the students’ associations of each of its colleges.>

Liz Smith
55 In section 11, page 19, line 16, after <bankrupt;> insert—

<(( )) is under 16 years of age;>

Michael Russell
98 In section 11, page 19, line 33, at end insert—

<(( )) This paragraph does not apply in relation to persons appointed in pursuance of paragraph 3(2)(aa).>

Michael Russell
99 In section 11, page 20, line 2, at end insert—

<(( )) a member appointed in pursuance of paragraph 3(2)(aa) is to hold office until the person ceases to be a chairing member of any of the board’s colleges;>
Michael Russell

100 In section 11, page 20, line 15, leave out <member of any of the institutions mentioned> and insert <person of the type described>.

Michael Russell

101 In section 11, page 20, line 33, after <member> insert <(except for a member appointed in pursuance of paragraph 3(2)(aa))>

Michael Russell

102 In section 11, page 21, line 14, at end insert—

<( ) Sub-paragraph (4) does not apply in relation to a member appointed in pursuance of paragraph 3(2)(aa).>

Neil Findlay

149 In section 11, page 21, line 18, at end insert—

<( ) Before determining the terms and conditions for any employee under sub-paragraph (1), the board must consult any body established by the Scottish Ministers for the consideration or negotiation of terms and conditions of college staff.>

Neil Bibby

183 In section 11, page 21, leave out line 26 and insert—

<( ) arrangements to enable any person employed by the board to join or continue to be a member of an existing pension scheme.>

Neil Bibby

184 In section 11, page 22, line 11, after <otherwise> insert <(or, in particular, considers that such participation would give rise to a material conflict of interest)>

Neil Bibby

185 In section 11, page 22, line 14, after <board> insert <(except during any part of a meeting when the appointment of board members is considered)>

Neil Bibby

186 In section 11, page 22, line 16, after <(9)> insert <and to the requirement that the board secures adequate insurance provision for its activities>

Colin Beattie

187 In section 11, page 22, line 23, at end insert—

<( ) forming or promoting (whether alone or with another) companies under the Companies Act 2006.>
Neil Bibby

188 In section 11, page 22, line 26, after <property> insert <or any other matter>

Section 12

Michael Russell

189 In section 12, page 24, line 23, for <exercise any of its other functions> substitute <discharge any of its duties>

Liz Smith

56 In section 12, page 24, line 27, leave out <or (e)>

Section 13

Liz Smith

57 In section 13, page 25, line 10, leave out <or, as the case may be, (e)>

After section 13

Michael Russell

150 After section 13, insert—

<Further education institutions: good governance>

Further education institutions: good governance

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AA Further education institutions: good governance

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1) to a college of further education which is a fundable post-16 education body, require it to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.

(2) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional strategic body under section 12(1), require it—

(a) to comply with any principles of governance which appear to the Council to be appropriate in relation to such a body; or

(b) to impose, when making a payment to any of its colleges under section 12B(1), a condition requiring the college to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.”>
Liz Smith  
Supported by: Liam McArthur  

151 After section 13, insert—

<Terms and conditions of college funding>

Terms and conditions of college funding
After section 9A of the 2005 Act, inserted by section 2, insert—

“9AA Regional colleges: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional college under section 12(1), require the regional college to comply with any principles of governance which appear to the Council to constitute good practice in relation to regional colleges.

9AB Regional boards: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional board under section 12(1), require the regional board to comply with any principles of governance which appear to the Council to constitute good practice in relation to regional boards.”>

Liam McArthur

152 After section 13, insert—

<Terms and conditions of college funding>

Terms and conditions of college funding
After section 9A of the 2005 Act, inserted by section 2, insert—

“9AC Other regional strategic bodies: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to any other regional strategic body under section 12(1), require the regional strategic body to comply with any principles of governance which appear to the Council to constitute good practice in relation to regional strategic bodies.”>

Section 14

Michael Russell

190 In section 14, page 26, line 1, leave out from first <fundable> to end of line 19 and insert <—

( ) any aspect of the funding or provision of fundable further education or fundable higher education (generally or in particular areas); or>

Michael Russell

191 In section 14, page 26, line 28, at end insert—

< ( ) When conducting a review, the Council must consult—
(a) the governing body of any post-16 education body and any regional strategic body to which the review relates;

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

(c) any body which appears to the Council to be representative of trade unions in Scotland;

(d) the students’ association of any post-16 education body to which the review relates; and

(e) any body which appears to be the Council to be representative of the interests of students of post-16 education bodies generally.

Michael Russell

In section 14, page 26, line 36, leave out <a report of the review to the Scottish Ministers> and insert <the Scottish Ministers, and any post-16 education body and regional strategic body to which the review relates, with a report of the review>

Joan McAlpine

In section 14, page 27, line 4, at end insert

<14B Review of fundable further and higher education: Dumfries and Galloway

(1) The Council must from time to time review the arrangements for the delivery of fundable further and higher education in the Dumfries and Galloway local authority area and report to the Scottish Ministers.

(2) When conducting a review under subsection (1), the Council must consult—

(a) The Crichton Foundation,

(b) The University of Glasgow,

(c) The University of the West of Scotland,

(d) Dumfries and Galloway College,

(e) Dumfries and Galloway Council,

(f) The Open University,

(g) SRUC (Scotland’s Rural College).

(3) The Scottish Ministers may by order modify the list of persons in subsection (2).”>

After section 14

Marco Biagi

After section 14, insert—

<The Council: exercise of functions>

The Council: exercise of functions

In section 20 of the 2005 Act, after subsection (1), insert—

“(1A) In exercising its functions, the Council is to have regard to—
(a) the desirability of enabling, encouraging or increasing participation in fundable further and higher education by persons belonging to socio-economic groups which are under-represented in such education; and

(b) the desirability of promoting collaboration and the sharing of good practice with and between post-16 education bodies in relation to the matters described in paragraph (a).”.

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**Section 15**

**Michael Russell**

103 In section 15, page 27, line 8, after <to> insert <The>

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**Michael Russell**

104 In section 15, page 27, line 16, at end insert—

<(2A) The Scottish Ministers may, by order, require The Skills Development Scotland Co. Limited to provide information it holds about a young person to such persons who provide education or training to young persons as may be specified in the order.

(2B) Such an order may specify—

(a) the information, or type of information, which must be provided, and

(b) the form and manner in which it is to be provided.>

---

**Michael Russell**

105 In section 15, page 27, line 17, at the beginning insert <The>

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**Michael Russell**

106 In section 15, page 27, line 21, leave out from second <by> to end of line 25 and insert <—
(a) by replacing the references in subsections (1), (2A) and (3) to the person to whom information is to be provided in pursuance of subsection (1) and who may be required to provide information in pursuance of subsection (2A) with references to such other person as they consider appropriate, or

(b) where that person changes its name, by modifying references to that person in subsections (1), (2A) and (3) to reflect that change of name.

Michael Russell

107 In section 15, page 27, line 27, leave out from <and> to end of line 29

Michael Russell

108 In section 15, page 27, line 30, leave out subsection (8) and insert—

< ( ) An order under subsection (1) or (2A) is subject to the affirmative procedure. 
( ) An order under subsection (5)(a) is subject to the negative procedure. >

Liam McArthur

62 In section 15, page 27, line 30, leave out <negative> and insert <affirmative>

Schedule

Michael Russell

109 In the schedule, page 29, line 13, at end insert—

< ( ) In section 3—

(a) in subsection (6), after “Act” insert “and the Further and Higher Education (Scotland) Act 2005”,

(b) after subsection (6) insert—

“(7) Before making regulations under subsection (6), the Scottish Ministers must consult—

(a) the boards of management to which the regulations relate;

(b) any regional strategic body for a college of further education which has such a board;

(c) the students’ association of each such college;

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

(e) the Council;

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

(g) the representatives of any trade union which is recognised by a board of management to which the regulations relate or which otherwise appears to the Scottish Ministers to be representative of its staff;

(h) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland; and
(i) any other person appearing to the Scottish Ministers as likely to be affected by the regulations.”.

Michael Russell

110 In the schedule, page 29, line 13, at end insert—

<(  ) In section 5—

(a) in subsection (1), after “situated” insert “, the persons mentioned in subsection (1A)”;

(b) after subsection (1) insert—

“(1A) Those persons are—

(a) the Council; and

(b) where the proposal is to exercise the power under section 3(1)(b) or (c) or 44 of this Act—

(i) the board of management of the college or colleges concerned;

(ii) any regional strategic body for such a college;

(iii) the representatives of any trade union which is recognised by any such board of management or which otherwise appears to the Scottish Ministers to be representative of its staff;

(iv) the students’ association of each such college.”.

Michael Russell

111 In the schedule, page 29, line 27, at end insert—

<(  ) In section 60—

(a) in subsection (1), after second “Act” insert “or which falls within subsection (2A)”,

(b) after subsection (2) insert—

“(2A) An order falls within this subsection if it is made under section 3(5) of this Act and makes provision other than provision varying the maximum or minimum number of members of a board of management established in pursuance of Part 1 of this Act.

(2B) An order falling within subsection (2A) is subject to the affirmative procedure.”.

Michael Russell

112 In the schedule, page 29, line 33, leave out <(2I)> and insert <(2H)>

Liz Smith

Supported by: Michael Russell

63 In the schedule, page 30, line 6, leave out <Except where sub-paragraph (2D) applies,>
Liz Smith
Supported by: Michael Russell
64 In the schedule, page 30, line 10, leave out <Except where sub-paragraph (2D) applies,>

Liz Smith
Supported by: Michael Russell
65 In the schedule, page 30, leave out lines 13 to 16

Michael Russell
113 In the schedule, page 30, line 18, at end insert—
   <( ) The principal of a college is to vacate office on ceasing to be the principal.>

Michael Russell
114 In the schedule, page 30, leave out lines 28 to 30

Liz Smith
66 In the schedule, page 30, line 28, leave out <at the time of appointment>

Liz Smith
67 In the schedule, page 30, line 30, leave out <before the member’s period of appointment ends>

Michael Russell
115 In the schedule, page 30, line 32, leave out from <omit> to <college,“> and insert <for the words from “such” to “purpose” substitute “—
   (a) in the case of the chairing member of the board of a regional college, the Scottish Ministers;
   (b) in the case of any other member of the board a regional college, the board;
   (c) in the case of any member of the board of a college which is not a regional college, the regional strategic body.”,>

Liz Smith
68 In the schedule, page 30, line 41, after <bankrupt;> insert—
   <( ) is under 16 years of age;>

Liz Smith
Supported by: Michael Russell
69 In the schedule, page 31, leave out lines 33 and 34

Michael Russell
116 In the schedule, page 31, line 34, at end insert—
   <5C Paragraphs 5A and 5B do not apply in relation to the principal of the college.>
Michael Russell

117 In the schedule, page 31, line 36, leave out from <for> to end of line 40 and insert <for “paragraphs 12 and” substitute “paragraph”> 

Liz Smith

70 In the schedule, page 31, leave out lines 37 to 40 

Neil Findlay

153 In the schedule, page 32, line 1, leave out <paragraph 16A> and insert <paragraphs 16A and 16B>

Michael Russell

193 In the schedule, page 32, leave out lines 3 to 12 and insert—

<“16A The appointment of a principal of a college which is not a regional college, and the terms and conditions of such an appointment, have effect only if approved by the regional strategic body for the college.”> 

Liam McArthur

194 In the schedule, page 32, line 4, leave out from first <regional> to end of line 5 and insert <board of the college on such terms and conditions as the board thinks fit.>

(2) The principal of a regional college is to be appointed by the board of the regional college on such terms and conditions as the board thinks fit.”,>

Neil Findlay

154 In the schedule, page 32, line 5, at end insert—

<“16B Before determining the terms and conditions for any employee under subparagraph (1), the board must consult any body established by the Scottish Ministers for the consideration or negotiation of pay and conditions of college staff.”>

Liam McArthur

195 In the schedule, page 32, leave out lines 7 to 11 

Michael Russell

118 In the schedule, page 32, line 33, at end insert—

<Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)>

In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, after the cross-heading “Offices” insert—

“The chairing member of the board of management of a college of further education which is designated as a regional college by order under section 7A of the Further and Higher Education (Scotland) Act 2005

The chairing member of a regional board established by or in pursuance of section 7B of that Act”>
Neil Bibby

196 In the schedule, page 32, line 33, at end insert—

<Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, after the italic cross-heading “Offices” insert—

“The chairing member of the board of a college which is not a regional college and is assigned by order under section 7C(1) of the Further and Higher Education (Scotland) Act 2005 (asp 6)”>

Michael Russell

119 In the schedule, page 33, line 13, at end insert—

<( ) In section 7(2)(h), for “fundable” substitute “post-16 education”.

Michael Russell

120 In the schedule, page 33, line 28, leave out <for> and insert <authorising the Scottish Ministers to make arrangements for, or otherwise providing for,>

Michael Russell

121 In the schedule, page 33, line 37, at end insert—

<(3A) But such an order may not make provision in pursuance of subsection (3)(b) under which a person appointed to a board of management is to hold office otherwise than as if appointed under paragraph 3(2)(a) or (e) or, as the case may be, 3A(2)(a) or (d) of schedule 2 to the 1992 Act.>

Michael Russell

122 In the schedule, page 33, line 38, leave out <(3)> and insert <(3A)>

Michael Russell

155 In the schedule, page 35, line 5, after <9A> insert <, 9AA>

Michael Russell

10 In the schedule, page 35, line 6, at end insert—

<( ) omit the word “fundable”,

Liam McArthur

6 In the schedule, page 35, leave out lines 9 to 13

Michael Russell

123 In the schedule, page 36, line 24, leave out from <after> to end of line 26 and insert <, for “the fundable bodies; or” substitute “post-16 education bodies and regional strategic bodies;

(aa) any body which appears to the Council to be representative of trade unions in Scotland; or”,>
Michael Russell

124 In the schedule, page 36, line 26, at end insert—

<( ) in subsection (5)—

(i) at the end of paragraph (f) insert “; and

(fa) The Skills Development Scotland Co. Limited”,

(ii) omit paragraphs (g) to (i),

( ) omit subsection (6),

( ) in subsection (7), for “subsections (5) and (6)” substitute “subsection (5)”.

Michael Russell

125 In the schedule, page 36, line 35, leave out from <25(1)> to <education”> and insert <25—

(a) in subsection (1)—

(i) for first “fundable” substitute “post-16 education body or regional strategic”,

(ii) omit second “fundable”,

(b) after subsection (1) insert—

“(1A) A direction made under subsection (1) in relation to any of a regional strategic body’s colleges may, in particular, require the Council to provide such financial support to the regional strategic body as may be specified in the direction (subject to such terms and conditions as may be so specified).”,

(c) in subsection (2), for the words from second “the” to “concerned” substitute “—

(a) the Council;

(b) the body to which the direction relates; and

(c) where that body is assigned to a regional strategic body by an order made under section 7C(1), the regional strategic body”.

Michael Russell

126 In the schedule, page 37, line 15, at end insert —

<(baa) an order under section 7B(2)(a) which establishes a regional board;

(bab) an order under section 7B(2)(b) which adds or removes an entry (but not including an order which removes an entry relating to a body which has been closed, wound up or has otherwise ceased to exist);>
Michael Russell

127 In the schedule, page 37, line 17, leave out <or> and insert—

<(bba) an order under section 9C(2) (other than an order which does no more than increase the amount specified in a previous order by an amount that is no greater than the amount which the Scottish Ministers, having had regard to any retail price index, consider is required in order to maintain the value of the previously specified amount in real terms);”>

Michael Russell

128 In the schedule, page 37, line 17, at end insert—

<((c) after paragraph (c) insert “; or

(ca) an order under paragraph 18 of schedule 2B (other than an order which does no more than vary the minimum number of members of a regional board or vary the maximum number of members which may be appointed in pursuance of paragraph 3(2)(e)),”>

Michael Russell

129 In the schedule, page 38, line 14, at end insert <; and

( ) any reference (other than in sections 23A and 23C) to the locality in which fundable further education or fundable further education is provided does not include reference to any such education which is provided by way of distance or open learning.”.>

Michael Russell

130 In the schedule, page 38, line 14, at end insert—

<Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

In the definition of “further education institution” in paragraph 15 of the Protection of Vulnerable Groups (Scotland) Act 2007, after “(asp 6)” insert “or a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act”.”>
Post-16 Education (Scotland) Bill

3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

**Assignation of colleges**  
169, 170, 171

**Performance monitoring**  
138, 139

**Regional strategic bodies: exercise of functions**  
172, 173, 174, 180

**Staff and property transfers**  
44, 45, 46, 142, 47, 48, 144, 49, 50, 51, 52, 145, 53

**Employee terms and conditions**  
149, 183, 153, 193, 194, 154, 195

*Notes on amendments in this group*  
Amendment 193 pre-empts amendments 194 and 195

**Regional boards: general powers**  
186, 187, 188

**Review of further and higher education**  
190, 191, 192, 11

**Duty to provide information to Skills Development Scotland**  
104, 106, 107, 108, 62

*Notes on amendments in this group*  
Amendment 108 pre-empts amendment 62
Power to vary board size: parliamentary procedure
111, 126, 127, 128

Public appointments
118, 196

Amendments already debated

Widening access to higher education
With 1 – 60, 61, 6

Consultation, collaboration, etc.
With 72 – 85, 86, 140, 175, 176, 177, 87, 178, 179, 89, 141, 143, 97, 148, 182, 109, 110, 123, 124

Minor and technical amendments
With 74 – 88, 90, 103, 105, 119, 120, 121, 122, 10, 129, 130

Membership of college and regional boards
With 77 – 92, 93, 146, 147, 71, 94, 181, 95, 96, 54, 55, 98, 99, 100, 101, 102, 184, 185, 56, 57, 112, 63, 64, 65, 113, 114, 66, 67, 115, 68, 69, 116, 117, 70

College governance
With 136 – 137, 43, 150, 151, 152, 155

Mismanagement
With 165 – 91, 189, 125
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

17th Meeting, 2013 (Session 4)

Tuesday 28 May 2013

Present:

George Adam
Colin Beattie
Neil Findlay (Deputy Convener)
Joan McAlpine
Liz Smith

Clare Adamson
Neil Bibby
Stewart Maxwell (Convener)
Liam McArthur

Also present: Michael Russell (Cabinet Secretary for Education and Lifelong Learning) and Marco Biagi.

Post-16 Education (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).

The following amendments were agreed to (without division): 169, 170, 86, 171, 139, 87, 88, 178, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 187, 150, 190, 191, 192, 109, 110, 111, 112, 63, 64, 65, 113, 114, 115, 69, 116, 117, 118, 122, 155, 10, 123, 124, 126, 127, 128, 129, 130.

The following amendments were agreed to (by division) —

85 (For 8, Against 1, Abstentions 0)
138 (For 7, Against 2, Abstentions 0)
96 (For 7, Against 1, Abstentions 1)
182 (For 7, Against 2, Abstentions 0)
189 (For 7, Against 2, Abstentions 0)
103 (For 7, Against 0, Abstentions 2)
104 (For 7, Against 0, Abstentions 2)
105 (For 7, Against 0, Abstentions 2)
106 (For 7, Against 0, Abstentions 2)
107 (For 7, Against 0, Abstentions 2)
108 (For 7, Against 0, Abstentions 2)
193 (For 6, Against 2, Abstentions 1)
119 (For 7, Against 0, Abstentions 2)
120 (For 7, Against 0, Abstentions 2)
121 (For 7, Against 0, Abstentions 2)
125 (For 7, Against 2, Abstentions 0)

The following amendments were disagreed to (by division) —

137 (For 4, Against 5, Abstentions 0)
172 (For 4, Against 5, Abstentions 0)
173 (For 4, Against 5, Abstentions 0)
174 (For 4, Against 5, Abstentions 0)
140 (For 2, Against 5, Abstentions 2)
The following amendments were pre-empted: 62, 66, 67, 70, 194 and 195.

The following amendments were not moved: 43, 71, 151, 152, 11, 60, 61 and 6.

The following provisions were agreed to without amendment: sections 9, 13, 16, 17, 18 and 19 and the long title.

The following provisions were agreed to as amended: sections 8, 10, 11, 12, 14 and 15 and the schedule.

The Committee completed Stage 2 consideration of the Bill.
On resuming—

Post-16 Education (Scotland) Bill: Stage 2

The Convener: Item 3 is continued consideration of the Post-16 Education (Scotland) Bill at stage 2. We will consider all the remaining amendments today.

I welcome to the committee the Cabinet Secretary for Education and Lifelong Learning, Mike Russell, his accompanying officials, and Marco Biagi, who has joined us again this morning.

Everyone should have a copy of the bill, the third marshalled list of amendments, and the third groupings of amendments. We will pick up where we left off last week.

Section 8—Regional strategic bodies

The Convener: The first group of amendments is on the assignation of colleges. Amendment 169, in the name of the cabinet secretary, is grouped with amendments 170 and 171.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Amendments 169 and 170 relate to the role of regional strategic bodies in proposing or approving colleges that are being assigned to them that have not previously been listed as fundable bodies in schedule 2 to the Further and Higher Education (Scotland) Act 2005 or which have not already been assigned to a regional strategic body. As the bill stands, the regional strategic body could only propose to ministers that a college be assigned to it after it has assessed whether the college meets the fundable body criteria specified in section 7(2) of the 2005 act.

On reflection, and having listened to the views of stakeholders at stage 1, we think that there is merit in transferring those functions from regional strategic bodies to the Scottish Further and Higher Education Funding Council. That would ensure that a consistent approach is taken nationally in assessing whether colleges meet the fundable body criteria. That would be more efficient and would relieve the pressure on regional strategic bodies to resource themselves to fulfil that function. For those reasons, I invite the committee to support amendments 169 and 170.

Amendment 171 is linked to giving the Scottish funding council the role that I have just outlined and to a related amendment that I will move in a later group regarding the SFC’s role in informing ministers if assigned colleges no longer meet the fundable body criteria. Given those responsibilities, there is a value in relation to good governance in giving the SFC a complementary duty to review whether assigned colleges continue to meet the fundable body criteria. Amendment 171 achieves that.

It would be for the funding council to determine when it was appropriate to conduct such a review. After carrying out any review, the funding council will be required to report to ministers, setting out its conclusions and making any recommendations. I therefore invite the committee to support amendment 171.

I move amendment 169.

Liam McArthur (Orkney Islands) (LD): I am perfectly content with amendments 169 and 170. On the face of it, I cannot see anything that is provided for by amendment 171 that would not already be done as a matter of course. I would be interested to hear the cabinet secretary set out the deficiency that exists regarding the powers that are currently available to the funding council that makes the amendment necessary. In what circumstances does he envisage such powers being used that differ from what happens at present?

In light of comments that I made last week about the structure that applies in the Highlands and Islands, is there something in the possible future structure of the University of the Highlands and Islands that might be at the root of this? Either way, I would welcome some additional clarification.

Liz Smith: I, too, am very happy with amendments 169 and 170.

It would be helpful, cabinet secretary, if you could assure us that amendment 171 addresses some of the concerns that have been raised by the colleges within UHI.

Michael Russell: On the powers that amendment 171 gives that do not exist at present, I can tell Liam McArthur that there will not be powers over assigned colleges unless the amendment is agreed to. That is the difference—that is why it is required.

On UHI, I recognise the position of Liz Smith and Liam McArthur. It is fair to say that I have had further representations from Highlands and Islands MSPs over the weekend, arising from a meeting that I think was held at North Highland College. As a result, I have copied to members the correspondence, and I am happy to meet Liz Smith and Liam McArthur, along with Highlands and Islands members, to ensure that we take the matter forward. I think that a solution is possible. I have spoken to James Fraser about the situation, but I would wish to discuss the matter in detail with members before returning to it at stage 3. That
offer remains open. Members will have had an email from me yesterday, confirming that—I hope that they have, anyway.

Amendment 169 agreed to.

Amendment 170 moved—[Michael Russell]—and agreed to.

Amendment 85 moved—[Michael Russell].

The Convener: The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 85 agreed to.

Amendments 86 and 171 moved—[Michael Russell]—and agreed to.

Section 8, as amended, agreed to.

Section 9—Funding of and by regional strategic bodies

Amendment 137 moved—[Liz Smith].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 137 disagreed to.

Section 9 agreed to.

After section 9

Amendment 43 not moved.

Section 10—Regional strategic bodies: functions

11:15

The Convener: Amendment 138, in the name of the cabinet secretary, is grouped with amendment 139.

Michael Russell: New section 23E of the 2005 act as inserted by section 10 of the bill will require the regional strategic body to monitor the performance of the colleges assigned to it, and provides that such performance monitoring might include assessing the quality of fundable further and higher education. However, section 13 of the 2005 act also imposes a duty on the funding council to secure the making of provision for assessing the quality of fundable further and higher education provided by post-16 education bodies.

As the explanatory notes to the bill make clear, the SFC currently relies on the services of Education Scotland to review colleges, and our intention is that the activities of the funding council and regional strategic bodies should be complementary with regard to performance monitoring. Concerns have been expressed that the bill creates scope for duplication and, to prevent that, I have lodged amendment 139, which seeks to require regional strategic bodies to “have regard to the desirability of preventing any unnecessary duplication” with the actions of ministers or the SFC in relation to the performance of assigned colleges.

Amendment 138 seeks to build on that by adding the word “monitoring” to new section 23E(2)(a) of the 2005 act, as inserted by section 10 of the bill, and making it clear that in monitoring the performance of its colleges the regional strategic body does not have to arrange its own assessment of the quality of education provided by its colleges but can instead rely on assessments carried out by the SFC in the exercise of its duties under section 13 of the 2005 act.

I hope that it is clear that the amendments will be helpful in clarifying the role of regional strategic bodies in relation to performance monitoring, and I ask the committee to support them on that basis.

I move amendment 138.

Neil Findlay: We have concerns about amendment 138, which appears to extend the role of regional strategic bodies to give them an assessment and monitoring function with regard to the HE and FE provided in assigned colleges. We
believe that the regional strategic bodies’ role is to work with and support assigned colleges instead of assessing and monitoring them, and we question how that would work in practice and how the relationship with the SFC would operate.

Michael Russell: Amendment 138 actually seeks to do almost the opposite of what Mr Findlay has claimed. It will mean that the regional strategic body does not have to undertake its own assessment. Monitoring already exists; the body does not have to do it, but can rely on the assessments of the SFC, which, of course, relies on the services of Education Scotland. Instead of increasing the monitoring and assessment role, the amendment actually reduces it because the body would not have to undertake the task and could rely on the SFC and Education Scotland. I think that such a move is helpful rather than unhelpful.

The Convener: The question is, that amendment 138 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 138 agreed to.

Amendment 139 moved—[Michael Russell]—and agreed to.

The Convener: Amendment 172, in the name of Neil Bibby, is grouped with amendments 173, 174 and 180.

Neil Bibby: Amendments 172 to 174 and 180, which are similar to the amendments that I moved last week on regional colleges, seek to ensure that colleges support economic regeneration, social inclusion and cohesion in their areas. On amendments 172 and 173, which focus on economic and social regeneration in college localities, I said last week that, at a time of such high youth unemployment, colleges must play a key role in supporting young people into work.

Colleges also play an important role in supporting older learners who want to retrain for employment and in giving people a second chance in life. As we discussed previously, they also support economic and social regeneration in our communities. As I said last week, colleges are important for Scotland’s economic needs, and the bill lacks a specific regional focus. Different regions face different challenges and have different needs and priorities. A regional focus allows for a tailored approach to the different challenges that each area faces.

There has been a focus on widening access to higher education, but we need to ensure that social inclusion in further education is also promoted, which is what amendments 174 and 180 are about. Learners might face challenging circumstances, so we need to ensure that colleges do all that they can and continue the good work that they already do to encourage people from disadvantaged backgrounds to take advantage of the training and retraining opportunities that are available.

As I said last week in discussing regional colleges’ responsibilities, local and regional economic issues are important, and they are as important, if not more so, in the context of regional strategic bodies’ responsibilities. The widening access agenda should be a priority for our colleges, which should promote social inclusion and cohesion in the communities that they serve. We should also take into account access for groups that are protected under the Equality Act 2012.

I move amendment 172.

Joan McAlpine (South Scotland) (SNP): In principle, most of us would have a great deal of sympathy with what the member has said. However, I am not sure that his amendments 172 to 174 and 180 are the way to achieve aims on which we all agree. I am interested in what the cabinet secretary says in response.

Michael Russell: Neil Bibby’s amendments 172 to 174 are similar to those that we discussed last week when we covered the regional colleges’ functions. The amendments helpfully stress the important role of regional bodies in economic and social regeneration and in reducing social exclusion in the areas where their colleges are situated, so I am sympathetic to them. However, similarly to when we debated the issues in relation to regional colleges, I make it clear that, although I recognise and accept the points that are being made and I am more than willing to consider an amendment at stage 3 to seek to capture the spirit of Neil Bibby’s amendments, I cannot agree to the amendments themselves. I therefore ask him to withdraw amendment 172 and not to move amendments 173 and 174, and to work with us.

The same is true of amendment 180. I agree with the principle underlying it and I am entirely happy with the concept that the college sector, as
well as the university sector and schools, should engage in efforts to widen access. Regional strategic bodies will have an important role to play, but there are technical difficulties with amendment 180. It lacks specificity and does not make clear who has the duty to identify those who are socially excluded. The term “socially excluded” presents difficulties, as it is inconsistent with the terminology elsewhere in the bill and its exact meaning is not made clear. Crucially, amendment 180 does not refer to underrepresentation, which is of course the core problem that all widening access efforts are intended to address.

Members will recall that, on the first day of stage 2, in response to Marco Biagi’s amendment 60, I gave a commitment to develop a stage 3 amendment that will establish widening access to further or higher education as one of the key matters to which the Scottish Further and Higher Education Funding Council must have regard in the exercise of its functions. I believe that that would satisfy the overall aim of Mr Bibby’s amendment 180 while avoiding the difficulties that I have highlighted.

Therefore, I ask Mr Bibby not to move amendments 180, 173 and 174 and to withdraw amendment 172, and to work with the Government to ensure that we get the right amendments that carry the spirit of what he is trying to achieve.

Neil Bibby: I do not have much to add to what I said earlier. I am content with the wording of the amendments and where they are placed in the bill, so I intend to press them.

The Convener: I call Neil Bibby to wind up and to inform us whether he wishes to press or withdraw amendment 172.

Neil Bibby: I do not have much to add to what I said earlier. I am content with the wording of the amendments and where they are placed in the bill, so I intend to press them.

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 173 disagreed to.

Amendment 174 moved—[Neil Bibby].

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 174 disagreed to.

Amendment 140 moved—[Liz Smith].

The Convener: The question is, that amendment 140 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

**The Convener:** The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 140 disagreed to.

Amendment 175 moved—[Neil Bibby].

**The Convener:** The question is, that amendment 175 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 175 disagreed to.

Amendment 176 moved—[Neil Bibby].

**The Convener:** The question is, that amendment 176 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 177 disagreed to.

Amendments 87 and 88 moved—[Michael Russell]—and agreed to.

Amendment 178 moved—[George Adam]—and agreed to.

Amendment 179 moved—[Neil Bibby].

**The Convener:** The question is, that amendment 179 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 179 disagreed to.

Amendments 89 and 90 moved—[Michael Russell]—and agreed to.

Amendment 180 moved—[Neil Bibby].

**The Convener:** The question is, that amendment 180 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 180 disagreed to.

11:30

Amendment 141 moved—[Liz Smith].

The Convener: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 141 disagreed to.

The Convener: Amendment 44, in the name of Liz Smith, is grouped with amendments 45, 46, 142, 47, 48, 144, 49 to 52, 145 and 53.

Liz Smith: One aspect of the bill that has created some confusion is that which addresses lines of responsibility and accountability. In several key passages of the bill, there is an implication that regional strategic bodies—except UHI—could require assigned colleges to move staff or assets as they see fit. That raises some issues, particularly with it seeming that one body would have control over staff contracts and the movement of assets while the lines of accountability would lie elsewhere.

The amendments in my name in this group, amendments 45 to 53, are aimed at ensuring that there is clarity on the issue, and at achieving agreement between institutions rather than an imposed arrangement that raises questions of accountability or conflict of interest. I am also content with amendments 142, 144 and 145 in the name of Neil Findlay.

I move amendment 44.

Neil Findlay: Amendment 142 removes the ability to transfer staff between regions, as we believe that the distances involved fall outside reasonable commuting distances and would make those transfers problematic. There is established employment law on the matter, so, although the Government might have the right to put such a provision in the bill, it would be difficult to apply in practice. We therefore believe that a straight deletion is best.

Amendment 144 is consequential on amendment 142. There is no need to consult other regional strategic bodies if no power is transferred to them.

Amendment 145 refers to the Transfer of Undertakings (Protection of Employment) Regulations 2006 and would introduce a practice similar to that in the Water Industry (Scotland) Act 2002 in relation to transfer of staff. The power to transfer staff by regional board is widely drafted, and we want a reminder in the bill that employment law and contractual rights exist. After all, the regional board is not the employer.

George Adam: Once again, I can see what the amendments in this group are trying to do, but I do not think that they achieve it. Throughout the whole process, there must be negotiations and discussions among the bodies involved, and there must be someone who makes a decision at the end of the day. I have some sympathy with the amendments, but maybe there is a way of working out something better for the future.

Michael Russell: I broadly agree with George Adam. The intention behind the amendments is good, but I do not think that they achieve the results that they want, and I shall explain why that is in a moment in particular reference to one of them.

Essentially, I am saying that it would be best if the amendments were withdrawn and there was constructive discussion between now and stage 3 so that we can get similar amendments that work. That is a point that I keep making: as I have said throughout the process, I am happy to have that constructive discussion.

The basic policy intention behind the staff transfer provisions in the bill is twofold. The provisions assist in the sharing of services and ensure that, in multicollege regions, the regional strategic body has the power to give effect to its duty to plan for delivering coherent provision in the region. The judgment to be made in multicollege regions is in balancing the autonomy of the institutions with the ability of a regional body to pursue its regional plans.

Amendments 44 to 48, 50 and 52 would not achieve that balance, because they would remove all references in new section 23L to the terms “require” or “requirement” and replace them with the term “request”. The effect of amendments 49, 51 and 53 would require every transfer under section 23L to be binding only with the consent of the colleges.
The bill makes such a provision for UHI because of UHI’s unique geography. It would be inappropriate for such transfers in the UHI region to be decided without consent, but I am not completely persuaded that a requirement for there to be consent in every case would strike the right balance. However, I am happy to consider the issues carefully again and to return with amendments at stage 3. There is a balance to be struck, and it may well be that it lies between the two positions.

On amendments 142 and 143, there are cases in which transfer to a regional college or regional strategic body might be appropriate in supporting the delivery of shared services across two regions. It is something that, for example, the Glasgow and Lanarkshire regional boards might want to consider, given their close proximity. However, I am willing to reflect on whether those sorts of transfer need to be covered in the bill. I will do so in the context of my consideration around the provisions relating to transfer of staff and property ahead of stage 3.

I have a lot of sympathy for amendment 145. I want TUPE to apply to transfers made under section 23L. I am content to reflect further on whether such provision should be made in the bill, and I am happy to enter into discussions on that in the lead-up to stage 3.

My offer, therefore, is to look at the issues with the members involved and to have discussions to try to find a way forward. If the members wish to withdraw their amendments at this stage, we can come back with something that works.

Liz Smith: I hear what the cabinet secretary says. My biggest concern—particularly regarding a lot of the rationalisation of colleges and the new structure that they will work under—is that we should have an agreement between the relevant institutions, rather than any hint that something might be imposed. That is why I will press my amendments.

I will press amendment 44.

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 44 disagreed to.

Amendment 45 moved—[Liz Smith].

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 45 disagreed to.

Amendment 46 moved—[Liz Smith].

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 46 disagreed to.

Amendment 142 moved—[Neil Findlay].

The Convener: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 142 disagreed to.
Amendment 47 moved—[Liz Smith].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 47 disagreed to.
Amendment 48 moved—[Liz Smith].

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 48 disagreed to.
Amendment 143 moved—[Liz Smith].

The Convener: The question is, that amendment 143 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 144 disagreed to.
Amendment 49 moved—[Liz Smith].

The Convener: The question is, that amendment 49 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 49 disagreed to.

Amendment 50 moved—[Liz Smith].

The Convener: The question is, that amendment 50 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 50 disagreed to.

Amendment 51 moved—[Liz Smith].

The Convener: The question is, that amendment 51 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 51 disagreed to.

Amendment 52 moved—[Liz Smith].

The Convener: The question is, that amendment 52 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 52 disagreed to.

Amendment 145 moved—[Neil Findlay].

The Convener: The question is, that amendment 145 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 145 disagreed to.

Amendment 53 moved—[Liz Smith].

The Convener: The question is, that amendment 53 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 53 disagreed to.

Amendment 91 moved—[Michael Russell]—and agreed to.

Section 10, as amended, agreed to.

11:45

Section 11—Regional boards: constitution

Amendments 92 and 93 moved—[Michael Russell]—and agreed to.
Amendment 146 moved—[Neil Findlay].

The Convener: The question is, that amendment 146 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 146 disagreed to.

Amendment 147 moved—[Neil Findlay].

The Convener: The question is, that amendment 147 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 147 disagreed to.

Amendment 71 not moved.

Amendment 94 moved—[Michael Russell]—and agreed to.

Amendment 181 moved—[Neil Bibby].

The Convener: The question is, that amendment 181 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 7, Against 1, Abstentions 1.

Amendment 96 agreed to.

Amendment 54 moved—[Liz Smith].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 54 disagreed to.

Amendment 97 moved—[Michael Russell]—and agreed to.

Amendment 148 moved—[Neil Findlay].
The Convener: The question is, that amendment 148 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 148 disagreed to.

The Convener: The question is, that amendment 182 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Against
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 182 agreed to.

The Convener: The question is, that amendment 55 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 55 disagreed to.

The Convener: The next group of amendments is on “Employee terms and conditions”. Amendment 149, in the name of Neil Findlay, is grouped with amendments 183, 153, 193, 194, 154 and 195. If amendment 193 is agreed to, I cannot call amendments 194 and 195 because of pre-emption rules.

I call Neil Findlay to move amendment 149 and speak to other amendments in the group.

Neil Findlay: The cabinet secretary has spoken for some time of his desire to reinstate national pay bargaining, as did Professor Griggs in his report and, I believe, in his evidence to the committee. Amendments 149, 153 and 154 seek to take us along that route. If the cabinet secretary and the Government want to convince us that they want to move towards national pay bargaining, I certainly hope that they will agree to these three amendments.

I move amendment 149.

The Convener: I call Neil Bibby to speak to amendment 183 and other amendments in the group.

Neil Bibby: I will speak only about my amendment 183, but I also support amendments 149, 153 and 154 in the name of Neil Findlay.

I believe that it is unnecessary and overly bureaucratic to create a new pension scheme. The existing scheme should continue to be accessed. We know that resources are tight and college staff are under a great deal of pressure at the moment. Setting up a new pension scheme would take a considerable volume of work and a significant amount of time that would be better spent focusing on the needs of college staff and students in our communities.

It is possible to become an admitted member of existing schemes—I understand that the police service recently joined the Strathclyde pension fund. Why can colleges not do the same and join existing schemes?

The Convener: I call the cabinet secretary to speak to amendment 193 and other amendments in the group.

Michael Russell: Amendment 193 is particularly crucial. The role of the principal is pivotal. That is as much the case in the context of assigned colleges as elsewhere. In multicollege regions, principals will have a particularly key role in establishing a productive working relationship
with their regional strategic body, which will be responsible for strategic planning in the region.

I am therefore pleased that Colleges Scotland has acknowledged the role that regional strategic bodies ought to play in the appointment of principals of assigned colleges, which is why I am happy to propose amendment 193 to reposition the role of regional strategic bodies to approve rather than make the appointment of the principal and the associated terms and conditions. I know that that was much sought at stage 1 and I think that it will be welcomed by the sector.

Amendment 194 is unnecessary. It makes provision for a regional college board to appoint a person as principal on such terms and conditions as it thinks fit. That is already the effect of existing paragraph 16 of schedule 2 to the Further and Higher Education (Scotland) Act 1992. Amendment 195 would remove new paragraph 17(1A) of schedule 2 to the 1992 act. I agree that that should be done, which is why amendment 193 does it. Amendment 194 is therefore redundant.

Unlike amendment 193, amendment 195 does not recognise the appropriate role that the regional strategic body will play in the appointment of the principal. That is now recognised by Colleges Scotland. I therefore invite the committee to support amendment 193, and I invite Mr McArthur to not move his amendments 194 and 195 because the issue is dealt with in amendment 193.

Amendment 183 would remove the ability of a regional board to establish a new pension scheme. There is a difference—I put this argument to Mr Bibby—between encouraging access to existing pension schemes, which I would agree with, and removing the ability of a regional board to have any say in the matter at all, including whether to establish a new pension scheme if it wished to do so. Amendment 183 would actually prevent a regional board from establishing a pension scheme on better terms and conditions. Therefore, amendment 183 as drafted would not achieve its intention and would be a retrograde step.

I want to confirm to Mr Findlay, as I have done many times, that I am absolutely committed to a system of national bargaining for terms and conditions for colleges. I intend that to go into place—perhaps unlike my predecessors in previous Administrations up to 2007—and the regional leads have already established a framework for negotiation with the relevant trade unions. That process is on-going.

Having considered the matter, I think that Mr Findlay’s amendments would not actually give effect to national pay bargaining, which is already happening in the framework for negotiation. If there is a need to deal with the matter in the bill, I am willing to consider with Mr Findlay what words should be used, but the amendments in his name would not provide that. The framework that is being discussed—

Neil Findlay: Will the cabinet secretary take an intervention?

Michael Russell: Let me finish, please.

That framework is in place, so allowing those negotiations to take place would be the best thing.

I am happy to take Mr Findlay’s intervention now.

Neil Findlay: Can the cabinet secretary give some indication as to when that framework will bear fruit? When will we see national pay bargaining?

Michael Russell: That is in the hands of those who are negotiating on those matters, which is the proper thing to happen. The trade unions are engaged in that framework, which will produce the results. I am very keen that that process moves forward. The matter is complex and difficult, but I have given a commitment to national pay bargaining on many occasions and repeat it now.

If Mr Findlay wants the issue to be dealt with in the bill, I am happy to work with him to find a way in which we can insert a reference to national pay bargaining. However, the three amendments in his name will not achieve that effect and will not help matters. Therefore, I encourage Neil Findlay not to press his amendments but to work with us to ensure that that happens.

Liam McArthur: The cabinet secretary has already set the background to my amendments 194 and 195, which seek to address the potential conflict that would arise if the terms and conditions for the principal of an assigned college were set by the regional board while he or she was an employee of the assigned college and line managed accordingly.

Amendments 194 and 195 would avoid setting the strange precedent in which an employee of one legal entity has terms and conditions that are set by another legal entity. As a result of the bill, the board of an assigned college would be required to accept those terms and conditions, which might be different from those otherwise used in the college.

Obviously, the cabinet secretary has recognised that potential problem by lodging amendment 193, which appears to do much the same thing as my amendments 194 and 195. Perhaps the principal shortcoming of amendment 193 is that it pre-empts both the amendments in my name, but on this occasion I am prepared to commit hara-kiri by voting for amendment 193.
The Convener: No other members have indicated that they wish to speak. I call Neil Findlay to wind up the debate and to indicate whether he will press or withdraw amendment 149.

Neil Findlay: I will press amendment 149.

The Convener: The question is, that amendment 149 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 149 disagreed to.

Amendment 183 moved—[Neil Bibby].

The Convener: The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 183 disagreed to.

Amendment 184 moved—[Neil Bibby].

The Convener: The question is, that amendment 184 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 184 disagreed to.

The Convener: The next group of amendments is on “Regional boards: general powers”. Amendment 186, in the name of Neil Bibby, is grouped with amendments 187 and 188.

Neil Bibby: The reason behind amendment 186 is not to expose colleges to the potential consequences of indemnifying third parties. I understand that the 1992 act states that no form of indemnification can be given without Scottish funding council permission. The bill as it stands refers to property. We should be opposed to any form of indemnification, as it would grant potentially unlimited guarantees to third parties that could potentially make colleges insolvent. If the granting of general contractual indemnification is to stay, it should be with the formal agreement of the Scottish funding council.

Amendment 188, which runs on from amendment 186, seeks to ensure that the boards acquire adequate insurance cover. The acquisition of adequate insurance cover should enable colleges to negotiate indemnification clauses out of most contracts that they are offered to sign—hence the amendment.
Amendment 187, in the name of Colin Beattie, would give general powers to form companies. Colleges have commercial activities, so I understand where the amendment is coming from, but I will allow Colin Beattie so speak to it in more detail.

I move amendment 186.

Colin Beattie: Amendment 187 is quite a minor amendment, in fact. Incorporated colleges already have the power to form and promote companies. The amendment clarifies that a regional board’s general power includes the ability to form and promote companies. That power could be used to support the delivery of shared services in their regions, for example. It is really just a clarification.

Liz Smith: There is a question about why amendment 186 is necessary. I cannot see any reason to underpin the issue with legislation.

I would welcome clarification on the impact of amendment 188, as it appears to limit the board’s ability to guarantee or give indemnity.

Amendment 187 would give regional boards the powers to form and promote companies. I am a little unclear about some of the implications of that, given that regional strategic bodies are primarily funding bodies.

Michael Russell: This group of amendments concerns the general powers of regional boards. The power that gives regional boards, like colleges, explicit powers to form or promote companies is sensible, and I can see no difficulty in doing so. Any funding body may wish to find opportunities on a regional basis to take its work forward by that means. Therefore, I support amendment 187.

Liz Smith is right about amendment 186. It seems rather odd to do what it proposes. I do not see why we should seek to legislate for such a level of prescription as we do not do so for other bodies. Therefore, I can see no reason to support the amendment.

Amendment 188 seeks to amend paragraph 14 of proposed new schedule 2B to the Further and Higher Education (Scotland) Act 2005 so that, in addition to property, a regional board will be unable to give a guarantee or indemnity over or in respect of any other matter without the written consent of ministers.

Paragraph 14 seeks to place regional boards, the SFC and incorporated colleges on the same legislative footing; the provisions will be common to all. I see no reason why we should differentiate between them, which the amendment would do. I understand the concern that Mr Bibby has expressed, but I do not think that it is a necessary precaution to make. Therefore, I invite the committee to reject amendment 188.

The Convener: I call Neil Bibby to wind up and indicate whether he wishes to press or withdraw amendment 186.

Neil Bibby: I will press it.

The Convener: The question is, that amendment 186 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 186 disagreed to.

Amendment 187 moved—[Colin Beattie]—and agreed to.

Amendment 188 moved—[Neil Bibby].

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result is: For 2, Against 7, Abstentions 0.

Amendment 188 disagreed to.

Section 11, as amended, agreed to.

Section 12—Regional boards: mismanagement

Amendment 189 moved—[Michael Russell].

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 189 agreed to.

Amendment 56 moved—[Liz Smith].

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Against Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 56 disagreed to.

Section 13 agreed to.

After section 13

Amendment 150 moved—[Michael Russell]—and agreed to.

Amendments 151 and 152 not moved.

Section 14—Review of further and higher education

The Convener: Amendment 190, in the name of the cabinet secretary, is grouped with amendments 191, 192 and 11.

Michael Russell: Section 14 inserts into the Further and Higher Education (Scotland) Act 2005 new section 14A, the purpose of which is to give the SFC a power, with the consent of ministers, to review the extent to which fundable further or higher education is being provided by colleges and universities in a coherent manner. I acknowledge the genuine concerns of the sector, particularly those of Universities Scotland, about the effect that the provision might have on individual courses and institutions. I must point out that this section is not and never has been about eroding institutional autonomy and, indeed, throughout the bill’s consideration I have made it clear that I wholeheartedly support the concept of responsible autonomy.

There is a need for the SFC to take a more proactive and coherent view of both sectors to ensure that we get the best value from our highly significant investment in further and higher education. That is of critical importance if we are to be able to satisfy ourselves that that investment is delivering the best possible outcomes for learners and for the public purse, and I do not intend to step back from that.

However, following discussions with sector representatives, I have lodged amendments 190 to 192 to achieve three things. Amendment 190 seeks to change the structure and content of new section 14A(2) of the 2005 act, which sets out particular matters to which a review under section 14A(1) may relate. It will not alter the scope of the section 14A(1) review power. Section 14A(1) of the 2005 act confers on the SFC a power to conduct a review and a duty to report on that review—and no more. As I see things working in practice, the ultimate responsibility to respond to any review would, rightly, be on institutions and regional strategic bodies.

Amendment 191 seeks to introduce a specific duty for the SFC to consult relevant staff, students
and institutions in any review. That should give all concerned reassurance that any review would be open, transparent and consultative.

Amendment 192 seeks to make provision for the final review to be presented to ministers and the relevant post-16 bodies and regional strategic bodies. That is important because, as I said, in practice the post-16 bodies and regional strategic bodies will be responsible for delivering and implementing any recommendations.

New section 14A of the 2005 act is not, and never has been, about eroding institutional autonomy. It provides a further mechanism for ensuring proper accountability for our significant public investment. Amendments 190 to 192 improve that, but do not impinge on institutional autonomy in any way, and I invite the committee to support them.

The remaining amendment in the group—Joan McAlpine’s amendment 11—raises an important issue. I fully recognise the unique role that the Crichton campus plays in the delivery of further and higher education in Dumfries and Galloway, and I am happy to put on record my continued and long-standing commitment to it. It is essential that local needs continue to be recognised by the funding council as a core part of the outcome agreement process. What the Crichton campus does is unique and extremely significant in a regional and a national context, so I support the aims of amendment 11, but I cannot accept the amendment as presented. I have concerns about the precedent that would be set by legislating for a particular local authority area, and I feel that the general review power that is contained in section 14 will allow the SFC to achieve those ends.

In January this year, I issued specific guidance to the funding council to ask it to put in place processes to develop a consolidated outcome agreement for the Crichton campus. That will include a consolidated widening access agreement, which is an extremely useful step forward. I think that that is the right approach to securing a sustainable future for the campus as a whole. On that basis, I ask Joan McAlpine not to move amendment 11, and I invite the committee to accept amendments 190 to 192.

I move amendment 190.

Joan McAlpine: I appreciate the cabinet secretary’s comments about the Crichton campus, which is a highly innovative and diverse campus that encapsulates a number of higher and further education institutions. It is a unique centre of learning and an important asset to the area.

The purpose of amendment 11 is to ensure that the involvement of all relevant partners in the Crichton campus is placed firmly at the centre of planning of further and higher education in Dumfries and Galloway. It seeks to make specific provision to require the SFC, when it considers it appropriate, to review the delivery of further and higher education in Dumfries and Galloway through consultation with the relevant partners on the Crichton campus.

However, given the minister’s recognition of the campus’s importance and the measures that he has put in place to consult all the relevant parties, I will be happy not to move amendment 11.

Liz Smith: I think that amendments 190 to 192 are correct. Universities Scotland was adamant about the fact that higher education teaching needs to be coherent throughout Scotland as a whole and within the regions, so I think that it is appropriate for the funding council to have a role in providing an overview.

Amendment 190 strikes the right balance between the powers of the institutions and the powers of the funding council. The existing provision would have given the funding council specific powers to review individual courses or the number of fundable higher education bodies in existence, which—as we discussed last week—would have been contrary to the concept of responsible autonomy. Amendments 191 and 192 continue that theme, most especially by stating that there must be full consultation with the governing bodies in conducting any review and that the university must be fully involved in the reporting process.

I cannot accept amendment 11 as it is unnecessary, particularly if amendment 191 is agreed to. It is overly prescriptive with regard to one area of Scotland, which could lead to unintended consequences.

12:15

Liam McArthur: Similarly, I welcome amendment 190, which strikes a better balance between the relative roles and responsibilities. Likewise, amendments 191 and 192 enhance and broaden the level of consultation, which is to be welcomed.

Amendment 11 shows a lack of confidence in the cabinet secretary’s bill. As Liz Smith indicated, it is overly prescriptive, and the objectives that it seeks to achieve will be achieved through the bill.

Neil Findlay: We support amendments 190 to 192.

We could all make the case for the uniqueness of education provision in our areas and there is a fear that, if we go down the route that amendment 11 proposes, we might have another 31 amendments to follow, with each claiming that a local authority area has a certain uniqueness and must be included in the bill.
Given that amendment 11 aims to widen the consultation process, I am a bit surprised that the member who lodged it did not support Neil Bibby’s amendments that sought to include community planning partners, transport providers and all the rest in the consideration of education in specific areas.

Clare Adamson: Will the member take an intervention?

Neil Findlay: I have finished.

Michael Russell: There seems to be agreement on the changes that are set out in amendments 190 to 192. I am grateful for that, and I pay tribute to the members who have said that they agree and to Universities Scotland and other stakeholders who have negotiated the issue in a productive way.

On amendment 11, I believe, as a strong and long-term supporter of the Crichton campus and Elizabeth Crichton’s vision for the site, that it is important that we recognise how unique it is. Those who do not know the campus well should go and have a look at it. However, I have indicated the difficulty with placing the site in the bill, and I am glad that the member has accepted that. The Crichton campus deserves to be understood as a special intervention in Scotland and one that should encourage us in bringing together on a single site a number of institutions that retain their identity but are able to work together for educational purposes. That is quite unique in Scotland.

Amendment 190 agreed to.

Amendments 191 and 192 moved—[Michael Russell]—and agreed to.

Amendment 11 not moved.

Section 14, as amended, agreed to.

AFTER SECTION 14

Amendments 60 and 61 not moved.

SECTION 15—DUTY TO PROVIDE INFORMATION TO SKILLS DEVELOPMENT SCOTLAND

Amendment 103 moved—[Michael Russell].

The Convener: The question is, that amendment 103 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 103 agreed to.

The Convener: Amendment 104, in the name of the cabinet secretary, is grouped with amendments 106 to 108 and 62. If amendment 108 is agreed to, amendment 62 will be pre-empted.

Michael Russell: The bill allows ministers to require by order any person to provide information about a young person to SDS. However, I have been persuaded by SDS’s view that it makes sense for ministers to have a similar power to require SDS itself to share data. It may be, for example, that SDS holds data about a young person and could assist a college to support that person. Amendment 104 gives ministers the power by order to require SDS to share information of that nature.

Amendments 106 to 108 all address points that the Subordinate Legislation Committee has helpfully raised. Amendment 106 clarifies the powers of ministers to substitute or amend references to the Skills Development Scotland Company Ltd in section 15 of the bill. Amendment 107 deletes section 15(7)(b). Amendment 108 makes orders that are made under section 15(1) subject to affirmative rather than negative procedure. It also provides that the new power that is being added at section 15(2)(a) by amendment 104 is subject to the same affirmative procedure.

Orders under new section 15(5)(b)—ministers’ power to substitute references to SDS in section 15 for references to a different person—will be subject to the negative procedure. Orders under new section 15(5)(a)—ministers’ power to change references to SDS, or any person who is substituted for SDS in section 15 in the event of a change of name of the person—will be subject to no procedure.

Orders under new section 15(5)(b)—ministers’ power to substitute references to SDS in section 15 for references to a different person—will be subject to the negative procedure. Orders under new section 15(5)(a)—ministers’ power to change references to SDS, or any person who is substituted for SDS in section 15 in the event of a change of name of the person—will be subject to no procedure.

Liam McArthur’s amendment 62 does not, alas, meet the Subordinate Legislation Committee’s recommendation by making all orders that are made under section 15 subject to affirmative procedure except those that are the consequence of a change of name. Given that amendment 108 amends section 15 to meet the Subordinate Legislation Committee’s recommendation on the types of procedure that will attach to orders made under section 15, I see no reason why amendment 62 is necessary, and I invite Mr McArthur not to move it if it is not pre-empted.
I move amendment 104.

Liam McArthur: One of the few upsides to the travel disruption that I encountered earlier this year was that I missed the evidence session with SDS, although I have read the Official Report of the meeting and I know from speaking to colleagues that that issue was a unifying force for the committee, even if very few others were.

I am reassured on some of the initial concerns about the powers that are being sought, as those powers are not as wide ranging as we initially feared and are not seeking to create some kind of uber-database. Nevertheless, my initial attempt at lodging an amendment that would have removed those powers entirely was considered to be a wrecking amendment. I know that the cabinet secretary would consider it entirely uncharacteristic that I would be so bold as to lodge a wrecking amendment, so I sought another way to achieve the same end.

I recognise that amendment 108, in the name of the cabinet secretary, achieves much the same as I seek to achieve, but there is a need for additional scrutiny on top of what is in the bill at present. On that basis, I am inclined to support amendment 108, which will pre-empt my amendment 62.

The Convener: Does the cabinet secretary wish to wind up?

Michael Russell: I have made all the points that I possibly can.

The Convener: The question is, that amendment 104 be agreed to. Are we agreed?

Members: No.

Amendment 104 agreed to.

The Convener: We will go through the amendments individually.

Amendment 105 moved—[Michael Russell].

The Convener: The question is, that amendment 105 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions

Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 105 agreed to.

Amendment 106 moved—[Mike Russell].

The Convener: The question is, that amendment 106 be agreed to. Are we agreed?

Members: No.

Amendment 106 agreed to.

Amendment 107 moved—[Mike Russell].

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 107 agreed to.

Amendment 108 moved—[Mike Russell].

The Convener: The question is, that amendment 108 be agreed to. Are we agreed?

Members: No.

Amendment 108 agreed to.

The Convener: Does any member object to a single question being put on amendments 105 to 108?

Neil Findlay: Yes.

Neil Bibby: Yes.
Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 107 agreed to.
Amendment 108 moved—[Mike Russell].

The Convener: The question is, that amendment 108 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 108 agreed to.

Section 15, as amended, agreed to.
Section 16 agreed to.

Schedule—Modification of enactments
Amendments 109 and 110 moved—[Mike Russell]—and agreed to.

The Convener: Amendment 111, in the name of the cabinet secretary, is grouped with amendments 126 to 128.

Michael Russell: I shall come on to amendment 111 in a moment. Amendment 126 fulfils a commitment that was given to the Subordinate Legislation Committee by providing that an order to establish a regional board or designate a fundable post-16 education body as a regional strategic body will be subject to the affirmative procedure. An affirmative order will also be required if an order seeks to remove a regional strategic body from schedule 2A to the 2005 act, except if such an order is required simply because a body has closed or ceased to exist.

Amendment 128 also fulfils a commitment that was given to the Subordinate Legislation Committee, as it amends section 34 of the 2005 act to provide that an order under paragraph 18 of schedule 2B to that act to vary the constitution or general powers of a regional board will be subject to the affirmative procedure, except when it does no more than vary the minimum or maximum board size, in which case the negative procedure will apply.

Given the Subordinate Legislation Committee’s comments on regional boards and its concerns about amending primary legislation by the negative procedure, amendment 111 is required to provide consistency in the procedure for varying the constitution of incorporated college boards as set out in the 1992 act. The amendment alters the procedures so that such orders are subject to the affirmative procedure, except when they do no more than amend the minimum or maximum board size, in which case the negative procedure will continue to apply.

I hope that providing for such additional scrutiny is welcome. I intend to lodge an amendment at stage 3 so that orders that amend the powers of colleges in section 12(2) of the Further and Higher Education (Scotland) Act 1992 are subject to the affirmative procedure as well.

Amendment 127 also addresses a concern raised by the Subordinate Legislation Committee. It is about the order-making powers under section 4 of the bill and a tuition fees cap. That committee did not feel that the negative procedure represented an appropriate level of scrutiny for the exercise of the power and suggested that the affirmative procedure would be more appropriate if fees were being raised by a level that exceeded real-terms increases. Amendment 127 will amend section 34 of the 2005 act to achieve that.

Accordingly, I invite the committee to support amendments 126, 128, 111 and 127. I move amendment 111.

12:30

Liam McArthur: I know from the Colleges Scotland briefing that it has taken legal advice on amendments 111 and 127. I have no problem with amendment 126, but concern has been expressed about the measure in amendment 128 not being subject to the affirmative procedure, and I would be grateful if the cabinet secretary clarified the issue.

I wonder whether the cabinet secretary might be inclined to make the same offer as he made in relation to earlier amendments and withdraw amendments 111 and 127, reflect further on the matter and come back with amendments at stage 3, subject to the legal advice that Colleges Scotland receives in the interim.

Michael Russell: I have seen no such legal advice from Colleges Scotland; indeed, we have received no such communication from it. However, I give the commitment that, if the amendments are agreed to and the legal advice that has been mentioned subsequently comes forward, I will
consider the matter again and will lodge at stage 3 any amendments that are required. As I have said, I am completely unsighted on the information that Mr McArthur has referred to. I want to proceed with amendments 111 and 127, in the light of the Subordinate Legislation Committee’s recommendations.

Amendment 111 agreed to.

Amendment 112 moved—[Michael Russell]—and agreed to.

Amendments 63 to 65 moved—[Liz Smith]—and agreed to.

Amendment 113 moved—[Michael Russell]—and agreed to.

The Convener: I remind members that, if amendment 114 is agreed to, amendments 66 and 67 will be pre-empted.

Amendments 114 and 115 moved—[Michael Russell]—and agreed to.

Amendment 68 moved—[Liz Smith].

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 68 disagreed to.

Amendment 69 moved—[Liz Smith]—and agreed to.

Amendment 116 moved—[Michael Russell]—and agreed to.

The Convener: I remind members that, if amendment 117 is agreed to, amendment 70 will be pre-empted.

Amendment 117 moved—[Michael Russell]—and agreed to.

The Convener: The question is, that amendment 117 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 193 agreed to.

Amendment 153 moved—[Neil Findlay].

The Convener: The question is, that amendment 153 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 193 agreed to.

Amendment 154 moved—[Neil Findlay].

The Convener: The question is, that amendment 154 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 154 disagreed to.

The Convener: The next group is on public appointments. Amendment 118, in the name of the cabinet secretary, is grouped with amendment 196.

Michael Russell: Amendment 118 achieves regulation of the ministerial appointment of chairs of regional colleges and regional boards under the public appointments code by providing for the bill to add those offices to schedule 2 to the Public Appointments and Public Bodies etc (Scotland) Act 2003. That is highly appropriate and a central element of improving accountability.

It is necessary that the chairs of regional colleges and regional boards are ministerial appointments. There is precedent for that across public bodies in Scotland. It is essential that a fair and open process underpins those appointments, and regulation under the public appointments code provides that assurance. My officials have shared our proposals with the Public Appointments Commissioner’s office. I am therefore pleased to present amendment 118.

I thank Mr Bibby for his related amendment 196, which seeks to add the chairs of colleges assigned to regional strategic bodies to the list of offices in the same schedule 2 to the 2003 act. However, the amendment is technically deficient, given that, under that act, only ministerial appointments can fall within the Public Appointments Commissioner’s remit. The bill provides that the chair of an assigned college that is an incorporated college will, subject to limited exceptions, be appointed by the regional strategic body, not by ministers. The bill makes no provision on the appointment of the chair of an assigned college that is not an incorporated college; that will be dealt with by the relevant college’s constitution. Therefore, I cannot support amendment 118.

I move amendment 118.

Neil Bibby: I will keep my remarks brief, as there are only two amendments in this last group.

Amendment 118 supports the public appointments procedure for the appointment of chairs of regional college boards. I agree with the cabinet secretary that openness and transparency are vital. My amendment 196 would make that apply to assigned colleges, which is important. As for the cabinet secretary’s remark that amendment 196 is deficient, I do not know whether he does irony, but I suggest that the bill is deficient, never mind my amendment. I will press amendment 118.

Michael Russell: I have made my points. Regrettably, amendment 196 is technically deficient: ministerial appointments can be made only in the way that I have described. I cannot avoid that; it is simply a fact.

Amendment 118 agreed to.

Amendment 196 moved—[Neil Bibby].

The Convener: The question is, that amendment 196 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 196 disagreed to.

Amendment 119 moved—[Michael Russell].

The Convener: The question is, that amendment 119 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 119 agreed to.

Amendment 120 moved—[Michael Russell].

The Convener: The question is, that amendment 120 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 120 agreed to.

Amendment 121 moved—[Michael Russell].

The Convener: The question is, that amendment 121 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 121 agreed to.

Amendments 122, 155 and 10 moved—[Michael Russell]—and agreed to.

Amendment 6 not moved.

Amendments 123 and 124 moved—[Michael Russell]—and agreed to.

Amendment 125 moved—[Michael Russell].

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Bibby, Neil (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 125 agreed to.
Post-16 Education (Scotland) Bill
[AS AMENDED AT STAGE 2]

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Schedule—Modification of enactments
Amendments to the Bill since the previous version are indicated by sideling in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Post-16 Education (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the support for, and the governance of, further and higher education institutions, including provision for the regionalisation of colleges; to make provision for reviews of how further and higher education is provided; to make provision for sharing information about young people’s involvement in education and training; and for connected purposes.

Introductory

1 Interpretation
In this Act—

“the 1992 Act” means the Further and Higher Education (Scotland) Act 1992,

“the 2005 Act” means the Further and Higher Education (Scotland) Act 2005.

Terms and conditions of higher education funding

2 Higher education institutions: good governance
After section 9 of the 2005 Act insert—

“9A Higher education institutions: good governance
The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance which appear to the Council to constitute good practice in relation to higher education institutions.”.

3 Widening access to higher education
After section 9AA of the 2005 Act, inserted by section 13A, insert—

“9B Widening access to fundable higher education
(1) The Scottish Ministers may, under section 9(2), impose terms and conditions for the purposes of enabling, encouraging or increasing participation in fundable higher education by persons belonging to any socio-economic group which they reasonably consider to be under-represented in such education.
(2) The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement of such description as the Scottish Ministers may specify.

(3) A “widening access agreement” is an agreement under which a higher education institution is to take actions specified by the Council for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).

(3A) Before specifying any actions under subsection (3) in relation to any particular higher education institution, the Council must consult—

(a) the institution;

(b) the representatives of any trade union which the institution recognises or which otherwise appears to the Council to be representative of its staff; and

(c) the institution’s students’ association.

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

(4A) The Scottish Ministers 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 this section.”.

4 Fee cap: students liable for higher education fees

After section 9B of the 2005 Act, inserted by section 3, insert—

“9C Fee cap: students liable for higher education fees

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1)—

(a) where the payment is made to a fundable post-16 education body which provides fundable higher education, impose on that body a condition that it complies with the requirement set out in subsection (2);

(b) where the payment is made to a regional strategic body, impose on that body a condition that it must, when making a payment under section 12B(1) to any of its colleges which provides fundable higher education, impose on the college a condition that it complies with the requirement set out in subsection (2).

(2) The requirement is that the post-16 education body to whom the payment is made is to secure that the fees paid to it—

(a) by persons in respect of whom it is authorised or required to charge higher fees by virtue of regulations made under section 1 of the Education (Fees and Awards) Act 1983 (c.40) (or by such class of such persons as the Scottish Ministers may by order specify);
(b) in connection with their attending in an academic year such courses of education as the Scottish Ministers may by order specify,
do not exceed such amount as the Scottish Ministers may by order specify.

(3) The Scottish Ministers, when making an order under this section, must seek to ensure—

(a) that, subject to any exceptions which they consider appropriate, it applies only in relation to fees payable by persons who have a connection with the United Kingdom; and

(b) that the amount of fees payable by a person attending any course of education provided by a post-16 education body in any particular academic year does not exceed the maximum amount of fees which that person would by virtue of any enactment be liable to pay if attending any higher education course provided elsewhere in the United Kingdom during that year.

(4) The Scottish Ministers may not specify courses under subsection (2)(b) in such a way as to discriminate between different 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.

(5) References in this section to the United Kingdom include references to the Channel Islands and the Isle of Man.”.

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);

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

(ab) the college’s students’ association;

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

(c) the Council; and

(d) 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—
23A Regional colleges: 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 colleges: 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;

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

(zb) the regional college’s students’ association;

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

(b) 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;

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

(ea) The Open University;

(d) The Skills Development Scotland Co. Limited;

(e) the Scottish Qualifications Authority; and

(f) 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 or any such person or type of person.

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

23BA 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 Scotland;

(b) issues affecting the economy of Scotland; and

(c) social and cultural issues in Scotland.

(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) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which, following consultation with the Council, 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.

(6) For the purposes of subsection (1)(b) and (c), “issues” means issues which, following consultation with the Council, 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.”.

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”);

(aa) the principal of the college;

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

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

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

(e) other members appointed by the board.

(3) An appointment made in pursuance of sub-paragraph (2)(e) 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”);

(aa) the principal of the college;

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

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

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

3B(1) An election to appoint members in pursuance of paragraph 3(2)(b) or (c) or 3A(2)(b) is to be conducted in accordance with rules made by the board.

(2) Before making, varying or replacing election rules, the board must consult the representatives of any trade union recognised by the college or which otherwise appears to the board to be representative of the 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).

(1A) 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 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.

(2) Different guidance may be issued for different purposes.”.
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 (e) or, as the case may be, 3A(2)(a) or (d) 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.

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.

(3) 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 (e) or 3A(2)(a) or (d) of Schedule 2, appoint another person in place of the removed member.
(4) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (3)(a) to the board and the member.

(5) An appointment made under subsection (3)(b) has effect as if made under the provision of Schedule 2 under which the removed member was appointed.”.

Regional strategic bodies

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 of the 2005 Act insert—

“SCHEDULE 2A
(introduced by section 7B(1))

REGIONAL STRATEGIC BODIES

PART 1

REGIONAL BOARDS

Regional Board for Aberdeen and Aberdeenshire Colleges
Regional Board for Glasgow Colleges
Regional Board for Lanarkshire Colleges
PART 2
OTHER REGIONAL STRATEGIC BODIES

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

"7C Assignation 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 assignation.

(3) For the purposes of considering whether or not to propose or approve any assignation 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) Before making an order under this section, the Scottish Ministers must consult—

(a) every college to which the order relates (except any not already established);

(aa) 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;

(ab) the students’ associations of the colleges to which the order relates;

(b) the Council;

(c) any local authority for an area in which any of the colleges to which the order relates is situated; and

(d) any other person appearing to the Scottish Ministers as likely to be affected by the order.

(5A) The Council may, whenever it considers appropriate, review whether a college which is assigned by order under subsection (2) is a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2).

(5B) 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.

(6) 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 (c.40), 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 23B of the 2005 Act, inserted by section 5(2), insert—

“Regional strategic bodies: functions

23C 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.

23D 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.

23E Performance monitoring

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

(2) This may, in particular, include—
   (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.

23F **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.

23G **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.

23H **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.

23I **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 Scotland,

(b) issues affecting the economy of Scotland; and

(c) social and cultural issues in Scotland.

(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) For the purposes of subsection (1)(a), “skills needs” means any requirement or desirability for skills or knowledge which, following consultation with the Council, 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.

(6) For the purposes of subsection (1)(b) and (c), “issues” means issues which, following consultation with the Council, 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.

23J 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;

(ha) 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).
(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;

(aa) 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;

(ab) the students’ associations of its colleges;

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

(c) 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;

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

(da) The Open University;

(e) The Skills Development Scotland Co. Limited;

(f) the Scottish Qualifications Authority; and

(g) 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 or 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.

23K 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—
   (i) any trade union recognised by any such college which represents
       college staff whom the regional strategic body considers likely to
       be affected by the proposed directions; or
   (ii) where no such trade union is recognised, any trade union which
        appears to the regional strategic body to be representative of such
        college staff; and
(c) where it appears to the regional strategic body that any students of any of
   its colleges are likely to be affected by the proposed directions, the
   students’ association for such colleges.

(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 to give directions to a
    college whose governing body is not a board of management established in

23L 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) A regional strategic body may, for any purpose referred to in subsection (2)(b)
    or (c), make arrangements for the transfer of any of its staff, property, rights,
    liabilities or obligations—
    (a) to any of its colleges;
    (b) to any regional college; or
    (c) to any other regional strategic body.
(4) Any requirement or arrangement under this section may make such further
    provision in relation to the transfer as the regional strategic body considers
    appropriate.
(5) Before making any requirement or arrangement under this section, the regional
    strategic body must consult—
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(a) any college to which the proposed transfer relates;

(b) the representatives of—

(i) any trade union recognised by any such college which represents college staff whom the regional strategic body considers likely to be affected by the proposed transfer; or

(ii) where no such trade union is recognised, any trade union which appears to the regional strategic body to be representative of such college staff;

(c) where it appears to the regional strategic body that any students of any of its colleges are likely to be affected by the proposed transfer, the students’ association for such colleges; and

(d) any other regional strategic body to which the proposed transfer relates.

(6) All property and rights transferred by virtue of subsection (1) or (3) are to be applied for the purpose of the advancement of education.

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

(8) A requirement or arrangement made under this section is binding on a college falling within subsection (9) only if the college consents to the making of the requirement or arrangement.

(9) A college falls within this subsection if—

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

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

Regional boards

11 Regional boards: constitution

(1) After section 23L of the 2005 Act, inserted by section 10(1), insert—

“Regional boards: constitution etc.

23M Regional boards: constitution

Schedule 2B makes provision about the constitution of a regional board, about the general powers of such a board and about certain administrative and other matters with respect to such a board.”.

(2) After schedule 2A of the 2005 Act, inserted by section 8(2), insert—

“SCHEDULE 2B
(introduced by section 23M)

REGIONAL BOARDS

Regional boards

1 (1) References in this schedule to “the board” are references to a regional board specified in Part 1 of schedule 2A.

(2) The board is to be known by the name by which it is described in that Part.
Status

2 (1) The board is a body corporate.

(2) The board—
   (a) is not a servant or agent of the Crown;
   (b) has no status, immunity or privilege of the Crown,

and its property is not to be regarded as property of, or held on behalf of, the Crown.

Membership

3 (1) The board is to consist of no fewer than 15 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”);
   (aa) subject to sub-paragraph (3A), the chairing member of each of the board’s colleges;
   (b) a person appointed by being elected by the teaching staff of the board’s colleges from among their own number;
   (c) a person appointed by being elected by the non-teaching staff of the board’s colleges from among their own number;
   (d) two persons appointed in accordance with paragraph 4; and
   (e) up to 9 other members appointed by the board.

3 (3) A person is not eligible for appointment as the chairing member 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 chief officer of the board.

3 (3A) A person is disqualified from being part of the board in pursuance of sub-paragraph (2)(aa) if the person has previously been removed from the board under section 23N.

3 (4) An appointment made in pursuance of sub-paragraph (2)(e) has effect only if approved by—
   (a) the chairing member; and
   (b) the Scottish Ministers.

3 (5) In appointing members under sub-paragraph (2)(e) and in extending the period of appointment of any member so appointed, the board 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).
(5A) Before issuing guidance under sub-paragraph (5), the Scottish Ministers must consult—
(a) any regional board to which the guidance relates;
(b) the board of management of any college of further education which is, or which the Scottish Ministers consider likely to be, assigned to the regional board by order under section 7C;
(c) the local authority for any area in which such a college is situated;
(d) the students’ association for each such college;
(e) the representatives of any trade union which is recognised by any such college 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.

(6) Different guidance may be issued for different purposes.

Student members

4 (1) The students’ associations of the board’s colleges are each entitled to nominate students for appointment in pursuance of paragraph 3(2)(d).

(2) Where only two students are so nominated, those students are to be so appointed.

(3) Members are otherwise to be so appointed by being elected by the students of all the board’s colleges from among the students so nominated.

(4) Sub-paragraphs (1) to (3) do not apply where only two colleges are assigned to the board and, in such a case, the students’ association of each college is to appoint one member from among the students of their respective colleges.

Election of staff and student members

5 (1) An election to appoint members in pursuance of paragraph 3(2)(b) or (c) or 4(3) is to be conducted in accordance with rules made by the board.

(2) Before making, varying or replacing election rules, the board must consult—
(a) its colleges;
(c) in the case of rules about elections in pursuance of paragraph 3(2)(b), the representatives of any trade union recognised by one or more of its colleges or which otherwise appears to it to be representative of the staff of its colleges; and
(d) in the case of rules about elections in pursuance of paragraph 4(3), the students’ associations of each of its colleges.

Disqualification from membership

6 (1) A person is not eligible for appointment as a member of the board if the person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;

(b) is an undischarged bankrupt; or

(c) has been removed from office under section 24 of the 1992 Act or section 23N of this Act.

(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;

(e) who has been adjudged bankrupt (and has not been discharged); or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

(3) This paragraph does not apply in relation to persons appointed in pursuance of paragraph 3(2)(aa).

Terms and conditions

7 (1) Subject to the other provisions of this Act—

(a) the chairing member holds and vacates office on such terms and conditions as the Scottish Ministers may determine; and

(b) other members hold and vacate office on such terms and conditions as the board may in each case determine.

(2) Subject to sub-paragraphs (3) to (8), paragraph 9 and section 23N—

(a) the chairing member is to hold office for such period (not exceeding 4 years) as the Scottish Ministers may determine;
(aa) a member appointed in pursuance of paragraph 3(2)(aa) is to hold office until the person ceases to be a chairing member of any of the board’s colleges;

(b) a member appointed by being elected in pursuance of paragraph 3(2)(b) or (c) is to hold office for 4 years;

(c) a member appointed in pursuance of paragraph 3(2)(d) is to hold office until 31 August following appointment; and

(d) a member appointed under paragraph 3(2)(e) is to hold office for such period (not exceeding 4 years) as the board may determine.

(3) The Scottish Ministers may extend the period of appointment of the chairing member for a single further period not exceeding 4 years.

(4) The board may extend the period of appointment of a member it appoints for a single further period not exceeding 4 years (but such an extension has effect only if approved by the chairing member and the Scottish Ministers).

(5) The chairing member is to vacate office if the chairing member becomes a person of the type described in paragraph 3(3).

(6) A member appointed under paragraph 3(2)(b) or (c) is to vacate office if the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of one of the board’s colleges before the member’s period of appointment ends.

(7) A member appointed in pursuance of paragraph 3(2)(d) is to vacate office if the member ceases to be a student of one of the board’s colleges before the member’s period of appointment ends.

(8) On ceasing to be a member, a person is eligible for reappointment (provided that the person is not ineligible by virtue of any other provision).

**Remuneration and allowances**

8 (1) The board is to pay to its chairing member such remuneration as the Scottish Ministers may in each case determine.

(2) The board is to pay to its members such allowances as the Scottish Ministers may in each case determine.

**Resignation and removal of members**

9 (1) The chairing member may by giving notice in writing to the Scottish Ministers resign office as a member.

(2) Any other member (except for a member appointed in pursuance of paragraph 3(2)(aa)) may by giving notice in writing to the board resign office as a member.

(3) The Scottish Ministers must, by giving notice in writing to the chairing member, remove the chairing member from office if—

(a) the chairing member—

   (i) is sentenced as mentioned in paragraph 6(1)(a); or

   (ii) has become a person to whom paragraph 6(1)(b) applies; or
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(b) they are satisfied that the chairing member—

(i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or

(ii) is otherwise unable or unfit to discharge the functions of the chairing member.

(4) The board must, by giving notice in writing to the member, remove any other member from office if—

(a) the member—

(i) is sentenced as mentioned in paragraph 6(1)(a); or

(ii) has become a person to whom paragraph 6(1)(b) applies; or

(b) it is satisfied that the member—

(i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or

(ii) is otherwise unable or unfit to discharge the functions of a member.

(5) Sub-paragraph (4) does not apply in relation to a member appointed in pursuance of paragraph 3(2)(aa).

Staff

10 (1) The board may (subject to any directions given under sub-paragraph (4)) appoint a chief officer and such other employees as it considers appropriate on such terms and conditions as the board may determine.

(2) The board may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed by the board.

(3) Arrangements under sub-paragraph (2) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities; and

(b) the establishment and administration of pension schemes.

(4) The board must comply with any directions given by the Council as regards—

(a) the appointment of employees;

(b) terms and conditions determined under sub-paragraph (1); or

(c) payments or arrangements made under sub-paragraph (2).

Proceedings of the board

11 (1) The board may regulate its own procedure (including any quorum).

(2) The validity of any proceedings of the board is not affected—

(a) by a vacancy in membership (or in a category of membership); or

(b) by any defect in the appointment of a member.
Committees

12 (1) The board may establish committees.

(2) The board is to determine—

(a) the composition of any committees;

(b) the terms and conditions of membership of any committee; and

(c) the procedure (including any quorum) of any committee.

(3) A committee may include persons who are not members of the board (but such persons are not to be entitled to participate in making decisions).

(4) The board is to pay to the members of its committees (whether or not they are also members of the board) such allowances as the Scottish Ministers may determine.

Participation at meetings

13 Unless the chairing member determines otherwise, a person who is the principal of one of the board’s colleges but who is not a board member is entitled to participate in any deliberations (but not in making decisions) at meetings of the board.

General powers

14 (1) The board may (subject to paragraphs (2) to (9)) do anything that is necessary or expedient for the purpose of or in connection with the exercise of its functions, including in particular—

(a) acquiring and disposing of land and other property;

(b) entering into contracts;

(c) investing sums not immediately required for the purpose of the discharge of its functions;

(d) accepting gifts of money, land or other property;

(e) forming or promoting (whether alone or with another) companies under the Companies Act 2006.

(2) The board may not borrow money.

(3) The board is not to—

(a) give any guarantee or indemnity over or in respect of any property; or

(b) create any trust or security over or in respect of any property, without the written consent of the Scottish Ministers.

(4) The board is not to dispose of any property to which this sub-paragraph applies without the written consent of the Scottish Ministers.

(5) Consent, for the purposes of sub-paragraphs (3) or (4), may be given—

(a) in respect of any case or class of case; and

(b) subject to such conditions as the Scottish Ministers may determine.
(6) Consent, for the purposes of sub-paragraph (4), is not required for a disposal of land which is or forms part of property to which that sub-paragraph applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.

(7) But the board is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which sub-paragraph (4) applies.

(8) Where property to which sub-paragraph (4) applies is disposed of, the board is (after deduction of such expenses as appear to the Scottish Ministers to have been reasonably incurred in the disposal) to pay to the Scottish Ministers such portion of the proceeds or value of the consideration for the disposal as the Scottish Ministers may, after consultation with the board, determine.

(9) Sub-paragraph (4) applies to—

(a) any property which has been acquired, improved or maintained wholly or partly, or directly or indirectly, out of funds provided by the Council under section 12; and

(b) any proceeds of, or any consideration for, the disposal of any such property.

Goods and services

The board may, for the purposes of providing support for the provision of fundable further education or fundable higher education, provide (and make charges in respect of the provision of) goods or services—

(a) to any of its colleges;

(b) to any other post-16 education body;

(c) to any other regional strategic body; or

(d) to any other person.

Delegation of functions

The board may authorise—

(a) the chairing member;

(b) any of its committees; or

(c) any of its employees,

to exercise such of its functions to such extent as it may determine.

(2) Sub-paragraph (1) does not affect the responsibility of the board for the exercise of its functions.

Accounts

The board must—

(a) keep proper accounts and accounting records;

(b) prepare a statement of accounts in respect of each yearly period ending on 31 March; and
(c) send the statement of accounts to the Scottish Ministers, in accordance with such directions as the Scottish Ministers may give.

(2) The Scottish Ministers must send the statement of accounts to the Auditor General for Scotland for auditing.

**Modification**

18 (1) The Scottish Ministers may by order modify this schedule (other than paragraph 2) by varying, adding to or removing any provision relating to a regional board’s constitution, functions or administrative arrangements.

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

(a) any board to which the order relates; and

(b) such other persons as they consider appropriate.”.

**Regional boards: mismanagement**

After section 23M of the 2005 Act, inserted by section 11(1), insert—

“23N Mismanagement of regional boards

(1) This section applies where it appears to the Scottish Ministers that a regional board—

(a) has committed or is committing—

   (i) a serious breach of any term or condition of a grant made to it under section 12(1)(c); or

   (ii) repeated breaches of such terms or conditions;

(b) has failed or is failing—

   (i) properly to discharge its responsibility for administering the funds made available to it under that section in respect of its colleges; or

   (ii) to discharge any of its duties properly; or

(c) has mismanaged, or is mismanaging, its financial or other affairs.

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

(a) remove any or all of the members of the regional board; and

(b) where a removed member was appointed under paragraph 3(2)(a) or (e) of schedule 2B, appoint another person in place of the removed member.

(3) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (2)(a) to the board and the member.

(4) An appointment made under subsection (2)(b) has effect as if made under the provision of paragraph 3 of schedule 2B under which the removed member was appointed.”.
Establishment and abolition of regional boards: supplemental

After section 23N of the 2005 Act, inserted by section 12, insert—

“23O Establishment and abolition of regional boards: supplemental

(1) The Scottish Ministers may make such arrangements as they consider appropriate in anticipation of the establishment of a regional board by virtue of an order under section 7B or the coming into force of section 8 of the Post-16 Education (Scotland) Act 2013.

(2) They may, in particular, appoint on terms and conditions determined by them persons who are, from the day on which the board is established, to hold office as if appointed under paragraph 3(2)(a) or, as the case may be, (e) of schedule 2B.

(3) An order under section 7B(2)(a) which abolishes a regional board may, in particular, make provision—

(a) for the transfer of the regional board’s staff, property, rights, liabilities or obligations to such other person as may be specified in the order;

(b) for the Scottish Ministers to pay any expenses incurred in connection with the abolition;

(c) imposing such duties or conferring such additional powers in relation to the abolition as the Scottish Ministers consider appropriate;

(d) for the exercise of any of the regional board’s functions by any member of the board specified in the order;

(e) appointing a person to administer the abolition (and giving that person such powers and duties as appear to the Scottish Ministers to be necessary or expedient for such purposes as are specified in the order).

(4) Such an order—

(a) must ensure that any transferred property and rights which, before the transfer, were to be applied for the purpose of the advancement of education are to continue to be applied for that purpose after the transfer,

(b) may contain provision for the transfer of staff, property, rights, liabilities or obligations only if the person to whom the transfer is being made (apart from the Scottish Ministers) has consented to the transfer.

(5) This section does not prejudice the generality of powers conferred by section 34(2) or by section 17 of the Post-16 Education (Scotland) Act 2013.”.

Further education institutions: good governance

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AA Further education institutions: good governance

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1) to a college of further education which is a fundable post-16 education body, require it to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.
(2) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional strategic body under section 12(1), require it—

(a) to comply with any principles of governance which appear to the Council to be appropriate in relation to such a body; or

(b) to impose, when making a payment to any of its colleges under section 12B(1), a condition requiring the college to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.”.

14 Review of further and higher education

After section 14 of the 2005 Act inset—

“14A  Review of fundable further and higher education

(1) The Council may, with the consent of the Scottish Ministers, review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner.

(2) A review may relate to—

(zg) any aspect of the funding or provision of fundable further education or fundable higher education (generally or in particular areas); or

(g) any aspect of the legislation or administrative framework which governs the funding or provision of fundable further education or fundable higher education.

(3) When seeking the consent of the Scottish Ministers to conduct a review, the Council must provide a case for review which—

(a) describes the scope of the proposed review; and

(b) explains why it is satisfied that any pre-conditions to conducting a review which the Scottish Ministers may determine are met in relation to the proposed review.

(3A) When conducting a review, the Council must consult—

(a) the governing body of any post-16 education body and any regional strategic body to which the review relates;

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

(c) any body which appears to the Council to be representative of trade unions in Scotland;

(d) the students’ association of any post-16 education body to which the review relates; and

(e) any body which appears to be the Council to be representative of the interests of students of post-16 education bodies generally.
(4) The bodies to which this subsection applies must provide the Council with such information, and make available for inspection such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.

(5) Subsection (4) applies to—

(a) post-16 education bodies; and

(b) regional strategic bodies.

(6) On completing a review, the Council must provide the Scottish Ministers, and any post-16 education body and regional strategic body to which the review relates, with a report of the review 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.

(7) The Council, when conducting and reporting on a review, must have regard to the importance of ensuring that public funds provided for fundable further education and fundable higher education are used as economically, efficiently and effectively as possible.

Information about young people’s involvement in education and training

Duty to provide information to Skills Development Scotland

(1) The Scottish Ministers may, by order, require a person to provide information the person holds about a young person to The Skills Development Scotland Co. Limited for the purposes of enabling or assisting it—

(a) to monitor that young person’s involvement in education or training,

(b) to provide advice or support as regards that young person’s education or training,

(c) to exercise any of its other functions in relation to that young person.

(2) Such an order may specify—

(a) the persons who are to be required to provide information,

(b) the information, or type of information, which must be provided, and

(c) the form and manner in which it is to be provided.

(2A) The Scottish Ministers may, by order, require The Skills Development Scotland Co. Limited to provide information it holds about a young person to such persons who provide education or training to young persons as may be specified in the order.

(2B) Such an order may specify—

(a) the information, or type of information, which must be provided, and

(b) the form and manner in which it is to be provided.

(3) The Skills Development Scotland Co. Limited and any person who is required to provide information by virtue of this section must have regard to any guidance issued by the Scottish Ministers about the provision or use of such information.

(4) In this section, “young person” means a person aged over 15 and under 25.
(5) The Scottish Ministers may, by order, modify this section—
   (a) by replacing the references in subsections (1), (2A) and (3) to the person to whom
       information is to be provided in pursuance of subsection (1) and who may be
       required to provide information in pursuance of subsection (2A) with references to
       such other person as they consider appropriate, or
   (b) where that person changes its name, by modifying references to that person in
       subsections (1), (2A) and (3) to reflect that change of name.

(7) An order under this section may make different provision for different purposes.

(9) An order under subsection (1) or (2A) is subject to the affirmative procedure.

(10) An order under subsection (5)(a) is subject to the negative procedure.

General

16 Modification of enactments
The schedule to this Act (which makes minor amendments to enactments and otherwise
modifies enactments for the purposes of or in consequence of this Act) has effect.

17 Ancillary provision
(1) The Scottish Ministers may by order make such supplementary, incidental,
   consequential, transitional, transitory or saving provision as they consider appropriate
   for the purposes of, in connection with or for the purposes of giving full effect to any
   provision made by, or by virtue of, this Act.

(2) An order under this section may make different provision for different purposes.

(3) An order under this section—
   (a) if it adds to, replaces or omits any part of the text of this or any other Act, is
       subject to the affirmative procedure,
   (b) is otherwise subject to the negative procedure.

18 Commencement
(1) This section and sections 17 and 19 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers
   may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

19 Short title
The short title of this Act is the Post-16 Education (Scotland) Act 2013.
SCHEDULE
(introduced by section 16)

MODIFICATION OF ENACTMENTS

Education (Scotland) Act 1980 (c.44)

1 (1) The Education (Scotland) Act 1980 is amended as follows.

   (2) In section 73ZA—
   
   (a) in subsection (3), for “fundable” substitute “post-16 education”,

   (b) in subsection (4), for “fundable” substitute “post-16 education”.

   (3) In section 73A—
   
   (a) in subsection (10), for “fundable” substitute “post-16 education”,

   (b) in subsection (11), for “fundable” substitute “post-16 education”.

Further and Higher Education (Scotland) Act 1992 (c.37)

2 (1) The 1992 Act is amended as follows.

   (1A) In section 3—
   
   (a) in subsection (6), after “Act” insert “and the Further and Higher Education (Scotland) Act 2005”,

   (b) after subsection (6) insert—

   “(7) Before making regulations under subsection (6), the Scottish Ministers must consult—

   (a) the boards of management to which the regulations relate;

   (b) any regional strategic body for a college of further education which has such a board;

   (c) the students’ association of each such college;

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

   (e) the Council;

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

   (g) the representatives of any trade union which is recognised by a board of management to which the regulations relate or which otherwise appears to the Scottish Ministers to be representative of its staff;

   (h) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland; and

   (i) any other person appearing to the Scottish Ministers as likely to be affected by the regulations.”.

   (1B) In section 5—

   (a) in subsection (1), after “situated” insert “, the persons mentioned in subsection (1A)”,
(b) after subsection (1) insert—

“(1A) Those persons are—

(a) the Council; and
(b) where the proposal is to exercise the power under section 3(1)(b) or (c) or 44 of this Act—

(i) the board of management of the college or colleges concerned;
(ii) any regional strategic body for such a college;
(iii) the representatives of any trade union which is recognised by any such board of management or which otherwise appears to the Scottish Ministers to be representative of its staff;
(iv) the students’ association of each such college.”.

(2) In section 12—

(a) in subsection (2)(d), after “Act” insert “or of the Further and Higher Education (Scotland) Act 2005”;
(b) after subsection (4) insert—

“(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.”.

(3) In section 36(1)—

(a) omit the word “and” appearing after the definition of “interest in land”;
(b) after the definition of “land” insert—

““regional college” means a college of further education designated as a regional college by order made under section 7A of the Further and Higher Education (Scotland) Act 2005; and
“regional strategic body” has the same meaning as in that Act of 2005.”.

(3A) In section 60—

(a) in subsection (1), after second “Act” insert “or which falls within subsection (2A)”;
(b) after subsection (2) insert—

“(2A) An order falls within this subsection if it is made under section 3(5) of this Act and makes provision other than provision varying the maximum or minimum number of members of a board of management established in pursuance of Part 1 of this Act.

(2B) An order falling within subsection (2A) is subject to the affirmative procedure.”.

(4) In Schedule 2—

(a) omit paragraphs 2 and 4,
(b) in paragraph 5—

(i) in sub-paragraph (1), for “6 to 10” substitute “5A and 5B”,
(ii) for sub-paragraph (2) substitute—
“(2) Subject to sub-paragraphs (2A) to (2H) below—

(a) a member appointed by being elected in pursuance of paragraph 3(2)(b) or (c) or 3A(2)(b) is to hold office for 4 years;

(b) a member appointed in pursuance of paragraph 3(2)(d) or 3A(2)(c) is to hold office until 31 August following appointment; and

(c) each other member of the board (including the chairing member) is to hold office for such period (not exceeding 4 years) as is specified in the member’s terms of appointment.

(2A) The Scottish Ministers may extend the period of appointment of the chairing member of a regional college for a single further period not exceeding 4 years.

(2B) The board of a regional college may extend the period of appointment of a member appointed under paragraph 3(2)(e) for a single further period not exceeding 4 years (but such an extension has effect only if approved by the chairing member and the Scottish Ministers).

(2C) A regional strategic body may extend the period of appointment of a member it appoints under paragraph 3A(2)(a) or (d) for a single further period not exceeding 4 years.

(2E) The chairing member of a regional college is to vacate office if the member becomes a person of the type described in paragraph 3(4) of Schedule 2.

(2EA) The principal of a college is to vacate office on ceasing to be the principal.

(2F) A member appointed under paragraph 3(2)(b) or (c) is to vacate office if the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of the college before the member’s period of appointment ends.

(2G) A member appointed under paragraph 3A(2)(b) is to vacate office if the member ceases to be a member of the staff of the college before the member’s period of appointment ends.

(2H) A member appointed in pursuance of paragraph 3(2)(d) or 3A(2)(c) is to vacate office if the member ceases to be a student of the college before the member’s period of appointment ends.”,

(iii) omit sub-paragraphs (3) and (4),

(iv) in sub-paragraph (5), for the words from “such” to “purpose” substitute “—

(a) in the case of the chairing member of the board of a regional college, the Scottish Ministers;

(b) in the case of any other member of the board a regional college, the board;

(c) in the case of any member of the board of a college which is not a regional college, the regional strategic body.”,

(c) after paragraph 5 insert—

“5A (1) A person is not eligible for appointment as a member of the board if the person—
(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;

(b) is an undischarged bankrupt; or

(c) has been removed from office under section 24 of this Act or section 23N of the Further and Higher Education (Scotland) Act 2005.

(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;

(e) who has been adjudged bankrupt (and has not been discharged); or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

5B (1) The relevant person must remove a member of the board from office (by giving notice in writing to the member) if—

(a) the member—

(i) is sentenced as mentioned in paragraph 5A(1)(a); or

(ii) has become a person to whom paragraph 5A(1)(b) applies; or

(b) the relevant person is satisfied that the member—

(i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or

(ii) is otherwise unable or unfit to discharge the member’s functions.

(2) In sub-paragraph (1), “relevant person”—

(a) in the case of the chairing member of the board of a regional college, means the Scottish Ministers,

(b) in the case of any other member of the board of a regional college, means the board of management of that college,

(c) in the case of a member of the board of a college which is not a regional college, means the regional strategic body for that college.

5C Paragraphs 5A and 5B do not apply in relation to the principal of the college.”,

(d) omit paragraphs 6 to 10,

(e) in paragraph 11(1), for “paragraphs 12 and” substitute “paragraph”,

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(g) omit paragraph 12,
(h) in paragraph 16, after “Act” insert “and paragraph 16A below”,
(i) after paragraph 16 insert—

“The appointment of a principal of a college which is not a regional college, and
the terms and conditions of such an appointment, have effect only if approved
by the regional strategic body for the college.”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

3 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000, after the
entry for “Quality Meat Scotland” insert—

“A regional board (within the meaning of the Further and Higher Education
(Scotland) Act 2005)”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

4 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.
(2) In section 3—

(a) in subsection (7)—

(i) omit the word “or” appearing after paragraph (b),
(ii) after paragraph (c) insert “, or

(d) add to it an entry relating to a regional strategic body (within the
meaning of that Act).”,

(b) in subsection (8), for “fundable” substitute “post-16 education”.

(3) In Part 3 of schedule 2, in paragraph 92(1), after “2005 (asp 6)” insert “and any college
of further education which is assigned to such a fundable body by order made under
section 7C(1) of that Act”.

Freedom of Information (Scotland) Act 2002 (asp 13)

5 In paragraph 49 of schedule 1 to the Freedom of Information (Scotland) Act 2002, after
“Council” insert “or a regional strategic body (within the meaning of the Further and
Higher Education (Scotland) Act 2005)”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

5A In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003,
after the cross-heading “Offices” insert—

“The chairing member of the board of management of a college of further
education which is designated as a regional college by order under section 7A
of the Further and Higher Education (Scotland) Act 2005

The chairing member of a regional board established by or in pursuance of
section 7B of that Act”
Further and Higher Education (Scotland) Act 2005 (asp 6)

6 (1) The 2005 Act is amended as follows.

(2) In section 3—
   (a) in paragraph (a), for first “fundable” substitute “post-16 education”,
   (b) in paragraph (b), for “fundable” substitute “post-16 education”.

(3) In section 4(1)—
   (a) in paragraph (a), for third “fundable” substitute “post-16 education”,
   (b) in paragraph (b), for “fundable” substitute “post-16 education”.

(4) In section 6—
   (a) for subsection (1) substitute—
       “(1) In this Act, “fundable body” means—
       (a) any body specified in schedule 2; and
       (b) any regional strategic body (see section 7B).”,
   (b) in subsection (2)—
       (i) after “fundable” insert “post-16 education”,
       (ii) for “that schedule” substitute “schedule 2”.

(4A) In section 7(2)(h), for “fundable” substitute “post-16 education”.

(5) After section 7C, inserted by section 8(3), insert—
   “7D Orders under sections 7A to 7C: supplemental

   (1) This subsection applies to—
       (a) any order under section 7A(1) which designates a regional college (or which revokes such a designation); and
       (b) any order under section 7C(1) which assigns a college of further education to a regional strategic body (or which revokes such an assignation).

   (2) An order to which subsection (1) applies may—
       (a) make provision about the membership of the board of management of the college of further education concerned,
       (b) make such additional provision as is considered appropriate in relation to the change of status of the college concerned.

   (3) Such an order may, in particular, make provision—
       (a) authorising the Scottish Ministers to make arrangements for, or otherwise providing for, the continuing in office, or the removal from office, of persons who are members of the board immediately before the day on which the designation or assignation has, or ceases to have, effect;
       (b) for the appointment by the Scottish Ministers, on terms and conditions determined by them, of persons who are to be members of the board from that day;
(c) deeming persons who continue in office, or who are appointed in pursuance of sub-paragraph (b), to hold 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 may be specified in the order.

(3A) But such an order may not make provision in pursuance of subsection (3)(b) under which a person appointed to a board of management is to hold office otherwise than as if appointed under paragraph 3(2)(a) or (e) or, as the case may be, 3A(2)(a) or (d) of schedule 2 to the 1992 Act.

(4) Subsections (1) to (3A) do not prejudice the generality of powers conferred by section 34(2).

(5) The Scottish Ministers must, in pursuance of sections 7A to 7C, seek to ensure—

(a) that every college of further education whose governing body is established in pursuance of Part 1 of the 1992 Act is either—

(i) designated as a regional college; or

(ii) assigned to a regional strategic body; and

(b) that at least two colleges of further education are assigned to each regional board.

(6) Where, despite subsection (5)(a), a college of further education whose governing body is so established is not so designated or assigned, the college is (subject to any contrary provision made under section 33 or 34(2) of this Act or section 17 of the Post-16 Education (Scotland) Act 2013) to be treated for the purposes of this Act, the 1992 Act and any other enactment as having been designated as a regional college.

(7) Nothing in subsections (5) and (6) affects the power to make an order under section 7C(1) in relation to a college of further education whose governing body is not so established.”.

(6) In section 9—

(a) in subsection (3)—

(i) in paragraph (b), for the words from “the” to “both)” substitute “any of the conditions referred to in subsections (4) to (5A)”,

(ii) after paragraph (b) insert—

“(c) include any terms or conditions referred to in sections 9A to 9C.”,

(b) in subsection (4), for the words from second “is” to second “specify” substitute “—

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

(b) where it is a regional strategic body, is, when making a payment to any of its colleges under section 12B(1), to impose on the college a requirement to comply with any such matters.”,

(c) in subsection (5)(a), after “fundable” insert “post-16 education”,

(d) after subsection (5) insert—
“(5A) The condition is that—

(a) when making a payment to a regional strategic 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 section 12) to impose on the regional strategic body a condition that it must, when making a payment to any of its colleges under section 12B(1), impose on the college a condition making the requirement referred to in subsection (6).”,

c) in subsection (6), for “fundable”, in both places, substitute “post-16 education”,

d) in subsection (8), after “fundable”, in both places, insert “post-16 education”,

e) in subsection (9), after “fundable” insert “post-16 education”,

f) in subsection (11)—

(i) for “in so far as provided for in subsection (4)” substitute “where imposed in pursuance of subsection (4) or section 9A, 9AA or 9B”,

(ii) after “Council” insert “or a regional strategic body”,

(iii) omit the word “fundable”,

(i) in subsection (12)—

(i) in paragraph (a), after “(7)” insert “and in section 9C”,

(ii) omit the word “or” appearing after paragraph (a),

(iii) in paragraph (b), omit sub-paragraph (ii),

(iv) after paragraph (b) insert—

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

(j) in subsection (13)(c)—

(i) in sub-paragraph (ii), for “fundable” substitute “post-16 education”,

(ii) in sub-paragraph (iii), for “fundable bodies” substitute “post-16 education bodies, and such regional strategic bodies.”.

(7) In section 10—

(a) in subsection (2)(a)—

(i) for “the fundable” substitute “post-16 education”,

(ii) after second “bodies” insert “and restructuring involving regional strategic bodies”,

(b) in subsection (2)(c), for “the fundable bodies” substitute “post-16 education bodies and, where appropriate, between those bodies and regional strategic bodies”,

(c) in subsection (6), for “fundable” substitute “post-16 education”.

(8) In section 11—

(a) in subsection (1)—

(i) omit the word “and” appearing after paragraph (a),
(ii) after paragraph (a) insert—

“(aa) providing support (whether financial or otherwise) to regional strategic bodies; and”,

(b) in subsection (3)—

(i) in paragraph (a), after third “fundable” insert “post-16 education”,

(ii) in paragraph (b), after “fundable” insert “post-16 education”,

(iii) in paragraph (c), after “fundable” insert “post-16 education”,

(iv) in paragraph (d), after “fundable” insert “post-16 education”.

(9) In section 13—

(a) in subsection (1), for third “fundable” substitute “post-16 education”,

(b) in subsection (2), for “fundable” substitute “post-16 education”.

(10) After section 13 insert—

“13A Performance of regional strategic bodies

The Council is to secure that provision is made for—

(a) assessing; and

(b) enhancing,

the performance of regional strategic bodies.”,

(11) In section 14—

(a) in subsection (1), after “fundable” insert “post-16 education”,

(b) in subsection (2)(a)—

(i) omit the word “or” appearing after sub-paragraph (i),

(ii) in sub-paragraph (ii) for “body; and” substitute “post-16 education body; or”,

(iii) after sub-paragraph (ii) insert—

“(iii) any regional strategic body; and”.

(12) In section 18(2)(a), after “body” insert “or of any of a regional strategic body’s colleges”.

(13) In section 20—

(a) in subsection (3), for “fundable” substitute “post-16 education”,

(b) in subsection (4), for “fundable” substitute “post-16 education”.

(14) In section 22—

(a) in subsection (2)—

(i) in paragraph (a), for “the fundable bodies; or” substitute “post-16 education bodies and regional strategic bodies;

(aa) any body which appears to the Council to be representative of trade unions in Scotland; or”,

(ii) in paragraph (b), for “fundable bodies” substitute “post-16 education bodies generally”,

(iii) in paragraph (c), for “fundable bodies” substitute “post-16 education bodies generally”. 
(aa) in subsection (5)—
   (i) at the end of paragraph (f) insert “; and
   (fa) The Skills Development Scotland Co. Limited”,
   (ii) omit paragraphs (g) to (i),

(ab) omit subsection (6),

(ac) in subsection (7), for “subsections (5) and (6)” substitute “subsection (5)”,

(b) in subsection (8), for the words from “promote” to “bodies” substitute “—
   (a) promote collaboration between post-16 education bodies; and
   (b) promote such collaboration between post-16 education bodies and
   regional strategic bodies as it considers appropriate.”.

(15) In section 24—
   (a) in subsection (2), after “7” insert “, 14A”,
   (b) in subsection (3), for “fundable body” substitute “post-16 education body or to a
   particular regional strategic body”.

(16) In section 25—
   (a) in subsection (1)—
      (i) for first “fundable” substitute “post-16 education body or regional
      strategic”,
      (ii) omit second “fundable”,
   (b) after subsection (1) insert—
       “(1A) A direction made under subsection (1) in relation to any of a regional strategic
       body’s colleges may, in particular, require the Council to provide such
       financial support to the regional strategic body as may be specified in the
       direction (subject to such terms and conditions as may be so specified).”,
   (c) in subsection (2), for the words from second “the” to “concerned” substitute “—
       (a) the Council;
       (b) the body to which the direction relates; and
       (c) where that body is assigned to a regional strategic body by an order
       made under section 7C(1), the regional strategic body”.

(17) In section 26—
   (a) in subsection (1), for “fundable” substitute “post-16 education”,
   (b) in subsection (2), for “fundable” substitute “post-16 education”,
   (c) in subsection (3), for “fundable”, where it appears in paragraphs (a) and (b),
   substitute “post-16 education”.

(18) In section 28—
   (a) in subsection (1), after “body” insert “or of any of a regional strategic body’s
   colleges”,
   (b) in subsection (3), after “12” insert “or, as the case may be, by a regional strategic
   body under section 12B”.
(19) In section 31, for “fundable” substitute “post-16 education”.

(20) In section 34(4)—
   (a) in paragraph (b), for “7(1) or (4)” substitute “7(4)”,
   (b) omit the word “or” appearing after paragraph (b),
   (c) after paragraph (b) insert—
   “(ba) an order under section 7(1) (other than an order which is made only in
   consequence of a body changing its name or being closed);
   (baa) an order under section 7B(2)(a) which establishes a regional board;
   (bab) an order under section 7B(2)(b) which adds or removes an entry (but
   not including an order which removes an entry relating to a body which
   has been closed, wound up or has otherwise ceased to exist);
   (bb) an order under section 7C(1) for which a proposal or approval under
   section 7C(2) is required;
   (bba) an order under section 9C(2) (other than an order which does no more
   than increase the amount specified in a previous order by an amount that
   is no greater than the amount which the Scottish Ministers, having had
   regard to any retail price index, consider is required in order to maintain
   the value of the previously specified amount in real terms);”
   (d) after paragraph (c) insert “; or
   (ca) an order under paragraph 18 of schedule 2B (other than an order which
   does no more than vary the minimum number of members of a regional
   board or vary the maximum number of members which may be
   appointed in pursuance of paragraph 3(2)(c)),”.

(21) In section 35—
   (a) in subsection (1)—
   (i) after the definition of “the 1992 Act” insert—
   ““college of further education” means the governing body of a body—
   (a) by which fundable further education or fundable higher education
   is provided; and
   (b) which is not a higher education institution;”,
   (ii) in the definition of “fundable body”, for “6(2)” substitute “6(1)”,
   (iii) after the definition of “fundable higher education” insert—
   ““fundable post-16 education body” is to be construed in accordance with
   section 6(2);”
   “higher education institution” means an institution which is—
   (a) a university; or
   (b) a designated institution (within the meaning of section 44(2) of the
   1992 Act);”,
   (iv) after the definition of “the Parliament” insert—
   ““post-16 education body” means—
(a) any fundable post-16 education body; and

(b) any college of further education assigned to a regional strategic body by order made under section 7C(1);

“recognised”, in relation to a trade union, has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992;

“regional board” is to be construed in accordance with section 7B(1)(b);

“regional college” means a college of further education designated as a regional college by order made under section 7A(1);

“regional strategic body” is to be construed in accordance with section 7B(1)(a);”,

(b) in subsection (2), omit “fundable” in each of the seven places where it occurs,

(c) after subsection (2) insert—

“(3) In this Act—

(a) any reference to the locality of a college of further education is a reference to any locality in which the college provides fundable further education or fundable higher education (other than by way of distance or open learning); and

(b) any reference (other than in sections 23A and 23C) to the locality in which fundable further education or fundable further education is provided does not include reference to any such education which is provided by way of distance or open learning.”.

Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

In the definition of “further education institution” in paragraph 15 of the Protection of Vulnerable Groups (Scotland) Act 2007, after “(asp 6)” insert “or a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act”.

918
Post-16 Education (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the support for, and the
governance of, further and higher education institutions, including provision for the
regionalisation of colleges; to make provision for reviews of how further and higher
education is provided; to make provision for sharing information about young people’s
involvement in education and training; and for connected purposes.

Introduced by: Michael Russell
On: 27 November 2012
Bill type: Government Bill
POST-16 EDUCATION (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Post-16 Education (Scotland) Bill as amended at Stage 2.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

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

SUMMARY AND BACKGROUND

4. The Bill makes provision in relation to some aspects of the Scottish Government’s post-16 education reform programme. The Bill contains provisions covering six areas:

- **University governance:** to allow Ministers, when providing funding to the Scottish Further and Higher Education Funding Council (“SFC”), to impose conditions relating to the need for higher education institutions to adhere to good practice in governance. *(Section 2)*

- **Widening access:** to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups. *(Section 3)*

- **Tuition fees cap:** to allow Ministers:
  - to set an upper limit on the level of higher education tuition fees which post-16 education bodies can charge UK students and certain others who are not entitled to be charged tuition fees at the level set by the Scottish Government; and
  - when providing funding to the SFC, to impose conditions with a view to ensuring that post-16 education bodies adhere to such an upper limit. *(Section 4)*
This document relates to the Post-16 Education (Scotland) Bill as amended at Stage 2 (SP Bill 18A)

- **College regionalisation:**
  - to provide for two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college or multi-college regions;
  - to establish new regional strategic bodies for colleges in multi-college regions to support a regional approach to the planning and funding of college provision; and
  - to introduce Ministerial powers to remove chairs and other members of incorporated colleges and regional boards for reasons of failure (in addition to mismanagement). *(Sections 5 – 13)*

- **Review of fundable further and higher education:** to allow the SFC to review the provision of fundable further and higher education with a view to ensuring that such education is being provided by post-16 education bodies in a coherent manner. *(Section 14)*

- **Data sharing:** to allow Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of, disengaging with, learning or training. *(Section 15)*


6. Throughout these Explanatory Notes various terms are used. The most important terms are as follows:

   - “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992 [“the 1992 Act” has the same meaning in the Bill (see section 1 of the Bill)];
   - “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005 [“the 2005 Act” has the same meaning in the Bill (see section 1 of the Bill)];
   - “fundable post-16 education body” means a body specified in schedule 2 to the 2005 Act [this is what is provided for in section 6(2) of the 2005 Act as amended by paragraph 6(4)(b) of the schedule to the Bill; in practice ‘fundable post-16 education bodies’ are colleges or higher education institutions];
   - “higher education institution” means a university or any designated institution (within the meaning of section 44(2) of the 1992 Act) [paragraph 6(21)(a)(iii) of the schedule to the Bill inserts a definition in these terms into section 35(interpretation) of the 2005 Act];
   - “incorporated college” means a college of further education which has a board of management established under the 1992 Act;
   - “post-16 education body” means any fundable post-16 education body, and any college which is assigned to a regional strategic body under section 7C(1) of the 2005 Act (inserted by section 8(3) of the Bill) [paragraph 6(21)(a)(iv) of the schedule to the Bill inserts a definition in these terms into section 35(interpretation) of the 2005 Act];
   - “regional board” means a body specified in part 1 of schedule 2A to the 2005 Act [this reflects the definition of “regional board” inserted into section 35(interpretation) of the
This document relates to the Post-16 Education (Scotland) Bill as amended at Stage 2 (SP Bill 18A)

2005 Act by paragraph 6(21)(a)(iv) of the Bill; new schedule 2A to the 2005 Act is inserted by section 8(2) of the Bill;

“regional college” means an incorporated college which the Scottish Ministers designate as a regional college by an order made under section 7A(1) of the 2005 Act [section 7A(1) of the 2005 Act is inserted by section 5(1) of the Bill; see also the definition of “regional college” inserted into section 35 (interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill];

“regional strategic body” means a body specified in schedule 2A to the 2005 Act [this reflects the definition of “regional strategic body” inserted into section 35 (interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill; new schedule 2A to the 2005 Act is inserted by section 8(2) of the Bill]; and

“SFC” means the Scottish Further and Higher Education Funding Council established under section 1 of the 2005 Act.

INTRODUCTORY

Section 1: Interpretation


TERMS AND CONDITIONS OF HIGHER EDUCATION FUNDING

Section 2: Higher education institutions: good governance

8. Section 9(1) of the 2005 Act gives the Scottish Ministers powers to make grants to the SFC and under section 9(2) the Scottish Ministers are able to attach terms and conditions to such grants. Section 2 of the Bill amends the 2005 Act by introducing new section 9A. New section 9A provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must, when making a payment to a higher education institution under section 12(1) of the 2005 Act (SFC’s power to make grants, loans or other payments) impose on that institution a condition that it must comply with any principles of governance which the SFC consider to constitute good practice in relation to higher education institutions.

9. Certain consequential amendments to section 9 of the 2005 Act in connection with new section 9A (and new sections 9B and 9C) are made by paragraph 6(6) of the schedule to the Bill.

10. There is similar provision for further education institutions in new section 9AA of the 2005 Act, inserted by section 13A of the Bill (see paragraph 102 below).

Section 3: Widening access to higher education

11. Section 3 of the Bill amends the 2005 Act to insert new section 9B. Section 9B makes provision about the terms and conditions that the Scottish Ministers can impose when making grants to the SFC under section 9(1) of the 2005 Act (described more fully in paragraph 8 above). New section 9B(1) gives the Scottish Ministers powers to set terms and conditions that are aimed at enabling, encouraging or increasing participation in higher education by people...
This document relates to the Post-16 Education (Scotland) Bill as amended at Stage 2 (SP Bill 18A)

from under-represented socio-economic groups. Subsection (4) describes what is meant by “under-represented” and subsection (4A) provides that Ministers may take into account any social or economic characteristics they consider appropriate when determining which groups constitute a ‘socio-economic group’ for the purposes of the section.

12. New section 9B(2) gives power to the Scottish Ministers to impose a condition on the SFC that the SFC (when making a payment to a higher education institution) is itself to make a requirement that the institution complies with a widening access agreement. And the Scottish Ministers are given power to specify the description of such widening access agreements. Section 9B(2) is framed as a particular example of the things that the Scottish Ministers can do in the context of their more general power to impose terms and conditions under section 9B(1).

13. New section 9B(3) then provides a definition of a “widening access agreement”.

14. As part of that definition, new section 9B(3) provides that in a widening access agreement the SFC can specify actions which a higher education institution is to take. New section 9B(3A) places a duty on the SFC to consult with the institution, trade unions appearing to the SFC to be representative of the institution’s staff and the institution’s students’ association before specifying those actions.

15. The intention is that, in the context of exercising the power to impose terms and conditions under new section 9B so as to require the SFC to then require institutions to comply with widening access agreements, those agreements will provide the detail of the range of activities that institutions will have to undertake in order to improve participation in higher education.

16. Amendments made by paragraph 6(6)(i) of the schedule to the Bill will amend the current restriction in the 2005 Act (in section 9(12)(b)) which would otherwise prevent terms and conditions relating to criteria for admission. However, that restriction is removed only for the limited purposes of new section 9B on widening access.

Section 4: Fee cap: students liable for higher education fees

17. Section 4 of the Bill amends the 2005 Act to insert new section 9C. Section 9C makes provision about the terms and conditions that the Scottish Ministers can impose when making grants, loans or other payments to the SFC under section 9(1) of the 2005 Act (described more fully in paragraph 8 above).

18. New section 9C(1) of the 2005 Act provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must:

   (a) when making a payment to a post-16 education body which provides fundable higher education, impose a condition that it must comply with the requirement provided for in section 9C(2);

   (b) when making a payment to a regional strategic body, impose a condition that, when making a payment under new section 12B of the 2005 Act (inserted by section 9 of the Bill) (regional strategic bodies’ powers to make grants, loans or other payments) to any of its colleges which provide fundable higher education, that regional strategic
body must impose a condition that such college must comply with the requirement provided for in section 9C(2).

19. The requirement provided for in new section 9C(2) of the 2005 Act is a requirement that the post-16 education body receiving the payment must ensure that fees charged by it to students in respect of whom the post-16 education body is authorised or required to charge higher fees in terms of section 1 of the Education (Fees and Awards) Act 1983 (or by any class of such students as may be provided for in an order made by the Scottish Ministers) in connection with their attending in an academic year such courses of education as may be provided for in the order, must not exceed the amount set by the Scottish Ministers in the order.

20. New section 9C(3) of the 2005 Act provides that the Scottish Ministers must seek to ensure that, subject to any exceptions which they consider to be appropriate, the order applies only to students who have a connection with the United Kingdom. It also provides that Ministers must seek to ensure that the amount provided for in the order will not result in the students to whom the order applies being charged higher fees per academic year for studying at a post-16 education body than the highest amount of fees per academic year, as set by legislation elsewhere in the UK, that such student would be charged if they chose to pursue any course of higher education in a part of the United Kingdom other than Scotland.

21. New section 9C(4) of the 2005 Act provides that in making provision in the order for the courses of higher education to which it is to apply, Ministers must not do so in a way which discriminates between different postgraduate teacher training courses on the basis of subject matter.

22. New section 9C(5) of the 2005 Act provides that for the purposes of new section 9C references to the United Kingdom include the Channel Islands and the Isle of Man.

23. Certain consequential amendments to section 9 of the 2005 Act in connection with new section 9C are made by paragraph 6(6) of the schedule to the Bill.

COLLEGE REORGANISATION

Section 5: Regional colleges

24. Section 5 of the Bill inserts new sections 7A, 23A, 23B and 23BA into the 2005 Act. The new section 7A of the 2005 Act enables the Scottish Ministers to designate any incorporated college as a regional college. Before making an order, the Bill requires the Scottish Ministers to consult specified persons.

25. New section 23A(1) of the 2005 Act places a duty on a regional college to exercise its functions with a view to securing high quality “fundable further education” and “fundable higher education” in its locality. These terms are defined in section 5 of the 2005 Act. The duty is framed to recognise that regional colleges are not the sole providers of such education in their localities. The SFC has a similar duty in section 3 of the 2005 Act.
26. Under new section 23A(2) of the 2005 Act, in complying with its duty a regional college must have regard to any fundable further and higher education provided by other post-16 education bodies in the locality of a regional college.

27. New section 23B(1) of the 2005 Act places a duty on a regional college to plan for how it proposes to provide fundable further education and fundable higher education and how it intends to exercise its other functions. When it makes such plans, a regional college must have regard to the importance of ensuring that its funds are used as economically, efficiently and effectively as possible. New section 23B(3) of the 2005 Act places a duty on a regional college to consult specified persons in relation to the exercise of its functions where they consider it appropriate to do so. The list in section 23B(3) can be amended by order made under new section 23B(6) of the 2005 Act. However, the Scottish Ministers cannot modify the entries for trade union representatives (section 23B(3)(a) of the 2005 Act) or students’ associations (section 23B(3)(b) of the 2005 Act).

28. New section 23B(5) of the 2005 Act places a duty on a regional college to seek to secure the collaboration of specified persons, so far as is consistent with the proper exercise of the college’s functions. Again, Scottish Ministers can amend the list by order made under new section 23B(6) of the 2005 Act.

29. New section 23BA of the 2005 Act sets out certain matters a regional college must have regard to when exercising its functions. Regional strategic bodies have a similar duty in new section 23I of the 2005 Act (inserted by section 10 of the Bill). The SFC has a similar duty in section 20 of the 2005 Act.

Section 6: Colleges: boards of management

30. Section 6(1) of the Bill inserts a new paragraph 3 into Schedule 2 to the 1992 Act to replace the current paragraph 3 which made provision for the constitution and proceedings of boards of management of incorporated colleges (including the appointment of the principal to the board by right of their position).

31. The effect of the provisions in section 6(1) is to make changes to the size and composition of incorporated college boards, depending on whether they are regional colleges or not.

Regional college boards

32. New paragraph 3(1) of Schedule 2 to the 1992 Act determines that the board of a regional college will have a minimum of 15 members and a maximum of 18 members.

33. Under new paragraph 3(2)(a), the chair of a regional college board will be appointed by the Scottish Ministers. Under new paragraph 3(4) the chair cannot be a member of the Scottish Parliament, the House of Lords, the House of Commons, the European Parliament or the principal of the college. Other board members must also include:
   a) the principal of the college
   b) a person elected by the teaching staff of the college;
c) a person elected by the non-teaching staff of the college; and  
d) two persons nominated by the college students’ association.

Other members will be appointed by the board. Under new paragraph 3(3) such other members can only be appointed with the approval of the college chair and Scottish Ministers.

Other college boards

34. New paragraph 3A(1) of Schedule 2 to the 1992 Act determines the size of incorporated college boards that are not regional colleges. Such colleges will have a minimum of 13 members and a maximum of 18 members.

35. Under new paragraph 3A(2)(a) of Schedule 2 to the 1992 Act, the chair of a college board will be appointed by the college’s regional strategic body (under new paragraph 3A(3), the college principal cannot be appointed as the chair). Other board members must also include:
   a) the principal of the college  
   b) a person elected by the staff of the college; and  
   c) two persons nominated by the college students’ association.

36. Other members will be appointed to the college board by the regional strategic body.

General provisions: all incorporated colleges

37. New paragraph 3B makes provision for the conduct of elections to appoint board members to represent college staff. Such elections must be conducted in accordance with rules made by the college board. Before making or changing rules, college boards must consult representatives of any trade union recognised by the college or which otherwise appears representative of the staff of the college.

38. New paragraph 3C(1) enables the Scottish Ministers to issue guidance to (a) regional colleges on appointments and extensions of appointments to their boards and (b) to regional strategic bodies on appointments and extensions of appointments to the boards of colleges assigned to them. Guidance on the making of such appointments or the extension of appointments may include guidance on the skills and experience that candidates should possess. New paragraph 3C(1A) specifies the persons Scottish Ministers must first consult before issuing guidance. New paragraph 3C(2) provides that the Scottish Ministers may issue different guidance for different purposes, including to different regional colleges/regional strategic bodies.

39. Further amendments to Schedule 2 to the 1992 Act are made by paragraph 2(4) of the schedule to the Bill and they affect the boards of all incorporated colleges. Given the importance of some of these changes, they are explained in the following paragraphs. Paragraph 2(4)(a) removes paragraph 2 (which determined the size of existing college boards) and paragraph 4 (which made provision for the transfer of board membership when incorporated colleges were transferred from local authorities in 1993) of Schedule 2 to the 1992 Act. Paragraph 4 is no longer required as those transfers have now occurred.
40. Paragraph 2(4)(b) of the schedule to the Bill makes some amendments in relation to the provisions for the length of appointments. Under the 1992 Act, appointments were generally for a fixed period of four years. Amended paragraph 5(2) of schedule 2 to the 1992 Act provides that, subject to sub paragraphs (2A) to (2H) (which make provision in relation to extension of appointments and circumstances in which persons appointed require to vacate office):

- a person elected to represent the staff will hold office for a fixed period of four years;

- student members hold office until 31 August following their appointment (this replicates what is currently provided for in paragraph 5(4) of Schedule 2 to the 1992 Act which is repealed by paragraph 2(4)(b)(iii) of the schedule to the Bill); and

- the chair and other members of the board will hold office for a period of up to four years (to be determined by the person making the appointment).

41. Paragraph 6 of Schedule 2 to the 1992 Act, which imposed minimum and maximum age requirements on board members, is removed by paragraph 2(4)(d) of the schedule to the Bill.

42. Paragraph 2(4)(d) of the schedule to the Bill also removes paragraph 7 of Schedule 2 to the 1992 Act. Paragraph 7 of Schedule 2 to the 1992 Act makes provision for circumstances in which a person will be ineligible for appointment as a board member. Instead paragraph 2(4)(c) of the schedule inserts a new paragraph 5A into Schedule 2 to the 1992 Act to make new provision on the eligibility of board members. The provisions are identical to the provisions which are being introduced in relation to regional boards as it was considered appropriate to align the eligibility requirements. A person is ineligible for appointment if he or she has (within the last five years) been sentenced to imprisonment of longer than three months, is an undischarged bankrupt or has been removed from office under section 24 of the 1992 Act or section 23N of the 2005 Act (inserted by section 12 of the Bill). Paragraph 2(4)(d) of the schedule to the Bill also removes paragraphs 8 and 9 of Schedule 2 to the 1992 Act which make provision for circumstances in which a person falls to be removed from office as board member. Instead paragraph 2(4)(c) of the schedule to the Bill inserts a new paragraph 5B into Schedule 2 to the 1992 Act to make new provision for removal of board members. A person must be removed from office if the person is sentenced to imprisonment for a period of not less than three months or has become an undischarged bankrupt (new paragraph 5B(1)(a) of Schedule 2 to the 1992 Act). A board member must also be removed from office if the person removing them is satisfied that they have been absent for more than six months or are otherwise unfit or unable to discharge their functions (new paragraph 5B(1)(b) of Schedule 2 to the 1992 Act).

43. Paragraph 2(4)(d) of the schedule to the Bill also removes paragraph 10 from Schedule 2 to the 1992 Act (filling of casual vacancies) as it is no longer required since most board appointments are no longer fixed term appointments. Paragraph 2(4)(g) of the schedule to the Bill removes paragraph 12 of Schedule 2 to the 1992 Act, which makes provision for the appointment of the chair of a college. Such provision is now included in amended paragraph 3 of that Schedule (for regional colleges) and new paragraph 3A of that Schedule (for other colleges). The Scottish Ministers would have powers to remove the chair of regional and other colleges under new section 24 of the 1992 Act (section 7 of the Bill substitutes a new section 24 of the 1992 Act).

44. Paragraph 2(4)(i) of the schedule to the Bill inserts new paragraph 16A into Schedule 2 to the 1992 Act which provides that the appointment of principals of colleges that are not regional
by those college boards (and the terms and conditions of those appointments) require the approval of the regional strategic body. This provision does not affect the contracts of existing principals. However, when those contracts become due for renewal, the regional strategic body has to agree the terms and conditions of the principal.

45. Section 6(2) of the Bill allows Scottish Ministers to make arrangements in relation to the boards of management of incorporated colleges in advance of the coming into force of the changes to the composition and structure of boards. Scottish Ministers can appoint persons as board members who will hold office as if appointed under the new paragraph 3(2)(a) or (e) or 3A(2)(a) or (d) of Schedule 2 to the 1992 Act. The Scottish Ministers also have the power to make arrangements for board members who are in office immediately prior to the coming into force of the re-structured boards either to remain in office or to be removed from office.

Section 7: Colleges: mismanagement

46. Existing section 24 of the 1992 Act enables the Scottish Ministers to remove by order members of incorporated college boards if they consider the boards have been or are being mismanaged. By substituting a new section 24, section 7 of the Bill extends the grounds on which Scottish Ministers may remove members.

47. The new section 24 of the 1992 Act enables the Scottish Ministers to remove any or all of the members of an incorporated college’s board (except the college principal who, by virtue of paragraph 3(2)(aa) of Schedule 2 to the 1992 Act in the case of regional colleges and paragraph 3A(2)(aa) of that schedule in the case of other colleges, must be a member of an incorporated college board) in circumstances where it appears to the Scottish Ministers that such a board:

   a) has committed or is committing a serious breach of any term or condition of grant made to it either by the SFC (in the case of regional colleges) or by its regional strategic body (in case of other colleges). Such a breach may be a one-off breach;

   b) has committed or is committing repeated breaches of such terms or conditions;

   c) has failed or is failing to provide or secure the provision of education of such standard as the Scottish Ministers consider to be appropriate;

   d) has failed, or is failing to discharge any of their duties properly; or

   e) has managed or is mismanaging its financial or other affairs.

48. The Scottish Ministers may also remove members if they receive advice from the SFC that a college fails to meet the criteria set out in section 7(2) of the 2005 to be either a fundable body (in respect of regional colleges) or a college assigned to a regional strategic body (in respect of other colleges).

49. Under new section 24(3), the Scottish Ministers may in such circumstance remove by order any or all board members (except the principal) and where those persons are not the staff or student members, appoint other persons in their place. New section 24(5) provides that such appointments are treated as if they were made under the usual provisions for such appointments. This means that relevant provisions regarding eligibility, length of service etc. apply to them.
REGIONAL STRATEGIC BODIES

Section 8: Regional strategic bodies

50. Section 8 of the Bill makes provision for regional strategic bodies.

51. A regional strategic body is either a regional board set up under this Bill or a body designated by order as such. Three regional boards are established under the Bill, and the University of the Highlands and Islands is specified as a regional strategic body.

52. Section 8(1) inserts a new section 7B into the 2005 Act. New section 7B(1) of the 2005 Act defines a regional strategic body (a body specified in new schedule 2A to the 2005 Act (inserted by section 8(2) of the Bill)) and regional board (a body specified in Part 1 of that schedule).

53. New section 7B(2) of the 2005 Act enables Scottish Ministers to modify new schedule 2A to the 2005 Act by order either to establish, abolish or re-name regional boards, or to add, remove or vary any entries in Part 2 of it. New section 7B(3) of the 2005 Act specifies the persons Scottish Ministers must first consult before making such an order.

54. Section 8(2) of the Bill inserts a new schedule 2A into the 2005 Act. New schedule 2A to the 2005 Act lists regional boards in Part 1 and other regional strategic bodies in Part 2. The University of the Highlands and Islands is the only body listed in Part 2 of that schedule. Three regional boards are established by the Bill:
   - Regional Board for Aberdeen and Aberdeenshire Colleges
   - Regional Board for Glasgow Colleges
   - Regional Board for Lanarkshire Colleges.

55. Section 8(3) of the Bill inserts a new section 7C into the 2005 Act. New section 7C(1) enables the Scottish Ministers to assign colleges of further education to a regional strategic body by order. Paragraph 6(21) of the schedule to the Bill amends section 35 of the 2005 Act (interpretation). A definition of “college of further education” is inserted into section 35 of the 2005 Act. “College of further education” is defined as the governing body of a body (a) by which fundable further education or fundable higher education is provided and (b) which is not a higher education institution. Under new section 7C(4) an order under new section 7C(1) could remove the college from the list of fundable bodies in schedule 2 to the 2005 Act and make such other provision in relation to the college as the Scottish Ministers consider appropriate. New section 7C(5) specifies the persons the Scottish Ministers must first consult before making such an order.

56. New section 7C(2) of the 2005 Act requires the SFC to propose or approve the assignation of a college to a regional strategic body, except where the college concerned is a fundable body, or where the college is assigned to another regional strategic body, immediately before the order. This means that colleges in multi-college regions that are currently fundable bodies (or have previously been assigned to a regional strategic body) can be assigned at the time regional strategic bodies are given their functions.
57. New section 7C(3) of the 2005 Act provides that when proposing or approving the assignation of a college, the SFC should consider the matters set out in section 7(2) of the 2005 Act. These are the same matters the SFC must consider when considering whether to propose or approve the addition of a learning provider to the list of fundable bodies.

58. New section 7C(5A) provides that the SFC may review whether an assigned college continues to satisfy the criteria set out section 7(2) of the 2005 Act. New section 7C(5B) outlines the actions the SFC must take on completing such a review.

59. New section 7C(6) of the 2005 Act provides that any references to a regional strategic body’s colleges are references to colleges assigned to the body by order.

**Section 9: Funding of and by regional strategic bodies**

60. Section 9(1) of the Bill amends section 12 of the 2005 Act (Funding of fundable bodies). The amendments enable the SFC to fund fundable post-16 education bodies and regional strategic bodies. The SFC would be able to fund regional strategic bodies for any purpose. This is, however, constrained in practice by the powers of the regional strategic bodies themselves.

61. Section 9(2) of the Bill confers responsibility on regional strategic bodies to administer funds. The Bill achieves this by inserting new sections 12A and 12B into the 2005 Act.

62. New section 12A of the 2005 Act specifies the funds a regional strategic body is responsible for administering. This is similar to the existing provision made for the SFC in section 11 of the 2005 Act.

63. New section 12B of the 2005 Act confers powers on a regional strategic body to make grants, loans or other payments. This is similar to the existing provision made for the SFC in section 12 of the 2005 Act.

64. New section 12B(1) of the 2005 Act specifies the persons and activities in respect of which regional strategic bodies can support financially. These include the provision of fundable further and fundable higher education by colleges assigned to the regional strategic bodies.

65. Section 12B(2) and (3) of the 2005 Act enables a regional strategic body to impose terms and conditions when it makes a payment under new section 12B(1) of the 2005 Act.

66. Under section 12B(4) a condition imposed under new section 9(5A) of the 2005 Act must make provision that will apply if the colleges fails to comply with the requirement in section 9(6) of the 2005 Act. Paragraph 6(6) of the schedule to the Bill makes various amendments to section 9 of the 2005 Act including inserting new section 9(5A) and amending section 9(6). Section 12B(6) provides that terms and conditions may only be imposed in relation to funds provided to the college by the regional strategic body.

67. Section 12B(7) specifies the persons a regional strategic body must first consult before imposing terms and conditions (unless the body considers that it not expedient to do so).
68. Section 12B(8) specifies certain matters to which a regional strategic body must have regard in making payments.

Section 10: Regional strategic bodies: functions

69. Section 10 of the Bill confers functions on regional strategic bodies. The Bill achieves this by inserting new sections 23C to 23L into the 2005 Act (section 10(1) of the Bill). Some of the duties being conferred are similar to new duties being placed on regional colleges.

70. Under the present 2005 Act, the SFC has certain functions over the bodies which the SFC directly funds. In the main the SFC will not have functions over colleges in multi-college regions, as the SFC will no longer directly fund them (although there are a few exceptions, such as in relation to assessing and enhancing quality of education). One of the intentions behind section 10(1) of the Bill is to confer on regional strategic bodies similar functions over the colleges they will fund.

71. New section 23C of the 2005 Act places a duty on a regional strategic body to exercise its functions with a view to securing high quality “fundable further education” and “fundable higher education” in the localities of its colleges. These terms are defined in section 5 of the 2005 Act. The duty is framed to recognise that colleges are not the sole providers of such education in their localities. New section 23A(1) of the 2005 Act places a similar duty on regional colleges. The SFC has a similar duty in section 3 of the 2005 Act.

72. New section 23D of the 2005 Act places a duty on a regional strategic body to plan for how it proposes its colleges should provide fundable further education and fundable higher education and how it intends to exercise its functions. Colleges assigned to a regional strategic body must have regard to any such plans when exercising their functions. When it makes such plans, a regional strategic body must have regard to the importance of ensuring that its funds are used as economically, efficiently and effectively as possible.

73. New section 23E of the 2005 Act places a duty on a regional strategic body to monitor the performance of its colleges. New section 23E(2) sets out what this may include. New section 23E(2)(a) provides that monitoring performance may include monitoring or assessing the quality of fundable further education and fundable higher education provided by the colleges. This new section is in addition to section 13 of the 2005 Act, which gives the SFC the function of securing that provision is made for assessing and enhancing the quality of further education and fundable higher education provided by post-16 education bodies. The SFC duty would therefore extend to such education provided by colleges assigned to a regional strategic body. In meeting this duty, the SFC currently secures the services of Education Scotland to review colleges. The SFC will retain this function in respect of quality to enable such services to be secured across all of Scotland’s funded colleges (whether funded directly by the SFC or by a regional strategic body). It is expected that the regional strategic body, in fulfilling the section 23E duty, would rely on reports of Education Scotland. The body would also have powers to require information from colleges under new section 23K(1) of the 2005 Act. New section 23E(3) provides that a regional strategic body must, when considering whether to take action to monitor the performance of colleges, seek to avoid unnecessary duplication with any action of Scottish Ministers (Education Scotland is an Executive Agency of the Scottish Government) or the SFC.
This document relates to the Post-16 Education (Scotland) Bill as amended at Stage 2 (SP Bill 18A)

74. New section 23F of the 2005 Act requires a regional strategic body to promote the use by colleges assigned to it of the Scottish Credit and Qualification Framework (which has been adopted by the SFC). The SFC has a similar duty in section 14 of the 2005 Act.

75. New section 23G of the 2005 Act enables a regional strategic body to have efficiency studies conducted into the operations of any college assigned to it. The SFC has a similar power in section 15 of the 2005 Act.

76. New section 23H of the 2005 Act gives a regional strategic body a right in certain circumstances to attend and address meetings of the governing body of colleges assigned to it. The SFC has similar rights in section 16 of the 2005 Act.

77. New section 23I of the 2005 Act sets out certain matters a regional strategic body must have regard to when exercising its functions. Regional colleges have a similar duty in new section 23BA of the 2005 Act. The SFC has a similar duty in section 20 of the 2005 Act.

78. New section 23J(1) of the 2005 Act places a duty on a regional strategic body to consult specified persons in relation to the exercise of its functions where the body considers it appropriate to do so. The list can be amended by order made under new section 23J(4). However, new section 23J(5) provides that the Scottish Ministers cannot modify the entries for colleges (section 23J(1)(a)) trade union representatives (section 23J(1)(b)) or students’ associations (section 23J(1)(c)). New section 23B(3) of the 2005 Act places a similar duty on regional colleges. The SFC has a similar duty in section 22 of the 2005 Act.

79. New section 23J(3) places a duty on a regional strategic body to seek to secure the collaboration of specified persons, so far as is consistent with the proper exercise of the regional strategic body’s functions. New section 23B(5) places a similar duty on regional colleges. The SFC has a similar duty in section 22 of the 2005 Act. The list of persons in section 23J(3) can be amended by the Scottish Ministers by order made under new section 23J(4). However, in terms of section 23J(5) the Scottish Ministers cannot modify the entry for the regional strategic body’s colleges (section 23J(3)(a)). New section 23J(6) requires the regional strategic body to promote collaboration between its colleges, and between its colleges and other post-16 education bodies, in relation to the provision of fundable further and fundable higher education.

80. New section 23K(1) of the 2005 Act places a duty on colleges assigned to a regional strategic body to provide that body with such information as the strategic body may reasonably require. Fundable bodies (and others including colleges assigned to regional strategic bodies) are similarly required to provide the SFC with information by virtue of section 22(4) of the 2005 Act.

81. New section 23K(2) to (7) of the 2005 Act enables a regional strategic body to issue directions (of a general or specific nature) to incorporated colleges assigned to it, which the colleges must comply with. New section 23K(4) specifies the persons a regional strategic body must first consult before giving such directions.

82. New section 23L(1) of the 2005 Act enables a regional strategic body to require the transfer of property, rights, liabilities or obligations of an incorporated college assigned to it
either to another of its colleges or to itself. New section 23L(2) outlines the purposes for which such a requirement may be made. It would enable, for example, staff etc to be transferred from one college in a region to another, to consolidate particular programmes of learning in particular colleges and staff etc to be transferred from colleges to the regional strategic body to enable that body to provide services to those colleges (e.g. finance and human resource management). New section 23L(5) specifies the persons a regional strategic body must first consult before making such a requirement.

83. New section 23L(3) enables a regional strategic body to transfer any of its staff etc to any college assigned to it or to a regional college or to another a regional strategic body in circumstances specified in section 23L(2)(b) or (c). Situations in which such a power could be used include the following. Where a regional strategic body was delivering shared services (such as finance and human resource management) to its colleges and one of those colleges was to be designated a regional college, a regional strategic body may wish to transfer staff etc. to the college to enable the college to deliver such services for itself. New section 23L(5) specifies the persons a regional strategic body must first consult before making such an arrangement. A regional strategic body may wish to transfer staff etc to another regional strategic body or a regional college to enable services to be delivered across regions.

84. The provisions of the Bill in relation to the transfer of property by incorporated colleges assigned to a regional strategic body are intended to ensure that such colleges will not be excluded from meeting the charity test set out in section 7 of the Charities and Trustee Investment (Scotland) Act 2005 (“the Charities Act”). In terms of section 7(4)(a) a body is excluded from meeting the charity test where 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 that is not a charitable purpose). While it is not known whether a regional strategic body would seek to become a charitable body, new section 23L(6) ensures that the provisions to transfer property and rights do not adversely affect the ability of colleges to remain as or of regional strategic bodies to become charities, as the subsection requires that any property transferred is to be applied for the purpose of the advancement of education (which is a charitable purpose).

85. New section 23L(8) of the 2005 Act provides that any requirement under section 23L(1) by a regional strategic body to transfer property to a college or to the regional strategic board requires the consent of a non-incorporated college. The consent of an incorporated college is not required.

REGIONAL BOARDS

Section 11: Regional boards: constitution

86. Section 11(1) and (2) of the Bill makes provision for the constitution and general powers of regional boards. The Bill achieves this by inserting a new section 23M and new schedule 2B into the 2005 Act.

87. The new schedule 2B sets out details of the status, membership and procedures of the regional boards. For example, it defines their membership, the provisions for appointing the chief officer and other staff and provision for committees and accounts.
88. The general powers of the regional boards are set out in paragraph 14 of schedule 2B. The SFC has similar powers in section 23 of the 2005 Act.

89. Paragraph 18 of schedule 2B enables the Scottish Ministers to modify the schedule by order. Paragraph 18(2) specifies the persons the Scottish Ministers must first consult before making an order.

Section 12: Regional boards: mismanagement

90. Section 12 of the Bill makes provision for the removal of members of regional boards by inserting a new section 23N into the 2005 Act. New section 23N enables the Scottish Ministers to remove by order any or all of the members of a regional board in circumstances where it appears to the Scottish Ministers that such a board:

a) has committed or is committing a serious breach of any term or condition of grant made to it either by the SFC. Such a breach may be a one-off breach;

b) has committed or is committing repeated breaches of such terms or conditions;

c) has failed, or is failing to properly discharge its responsibility to administer funds or discharge any of its duties properly; or

d) has managed or is mismanaging its financial or other affairs.

91. As regional boards are not required to meet the criteria to be a fundable post-16 education body (because they are not a learning provider), there is no similar provision in new section 23N along the lines of that in amended section 24(1)(b) of the 1992 Act, which enables the Scottish Ministers to remove board members of regional colleges if those colleges fail to meet such criteria.

92. Under new section 23N(2), the Scottish Ministers may in such circumstances remove by order any or all board members and where those persons are not the staff or student members, appoint other persons in their place. New section 23N(4) provides that such appointments are treated as if they were made under the usual provisions for such appointments. This means that relevant provisions regarding eligibility, length of service etc. apply to them.

Section 13: Establishment and abolition of regional boards: supplemental

93. Section 13 of the Bill inserts new section 23O into the 2005 Act. New section 23O(1) and (2) of the Bill allow Scottish Ministers to make arrangements in relation to the establishment of regional boards either in advance of the coming into force of the provisions in section 8 of the Bill, or in the future before an order is made under section 7B of the 2005 Act. Scottish Ministers may in particular appoint persons as regional board members who are to hold office as if appointed under the new paragraph 3(2)(a) or (e) of the new schedule 2B to the 2005 Act.

94. New section 23O(3) specifies the particular provisions that an order (made under section 7C of the 2005 Act) to abolish a regional board may contain. This includes the transfer of the regional board’s staff, property, right, liabilities or obligations.
95. New section 23O(4)(a) ensures any property and rights that were used before the transfer for the advancement of education continue to be used for this purpose. While it is not known whether a regional board would seek to become a charitable body, this provision ensures that the provisions to transfer property and rights do not adversely affect its ability to become a charity.

96. New section 23O(4)(b) ensures that a transfer to a person other than the Scottish Ministers can only occur if the person to whom the transfer is being made has consented to that transfer.

FURTHER EDUCATION INSTITUTIONS: GOOD GOVERNANCE

Section 13A: Further education institutions: good governance

97. Section 9(1) of the 2005 Act gives the Scottish Ministers powers to make grants to the SFC and under section 9(2) the Scottish Ministers are able to attach terms and conditions to such grants. Section 13A of the Bill amends the 2005 Act by introducing new section 9AA.

98. New section 9AA(1) provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must, when making a payment to a college of further education that is a fundable post-16 education body under section 12(1) of the 2005 Act (SFC’s power to make grants, loans or other payments) impose on that college a condition that it must comply with any principles of governance which the SFC considers to constitute good practice in relation to colleges of further education. Such colleges are eligible for funding directly by the SFC. These would be regional colleges and other SFC directly funded colleges, e.g. Newbattle Abbey College.

99. New section 9AA(2) provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must, when making a payment to a regional strategic body under section 12(1) of the 2005 Act (SFC’s power to make grants, loans or other payments), impose on that regional strategic body a condition that the regional strategic body either: (a) comply with any principles of governance which the SFC considers to constitute good practice in relation to such a body or (b) impose conditions when making a payment under section 12B(1) (regional strategic body’s power to make grants, loans or other payments) to a college assigned to it requiring the college to comply with any principles of governance which the SFC considers to constitute good practice in relation colleges of further education.

100. There is similar provision for higher education institutions in new section 9A of the 2005 Act, inserted by section 2 of the Bill (see paragraph 8 above).

101. A consequential amendment to section 9 of the 2005 Act in connection with new section 9AA is made by paragraph 6(6)(h) of the schedule to the Bill.

REVIEW OF FURTHER AND HIGHER EDUCATION

Section 14: Review of further and higher education

102. Section 14 of the Bill amends the 2005 Act to insert new section 14A.
103. New section 14A(1) of the 2005 Act empowers the SFC, subject to Scottish Ministers giving their consent, to review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner.

104. New section 14A(2) provides that such a review may relate to any aspect of the funding or provision of fundable further education or fundable higher education (and that aspect can focus on particular areas or be more general), or to any aspect of the legislation or administrative framework governing the funding or provision of fundable further or higher education.

105. New section 14A(3) provides that when the SFC is seeking the consent of the Scottish Ministers to conduct a review it must provide the Scottish Ministers with a case for review setting out the proposed scope of the review which the SFC wishes to carry out. Section 14A(3) also provides that the case for review must explain why the SFC considers that any pre-conditions to the conducting of a review which the Scottish Ministers are empowered to set are met.

106. New section 14A(3A) provides that, when conducting a review under section 14A(1), the SFC must consult and lists the people who must be consulted.

107. New section 14A(4) and (5) provide that post-16 education bodies and regional strategic bodies are required to provide the SFC with such information as the SFC may reasonably require for the purposes of conducting a review. Such bodies are also required to make available to the SFC for inspection such accounts and other documents as the SFC may require for the purposes of conducting a review.

108. New section 14A(6) provides that once the SFC has completed a review it must submit a report to the Scottish Ministers and any post-16 education body and regional strategic body to which the review relates setting out the conclusions it has reached, the reasons for those conclusions and any recommendations it has for action.

109. New section 14A(7) provides that in conducting a review the SFC must have regard to ensuring that public funds provided for fundable further education and fundable higher education are used as economically, efficiently and effectively as possible.

**INFORMATION ABOUT YOUNG PEOPLE’S INVOLVEMENT IN EDUCATION AND TRAINING**

**Section 15: Duty to provide information to Skills Development Scotland**

110. Section 15 of the Bill is about the provision of information to and by Skills Development Scotland (SDS). Section 15(1) gives power to the Scottish Ministers, by means of an order, to require a person to provide information held about a young person to SDS for certain purposes. Those purposes are set out in subsection (1) and relate to SDS’s functions. Subsection (4) defines “young person” for the purposes of this section, which captures 16 to 24 year olds.

111. Section 15(2) allows an order (under section 15(1)) to set out the detail of the persons who are to be required to give information (and the intention is that this will be used to specify other organisations that have responsibilities for providing learning and training to young
people), the information to be given and the form and manner in which the information is to be given.

112. Section 15(2A) gives power to the Scottish Ministers, by means of an order, to require SDS to provide information it holds about a young person to such persons who provide education or training to young persons as may be specified in the order.

113. Section 15(2B) provides that an order made under section 15(2A) may specify the information, or type of information, which must be provided and the form and manner in which it must be provided.

114. There is a requirement in section 15(3) for SDS, and any person required to give information, to have regard to any guidance that the Scottish Ministers may issue about giving or using that information.

115. Section 15(5) gives a further order making power to the Scottish Ministers. That is a power to modify the references to SDS within section 15. The expectation is that this power would be used where SDS had a change of name or where another organisation took on the functions that are currently carried out by SDS.

116. Section 15(7), (9) and (10) make supplementary provision about the order making powers in section 15.

117. Requirements imposed using the power in section 15(1) will not affect the operation of other legislative requirements relating to the sharing of data such as those contained within the Data Protection Act 1998. However, requirements imposed under this section might provide a legal basis for the sharing or using of data under that Act.

GENERAL

Section 16: Modification of enactments

118. Section 16 of the Bill introduces the schedule to the Bill which sets out minor consequential amendments to, and modifications of, other enactments as a result of the Bill. Some of the amendments, particularly in relation to the changes made by paragraph 2(4) of the schedule in relation to the provisions on boards of management of incorporated colleges, are explained in more detail above.

Paragraph 2(2)(b) of schedule – remuneration of chairs of regional colleges.

119. A regional college board is to pay its chair such remuneration as the Scottish Ministers may determine. There is similar provision for the chairs of regional boards in new paragraph 8(1) of new schedule 2B to the 2005 Act.

Paragraph 6(5) of schedule – orders under sections 7A to 7C: supplemental

120. New section 7D(2) of the 2005 Act allows Scottish Ministers, when making orders under section 7A(1) or 7C(1) of the 2005 Act, to make provisions in relation to the boards of
management of incorporated colleges or to make such additional provision as is considered necessary in relation to the change of status of the college. In such an order the Scottish Ministers can make provision about the continuation in office or removal from office of any existing board members once the college’s status changes, or about the appointment by the Scottish Ministers of persons as board members, or about deeming any persons who continue in office or who are appointed to hold office as if appointed under the new paragraph 3 or 3A of Schedule 2 to the 1992 Act.

121. In making orders to designate an incorporated college as regional or in assigning colleges to a regional strategic body these provisions require the Scottish Ministers to seek to ensure that every incorporated college is one or the other. Given that it is necessary for the proper functioning of a board that it is one or the other, provision is made for the possible failure of the Scottish Ministers to discharge this responsibility. In such circumstances an incorporated college is to be treated as being designated as a regional college. There is a proviso which enables the Scottish Ministers to make contrary provision. This is to enable the Scottish Ministers, if necessary, to keep some colleges under existing governance arrangements until such time as they are able to be designated as a regional college (or not), perhaps because merger is imminent.

**Paragraph 6(9) of schedule – amendment to section 13 of the 2005 Act**

122. The SFC duty in section 13 of the 2005 Act is amended to reflect other changes made by the Bill. The duty is now to secure provision for assessing and enhancing the quality of fundable further and higher education provided by fundable bodies and also colleges assigned to a regional strategic body.

**Section 17: Ancillary provisions**

123. Section 17 of the Bill gives the Scottish Ministers the power, by order, to make supplemental, incidental, consequential, transitional, transitory or saving provisions for the purpose of giving full effect to the Bill.

**Section 18: Commencement**

124. Section 18 of the Bill deals with commencement of its provisions. Sections 17 to 19 come into force on the day after Royal Assent. The coming into force of section 17 of the Bill will allow the Scottish Ministers, by order, to make supplemental, incidental, consequential, transitional, transitory or saving provisions for the purpose of giving full effect to the Bill. Other provisions of the Act will be brought into force by order by the Scottish Ministers at different times.

**Section 19: Short title**

125. Section 19 of the Bill provides that the short title of the Act is the Post-16 Education (Scotland) Act 2013.
POST-16 EDUCATION (SCOTLAND) BILL
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Post-16 Education (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

3. In this memorandum:
   
   • “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992,
   • “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005;.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 4 – Fee cap: students liable for higher education fees

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative and negative procedure, depending on the circumstances

Provision

4. Section 4 of the Bill inserts new section 9C into the 2005 Act. For the purposes of any condition imposed by the Scottish Ministers on the Scottish Funding Council (“the SFC”) in pursuance of new section 9C(1), new section 9C(2) would allow the Scottish Ministers, by order, to set an upper limit (or ‘cap’) on the amount of fees payable to a post-16 education body by a person in respect of whom such body is authorised or required to charge higher fees by virtue of Regulations made under section 1 of the Education (Fees) Act 1983 (“the 1983 Act”) or to such class of such persons as the Scottish Ministers may in the order specify.
Amendment at Stage 2

5. In response to a recommendation from the Subordinate Legislation Committee an amendment was made to the procedure which applies to an order made under section 9C(2). This amendment was made to paragraph 6(20)(c) of the schedule to the Bill which amends section 34(4) of the 2005 Act by inserting a new sub-paragraph (bba) to provide for both affirmative and negative procedure depending on the circumstances.

Reason for taking power

6. The original Delegated Powers Memorandum explained the background to the reason for taking this power. For students commencing courses of education in the 2012/13 or later academic years the tuition fee arrangements have their basis in section 9 of the 2005 Act and they ensure that only those students with a connection with Scotland - and not those with a connection with another part of the United Kingdom - are entitled to be charged ‘set fees’. Under the current legislative arrangements institutions are free to charge students with a connection with another part of the United Kingdom higher fees. Scottish Ministers do not wish institutions to be able to charge such students fees at a higher level than the highest amount of fees per academic year, as set by legislation elsewhere in the UK, that such students would be charged if they chose to pursue any course of higher education in a part of the United Kingdom other than Scotland and new section 9C of the 2005 Act therefore gives Scottish Ministers a power to impose a condition on the SFC to require institutions to charge fees at a level which does not exceed a particular upper limit (or ‘cap’).

Choice of procedure

7. Following an amendment at stage 2, an order under section 9C(2) is now subject to the affirmative procedure, unless it is an order which does no more than increase the amount specified by a previous order by an amount which is no greater than the amount which Scottish Ministers, having had regard to any retail price index, consider is required to maintain the value of the previously specified amount in real terms. In all other cases the order will be subject to the negative procedure. Having reflected on the comments from the Subordinate Legislation Committee, Scottish Ministers consider that it is appropriate for there to be a higher level of parliamentary scrutiny in circumstances where the fee cap is being increased by an amount which represents more than a increase in the cap in real terms or where there is a reduction in the fee cap. Ministers are content that, where there is no increase in real terms, the negative procedure is appropriate and would provide sufficient opportunity for scrutiny.

Section 5(1) – Regional colleges

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

8. Section 5(1) of the Bill inserts a new section 7A into the 2005 Act. Section 7A(1) gives Scottish Ministers a power, by order, to designate any college of further education with a board of management under Part 1 of the 1992 Act (known as an “incorporated college”) as a regional college. New section 7A(2) requires consultation with certain persons before such an order can be made under section 7A(1).
Amendment at Stage 2

9. At stage 2, the provision was amended to require wider consultation before Ministers can exercise their power to designate a regional college under section 7A(1). Section 7A(2) now also requires consultation with representatives of relevant students’ associations and with trade unions representing college staff. Amendment was also made at Stage 2 to paragraph 6(5) of the schedule to the Bill which inserts section 7D into the 2005 Act. Section 7D makes supplemental provisions in relation to orders made under section 7A(1) of the 2005 Act. Section 7D(3)(a) was changed to allow an order to authorise Scottish Ministers to make arrangements for the continuation in office or removal from office of persons who were board members immediately before an order under section 7A(1) to designate a regional college. Section 7D (3A) was also inserted to ensure that any order which makes provision for appointment of new board members of a regional college can only make provision for those members who could be appointed under paragraph 3(2)(a) or (e) of Schedule 2 to the 1992 Act (i.e. the chairing member or ordinary members).

Reason for taking power

10. One of the key aims of the Bill is to enable the existence of two types of incorporated colleges with different duties, composition and appointment provisions, depending on whether they are in single-college or multi-college regions. Scottish Ministers intend to designate incorporated colleges in single-college regions as regional colleges. The power to designate gives Scottish Ministers flexibility to be able to do so and also in future to respond to changes if there is future restructuring.

Choice of procedure

11. The power remains subject to negative procedure. If Parliament has already approved the principle of having colleges designated as regional colleges, it is considered appropriate that an order to designate a regional college is subject to negative procedure.

Section 7 – Colleges: mismanagement

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

12. Section 24 of the 1992 Act, as substituted by section 7 of the Bill, gives Scottish Ministers a power, by order, to remove members of an incorporated college’s board in specified circumstances and to appoint new members in their place.

Amendment at Stage 2

13. The new section 24(1)(a) of the 1992 Act (as in section 7 of the Bill at introduction) set out the circumstances Ministers would be able to exercise their power to remove board members. The new section 24(1)(a)(iv) specified as one such circumstance when it appeared to Ministers that the board of management had failed, or were failing, to exercise any of their functions properly. This has been amended so that it is more restricted and now provides that the circumstance is one where the board has failed, or is failing, to discharge any of its duties properly. This was prompted by the report of the Subordinate Legislation Committee which found that there was a ‘substantial expansion’ of the grounds for removal.
14. The new section 24(3)(a) of the 1992 Act (as in section 7 of the Bill at introduction) gave Ministers the power to remove any or all of the members of an incorporated college’s board. At stage 2 this provision was modified to prevent Ministers from removing the principal from an incorporated college’s board. Other amendments made at stage 2 provided for the principal to be an ex officio member of the board and it was therefore necessary to prevent the removal of the principal under the new section 24 of the 1992 Act.

15. These amendments serve to restrict the exercise of the power in section 24(3)(a).

Reason for taking power

16. Existing section 24 of the 1992 Act enables Ministers to remove board members for reasons of mismanagement, but the substituted section 24 specifies additional circumstances where Ministers can remove board members of an incorporated college. However, it is considered appropriate to restrict the removal under section 24(1)(a)(iv) to circumstances where boards are failing to discharge their duties properly, rather than to exercise their functions properly.

Choice of procedure

17. We note that in its report the Subordinate Legislation Committee stated that “given the substantial expansion of the grounds upon which members of a college’s board of management may be removed, the Committee draws the power in section 7 (substituting section 24 of the 1992 Act) to the attention of the lead Committee. It is otherwise content that the exercise of the power be subject to the negative procedure”. The power remains subject to the negative procedure. Existing section 24 of the 1992 Act already provided that the power to remove board members was exercisable by order subject to the negative procedure.

Section 8(1) – Regional strategic bodies

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<tr>
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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative or negative procedure, depending on the circumstances</td>
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Provision

18. Section 8(1) of the Bill inserts a new section 7B into the 2005 Act. Section 7B(1) establishes, as regional strategic bodies, certain bodies specified in the new schedule 2A to the 2005 Act. Section 7B(2) gives Scottish Ministers a power, by order, to modify part 1 of schedule 2A so as to establish, abolish or rename a regional board (a category of regional strategic body) and to modify part 2 of schedule 2A by adding, removing or varying any entry in part 2 of schedule 2A. Once listed in schedule 2A bodies can be funded by the SFC by virtue of section 12(1)(c) of the 2005 Act, as amended by section 9(1) of the Bill.

Amendment at Stage 2

19. In response to a recommendation from the Subordinate Legislation Committee, an amendment was made to the procedure which applies to orders made under the new section 7B(2) of the 2005 Act. This amendment was made to paragraph 6(20) of the schedule to the Bill which amends section 34(4) of the 2005 Act. Paragraph 6(20)(c) inserts new sub-paragraphs (baa) and (bab) into section 34(4) to provide for both affirmative and negative procedure depending on the circumstances.

Reason for taking power

20. Flexibility is required to enable the list of bodies in schedule 2A to be amended to take account of future restructuring, such as the merger of colleges to form colleges which are then designated as regional...
colleges, which could then involve the abolition of a regional board. New regional boards might require to be created or other regional strategic bodies designated as a result of future decisions about the number and coverage of college regions.

Choice of procedure

21. The power in section 7B(2)(a) is now subject to affirmative procedure when the order establishes a new regional board. The power in section 7B(2)(b) is now subject to affirmative procedure when the order adds or removes an entry from part 2 of schedule 2A to the 2005 Act, unless the order is removing the entry simply because the body has closed, been wound up or otherwise ceased to exist. It is considered that more detailed parliamentary scrutiny is required where Scottish Ministers wish to set up a new regional board under section 7B(2)(a) or when an order adds a body to or removes a body (for reasons other than closure or winding up) from part 2 of schedule 2A as these orders would raise issues about whether or not the bodies concerned should be receiving public funding by the SFC. These powers in relation to regional strategic bodies are similar to the current power under section 7(1) of the 2005 Act an order to add, remove or vary the list of fundable bodies in schedule 2 to the 2005 Act. The procedure which applies to the exercise of the power in section 7(1) was already modified by paragraph 6(20)(c). Scottish Ministers consider it appropriate that the same levels of parliamentary scrutiny apply to the exercise of the powers in section 7(1) and section 7B(2) and the same principles have therefore been applied in relation to the powers in section 7B(2) so that they are consistent with modified approach under section 7(1) of the 2005 Act.

Section 8(3) – Regional strategic bodies

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative or negative procedure, depending on the circumstances

Provision

22. Section 8(3) inserts new section 7C(1) into the 2005 Act which gives Scottish Ministers the power, by order, to assign colleges of further education to a regional strategic body. Assignation of colleges to a regional strategic body will give that body certain functions in respect of those colleges, including the power to fund them. The new section 7C(5) requires consultation with certain specified persons before an order can be made under section 7C(1).

Amendment at Stage 2

23. At stage 2, the provision was amended to require wider consultation before Ministers can exercise their power to make an assignation of a college to a regional strategic body. Section 7C(5) now also requires consultation with every college affected by an order (only if that college already exists) as well as consultation with representatives of relevant students’ associations and with trade unions representing college staff. An amendment was also made to the new section 7C(2) to transfer the function of proposing or approving an assignation before such an order can be made from the regional strategic body to the SFC (where such a proposal or approval is required because the college to be assigned is not already a fundable post-16 education body or has not already been assigned to a regional strategic body). Amendment was also made at stage 2 to paragraph 6(5) of the schedule to the Bill which inserts section 7D into the 2005 Act. Section 7D makes supplemental provisions in relation to orders made under section 7C(1) of the 2005 Act. Section 7D(3)(a) was changed to allow an order to authorise Scottish Ministers to make arrangements for the continuation in office or removal from office of persons who were board members immediately before an order under section 7C(1) to assign a college. Section 7D (3A) was also inserted to ensure that any order which makes provision for appointment of new board members of an assigned
This document relates to the Post-16 Education (Scotland) Bill as amended at stage 2 (SP Bill 18A)
college can only make provision for those members who could be appointed under paragraph 3A(2)(a) or
d(2) of Schedule 2 to the 1992 Act (i.e. the chairing member or ordinary members)

Reason for taking power
24. Flexibility is required to enable further colleges to be assigned to a regional strategic body or for
colleges to be assigned to different regional strategic bodies, which might occur as a result of future
decisions about the number and coverage of college regions.

Choice of procedure
25. There has been no change in the procedure which applies to the exercise of the power in section 7C(1).
Where exercise of this power involves adding new bodies to the list of bodies which are entitled to receive
public funding, in this case through a regional strategic body, it remains subject to the affirmative
procedure. However, where the exercise of this power results in the assignation of a body which is
already funded by either the SFC or by a regional strategic body, Scottish Ministers consider it remains
appropriate that such assignations should be subject to the negative procedure.

Section 11(2) – Regional boards: constitution

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative or negative procedure, depending on the circumstances

Provision
26. Paragraph 18(1) of the new schedule 2B to the 2005 Act, as inserted by section 11(2) of the Bill, gives
Scottish Ministers a power, by order, to vary, add or remove any provision relating to a regional board’s
constitution, functions or administrative arrangements.

Amendment at Stage 2
27. In response to a recommendation from the Subordinate Legislation Committee an amendment was
made to the procedure which applies to an order made under paragraph 18(1) of the new schedule 2B to
the 2005 Act. This amendment was made by paragraph 6(20)(d) in the schedule to the Bill which amends
to section 34(4) of the 2005 Act by inserting a new sub-paragraph (ca) to provide for both affirmative and
negative procedure depending on the circumstances.

Reason for taking power
28. Scottish Ministers consider it appropriate that they have flexibility to amend provisions regarding a
regional board’s constitution, functions or administrative arrangements. The Bill would create boards of a
novel nature, new to the post-16 education system. Scottish Ministers would consider it helpful to be able
to respond to any new demands on these boards by enabling such provisions to be amended.

Choice of procedure
29. The power is subject to the affirmative procedure, unless an order does no more than vary the
minimum members of regional board or vary the maximum number of members who can be appointed
under paragraph 3(2)(e) of the new schedule 2B. If it varies the minimum or maximum board numbers
only, then it will be subject to the negative procedure. At the time of introduction of the Bill Ministers
considered the procedure should be consistent with the procedure which applies to the similar power in
section 3(5) of the 1992 Act to amend Schedule 2 to the 1992 Act on the constitution of boards. However, having reflected on the comments from the Subordinate Legislation Committee Ministers are content that the affirmative procedure should apply to ensure a higher level of parliamentary scrutiny in circumstances where the order does more than variation of board numbers. A corresponding change is being made to the procedure applying to the power in section 3(5) of the 1992 Act to ensure consistency.

Section 12 – Regional Boards: mismanagement

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

30. New section 23N of the 2005 Act, as inserted by section 12 of the Bill, gives Scottish Ministers a power, by order, to remove any or all of the members of a regional board in specified circumstances and to appoint new members in their place.

Amendment at Stage 2

31. The new section 23N of the 2005 Act (as in section 12 of the Bill at introduction) set out the circumstances Ministers would be able to exercise their power to remove regional board members. The new section 23N(1)(b)(ii) specified as one such circumstance when it appeared to Ministers that the regional board had failed, or were failing, to exercise any of their other functions properly. This has been amended so that it is more restricted and now provides that the circumstance is one where the board has failed, or is failing, to discharge any of its duties properly.

Reason for taking power

32. Scottish Ministers consider it appropriate to have powers to be able to act if necessary to remove members if the boards are being mismanaged. Scottish Ministers consider that these powers are necessary to ensure that regional boards are accountable for agreed outcomes to safeguard educational opportunities provided by colleges funded by regional boards, but it is considered appropriate to restrict the removal under section 23N(1)(b)(ii) to circumstances where boards are failing to discharge their duties properly, rather than to exercise their functions properly. This was prompted by the report of the Subordinate Legislation Committee which commented on the ‘breadth of the grounds’ for removal.

Choice of procedure

33. We note that in its report the Subordinate Legislation Committee stated that “given the breadth of the grounds upon which the members of a regional board may be removed, the Committee draws the power in section 12 (inserting section 23N of the 2005 Act) to the attention of the lead Committee. It is otherwise content that the exercise of the power be subject to the negative procedure”. The power remains subject to negative procedure and therefore remains consistent with the similar provision in section 24 of the 1992 Act.
Section 15(1) – Duty to provide information to Skills Development Scotland

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative procedure

Provision

34. Section 15(1) gives Scottish Ministers the power, by order, to place a duty on any person to provide information which that person holds about a young person to Skills Development Scotland for the purposes of enabling or assisting Skills Development Scotland to monitor that young person’s involvement in education or training, to provide advice or support regarding that young person’s involvement in education or training or to exercise any other functions in relation to that young person. By virtue of section 15(2) Scottish Ministers may specify persons who are to provide information, information to be provided and the form and manner in which it is to be provided.

Amendment at Stage 2

35. In response to a recommendation from the Subordinate Legislation Committee, an amendment was made to the procedure which applies to an order made under section 15(1) of the Bill. Section 15(9) provides that an order under sub-section (1) is subject to the affirmative procedure.

Reason for taking power

36. Scottish Ministers will wish to impose this duty to provide information to Skills Development Scotland on persons who are providing education and training to young persons and they need to have flexibility to make provision regarding the persons on whom the duty should be imposed. It is also considered that the details regarding the information to be provided and the form and manner in which it is to be provided would be largely technical and should therefore be determined in subordinate legislation.

Choice of procedure

37. The power is now subject to the affirmative procedure. Ministers accept that this is a broad power and are content to follow the recommendation of the Subordinate Legislation Committee that, if the power remains broad, it should be subject to the affirmative procedure to ensure adequate parliamentary scrutiny.

Section 15(2A) – Duty to provide information to Skills Development Scotland

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative procedure

Provision

38. Section 15(2A) gives Scottish Ministers the power, by order, to place a duty Skills Development Scotland to provide information which Skills Development Scotland holds about a young person to persons who provide education and training to young persons as may be specified in the order. By virtue of section 15(2B) Scottish Ministers may specify the information to be provided and the form and manner in which it is to be provided.

Amendment at Stage 2
39. This is a new power which was inserted at stage 2.

Reason for taking power

40. Scottish Ministers will wish to impose this duty on Skills Development Scotland to provide information to persons providing education and training and they need to have flexibility to make provision regarding the persons to whom the information should be provided. It is also considered that the details regarding the information to be provided and the form and manner in which it is to be provided would be largely technical and should therefore be determined in subordinate legislation.

Choice of procedure

41. By virtue of section 15(9) of the Bill, an order under sub-section (2A) is subject to the affirmative procedure. Ministers consider that it is appropriate that this power to impose a duty on Skills Development Scotland to provide information is subject to the same procedure as the power to impose a duty on other persons to provide information to Skills Development Scotland in order to ensure adequate parliamentary scrutiny of the persons to whom Skills Development Scotland is to provide information.

Section 15(5) – Duty to provide information to Skills Development Scotland

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<td>Order made by Scottish Statutory Instrument</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure, or, where it relates to a change of name the order must be laid before the Parliament under section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010</td>
</tr>
</tbody>
</table>

Provision

42. Section 15(5)(a) gives Scottish Ministers the power, by order, to modify section 15 to replace references to Skills Development Scotland with references to any other person if they consider it appropriate to do so and section 15(5)(b) gives Ministers power to modify such references if there is a change of name of the person.

Amendment at Stage 2

43. In response to a recommendation from the Subordinate Legislation Committee, sub-section (5) was amended at stage 2 to make clear that Ministers have the power to replace references in sub-sections (1), (2A) and (3) to the person to whom information is to be provided under sub-section (1) or the person to who is to provide information under sub-section (2A) with references to such other person as they consider appropriate (sub-section (5)(a)) and that Ministers also have the power to modify references to that person in sub-sections sections (1), (2A) and (3) to reflect a change of name of that person (sub-section (5)(b)). In addition, section 15(7)(b) was removed from the Bill following comments from the Subordinate Legislation Committee that it duplicated the general ancillary powers provision in section 17(1) of the Bill.

Reason for taking power

44. As explained above, section 15(1) of the Bill enables Scottish Ministers to place a duty on any person to share information with Skills Development Scotland and section 15(2A) enables Scottish Ministers to place a duty on Skills Development Scotland to share information. It is conceivable that Scottish Ministers might reconsider the role of Skills Development Scotland in future and, as part of that, whether
it remains the most appropriate organisation to provide or be provided with information in relation to a young person’s education and training. In addition, it may be that in future there is a change to the name of Skills Development Scotland and the power in sub-section (5)(b) gives Scottish Ministers the flexibility to deal with such a change of name.

Choice of procedure

45. The power in section 15(5)(a) is subject to the negative procedure. Ministers still consider that this is appropriate given that a change to the person to whom any information about a young person is to be provided or who is to provide information about a young person would be largely technical. If the power is used to reflect a change to the name of Skills Development Scotland (section 15(5)(b)), the exercise of the power would be subject to no procedure and would require under section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 to be laid before the Parliament as soon as possible after it is made. (Given the removal from the Bill of what was section 15(7)(b), if any order made under section 15(5) makes ancillary provision in exercise of the powers in section 17, then the procedure applicable to the exercise of the power in section 17 would apply to that order. That would result in affirmative procedure being applicable if the order amended primary legislation.)

Schedule – paragraph 2(1A) – Modification of enactment

Power conferred on: The Scottish Ministers
Power exercised by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

46. Section 3(6) of the 1992 Act gives Ministers the power, by regulations, to impose requirements with which boards of management must comply in discharging their functions under the 1992 Act.

Amendment at Stage 2

47. Neither the existing power in section 3(6), nor the applicable negative procedure, has been amended, but an amendment was made at stage 2 to insert a new section 3(7) to the 1992 Act (by paragraph 2(1A) of the schedule to the Bill) to require consultation with a list of specified persons before Ministers make regulations under section 3(6) of the 1992 Act. The list includes college boards of management, regional strategic bodies, students’ associations, the SFC and trade unions.

Schedule – paragraph 2(1B) – Modification of enactment

Power conferred on: The Scottish Ministers
Power exercised by: Order made by Scottish Statutory Instrument
Parliamentary procedure: Negative procedure

Provision

48. Section 3 of the 1992 Act gives Ministers the power, by order, to establish new colleges of further education or to merge or close existing colleges. Section 44 of the 1992 Act gives Ministers the power, by order, to designate higher education institutions. Where Ministers intend to exercise these powers, section
5(1) of the 1992 requires consultation with the relevant education authority and any other person affected by the proposal.

Amendment at Stage 2

49. Neither the existing powers in section 3(2) or section 44(1), nor the applicable negative procedure, has been amended, but an amendment was made at stage 2 to insert a new section 5(1A) to the 1992 Act (by paragraph 2(1B) of the schedule to the Bill) to require consultation with an extended list of persons before Ministers make an order under section 3(2) or section 44(1) of the 1992 Act. The list includes college boards of management, regional strategic bodies, students’ associations, the SFC and trade unions.

Schedule – paragraph 2(3A) – Modification of enactment

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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative procedure</td>
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</tbody>
</table>

Provision

50. Section 3(5) of the 1992 Act enables Scottish Ministers, by order, to amend Schedule 2 to the 1992 Act which sets out the constitution and proceedings of boards of management.

Amendment at Stage 2

51. Paragraph 2(3A) was inserted into the schedule to the Bill at stage 2. It amends section 60 of the 1992 Act to provide that any order made under section 3(5) of the 1992 Act is subject to either the affirmative and negative procedure depending on the circumstances

Choice of procedure

52. As with regional boards, Scottish Ministers consider it appropriate that they have flexibility to amend provisions regarding an incorporated college’s constitution or proceedings by subordinate legislation.

53. The choice of procedure for amending the constitution and proceedings of boards of management was prompted by the Subordinate Legislation Committee’s comments on similar provisions for regional boards. The power is subject to the affirmative procedure unless it does no more than vary the minimum or maximum numbers of the members of a board of management established under the 1992 Act. If it varies the minimum or maximum board numbers only, then it will be subject to the negative procedure. Having made changes to the procedure which applies to the power to make changes to the new schedule 2B of the 2005 Act in relation to the constitution of regional boards, Ministers considered that it would be appropriate to make changes to the procedure for this similar power for college boards of management. Ministers consider that it is appropriate that the affirmative procedure should apply to ensure a higher level of parliamentary scrutiny in circumstances other than a variation of board numbers.

54. The Delegated Powers and Law Reform Committee may wish to note that Ministers intend at stage 3 to propose a related amendment to the procedure which applies to the exercise of the power in section 12(8) of the 1992 Act which allows Ministers to amend the provisions of section 12(2) of the 1992 Act. The exercise of this power will also be made subject to the affirmative procedure, instead of the negative
This document relates to the Post-16 Education (Scotland) Bill as amended at stage 2 (SP Bill 18A)

procedure as currently provided by section 60 of the 1992 Act. This is considered appropriate to ensure consistency with the procedures which apply to regional boards and college boards of management.
Delegated Powers and Law Reform Committee

36th Report, 2013 (Session 4)

Post-16 Education (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 19 June 2013
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Christian Allard
Nigel Don (Convener)
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:
Delegated Powers and Law Reform Committee

36th Report, 2013 (Session 4)

Post-16 Education (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 18 June 2013, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Post-16 Education (Scotland) Bill as amended at Stage 2 (“the Bill”). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Post-16 Education (Scotland) Bill was introduced in the Scottish Parliament by the Scottish Government on 27 November 2012. It is described as providing a technical and administrative underpinning to the Scottish Government’s wider post-16 education reform programme. As a result, the Bill principally amends the two main enactments in this area, the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) and the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”).

3. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”).

4. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 14th report of 2013.

DELEGATED POWERS PROVISIONS

5. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

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1 Post-16 Education (Scotland) Bill (as amended at stage 2) available here: http://www.scottish.parliament.uk/S4_Bills/Post-16%20Education%20Bill/b18as4-amend-rev.pdf

2 Post-16 Education (Scotland) Bill Supplementary Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/P-16_SDPM.pdf
6. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers provisions:

Section 5 (inserting section 7A(2) of the 2005 Act) – Regional colleges,

Section 6 (inserting paragraphs 3B(2) and 3C(1A) of Schedule 2 to the 1992 Act)- Colleges: boards of management,

Section 7 (inserting section 24(1) and (3) of the 1992 Act),

Section 8(3) (inserting section 7C of the 2005 Act) – Assignation of colleges,

Section 11(2) (inserting paragraphs 3(5A) and 5(2) of new Schedule 2B (Regional boards-membership) to the 2005 Act),

Section 12 (inserting section 23N(1) of the 2005 Act- Mismanagement of regional boards),

Section 15(1), (5), (9) and (10) – Duty to provide information to Skills Development Scotland,

Schedule, paragraph 2(1A), (1B) and (3A) (modification of the 1992 Act),

Schedule, paragraph 6(5) (inserting section 7D of the 2005 Act),

Schedule, paragraph 6(16) (modifying section 25 of the 2005 Act),

Schedule, paragraph 6(20) (modifying section 34(4) of the 2005 Act).

7. The Committee’s comments and recommendations on the remaining delegated power are considered below.

**Section 15(2A) – Duty to provide information to Skills Development Scotland**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercised by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative</td>
</tr>
</tbody>
</table>

**Background**

8. Section 15(2A) extends the delegated powers contained in the section. These are powers by order to require a person to provide information the person holds about a young person to The Skills Development Scotland Co. Limited (“SDS”), for certain purposes in connection with education or training.

9. The new power in section 15(2A) allows the Scottish Ministers by order to place a duty on SDS to provide information which that body holds about a young person to such persons who provide education and training to young persons, as may be specified in the order. By virtue of section 15(2B) Scottish Ministers may specify the information to be provided and the form and manner in which it is to be provided.
Comments

10. As section 15(2A) extends the powers to require the provision of information which are contained in the section, the Committee considers that observations made in the Committee’s report at Stage 1 also apply to this new power introduced at Stage 2. (This refers to the comments and recommendations in paragraphs 50 to 55 of the report).

11. The Committee agrees that the exercise of this power should be subject to the affirmative procedure, to ensure adequate Parliamentary scrutiny of the use of the power.

12. The Committee however observes that, as for the power in section 15(1), the exercise of the power in section 15(2A) appears likely to engage the rights under Article 8 of the European Convention on Human Rights of the persons whose personal data is shared in terms of an order under this section. It accordingly notes that it will wish to be reassured, when it comes to consider any subordinate legislation made under this power, that adequate consideration has been given to the Convention rights (in particular Article 8) and that – to the extent that Article 8 is engaged – any interference is capable of being objectively justified and is proportionate.

13. The Committee also welcomes that various amendments to the delegated powers provisions which were agreed at Stage 2 implement recommendations in its Report at Stage 1.
Post-16 Education (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 19
Long Title
Schedule

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Neil Findlay

5 In section 2, page 1, line 19, at end insert—

( ) Before deciding any principles of governance for the purposes of subsection (1), the Council must consult the persons listed in section 22(1B).”.

( ) In section 22 of the 2005 Act, after subsection (1), insert—

“(1B) The persons are such—

(a) representatives of trade unions which appear to the Council to be representative of the staff of higher education institutions;
(b) representatives of students’ associations representing higher education students;
(c) representatives of business;
(d) others persons,
as the Council considers appropriate.”.

Joan McAlpine

100 In section 2, page 1, line 19, at end insert—

( ) Without prejudice to the generality of this section, such principles of governance must include membership on remuneration committees (or other such relevant committees) of the institution by—

(a) the representatives of any trade union which the institution recognises or which otherwise appears to the Council to be representative of its staff; and
(b) the institution’s students’ association.”.
After section 2

Jenny Marra

3 After section 2 insert—

<Higher education institutions: gender quotas

After section 9A of the 2005 Act, inserted by section 2, insert—

“9ZAA Higher education institutions: gender quotas

The Scottish Ministers must, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to ensure that the proportion of both men and women on that institution’s governing body is at least 40 per cent of the membership of the body.”>

Section 3

Michael Russell

7 In section 3, page 2, line 3, leave out from <of> to end of line 4 and insert <which makes provision in relation to—

( ) any socio-economic group which the Scottish Ministers reasonably consider to be under-represented in fundable higher education; and

( ) other socio-economic groups, if any, which the Council and the institution agree are under-represented in fundable higher education.>

Michael Russell

8 In section 3, page 2, line 5, leave out from <under> to <Council> in line 6 and insert <between a higher education institution and the Council under which the institution is to take actions specified in the agreement>

Michael Russell

10 In section 3, page 2, line 11, leave out from <specifying> to end of line 13 and insert <entering into a widening access agreement in pursuance of this section, a higher education institution must consult—>

Michael Russell

11 In section 3, page 2, line 15, leave out <the Council> and insert <it>

Michael Russell

15 In section 3, page 2, line 21, after <Ministers> insert <, the Council and higher education institutions>
After section 3

Neil Findlay

16 After section 3 insert—

**<Duties of the Council in relation to good governance: duty to consult**

In section 22 of the 2005 Act, after subsection (1) insert—

“(1A) The Council must, in the exercise of any of its functions under section 9A of this Act, consult the persons listed in subsection (1B).

(1B) The persons referred to in subsection (1A) are such—

(a) representatives of trade unions which appears to the Council to be representative of the staff of higher education institutions;

(b) representatives of students’ associations representing higher education students;

(c) representatives of businesses;

(d) other persons,

as the Council considers appropriate.”.

Section 5

Neil Bibby

101 In section 5, page 4, line 22, at end insert—

**<( ) the community planning partnership for the area in which the regional college is situated;>**

Neil Bibby

102 In section 5, page 4, line 22, at end insert—

**<( ) the community health partnership for the area in which the regional college is situated;>**

Neil Bibby

103 In section 5, page 4, line 22, at end insert—

**<( ) transport providers in the area in which the regional college is situated;>**

Michael Russell

17 In section 5, page 5, line 19, at end insert—

**<23ZBA 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.

Michael Russell
18 In section 5, page 5, line 22, leave out <Scotland> and insert <the locality of the regional college>

Michael Russell
19 In section 5, page 5, line 23, leave out <Scotland; and> and insert <the locality of the regional college;>

Michael Russell
20 In section 5, page 5, line 24, leave out <Scotland.> and insert <the locality of the regional college; and
( ) the needs and issues in relation to Scotland identified by the Council for the purposes of section 20(1).>

Marco Biagi
21 In section 5, page 5, line 34, at end insert—
<(4A) 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.>

Michael Russell
22 In section 5, page 5, line 36, leave out <, following consultation with the Council,>

Michael Russell
23 In section 5, page 6, line 3, leave out <, following consultation with the Council,>
In section 5, page 6, line 7, at end insert—

( ) 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.

( ) 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 (4A).

( ) 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 (4A); and

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

Section 6

In section 6, page 6, line 17, leave out <among their own number> and insert <the recognised trade unions>

In section 6, page 6, line 19, leave out <among their own number> and insert <the recognised trade unions>

In section 6, page 6, leave out lines 23 to 26 and insert—

(3A) Before making an appointment in pursuance of sub-paragraph (2)(e), the board must submit a recommendation for the appointment to—

(a) the chairing member; and

(b) the Scottish Ministers.

(3B) Before making a recommendation under sub-paragraph (3A), the board must consult with the chairing member and the Scottish Ministers as to the criteria for the appointment.

(3C) A recommendation under sub-paragraph (3A) having been made, the chairing member and the Scottish Ministers may—

(a) confirm the appointment; or

(b) reject the appointment and request that a further recommendation be made under sub-paragraph (3A).>
Neil Findlay
28 In section 6, page 7, line 4, leave out <a person> and insert <two members>

Michael Russell
29 In section 6, page 7, line 4, after first <the> insert <teaching>

Neil Findlay
30 In section 6, page 7, line 5, leave out <among their own number> and insert <the recognised trade unions>

Michael Russell
31 In section 6, page 7, line 5, at end insert—
   <(ba) a person appointed by being elected by the non-teaching staff of the college from among their own number;>

Neil Findlay
32 In section 6, page 7, line 8, leave out <regional strategic body> and insert <board>

Neil Findlay
33 In section 6, page 7, line 8, at end insert—
   <( ) An appointment made in pursuance of sub-paragraph 3A(2)(d) has effect only if approved by the regional strategic body.>

Michael Russell
34 In section 6, page 7, line 10, after <3A(2)(b)> insert <or (ba)>

Michael Russell
35 In section 6, page 7, line 11, leave out from <election> to end of line 13 and insert <rules about elections to be held in pursuance of paragraph 3(2)(b) or 3A(2)(b), 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.>

( ) Before making, varying or replacing rules about elections to be held in pursuance of paragraph 3(2)(c) or 3A(2)(ba), 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.>

Liz Smith
36 In section 6, page 8, line 13, at end insert—
   <( ) Before making an arrangement under subsection (2), the Scottish Ministers must consult the board of management of any college of further education to which the arrangement relates.>
Section 7

**Liz Smith**

37 In section 7, page 8, line 21, leave out <12 or 12B> and insert <9AA>

**Liz Smith**

38 In section 7, page 8, line 29, leave out from beginning to <properly;>

**Liz Smith**

Supported by: Liam McArthur

39 In section 7, page 8, line 43, at end insert—

\(<( )\) Before making an order under subsection (3)(a), the Scottish Ministers must consult the Council.>

**Neil Bibby**

105 In section 7, page 9, line 2, at end insert—

\(<( )\) A person removed under subsection (3)(a) may appeal to an independent review panel to be established by the Scottish Ministers to decide such appeals.>

Section 8

**Michael Russell**

40 In section 8, page 9, leave out line 36

**Michael Russell**

41 In section 8, page 10, line 23, at end insert—

\(<( )\) 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.>

**Michael Russell**

42 In section 8, page 10, line 25, at end insert—

\(<( )\) the regional strategic body (except where not already established);>

**Michael Russell**

43 In section 8, page 10, line 38, leave out <(2)> and insert <(1)>
After section 9

**Liam McArthur**

44 After section 9, insert—

<Other regional strategic bodies: terms and conditions of funding

After section 12B of the 2005 Act, inserted by section 9, insert—

“12C Other regional strategic bodies: terms and conditions of funding

(1) The Council may, under section 12(2), when making a payment to any other regional strategic body under section 12(1), impose a condition requiring the regional strategic body to comply with any procedures or arrangements for the administration by the body of the funds mentioned in section 12A, which appear to the Council to constitute good practice in relation to the allocation of funds by regional strategic bodies.

(2) In this section, reference to any other regional strategic body is a reference to a body specified in Part 2 of Schedule 2A.”.

**Section 10**

**Michael Russell**

45 In section 10, page 14, line 24, at end insert—

<23HA 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.>

**Michael Russell**

46 In section 10, page 14, line 27, leave out <Scotland> and insert <the localities of its colleges>
In section 10, page 14, line 28, leave out <Scotland; and> and insert <the localities of its colleges;>.

In section 10, page 14, line 29, leave out <Scotland.> and insert <the localities of its colleges; and the needs and issues in relation to Scotland identified by the Council for the purposes of section 20(1).>.

In section 10, page 15, line 5, at end insert—

"(4A) 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.>.

In section 10, page 15, line 7, leave out <, following consultation with the Council,>.

In section 10, page 15, line 12, leave out <, following consultation with the Council,>.

In section 10, page 15, line 17, at end insert—

"( ) 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.
( ) 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 (4A).
( ) 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 (4A); and
(b) whether a socio-economic group so determined is under-represented in fundable further education or fundable higher education."
Neil Bibby

106 In section 10, page 15, line 27, at end insert—

<(  ) each community planning partnership for the areas in which its colleges are situated;>  

Neil Bibby

107 In section 10, page 15, line 27, at end insert—

<(  ) each community health partnership for the areas in which its colleges are situated;>  

Neil Bibby

108 In section 10, page 15, line 27, at end insert—

<(  ) transport providers in the areas in which its colleges are situated;>  

Neil Bibby

109 In section 10, page 16, line 12, at end insert—

<(  ) each community planning partnership for the areas in which its colleges are situated;>  

Michael Russell

53 In section 10, page 17, leave out lines 2 to 11 and insert—

<(  ) 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

(  ) the students’ association of every such college.>  

Michael Russell

54 In section 10, page 17, line 14, after <body> insert <—

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

Michael Russell

110 In section 10, page 17, leave out from line 31 to end of line 24 on page 18 and insert—

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

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

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).

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

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

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.

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.

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).

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

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).”.

Neil Findlay

55 In section 10, page 17, leave out lines 35 and 36

Neil Findlay

56 In section 10, page 18, leave out line 12

Liz Smith

57 In section 10, page 18, line 15, leave out first <subsection> and insert <subsections (7A) and>

Liz Smith

58 In section 10, page 18, line 16, at end insert—

<[(7A) A requirement or arrangement made for the purpose of subsection (2)(a) is binding on a college only if the college consents to the making of the requirement or arrangement.>]

Neil Findlay

59 In section 10, page 18, line 19, at end insert—

<[( ) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer of staff under this section whether or not they would so apply apart from this subsection.>]

Section 11

Neil Findlay

60 In section 11, page 19, line 16, leave out <among their own number> and insert <the recognised trade unions>

Neil Findlay

61 In section 11, page 19, line 18, leave out <among their own number> and insert <the recognised trade unions>
Michael Russell

62 In section 11, page 19, line 20, leave out <9> and insert <10>

Neil Findlay

63 In section 11, page 19, leave out lines 31 to 34 and insert—

<(4A) Before making an appointment in pursuance of sub-paragraph (2)(e), the board must submit a recommendation for the appointment to—
(a) the chairing member; and
(b) the Scottish Ministers.

(4B) Before making a recommendation under sub-paragraph (4A), the board must consult with the chairing member and the Scottish Ministers as to the criteria for the appointment.

(4C) A recommendation under sub-paragraph (4A) having been made, the chairing member and the Scottish Ministers may—
(a) confirm the appointment; or
(b) reject the appointment and request that a further recommendation be made under sub-paragraph (4A).>

Michael Russell

64 In section 11, page 20, line 38, leave out from <recognised> to end of line 40 insert <which any of its colleges recognise as being, or which otherwise appears to the board to be, representative of the teaching staff of its colleges;>

Neil Bibby

112 In section 11, page 21, line 12, after <has> insert <within 4 years of the date on which the appointment would take effect,>

Michael Russell

65 In section 11, page 21, line 12, after <Act> insert <(in relation to any college)>

Michael Russell

66 In section 11, page 21, line 13, after <Act> insert <(in relation to any regional board)>

Michael Russell

67 In section 11, page 21, line 35, after <members> insert <(unless holding office in pursuance of paragraph 3(2)(aa))>

Michael Russell

68 In section 11, page 22, line 40, leave out <or>
Michael Russell

69 In section 11, page 22, line 41, at end insert—

<( ) is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23N of this Act (in relation to any other regional board); or>

Michael Russell

70 In section 11, page 23, line 17, at end insert—

<(6) The Scottish Ministers must, by giving notice in writing to the member, remove a member (other than the chairing member) from office if the member is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23N of this Act (in relation to any other regional board).>

<(7) Where a member removed under sub-paragraph (6) was appointed under paragraph 3(2)(e), the Scottish Ministers may appoint another person in place of the removed member.>

<(8) An appointment made under sub-paragraph (7) has effect as if made under paragraph 3(2)(e).>

Neil Findlay

1 In section 11, page 23, line 21, at end insert—

<( ) Before determining the terms and conditions for any employee under sub-paragraph (1), the board must consult any body established by the Scottish Ministers for the consideration or negotiation of terms and conditions of college staff.>

Liz Smith

71 In section 11, page 24, line 24, at end insert—

<( ) borrowing such sums as the board thinks fit;>

<( ) granting such security or giving such guarantee or indemnity as the board thinks fit;>

Liz Smith

72 In section 11, page 24, line 28, leave out from beginning to end of line 18 on page 25

Section 12

Liz Smith

73 In section 12, page 26, line 20, leave out <12(1)(c)> and insert <9AA>

Liz Smith

74 In section 12, page 26, leave out line 25
Liz Smith
Supported by: Liam McArthur

75 In section 12, page 26, line 30, at end insert—

<( ) Before making an order under subsection (2)(a), the Scottish Ministers must consult the Council.>

Section 13A

Neil Findlay

76 In section 13A, page 28, line 9, at end insert—

<( ) Before deciding any principles of governance for the purposes of subsections (1) or (2), the Council must consult the persons listed in section 22(1B).”>

After section 13A

Jenny Marra

4 After section 13A insert—

<Further education institutions: gender quotas

After section 9AA of the 2005 Act, inserted by section 13A, insert—

“9AB Further education institutions: gender quotas

The Scottish Ministers must, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1) to a college of further education which is a fundable post-16 education body, require it to ensure that the proportion of both men and women on the college’s governing body is at least 40 per cent of the membership of the body.”>

Marco Biagi

77 After section 13A, insert—

<Duties of Funding Council in relation to widening access

Council to have regard to desirability of widening access

(1) Section 20 of the 2005 Act is amended as follows.

(2) After subsection (4) insert—

“(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.”.

(3) After subsection (6) insert—

“(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.”;

Marco Biagi

78 After section 13A, insert—

<Council to review progress with widening access

After section 19 of the 2005 Act insert—

“19A Reviews of progress with widening access

(1) The Council must conduct reviews of the extent to which progress is being made in enabling, encouraging and improving participation in fundable further education and fundable higher education by persons belonging to socio-economic groups which the Council reasonably considers to be under-represented in such education.

(2) The first such review must be completed before the end of the period of three years beginning with the date on which this section comes into force.

(3) Subsequent reviews must be completed before the end of the period of three years beginning with the date on which the immediately preceding review was completed.

(4) On completing a review, the Council must provide the persons mentioned in subsection (5) with a report of the review which—

(a) sets out the conclusions 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.

(5) Those persons are—

(a) the Scottish Ministers;
(b) each regional strategic body; and
(c) each post-16 education body.
(6) The bodies to which this subsection applies must provide the Council with such information, and make available such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.

(7) Subsection (6) applies to—
   (a) regional strategic bodies; and
   (b) post-16 education bodies.

(8) For the purposes of subsection (1), 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) 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 (1).

(10) The Council must consult the Scottish Ministers before determining—
   (a) which groups are to constitute “socio-economic groups” for the purposes of subsection (1), and
   (b) whether a socio-economic group so determined is under-represented in fundable further education or fundable higher education.

After section 14

Michael Russell

79  After section 14, insert—

"Collective bargaining framework for college staff"

Collective bargaining framework for college staff

After section 15 of the 1992 Act insert—

“15A  Collective bargaining framework for college staff

(1) Before making regulations under section 3(6) of this Act which prescribe requirements which relate to collective bargaining arrangements in respect of any contracts entered into in pursuance of section 12(2)(h)(i) of this Act, the Scottish Ministers must—

   (a) establish an advisory committee, to be known as the National Pay and Conditions Advisory Committee for Scotland’s Colleges, for the purpose of making recommendations to them, by such time as they may specify, about—

      (i) the outcomes which the regulations should seek to achieve; and
      (ii) how the regulations should seek to achieve those outcomes; and

   (b) have regard to any recommendations made by the committee.

(2) When making any such regulations, the Scottish Ministers must have regard to the desirability of ensuring that the regulations are framed in accordance with any guidance issued by the Advisory, Conciliation and Arbitration Service (ACAS) which relates to the form of schemes which govern how employees’ terms and conditions may be negotiated or determined.
(3) A committee established under subsection (1)(a) above is to be comprised of—
   (a) 4 persons who appear to the Scottish Ministers to be representative of the
        interests of boards of management;
   (b) 4 persons who appear to the Scottish Ministers to be representative of the
        interests of trade unions recognised by boards of management or who
        otherwise appear to them to be representative of the teachers and other
        staff employed by boards of management;
   (c) a person appointed by the Council (such person being a member of the
        Council or an employee of the Council); and
   (d) other persons appointed by the Scottish Ministers.

(4) The Scottish Ministers may—
   (a) make or authorise the Council to make further provision about the
       constitution, remit or procedure of the committee,
   (b) provide or authorise the Council to provide the committee with financial
       or other support (including by paying allowances to members of the
       committee in respect of expenses).

Clare Adamson

80 After section 14, insert—

<Equal opportunities

Equal opportunities: post-16 education bodies etc.

After section 26 of the 2005 Act insert—

"26A Equal opportunities: post-16 education bodies etc.

(1) Every post-16 education body and regional strategic body must, when making
    appointments to its governing body or exercising any of its other functions, do
    so in a manner which encourages equal opportunities and in particular the
    observance of the equal opportunities requirements.

(2) In subsection (1), “equal opportunities” and “equal opportunity requirements”
    have the same meanings as in Section L2 (equal opportunities) of Part II of
    Schedule 5 to the Scotland Act 1998 (c.46).”.

Schedule

Liz Smith

81 In the schedule, page 32, line 14, at end insert—

<( ) in subsection (2)(g), omit “subject to subsection (7)(a) below and section 18 of
    this Act”,
   ( ) in subsection (2)(j), omit “subject to subsection (7)(a) below and the said section
    18”,
   ( ) in subsection (2)(l), omit “subject to subsection (7)(a) below and the said section
    18”,
Liz Smith
82 In the schedule, page 32, line 18, at end insert—

<( ) omit subsection (7).>

Liz Smith
83 In the schedule, page 32, line 18, at end insert—

<( ) Section 18 (disposal of certain property) is repealed.>

Michael Russell
84 In the schedule, page 32, line 33, at end insert <; or

(b) it is made under section 12(8) of this Act.>>

Michael Russell
85 In the schedule, page 32, line 39, leave out from <“6”> to <5B”> and insert <the words from “6”
to the end of the sub-paragraph substitute “5A and 5B below, a member of the board—

(a) if appointed in pursuance of paragraph 3(2)(a) as the chairing member of
the board of a regional college, holds and vacates office on such terms
and conditions as the Scottish Ministers may determine;

(b) if appointed in pursuance of paragraph 3A(2)(b) to (e) as a member of
the board of a regional college, holds and vacates office on such terms
and conditions as the board may determine;

(c) if appointed in pursuance of paragraph 3A(2)(a) or (b) to (d) as a
member of the board of a college which is not a regional college, holds
and vacates office on such terms as the regional strategic body may
determine; and

(d) is, on ceasing to hold office, eligible for re-appointment.>>

Michael Russell
86 In the schedule, page 33, line 3, after <3A(2)(b)> insert <or (ba)>

Michael Russell
87 In the schedule, page 33, line 21, after <(c)> insert <or 3A(2)(b) or (ba)>

Michael Russell
88 In the schedule, page 33, leave out lines 24 to 26

Neil Bibby
115 In the schedule, page 34, line 7, after <has> insert <within 4 years of the date on which the
appointment would take effect,>

Michael Russell
89 In the schedule, page 34, line 7, after <Act> insert <in relation to any college>
Michael Russell

90 In the schedule, page 34, line 8, after <2005> insert <(in relation to any regional board)>.

Michael Russell

91 In the schedule, page 34, line 39, at end insert—

<(3) The Scottish Ministers must, by giving notice in writing to the member, remove a member from office if the member is removed from office under section 24 of this Act (in relation to any other college) or section 23N of the Further and Higher Education (Scotland) Act 2005 (in relation to any regional board).

(4) Where a member removed under sub-paragraph (3) was appointed under paragraph 3(2)(e) or 3A(2)(d), the Scottish Ministers may appoint another person in place of the removed member.

(5) An appointment made under sub-paragraph (4) has effect as if made under the provision under which the removed member was appointed.>

Neil Findlay

2 In the schedule, page 35, line 6, at end insert—

<(  ) in paragraph 17, after sub-paragraph (1) insert—

“(1A) Before determining the terms and conditions for any employee under sub-paragraph (1), the board must consult any body established by the Scottish Ministers for the consideration or negotiation of pay and conditions of college staff.”.>

Michael Russell

92 In the schedule, page 35, line 6, at end insert—

<Education Act 1994 (c.30)

In section 21(2)(b) of the Education Act 1994, for the words from “, or” to “4(1)” substitute “is established in pursuance of Part 1”>

Michael Russell

93 In the schedule, page 36, leave out line 17 and insert—

<(  ) In section 7—

(a) in subsection (2)—

(i) after paragraph (f) insert—

“(fa) arrangements for the purpose of seeking to ensure that the interests of the body’s students are represented by a students’ association;”

(ii) in paragraph (h), for third “fundable” substitute “post-16 education”,

(iii) omit the word “and” appearing after paragraph (h),

(iv) after paragraph (h) insert—
“(ha) where the body is a regional strategic body, procedures and arrangements for the administration by the body of the funds mentioned in section 12A(2) and for the exercise of its other functions as a regional strategic body; and”,

(b) after subsection (2) insert—

“(2A) Paragraph (ha) of subsection (2) applies only where the Council is considering whether to remove the entry relating to the body concerned from schedule 2.”,

(c) in subsection (4), for “(h)” substitute “(ha)”.

Michael Russell

116 In the schedule, page 36, line 29, after <provision> insert <(not being provision mentioned in paragraph (a))>

Michael Russell

117 In the schedule, page 36, line 30, at end insert—

<( ) Subsection (2)(a) applies only where the college of further education concerned is one whose board of management is established in pursuance of Part 1 of the 1992 Act.>

Michael Russell

118 In the schedule, page 36, line 31, leave out <Such an order may, in particular, make> and insert <Provision under subsection (2)(a) may include>

Michael Russell

94 In the schedule, page 37, line 37, after <concerning> insert <fundable>

Michael Russell

95 In the schedule, page 37, line 39, leave out from <, when> to end of line 41 and insert <—

(i) to comply with any matters concerning regional strategic bodies generally as the Scottish Ministers may specify; or
(ii) when making a payment to any of its colleges under section 12B(1), to impose on the college a requirement to comply with any matters concerning post-16 education bodies or any class of them as the Scottish Ministers may specify.”

Michael Russell

96 In the schedule, page 38, line 14, leave out <(4)> and insert <(4)(a) or (b)(ii)>

Michael Russell

97 In the schedule, page 38, line 14, leave out <, 9AA or 9B> and insert <or 9AA>
In the schedule, page 39, line 30, at end insert—

<(  )> after subsection (9) (as inserted by section (Council to have regard to desirability of widening access)), insert—

“(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).”.

In the schedule, page 40, line 29, at end insert—

<(  )> After section 25 insert—

“25A Provision of information

(1) A person mentioned in subsection (2) must provide the Scottish Ministers with such information as they may reasonably require for the purposes of or in connection with the exercise of any of their functions under this Act.

(2) Those persons are—

(a) a regional strategic body; or

(b) a college of further education which is—

(i) a regional college; or

(ii) assigned to a regional strategic body by order made under section 7C(1).”.

In the schedule, page 41, line 18, at end insert—

<(  )> an order under section 23L(11);”.

In the schedule, page 42, line 22, at end insert—

<(  )> In schedule 1, in paragraph 4—

(a) the existing provision becomes sub-paragraph (1); and

(b) after that sub-paragraph insert—

“(2) A person is disqualified from appointment as a member of the Council if that person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;
(b) is an undischarged bankrupt; or  
(c) has been removed from office under section 24 of the 1992 Act (in relation to any college) or section 23N of this Act (in relation to any regional board).

(3) For the purposes of sub-paragraph (2)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);  
(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);  
(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;  
(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;  
(e) who has been adjusted bankrupt (and has not been discharged); or  
(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

(4) A person is disqualified from holding office as a member of the Council if that person—

(a) is sentenced as mentioned in sub-paragraph (2)(a);  
(b) has become a person to whom sub-paragraph (2)(b) applies; or  
(c) is removed from office as mentioned in sub-paragraph (2)(c)."
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Governance: consultation**
5, 100, 16, 76

**Group 2: Equalities**
3, 4, 80

**Group 3: Widening access**
7, 8, 10, 11, 15, 21, 24, 49, 52, 77, 78, 97

Debate to end no later than 45 minutes after proceedings begin

**Group 4: Regional colleges and regional strategic boards: functions etc.**
101, 102, 103, 17, 18, 19, 20, 22, 23, 45, 46, 47, 48, 50, 51, 106, 107, 108, 109, 53, 119

**Group 5: Board membership**

**Group 6: Mismanagement**
37, 38, 39, 105, 73, 74, 75

Debate to end no later than 1 hour 35 minutes after proceedings begin
Group 7: Designation of regional boards and assigned colleges
40, 41, 42, 43

Group 8: Other regional strategic bodies: terms and conditions of funding
44, 95, 96

Group 9: Regional strategic boards: staff transfers etc.
54, 110, 55, 56, 57, 58, 59, 120

Notes on amendments in this group
Amendment 110 pre-empts amendments 55, 56, 57, 58 and 59

Debate to end no later than 2 hours after proceedings begin

Group 10: Collective bargaining
1, 79, 2

Group 11: Colleges and regional boards: procedure and powers
71, 72, 81, 82, 83

Group 12: Minor and consequential amendments
84, 92, 93, 116, 117, 118, 94, 98

Debate to end no later than 2 hours 20 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-07154—That the Parliament agrees that, during stage 3 of the Post-16 Education (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 45 minutes,

Groups 4 to 6: 1 hour 35 minutes,

Groups 7 to 9: 2 hours,

Groups 10 to 12: 2 hours 20 minutes.

The motion was agreed to.

**Post-16 Education (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 7, 8, 10, 11, 15, 17, 18, 19, 20, 21, 22, 23, 24, 29, 31, 34, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 62, 64, 67, 68, 75, 77, 78, 80, 84, 86, 87, 88, 92, 93, 116, 117, 118, 94, 95, 96, 97, 98, 119 and 120.

The following amendments were agreed to (by division)—

35 (For 81, Against 35, Abstentions 0)

53 (For 101, Against 12, Abstentions 0)

65 (For 60, Against 53, Abstentions 0)

66 (For 61, Against 53, Abstentions 0)

69 (For 99, Against 22, Abstentions 0)

70 (For 61, Against 53, Abstentions 0)
79 (For 101, Against 12, Abstentions 0)
85 (For 63, Against 17, Abstentions 32)
89 (For 63, Against 48, Abstentions 0)
90 (For 62, Against 49, Abstentions 0)
91 (For 63, Against 48, Abstentions 0)
99 (For 60, Against 49, Abstentions 0).
The following amendments were disagreed to (by division)—
5 (For 36, Against 80, Abstentions 0)
100 (For 36, Against 80, Abstentions 0)
3 (For 36, Against 81, Abstentions 0)
16 (For 36, Against 80, Abstentions 0)
101 (For 37, Against 80, Abstentions 0)
102 (For 37, Against 78, Abstentions 0)
103 (For 37, Against 79, Abstentions 0)
25 (For 32, Against 80, Abstentions 0)
26 (For 35, Against 81, Abstentions 0)
27 (For 52, Against 64, Abstentions 0)
28 (For 53, Against 62, Abstentions 0)
30 (For 35, Against 81, Abstentions 0)
32 (For 53, Against 63, Abstentions 0)
33 (For 54, Against 63, Abstentions 0)
36 (For 54, Against 62, Abstentions 0)
37 (For 53, Against 63, Abstentions 0)
38 (For 53, Against 63, Abstentions 0)
105 (For 41, Against 73, Abstentions 0)
106 (For 37, Against 78, Abstentions 0)
107 (For 36, Against 77, Abstentions 0)
108 (For 37, Against 77, Abstentions 0)
109 (For 37, Against 76, Abstentions 0)
60 (For 35, Against 78, Abstentions 0)
61 (For 35, Against 79, Abstentions 0)
63 (For 53, Against 61, Abstentions 0)
112 (For 53, Against 59, Abstentions 0)
1 (For 35, Against 78, Abstentions 0)
71 (For 51, Against 61, Abstentions 2)
72 (For 51, Against 61, Abstentions 2)
73 (For 51, Against 60, Abstentions 0) 3
74 (For 53, Against 61, Abstentions 0)
76 (For 35, Against 75, Abstentions 0)
4 (For 40, Against 73, Abstentions 0)
81 (For 50, Against 60, Abstentions 2)
115 (For 52, Against 60, Abstentions 0)
2 (For 32, Against 79, Abstentions 0).

Amendment 44 was moved and, with the agreement of the Parliament, withdrawn.

The following amendments were pre-empted: 55, 56, 57, 58 and 59.

The following amendments were not moved: 82 and 83.

The Deputy Presiding Officer extended the time-limits under Rule 9.8.4A(a).

**Post-16 Education (Scotland) Bill:** The Cabinet Secretary for Education and Lifelong Learning (Michael Russell) moved S4M-07108—That the Parliament agrees that the Post-16 Education (Scotland) Bill be passed.

After debate, the motion was agreed to (DT) by division: For 65, Against 51, Abstentions 0).
Scottish Parliament

Wednesday 26 June 2013

[The Deputy Presiding Officer opened the meeting at 14:00]

Business Motion

The Deputy Presiding Officer (John Scott):
Good afternoon, everyone. The first item of business this afternoon is consideration of business motion S4M-07154, in the name of Joe FitzPatrick, on behalf the Parliamentary Bureau, setting out a timetable for stage 3 of the Post-16 Education (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Post-16 Education (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 45 minutes,
Groups 4 to 6: 1 hour 35 minutes,
Groups 7 to 9: 2 hours,
Groups 10 to 12: 2 hours 20 minutes.—[Joe FitzPatrick.]

Motion agreed to.
Post-16 Education (Scotland) Bill: Stage 3

14:40

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 proceedings on the Post-16 Education (Scotland) Bill. In dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as possible after I call the group.

Section 2—Higher education institutions: good governance

The Deputy Presiding Officer: Group 1 is on “Governance: consultation”. Amendment 5, in the name of Neil Findlay, is grouped with amendments 100, 16 and 76.

Neil Findlay (Lothian) (Lab): Through amendments 5, 16 and 76, we want to ensure that, when the principles that govern our universities are discussed, debated and/or even changed, the main and most important stakeholders in our universities are included in those deliberations. That would include the student associations that represent those who attend universities, the trade unions that represent the staff in higher education, the business community and other relevant groups.

The recent development of the code of governance was heavily criticised by staff and students for being an exclusive exercise that was conducted by a narrow, self-appointed group and excluded staff, unions and the National Union of Students. The amendments would ensure that that would not happen in future, and I hope that the Government will accept them.

We support Joan McAlpine’s amendment 100, which is on staff and students being on remuneration committees. That is a good move that will, I hope, open up the remuneration process to more scrutiny, debate and transparency.

I move amendment 5.

Joan McAlpine (South Scotland) (SNP): Amendment 100 is a probing amendment. It is supported by the NUS, which, like me, is looking for reassurances from the cabinet secretary. The NUS recognises the concern about the pay gap between senior management and workers in the universities sector. In Scotland, the gap is a ratio of 1:16. The situation is out of step with Scotland’s egalitarian education tradition.

The pay differential in universities is higher than that in the public sector as a whole. It is wider than the gap between a four-star general and a private in the army, and it is wider than the gap between the national health service chief executive and a hospital porter. The average pay for a university principal is £240,000, which is far in excess of what the United Kingdom Prime Minister earns. It is all the more worrying when we consider that a recent NUS survey seemed to indicate that some universities in Scotland are not paying their lowest-paid members of staff the living wage.

Amendment 100 does not seek to dictate the salaries of university principals. It seeks to ensure that staff and students are represented on the universities’ remuneration committees. From the start of the process, the cabinet secretary made it clear that the chair’s job was not to rewrite the original von Prondzynski report but, rather, to find a way in which to take his recommendations and apply them across the sector through a code. The consultation period on the draft code closed last week, and it is disappointing that the final code will not be published until after the stage 3 proceedings.

I do not think that I am alone in thinking that the chairs of university courts who first gave evidence to the Education and Culture Committee were not particularly conciliatory. Indeed, their position on consultation with other stakeholders did not inspire confidence. I was more encouraged by the constructive attitude of Sir Robert Smith, who, at a later evidence session, agreed to speak to the staff representatives about the code.

As things stand, the proposed code makes no reference to staff and students in its discussion of remuneration, other than to note that remuneration panels should be careful not to agree severance packages that staff and students might find excessive. The code should go further than that.

14:45

I would like the cabinet secretary to state his position on the presence of staff and students on remuneration panels and what message he would intend us to send to universities on the subject of executive pay.

Like everyone else in this chamber, I am very proud of the performance of our universities and their ranking in international league tables. At the same time, they must remember that they are in receipt of large amounts of public money, which brings with it certain responsibilities. Universities in Scotland are not businesses; they are learning...
communities, and staff and students are key members of those communities, who should be treated as such by management.

The Deputy Presiding Officer: I should have drawn to members’ attention at the outset that we are tight for time and it would be helpful if we could have succinct speeches.

Liz Smith (Mid Scotland and Fife) (Con): There is clearly a need to ensure an effective balance between the accountability of public money and the autonomy that is enjoyed by colleges and universities to be responsible for the running of their institutions. In our view, one of the reasons that the bill has been fraught with so many difficulties has been the sharp division of opinion on that issue between the Scottish Government and the college and university sectors, which have seen the balance shift too much in favour of the Government and too much away from them.

The college and university sectors have rightly questioned which structures of governance and academic accountability can best deliver the very high standards of further and higher education across Scotland and how they can maintain their competitive edge when measured against the rest of the world. That competitive edge is directly linked to the abilities of colleges and universities to be innovative, diverse and flexible, and therefore they expect Government to respond to policies that will enhance those characteristics. They do not expect the Government to be interventionist, which is very much against international trends in further and higher education.

The sectors do not understand—neither do the Scottish Conservatives—why there needs to be extensive legislation to change governance structures, when they can find no evidence that existing governance structures undermine or in some way hold back education outcomes for our students. They are puzzled when the main architect of the reform of governance tells them that the existing structures are largely working very well indeed, yet they are told that there must be wholesale changes. That does not make sense. In particular, they worry deeply about the excessively prescriptive parts of the bill, which would see many governing bodies restrained in political straitjackets, without the ability to respond well to the educational needs of what is a very diverse and competitive set-up.

The sectors’ fears about the extent of that intervention have led the Scottish Conservatives to oppose a great deal in this section of the bill, and we will do so again by opposing amendments 5, 100, 16 and 76.

Liam McArthur (Orkney Islands) (LD): As the Presiding Officer said, we are tight for time; that is regrettable, but it is not out of keeping with the way in which the bill has progressed since it was introduced to Parliament. With that in mind, I will keep my remarks brief.

I remain sceptical of the need for statutory underpinning of a code of good governance for our universities. I am still of the view that that encroaches into the responsible autonomy of those institutions, which international evidence shows is a defining feature of the best-performing universities worldwide.

I welcome that Mr Russell has backed down, in so far as ministers will not now decree what constitutes good governance. That will fall to the Scottish Further and Higher Education Funding Council. However, I am not sure that the additional layer of consultation that Neil Findlay seeks is necessary.

Joan McAlpine’s amendment 100 reflects public concern about pay levels and pay increases for some of our senior academic positions, but I believe that it runs counter to corporate governance rules that remuneration committees should be composed of directors external to the organisation. Remuneration procedures need to be transparent and robust and staff and students need a genuine and effective say in remuneration decisions, but that can be achieved through their enhanced roles in the governing body.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): I will not rehearse all the arguments that have been heard already. Suffice it to say, we have endeavoured to develop and improve the bill by listening to the sector and the Opposition parties as we have moved through the process. We have a series of amendments that continue that process, which I am pleased is taking place.

When Neil Findlay lodged at stage 2 a very similar amendment to his amendment 5 today, I agreed—as I continue to agree—that consultation should be at the heart of the development of any governance standards that are adopted across universities. Progress has been made on that and other changes to the bill have achieved that. The Scottish funding council’s existing duties allow for a sufficient level of consultation, which has also been improved by the bill. The Education and Culture Committee accepted that at stage 2 and the amendments are not substantively different from those that were previously lodged in a way that makes me reconsider the position.

Joan McAlpine’s amendment 100 raises an important point. I fully support the principle of having more transparency in the area and I expect to see Professor von Prondzynski’s recommendations in that regard properly reflected in the final code of governance. Indeed, as I said
during education questions, Lord Smith has now indicated to me and to the convener of the Education and Culture Committee that he has made substantial progress in that regard.

Amendment 100 expresses an aim that I share but, unfortunately, it will not achieve that aim. Our universities are many and varied, as Liz Smith has pointed out before now, and their governance instruments—some of which date back hundreds of years—introduce a level of complexity that the amendment does not accommodate. Nevertheless, it is right that, when we see the final code of governance, we should consider whether further legislation is required in the proposed higher education governance bill that I have committed to bring to Parliament in the coming years. As we know, there are some things in the von Prondzynski recommendations that cannot be implemented except by an underpinning statute of the type that von Prondzynski asked for.

I support my colleague Joan McAlpine’s aim, but her amendment, alas, will not achieve that aim. I therefore ask her not to move amendment 100—the matter is very much taken to heart.

The Deputy Presiding Officer: I call Neil Findlay to wind up and to press or withdraw amendment 5.


The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division in stage 3, I suspend the meeting for five minutes.

14:51

Meeting suspended.

14:56

On resuming—

The Deputy Presiding Officer (Elaine Smith): We move to the division on amendment 5.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Crawford, Bruce (Stirling) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (Central Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Macdonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Findlay, Neil (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fee, Mary (West Scotland) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Boyack, Sarah (Lothian) (Lab)
Bibby, Neil (West Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)

Agreement: Amendment 100 was debated. The result of the division is: For 36, Against 80, Abstentions 0.

Amendment 5 disagreed to.

Amendment 100 moved—[Neil Findlay].

The question is, that amendment 100 be agreed to. Are we agreed?

Members: No.

For
Baille, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clyackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kincross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiini, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
This is the eighth set of gender-quota amendments that I have moved in Parliament—I moved four sets of such amendments during consideration of the Police and Fire Reform (Scotland) Bill and two during consideration of the Scottish Civil Justice Council and Criminal Legal Assistance Bill, and I have now moved such amendments twice during consideration of the Post-16 Education (Scotland) Bill. Each time, my amendments have been opposed by the Scottish National Party. First, it said that it did not agree with quotas. Now, it says that it agrees with them, but does not have the power to implement them. The rhetoric may have changed, but the reality has not: the SNP is still not prepared to be bold for the women of Scotland.

The SNP says that it has legal advice to back up its position, but we will never see it and the SNP will not tell us what it is. We have been here before. [ Interruption.]

The Deputy Presiding Officer: Order.

15:00

Jenny Marra: The reality is that we simply will not get a fair judgment until the policy is tested. If the Government were truly committed to the policy, as the cabinet secretary has told me he is, the Government would have lodged its own amendments, which would have gone before the Lord Advocate for him to test. The Scotland Act 1998 is tested constantly. Private legal advice is not an excuse not to test the powers of the Scottish Parliament, which are so important to the Scottish Parliament, which are so important to the Scottish women.

The SNP says that it has legal advice to back up its position, but we will never see it and the SNP will not tell us what it is. We have been here before. [ Interruption.]

The Deputy Presiding Officer: Order.

15:00

Jenny Marra: The reality is that we simply will not get a fair judgment until the policy is tested. If the Government were truly committed to the policy, as the cabinet secretary has told me he is, the Government would have lodged its own amendments, which would have gone before the Lord Advocate for him to test. The Scotland Act 1998 is tested constantly. Private legal advice is not an excuse not to test the powers of the Scottish Parliament, which are so important to the SNP.

Labour will support Clare Adamson’s amendment 80. There is little to disagree with, because it simply restates duties that Labour legislated for in the Equality Act 2010. However, there is no doubt that we need to be more radical. The Parliament has seen some of its best legislation passed when it has united to test the powers of the Scotland Act 1998. Legal advice initially said that the smoking ban was ultra vires, but the Government of the day took the risk and passed it into law. The lesson from the smoking ban is that the Scotland Act 1998 is fluid. Today, we can take advantage of that fluidity to make a real difference to how our universities and colleges are run.

We are not doing enough to tackle the lack of female representation—80 per cent of people on our public boards are men and only 27 per cent of university court members are women. This week, public bodies in Scotland may find themselves in court over their failure to address that. The time to act is now. Our Scottish Parliament was not designed simply to reiterate Westminster
legislation. [ Interruption. ] That is exactly what the cabinet secretary is doing. [ Interruption. ]

**The Deputy Presiding Officer:** Order, please.

**Jenny Marra:** Our Parliament was designed to use and test the powers that we have in order to make bold changes to the lives of people in Scotland. I think that the Government has missed an opportunity to test its boldness.

I move amendment 3.

**Clare Adamson (Central Scotland) (SNP):** I lodged amendment 80 to address a critical issue that the committee considered during its evidence gathering. A recurring theme was the lack of diversity, particularly in relation to gender, on university governing bodies. Although that is clearly an issue in universities, my further research has shown that the situation in colleges is not much better. In both sectors, only about 30 per cent of board members are women. That situation is absolutely unacceptable, so I am pleased that the cabinet secretary has given his explicit support to addressing that inequality.

Although I support the intention behind Jenny Marra’s amendments, I accept the cabinet secretary’s view that they are not within the Parliament’s legislative competence. I look forward to making “bold” decisions for the women of Scotland.

**Jenny Marra:** Will Clare Adamson take an intervention?

**Clare Adamson:** No, thank you.

**Hugh Henry (Renfrewshire South) (Lab):** Take a bold decision.

**The Deputy Presiding Officer:** Order.

**Clare Adamson:** The bold decision would be to vote next year for the powers that would bring such amendments within the Parliament’s legislative competence.

I accepted the cabinet secretary’s generous offer to work with those who had wanted to lodge amendments on the subject and with the Minister for Commonwealth Games and Sport to draft amendment 80, which signals our desire to see meaningful progress being made, and which will enable that to happen in a way that is within the Parliament’s current competence.

**Liam McArthur:** As I said at stage 2, I firmly believe that one area in which the performance of our university governing bodies needs to improve significantly is the diversity of their make-up. That view is shared by Lord Smith, who was unequivocal in setting out for the committee his expectations on what needs to happen over the next few years. Both he and Simon Pepper talked of the need for a major shift in the culture of our governing bodies in Scotland. [ Official Report, Education and Culture Committee, 7 May 2013; c 2342. ]

but both felt that the compulsory nature of the new governance code would help to bring that about and argued that time is needed to allow that change to take place.

Although I have sympathy with amendment 3 in the name of Jenny Marra, and believe that her efforts now and at stage 2 have helped to reinforce Parliament’s expectations to the university sector, I feel that it is not appropriate at this time to introduce the strict quota that she proposes. There might be a better case to make for taking that approach in the college sector, as is proposed in amendment 4, in recognition of the absence of the same type of governance code as exists for higher education, but even then careful consideration must be given to timeframes.

Amendment 80 in the name of Clare Adamson is, for now, a helpful addition in underscoring the need for greater diversity and equality of opportunity in appointments to university governing bodies. As Simon Pepper suggested to the committee, “The proof of the pudding is in the eating”. [ Official Report, Education and Culture Committee, 7 May 2013; c 2342. ]

I suspect that if the pudding turns out to be not as was expected, demands will very quickly grow for very different ingredients to be added.

**Michael Russell:** No one is defending the woeful record of university and college boards. The boards themselves have accepted that the gender balance on them is atrocious—indeed, in some cases, it is more than atrocious. We need to get that situation changed quickly, and that view is supported not only by me and the education team but by the equalities minister and the Government itself.

The question is how we get there. Unfortunately, Jenny Marra’s suggestion shows a regrettable lack of knowledge of what would actually happen were we to pass amendment 3. [ Interruption. ] Presiding Officer, can I have the opportunity to make this point?

**The Deputy Presiding Officer:** Order.

**Michael Russell:** Essentially, amendment 3 is a wrecking amendment. The bill would go not to the Lord Advocate but into constitutional limbo. It would require the attention of the Advocate General—whoever that is—and the process would take a considerable time. As a result, all the things that we are trying to achieve through the bill such as widening access, improving governance and mutualisation would go. Perhaps that is the idea;
perhaps Labour wants to put the bill into constitutional limbo.

I have spoken to Jenny Marra on the matter, have told her the facts and have indicated my support—indeed the equals minister has now sought the support of the leader of the Labour Party on this—for getting responsibility for this issue transferred to the Scottish Parliament. In that way, Ms Marra’s fine nationalist rhetoric—she made a good job of it—could be matched by actions. Instead of her standing up and making a speech about what needs to change, she could vote for that change—and the most effective vote for change would be to vote yes next year. [Applause.]

The Deputy Presiding Officer: Order.

Michael Russell: Even if Jenny Marra is not going to do that, she and her party might support the necessary moves at Westminster to transfer responsibility for equalities legislation to this Parliament. However, I will not hold my breath for that change of heart.

Clare Adamson’s amendment goes as far as we can within the powers of the Parliament. I want to go much further than that and to test the powers of this Parliament; indeed, I want to test those powers to destruction, which is what we will do when we have independence. Let us recognise—[Interruption.]

The Deputy Presiding Officer: Order.

Michael Russell: Let us recognise that we cannot do that in this bill here and now unless we wreck the bill here and now. If that is Labour’s intention, I hope that Parliament rejects it.

I would have been happy to make common cause with Jenny Marra and to ensure that we had a united approach on the matter. I regret that she was not willing to do so.

The Deputy Presiding Officer: Do you wish to press or withdraw amendment 3, Ms Marra?

Jenny Marra: I will press amendment 3.

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baille, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)

Against

Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provian) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 36, Against 81, Abstentions 0.

Amendment 3 disagreed to.

Section 3—Widening access to higher education

The Deputy Presiding Officer: Group 3 is on widening access. Amendment 7, in the name of the cabinet secretary, is grouped with amendments 8, 10, 11, 15, 21, 24, 49, 52, 77, 78 and 97.

Michael Russell: Section 3 is at the very heart of the bill. During stage 2, we had a detailed discussion about widening access provisions. Liam McArthur in particular lodged a number of amendments, which I opposed at the time because I felt that they went too far in diluting the effectiveness of the provision. However, I think that the entire committee agreed that there was merit in some aspects of his proposals, so I have worked with Universities Scotland and the NUS Scotland to agree some small but important changes to the provision that will make clearer the nature of the agreements between institutions and the Scottish funding council.

It is important that ministers will retain the power to drive the agenda but—this was the key point—universities, with the agreement of the funding council, will be able to go beyond that to extend agreements to other groups, as they see fit. That strikes the right balance between respecting responsible autonomy—which we do, of course—and ensuring that there is progress in an area in which the track record has left a lot to be desired.

On the other amendments in the group, the principles that underlay Marco Biagi’s stage 2 amendments were eminently sensible. His updated versions in the group will widen the scope and therefore the benefit of his previously lodged amendments, and I am happy to support them.

I move amendment 7.

Marco Biagi (Edinburgh Central) (SNP): I beg the indulgence of members, as I have six amendments in the group, which are in three subgroups, each of which I will outline in turn.

Amendments 21, 24, 49 and 52 will create a duty on the regional colleges and regional strategic bodies to have regard to the desirability of participation in further education and higher education by underrepresented socioeconomic groups. Scotland’s colleges do excellent work on that already. Some 22 per cent of college students come from the 20 per cent most deprived areas of the country, and articulation with universities is a well-trodden path that allows people from non-traditional backgrounds to access full university degrees. The amendments will put into the new founding statute what the sector does so well already.

Amendment 77 will create a similar duty on the Scottish funding council, which is already required to have regard to a wide range of areas, including skills needs, the economy, social and cultural issues, sustainable development, the UK and international context, and the educational support needs of students. Widening access to higher education will now take its well-deserved place alongside those other priorities. Moreover, amendment 77 will ensure that the Scottish funding council will not simply have to pay heed to the desirability of widening access, but will promote the sharing of good practice among institutions. That is an important role for the Scottish funding council into which I hope it will grow over the coming years.

Finally, amendment 78 will create a duty on the Scottish funding council to review and report every three years on progress on widening access. We have seen a lot of reviews of higher education in these islands. In past years, our student communities have anxiously watched when
another review—by Dearing, Cubie or Browne—has come along with questions that have always
been asked in such a way that the answer would always be more fees, more charges and more
barriers. The reviews in question will focus on how we can open doors, rather than shut them.
Although they will be a lot less grandiose, I hope that they will be just as closely watched, well
respected and deeply challenging, because we cannot allow to continue the status quo of recent
decades in terms of socioeconomic participation.

At stage 2, the cabinet secretary accepted the principles of my amendments in those areas, but
pointed out technical problems, which have been addressed by our working together, so I hope that
members will join the chorus of stakeholders, which includes Colleges Scotland, Universities
Scotland and NUS Scotland, in supporting the amendments.

We have in the chamber the shared objective that access to learning should be open to all. Embedding a clear and much-needed focus on widening access in our post-16 funding bodies will help to achieve that vision.

15:15

The Deputy Presiding Officer: Many thanks. A number of members wish to contribute to the
debate on group 3, but it is unlikely that I can call you all. I ask those whom I call to be brief.

Neil Findlay: Throughout the passage of the bill, Scottish Labour has been consistent in its
view that our universities need to open up access so that many more people have the opportunity
to access higher education. It is not acceptable that some of our higher education institutions have
made such little progress in that area and continue to draw students from a very narrow section of
society. Higher education should be accessible to students from all classes, backgrounds and
cultures.

Throughout the debate, Scottish Labour has sought to amend the bill, working with disability
charities, NUS Scotland and others, so that the system can be opened up and can enhance the
prospect that disabled students and others, including those from the SIMD—Scottish index of
multiple deprivation—20 most deprived areas, will gain access to higher education. It was a great
disappointment that the cabinet secretary rejected the very progressive proposals on that. We lodged
such amendments again for stage 3, but they were not selected.

Let me state clearly, so that there can be no misrepresentation of our position—as has
frequently been done in the past by the cabinet secretary—that we support widening access and,
indeed, we want to go further than the Government proposes. However, that has been
rejected by the cabinet secretary.

The Deputy Presiding Officer: I must hurry you along.

Neil Findlay: We acknowledge that there has been progress during the progress of the bill and
that the Government has acknowledged some of our arguments, but instead of accepting our
proposals, the Government has lodged amendments in Marco Biagi’s name. Our genuine
proposals were supported by a broad coalition of charities and campaign groups but, sadly, they
were rejected by the cabinet secretary. The bill is a lesser bill for that.

Liz Smith: I record Scottish Conservatives’ support for the principle of widening access, which
we believe is valuable not just for intrinsic educational reasons but for social and economic ones. I think that our parliamentary record over a long period substantiates that claim.

We do, however, differ markedly from the Scottish Government on where the policy focus
should be, and we remain very concerned about some of the unintended consequences of forcing
universities to adopt prescriptive targets that are enshrined in legislation, rather than to be bound by
what are successful outcome agreements. Indeed, we do not believe that we have ever been
provided with an answer as to what additional benefits will accrue to universities from having
prescriptive legislation rather than outcome agreements. Our belief is that the policy focus
should be on schools far more than on tertiary education.

We are conscious of the unanimous support for the widening access principle, but we have had
great difficulty with the sections of the bill that are overly prescriptive. We are also very conscious of
the universities’ lobbying of the cabinet secretary to ensure that ministers will not be able to
intervene in admissions policy. On that basis, we will support amendments 7, 8, 10, 11 and 15.

Stewart Maxwell (West Scotland) (SNP): I very much welcome the amendments in group 3 in
the names of the cabinet secretary and Marco Biagi. As the cabinet secretary said, the
amendments are at the very heart of the bill and are a crucial part of the process that underpins
much of what we have been trying to do in getting the bill through. Neil Findlay’s amendments at
stage 2 were, of course, comprehensively defeated, so it is not surprising that they have not
come back at stage 3.

I very much welcome amendments 7, 8, 10, 11, 15 and 97, which I believe have been negotiated
and agreed with outside stakeholders including Universities Scotland and NUS Scotland. I think
that that is a very welcome development in the
process. Obviously, the amendments will change the nature of the widening access provision and I think that they much better reflect the process between the SFC and the universities, which is very welcome for dealing with widening access agreements.

Amendment 7 will broaden the scope of agreements so that they can include additional groups that are agreed by the SFC and the institution. Again, that is very welcome. Amendment 10 is important because it will ensure that the institution has the obligation to consult; in other words, as the amendment states, the “higher education institution must consult”.

Again, that is a very welcome change.

**The Deputy Presiding Officer:** I must hurry you along.

**Stewart Maxwell:** I very much welcome Marco Biagi’s amendments, which include the previously suggested changes. I point, Presiding Officer, to amendment 78, which will create a duty for the SFC to review and provide a report. Again, I think that that is an extremely welcome development.

**The Deputy Presiding Officer:** Thank you very much. Very briefly, Liam McArthur.

**Liam McArthur:** As others have said, whatever progress has been made over recent years in terms of widening access, it has been far too slow and has started from a very low base. The minister is therefore right to attach priority to addressing the issue, although I think that he has failed to make the case for why legislation is essential. Widening access agreements are now being developed and the funding levers that he has always had at his disposal, as both carrot and stick, will determine whether ambitions are met.

Nevertheless, as the minister is determined to press on with his approach, it is important that we establish certain safeguards. The need to broaden the definition of what constitutes an under-represented group was a key feature of evidence at stage 1 and of amendments, including mine, at stage 2. In that context, I welcome the amendments in group 3, which reflect the consensus that has emerged on the issue.

The review requirements that are set out in Marco Biagi’s amendment 78 are also worthwhile provisions.

I note that the cabinet secretary’s amendments 7, 8, 10 and 15 acknowledge, however belatedly, that widening access agreements flow from higher education institutions, albeit in consultation with other stakeholders. Indeed, despite his protestations at stage 2, he now seems to believe that such agreements are “a creature of the universities”.

**The Deputy Presiding Officer:** I can allow an extremely brief contribution from George Adam.

**George Adam (Paisley) (SNP):** For me, widening access is the most important part of the bill. I say that for personal reasons because my constituency includes Ferguslie Park, which is an area of multiple deprivation. We need to provide opportunities for all our young people in Scotland, including those from areas such as Ferguslie Park.

Until now, progress on widening access has been extremely slow; an increase of 1 percentage point in the past nine years is just not good enough. Some Opposition parties say that they support widening access, but they vote against it when they get the opportunity to do so. I find that quite a strange thing for anyone to do because, as the cabinet secretary quite rightly said, widening access is at the very heart of the bill.

**Neil Findlay:** Will George Adam give way?

**George Adam:** I do not have time.

On 19 February, the NUS Scotland president Robin Parker told the Education and Culture Committee:

“...The legislation must happen. ... A year ago, it would have taken 40 years if things had carried on at the current rate.”—[Official Report, Education and Culture Committee, 19 February 2013; c 1985-8.]

For me, that rate of progress is just not good enough for the young people of Scotland.

**The Deputy Presiding Officer:** I am afraid that I must ask you to conclude.

**George Adam:** In my area, the University of the West of Scotland has managed to attract more than 20 per cent of its students from lower-income areas. UWS provides a perfect example of how we can move forward to ensure that all young people in Scotland have the opportunity.

**The Deputy Presiding Officer:** I call the cabinet secretary to wind up the debate.

**Michael Russell:** However we got here, we have got here. I hope that we can now legislate on widening access, which is needed to drive forward progress that has been too slow.

I will not spoil the moment by disputing all the various arguments that we have heard. I have listened—I certainly listened to Liam McArthur, as I said in my opening remarks—but I have listened particularly to Universities Scotland and NUS Scotland. I pay tribute to Robin Parker, who is just finishing his period of two years as president of NUS Scotland. He has been a tower of strength in taking the issue forward, which he has driven almost personally, and he certainly deserves much of the credit for it.

Amendment 7 agreed to.
Amendments 8, 10, 11 and 15 moved—[Michael Russell]—and agreed to.

After section 3

Amendment 16 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (Con)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)

Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk West) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 36, Against 80, Abstentions 0.

Amendment 16 disagreed to.
Section 5—Regional colleges

The Deputy Presiding Officer: That brings us to group 4, which is on regional colleges and regional strategic boards: functions etc. Amendment 101, in the name of Neil Bibby, is grouped with amendments 102, 103, 17 to 20, 22, 23, 45 to 48, 50, 51, 106 to 109, 53 and 119.

Neil Bibby (West Scotland) (Lab): There are 21 amendments in group 4, which is on the functions of regional colleges and regional strategic bodies. Amendments 101, 106 and 109 in my name would ensure that colleges engage fully with community planning partners in their areas. I lodged similar amendments at stage 2 and I lodged amendments on the same issue for today because I believe that colleges should consult community planning partners when decisions are taken.

Colleges are a vital part of the community and should work with community planning partners when possible. It is vital that, as well as meeting a community’s general needs, colleges should meet an area’s economic needs. We have seen some concessions on that through the cabinet secretary’s amendments 17 and 45, so I hope that we will also see concessions on consultation with community planning partners.

Similarly, amendments 102 and 107 would ensure that colleges engage and work with community health partnerships. Unfortunately, far too many of the communities in which colleges are situated have high levels of health inequalities. It is important that colleges consult community health partnerships and, when possible, work with them to resolve issues when health and education services overlap. Amendments 102 and 107 are simple, reasonable and necessary.

My amendments 103 and 108 would require regional colleges and regional strategic bodies to consult transport providers that serve the areas in which colleges are situated. Those amendments are important, particularly given the regionalisation agenda. We are hearing more and more concerns about the prospect of courses not being available at local colleges because they have been moved to other campuses in a region.

The Education and Culture Committee has heard about construction courses being moved from Dalkeith in Midlothian to the other side of Edinburgh. To put it simply, if such changes continue, as we fear that they will, transport providers must be consulted. I have said many times that, in my West Scotland region, I regularly hear concerns about the possibility of a lack of transport for people who want to travel between Clydebank and Greenock. Such a situation would be very problematic. If that is the case in West Scotland and Edinburgh, I am pretty sure that the situation will be repeated in almost every part of Scotland.

I would of course prefer courses to be retained at their present locations but, if they are to be moved to different parts of a region, there must be engagement with transport providers to ensure adequate transport provision between college campuses for staff and students. That is necessary in relation to the regionalisation agenda. Even if that agenda was not happening through the bill, it would make sense to consult and work with transport providers that serve local colleges. I believe that the whole Parliament must support amendments 103 and 108.

I am happy to support amendments 17 and 45 in the name of Mike Russell and related amendments. I was surprised that references to local economic and social wellbeing were not originally included in the bill. As the cabinet secretary and members of the Education and Culture Committee will know, I lodged amendments at stage 2 that called for regional boards and regional strategic bodies to have a duty to promote social cohesion and inclusion and local economic regeneration and to have regard to regeneration plans that affect a college’s locality.

I therefore welcome the lodging of amendments to that effect at stage 3. At a time of high unemployment, it is vital that our colleges continue to play a key role in helping people back to work. Prior to stage 2, there was a complete lack of a specific regional focus. We know that different regions face different challenges and have different needs and priorities. The amendments will address what were, in my opinion, glaring omissions, so I am happy to support them.

I move amendment 101.

Michael Russell: Amendments 17 and 45 fulfil commitments that I gave to Neil Bibby in committee at stage 2 to place new duties on regional colleges and regional strategic bodies in relation to economic and social regeneration and social inclusion and cohesion. I am grateful to him for the positive role that he played in raising the issue. The duties are part of a wider duty on regional colleges and regional strategic bodies to improve economic and social wellbeing in their localities.

Amendments 18 to 20, 22, 23, 46 to 48, 50 and 51 integrate more generally into the bill local matters, by which I mean skills needs and economic, social and cultural issues. Local matters are for the regional bodies to determine. National issues will be for the Scottish funding council, in consultation with ministers, as is the case now. Given the way in which the bill is constructed, a lot of amendments—nine in total—
are required to deliver on one good idea, but I am satisfied that the result will be a better bill.

Amendment 53 will align the consultation provisions in new section 23K of the Further and Higher Education (Scotland) Act 2005 with similar provisions elsewhere in the bill. Amendment 119 will enable ministers to obtain from a regional strategic body, a regional college or an assigned college such information as they may reasonably require in connection with the exercise of their functions under the 2005 act.

At stage 2, Neil Bibby lodged identical amendments to today’s amendments 101 to 103 and 106 to 109, and I outlined then the good reasons why I cannot support them. It is true that colleges play an important role in CPPs, but the Government will consult this summer on a draft community empowerment and renewal bill, which will be the appropriate vehicle for considering the issue if any changes are to take place.

15:30

There is nothing preventing colleges and regional strategic bodies from consulting community health partnerships, transport providers and community planning partnerships. During my meeting at Adam Smith College two weeks ago, we discussed the role that the college could play in assisting with transportation, as many colleges have always done. I see no convincing reason to place a statutory obligation on them to do so.

Liam McArthur: As I said in the stage 1 debate, I feel that the cabinet secretary is pursuing an interventionist and controlling agenda in relation to our colleges, which is unwise and, in many cases, counterproductive. Nevertheless, I accept that a number of more positive steps are being taken in the group of amendments. Amendments that reinforce the need for regional colleges to focus on their locality’s needs and in particular on skills and on regeneration needs are helpful, albeit that they rather confirm what is the bread and butter of most of our colleges already.

I was happy to support Neil Bibby’s amendments at stage 2, as they helped to make the point that the Government needed to expand its horizons on those with whom engagement is needed in any given locality, notably on the transport aspects of college mergers. However, those amendments have now been overtaken by other changes that have been made to the bill.

The Deputy Presiding Officer: I ask Neil Bibby to wind up and indicate whether he intends to press or withdraw amendment 101.

Neil Bibby: I have nothing more to add, and I will press the amendment.
The Deputy Presiding Officer: The result of the division is: For 37, Against 80, Abstentions 0.

Amendment 101 disagreed to.

Amendment 102 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 102 be agreed to. Are we agreed?
The Deputy Presiding Officer: The result of the division is: For 37, Against 78, Abstentions 0.

Amendment 102 disagreed to.

Amendment 103 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 103 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Amendments 22 and 23 moved—[Marco Biagi]—and agreed to.

Amendments 17 to 20 moved—[Michael Russell]—and agreed to.

Amendment 21 moved—[Marco Biagi]—and agreed to.

Amendments 27 and 63 would ensure that recommendations of appointments to boards are made by the board and submitted to the chair and ministers for final approval. That will give the board the power to make its own appointment, which is the right thing to do.

Amendment 28 would increase representation to two members from one, which would ensure that colleges that are not regional colleges will have two staff representatives on boards and that the set-up is similar to that of regional colleges.

We accept Mike Russell’s amendments 29 and 31 because they are similar to my amendment 28 in that they would ensure that colleges will have two staff representatives—one teaching and one non-teaching—which is the same as the regional colleges. Amendments 30, 60 and 61 will ensure that representation of teaching and non-teaching staff will come from those recognised trade unions.

Amendments 32 and 33 seek to ensure that assigned college boards will be able to appoint their own board members in the same way as regional colleges, recognising the role of the regional strategic body and that its approval will be needed to appoint other members.

I move amendment 25.

Michael Russell: Amendments 65, 66, 68 to 70 and 89 to 91 will ensure that a person who is removed by ministers for reasons of mismanagement from one relevant board that is an incorporated college board or regional board will be removed from all such boards.

The effect of Government amendment 99 will be that, if a person cannot be a member of an incorporated college board or regional board, they will also be barred from being a member of or serving on the Scottish funding council.

Government amendments 29, 31, 86, 87 and 88 provide for two elected staff members on assigned college boards—one elected by teaching staff and one by non-teaching staff—and make related provisions relating to their tenure.

Amendments 67 and 85 relate to terms and conditions of appointment. Amendment 67
prevents a regional board from setting the terms and conditions of the appointment to the board of an assigned college chair. Amendment 85 makes provision for who sets the terms and conditions of incorporated college board members.

Amendments 34, 35 and 64 ensure that relevant staff unions are consulted on the election rules relating to staff members on incorporated college boards and regional boards.

Amendment 62 increases the minimum number of “ordinary” members of a regional board. It would ensure that a regional board with three assigned colleges would have a maximum board size of 18.

Mr Findlay’s amendments 25, 26, 28, 30, 60 and 61 are identical to those that he lodged on the same topic—that of trade union nominees on boards—at stage 2. As I committed to doing, I have reflected and consulted on the matter. While I recognise the value of trade union experience and background on boards—the bill achieves major gains for trade unions—I have concluded that I do not want to exclude anybody. I want to leave it to boards to determine how, in addition to the two elected staff members, they access and utilise such expertise, subject to any guidance that is issued on appointments. I will consult on the appointments guidance, as the bill would require me to do.

Amendments 32 and 33 proposed by Mr Findlay take us back to assigned college boards being responsible for their own appointments, albeit with the regional strategic body’s approval. If that is how regional strategic bodies want to work with their colleges, that is fine, but it should be a matter for regional strategic bodies to determine. That is the hierarchy that the bill seeks to establish. I will make that clear in the appointments guidance.

Amendments 27 and 63 that have been lodged by Mr Findlay prescribe a level of detail that I think is inappropriate for legislation.

Liz Smith: Two of the great advantages of our college system, particularly since 1992, are its diversity and flexibility, which give it the ability to respond to local needs. Since those features are clearly those that bring success to the college sector, it makes sense to ensure that the management of our colleges reflects that diversity and flexibility.

That is why the Scottish Conservatives have been reluctant to see overly prescriptive changes to management structures and especially to board membership. For example, we would not wish to put in place any structures that, while allowing trade unions to be eligible for board membership, would exclude other staff who are not members of trade unions.

Likewise, we believe that there has to be maximum consultation on board appointments and an appointments process that has full transparency and the appropriate lines of accountability. For example, we prefer to see other member appointments to assigned college boards to be approved by the regional strategic body. Board membership is crucial to the good workings of our colleges, but we strongly believe that it must reflect the diversity of the college sector, bringing to it a variety of experience and skills rather than being too prescriptive.

On amendment 36, we are of the strong opinion that colleges work best when there is clear collaboration between the different institutions and when there is similar collaboration between the different institutions, the Scottish funding council and the Scottish Government. That collaboration can be effective only if there is mutual trust between the different partners—I use the word “partner” advisedly—and when the professional relationships are built on consultation. Too often in this bill, the Scottish Government has sought to impose its will on colleges in a way that undermines that mutual trust.

Amendment 36 therefore requires the Scottish ministers to consult the existing board fully, prior to making any transfer or new appointment of board members—which will obviously be part of the transitional arrangements for new boards. In that way, there will be a process based on agreement rather than on the whim of the Government.

Neil Bibby: Amendments 112 and 115, which are supported by Colleges Scotland, would prevent a board member from being barred permanently from holding office. A board member could be removed for a number of reasons and, while it may be justified the majority of the time, we have to be realistic and accept that, on occasion, it may not be justified. Is it is therefore right to bar someone permanently?

The Government’s amendments would prevent a board member who has been removed from a board from sitting on any college board ever. That compares to a fixed five-year ban for someone who has committed a criminal offence, proposed by the cabinet secretary. Many people would see it as disproportionate to bar a board member permanently.

Central to the amendments is the fact that they would give former board members the opportunity to apply to hold office after a period of four years, which is effectively a one-term ban. Clearly, if they were not deemed fit to hold office again, they would not. Any application process would take into account previous conduct and any previous offences.
Amendments 112 and 115 give us the chance to make the ban for a removed board member more proportionate and prevent board members from being permanently banned from holding office. I urge members to support the amendments.

15:45

The Deputy Presiding Officer: A few members wish to speak, so I would appreciate brief contributions.

Patrick Harvie (Glasgow) (Green): I slightly expected Mr Findlay to make more of a case for his amendments 25 and 26 in his opening speech. I ask him to clarify, in his closing speech, whether he considered lodging an amendment that would guarantee unions the ability to participate in the boards but would not exclude non-union staff members from being considered for that role. Surely that would be a more inclusive approach. Could he explain his reasons for not approaching the issue in that way?

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am concerned that Mr Findlay’s amendments 25, 26, 28, 30, 60 and 61 remove the stated intention regarding staff representation on the board of assigned colleges.

Mr Findlay proposes to increase the number of members of the board who are elected by trade unions to two while alternative representation from teaching staff and non-teaching staff seems to be eliminated. In some colleges, now or in the future, there might be more than two trade union or staff associations represented, while in others there might only be one. In such cases, how will the proposed trade union representatives be determined?

It also seems to be entirely possible that, under the existing proposals, staff representatives could well be trade union or staff association members. Nothing seems to exclude that possibility. I struggle, therefore, to see the need for Mr Findlay’s amendments.

Liam McArthur: I think that Neil Findlay’s amendments 25, 26, 30, 60 and 61 are unduly prescriptive in terms of staff representation. However, I welcome his amendments 27, 28, 32, 33 and 63, which make helpful changes to the way in which board appointments are made for regional and assigned colleges as well as increasing staff representation.

Liz Smith’s amendment 56, which stipulates consultation with an existing board in relation to the transfer or new appointment of board members, is entirely sensible.

Neil Bibby’s amendments 112 and 115 also offer a pragmatic solution to dealing with instances in which mismanagement has occurred, allowing for a suitable but not disproportionate period of exclusion and full transparency in any future application processes. By contrast, the minister’s amendments 89 and 90—and even 70—seem rather open ended.

I can support most of the rest of the minister’s amendments in this group. I note, however, that amendment 85 could be improved by allowing other member appointments to assigned colleges to be approved rather than set by the regional strategic board.

The Deputy Presiding Officer: I ask Neil Findlay to wind up and indicate whether he intends to press or withdraw his motion.

Neil Findlay: I have no further comments to make. I will press my amendment.

The Deputy Presiding Officer: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clara (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bhug, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (Scotland South) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen North) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 32, Against 80, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 26 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Ballie, Jackie (Dumfriesshire) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
The Deputy Presiding Officer: The result of the division is: For 35, Against 81, Abstentions 0.

Amendment 26 disagreed to.

Amendment 27 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 27 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumfartone) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnston, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maclay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jackie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearden) (SNP)
McMillan, Stuart (Dundee City East) (SNP)
Mclean, Nathan (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Denis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dunfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Heburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jackie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearden) (SNP)
McMilan, Stuart (Dundee City East) (SNP)
Mclean, Nathan (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Denis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
The Deputy Presiding Officer: The result is: For 52, Against 64, Abstentions 0.

Amendment 27 disagreed to.

Amendment 28 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 28 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnis, John (Highlands and Islands) (Ind)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (Clydesdale) (SNP)
McLeod, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Jo (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen South) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Edinburgh South) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watson, Maureen (Aberdeenshire South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 53, Against 62, Abstentions 0.

Amendment 28 disagreed to.
Amendment 29 moved—[Michael Russell]—and agreed to.
Amendment 30 moved—[Neil Findlay].
Agreed to.

The division is: For 35, Against 81, Abstentions 0.

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hum, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCuolloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (Lothian) (Green)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McCafferty, Stuart (North East Scotland) (SNP)
McInnes, Alison (North East Scotland) (Con)
MacNeil, Douglas (Glasgow Main) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Stewart, David (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beamish, Claudia (South Scotland) (Lab)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchan, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)

Amendment 30 disagreed to.

Amendment 31 moved—[Michael Russell]—and agreed to.

Amendment 32 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 32 be agreed to. Are we agreed?
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 53, Against 63, Abstentions 0.

Amendment 32 disagreed to.

Amendment 33 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Anneli (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LDP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.

Amendment 33 disagreed to.

Amendment 34 moved—[Michael Russell]—and agreed to.

Amendment 35 moved—[Michael Russell].

The Deputy Presiding Officer: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)

Against
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beatle, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Gloucester) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hebburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Roberson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Ross, Malcolm (Inverness and Nairn) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy North) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Amendment 36 moved—[Liz Smith].

The Deputy Presiding Officer: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougal, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mclnnnes, Alison (Rutherglen) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougal, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mclnnnes, Alison (Rutherglen) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougal, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mclnnnes, Alison (Rutherglen) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burges, Michelle (Cunningham) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Biagio (South Scotland) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
incidence of mismanagement.

If the code operates well, it should reduce further the principles are relevant and that if the code will operate in the university sector. We believe that exactly the same introduce a code of governance that is similar to Scottish Conservatives lodged amendments to due process ensues. That is why at stage 2 the college mismanagement

Obviously, college mismanagement occurs in relatively few situations, but when it occurs it is essential that definitions are clear and due process ensues. That is why at stage 2 the Scottish Conservatives lodged amendments to introduce a code of governance that is similar to the enhanced one that will operate in the university sector. We believe that exactly the same principles are relevant and that if the code operates well, it should reduce further the incidence of mismanagement.

However, we are concerned about the lack of clarity over what constitutes mismanagement and we have lodged some amendments to try to tighten up the definition. There must be consistency with the code of governance and its principles when all alleged instances of mismanagement are evaluated—something that is not entirely clear in the bill as it stands. In that respect, we feel strongly that any attempt to remove board members should be set against that code of good governance. Amendment 37 would ensure that serious or repeated breaches of the code would provide grounds for removal, but would not confuse that with other instances of possible mismanagement.

We are concerned about the line in section 7 that talks about board members “failing ... to discharge ... their duties”.

That is too open-ended, and it is open to different interpretations. Amendment 38 seeks to remove that line.

We also believe that any orders made by Scottish ministers to remove board members should be subject to consultation with the Scottish funding council, since that reflects a more open process of discussing whether a college has not been able to fulfil the conditions set by the council. Amendment 39 is specifically designed to ensure that such consultation takes place and that there is the safeguard of allowing for careful and independent scrutiny of any situations involving alleged serious or repeated breaches of the code.

Currently, the bill will allow ministers to argue that repeated or serious breaches of any condition of grant are grounds for removal. That could include, for example, outcome agreement targets not being met. If a college breaches its targets in that way, financial penalties will result. Given that the code of governance is being introduced as a condition of grant, it will fall within that provision as well. Amendment 73 would ensure that the only condition of grant for which serious or repeated breaches could result in removal from the board would be those that relate to the code of governance.

Amendment 74 would remove the line that refers to regional boards “failing to discharge” their “duties properly”, which we consider too vague and open to interpretation, if not abuse.

Amendment 75 would secure the important safeguard of requiring ministers to consult the Scottish funding council before appointing another board member.
I move amendment 37.

Neil Bibby: When ministers aim to give themselves more powers to fire members of public body boards, we need to consider what safety mechanisms are needed. As the Colleges Scotland briefing states, Mike Russell has sought to extend his powers to remove board members to include potential removal for breaches of any condition of grant—for example, not meeting targets set in outcome agreements—and for failure to discharge duties.

It is therefore more than reasonable that further action is taken to limit those powers appropriately. I support Liz Smith’s amendments 37 and 73, which would limit possible causes of removal to breaches of the code of governance, and amendments 38 and 74, which would remove broad ministerial powers to remove board members for failure to discharge duties.

My amendment 105 calls for the establishment of an independent panel to review decisions to remove college board members. There is particular unease about this area of the bill. It was put to me, even last week, that there could have been a role for the Standards Commission for Scotland in cases of dissatisfaction about conduct, as I understand that it already has a statutory role in the oversight of college governance.

Some safety mechanism should be in place. If a member of staff is removed, they have the right to appeal, so it is reasonable that a board member should have the same right if they are removed by the cabinet secretary. I would expect the cabinet secretary to think that that was reasonable and I would be disappointed if he did not. The fact is that the cabinet secretary’s judgment could be called into question in certain circumstances—we all know that it has been called into question in the past.

When taking evidence, we heard concerns about the level of ministerial control, so although I hope that the cabinet secretary’s judgment would be sound in such situations, I also hope that members will support amendment 105, to allow an independent appeal panel to review decisions to remove board members. That would reassure people who might find themselves in that position.

The cabinet secretary said at stage 2 that such an amendment was not necessary or desirable, but I think that a former board member in that position would find the provision both necessary and desirable. The option of judicial review would be a costly and time-consuming exercise.

We also welcome amendments 39 and 75, which would introduce a requirement for the Scottish funding council to be consulted on any proposed removal. It is important that such assessments are made more objectively.

Liam McArthur: I begin by addressing amendments 39 and 75, to which I have lent my support. As I have said in earlier proceedings, I remain concerned about the extent and range of powers over our colleges that the cabinet secretary feels need to be vested in his hands. His wholly regrettable spat with the former chair of Stow College at the end of last year provided a disturbing insight into the frustration that he obviously feels at his lack of hiring and firing powers. Along with amendments 37 and 38, which would link any decision to remove a college board member to the code of governance rather than the more open-ended and potentially subjective discharge-of-their-duties requirement, amendments 39 and 75 would require any ministerial order to that effect to be subject to consultation with the funding council. If nothing else, that would give some reassurance that any action was not being taken for merely personal or even political reasons.

I also offer my support to Neil Bibby’s amendment 105, which revisits an issue that was touched on at the end of yet another long and rather tetchy committee session at stage 2. I got the impression that the cabinet secretary was, at that stage, not unsympathetic to the idea of an appeal mechanism in instances when board members have been removed. I may have misread that, however, as there is no alternative amendment from the Government as far as I can see. Even if Mr Russell were to accept the case that Liz Smith and I are making for wider consultation on such orders, there would still be a strong argument for a right of appeal to be available to those who are subject to ministerial dismissal. I look forward to hearing what the cabinet secretary has to say.

Michael Russell: I am minded to support amendment 39, despite the fact that Mr McArthur has tried to talk me out of it. The reality is that I was sympathetic at stage 2. I am happy to support the amendment, which is a Colleges Scotland amendment.

The Griggs review recommended

"the removal of the Chair and/or Board if they do not fulfil the required outcomes."

Amendments 37, 73, 38 and 74 would unduly restrict the powers to remove board members, taking us back to the largely process-focused provisions that we have now. Adherence to any code of governance would be a condition of grant, so the bill already provides a mechanism for removing board members if they fail to deliver on the code. However, that is not the only type of condition of grant. Outcome agreements, for example, would be terms and conditions of SFC grant to regional colleges and regional or strategic bodies. Serious or repeated breaches of an
outcome agreement would, therefore, be grounds for the removal of board members.

In its written evidence to the Education and Culture Committee, West Lothian College summed up the issue well. It stated:

“The Board notes the introduction of Ministerial powers to remove chairs and other members for reasons of failure in addition to mismanagement. The Board reiterates its view that it has no difficulty with being audited against a set of agreed outcomes.”

I fail to see why failure to discharge duties—failure to discharge legal obligations—is not also an appropriate ground for removal.

I have some sympathy for the idea behind amendment 105, but the amendment has no detail at all. It is not clear how recourse to an independent review panel would sit alongside the existing mechanism of parliamentary scrutiny—nothing is clear in the amendment.

Amendments 39 and 75, in the name of Liz Smith, which are supported by Liam McArthur, provide a much better way to achieve an independent look: consultation with the SFC before an order can be made. The amendments are supported by Colleges Scotland. I therefore urge members to support amendments 39 and 75 and to reject the rest.

The Deputy Presiding Officer (John Scott): I call Liz Smith to wind up and to press or withdraw amendment 37.

Liz Smith: I am grateful for the support that has been given to some of the amendments, particularly amendment 39, which I consider to be very important.

There is a concern about the definition of mismanagement, and the cabinet secretary will be conscious of the concerns that have been raised throughout the evidence-taking process about what “discharging duties” means. On that basis, I press amendment 37.

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGriger, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Mahon, Michael (Uddingston and Bellshill) (Lab)
Mahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clara (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffeey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Amendment 38 moved.

Amendment 38 disagreed to.

The question is, that amendment 38 be agreed to. Are we agreed?

The Deputy Presiding Officer: The result of the division is: For 53, Against 63, Abstentions 0.

Amendment 37 disagreed to.

The Deputy Presiding Officer: The question is, that amendment 38 be agreed to. Are we agreed?

Members: 

No.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jonny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milton, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allard, Christian (North East Scotland) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
The Deputy Presiding Officer: The result of the division is: For 53, Against 63, Abstentions 0.

Amendment 38 disagreed to.

Amendment 39 moved—[Liz Smith]—and agreed to.

Amendment 105 moved.—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 105 be agreed to. Are we agreed?

Members: No.

For
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eade, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clarkmannshshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (East Ayrshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Amendments 41 to 43 moved—[Michael Russell]—and agreed to.

After section 9

Michael Russell: Highland members, of whom I am one—I declare that interest—are aware of the correspondence on the matter, which has been
going on for some time, and a number of Highland members have met colleges in their area that are part of UHI to discuss it.

Amendment 95 seeks to give ministers a power to impose terms and conditions to require regional strategic bodies to comply with specified matters before they receive funding from the funding council. It specifically addresses the issue that is raised in the UHI circumstances and will provide parity with the power that is already in the bill in relation to the provision of funding to institutions.

Amendment 96 is a technical amendment that links to amendment 95. It will have the effect of restricting the power so that it can be used only to set terms and conditions that relate to regional strategic bodies as a group, as opposed to terms and conditions that relate to any particular one.

I support the objectives of Liam McArthur's amendment 44, but after a great deal of consultation, I consider that amendment 93 and the linked amendments—we will discuss amendment 93 when we come to the final group—are a more effective and lasting mechanism to achieve those objectives. Although amendment 44 is well intentioned and I can understand where it comes from, it would not give the funding council any additional powers that it does not already have.

Amendment 93 will regularise the situation and is supported by Colleges Scotland. Whatever we do—I hope that amendment 93 is the right way to proceed—will provide support and succour to the Highland colleges and will give them a degree of reassurance on the matter, which is what they want. As far as I am aware, what we propose has the support of every Highland member in the chamber. I ask Mr McArthur to withdraw amendment 44, as the amendments that I have lodged will take care of the matter, which is something that we all support.

Liz Smith: I add our support, in principle, for the amendments in this group.

UHI is a unique institution, and we have been very conscious of the concerns that the individual colleges have raised. I am grateful to the cabinet secretary and the other members who have worked hard to try to resolve the issue. Given that UHI is such a unique institution, it is perhaps not surprising that that has been difficult, but I think that we are making progress. Therefore, we are happy to support the Government's amendments.

Liam McArthur: Given the cabinet secretary's remarks, I think that we will maintain a watching brief on this issue but we have probably done as much as we can through amendment 93, which I hope will be agreed to later. On that basis, I intend to withdraw amendment 44.

Amendment 44, by agreement, withdrawn.

Section 10—Regional strategic bodies: functions

Amendments 45 to 48 moved—[Michael Russell]—and agreed to.

Amendment 49 moved—[Marco Biagi]—and agreed to.

Amendments 50 and 51 moved—[Michael Russell]—and agreed to.

Amendment 52 moved—[Marco Biagi]—and agreed to.

Amendment 106 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 106 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
The Deputy Presiding Officer: The result of the division is: For 37, Against 78, Abstentions 0.

Amendment 106 disagreed to.

Amendment 107 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 107 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Gloucester and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alan (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (North Scotland) (SNP)
Brown, Gavin (Lothian) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Macleod, Aileen (Clydesdale) (SNP)
Macleod, Bruce (North East Scotland) (SNP)
Mackay, Jamie (Cumbernauld and Kilsyth) (SNP)
Macleod, Lewis (North East Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
MacAskill, Kenny (Edinburgh Easter) (SNP)
McDonald, Angus (Falkirk East) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
MacGregor, Jamie (Highlands and Islands) (Con)
MacInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Linlithgow) (SNP)
Macleod, Stuart (West Scotland) (SNP)
Milne, Nanette (East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Amendment 108 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 108 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumfartoon) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus ( Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The question is, that amendment 109 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McKay, Derek (Renfrewshire North and West) (SNP)
McKenzies, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 77, Abstentions 0.

Amendment 108 disagreed to.

Amendment 109 moved—[Neil Bibby].
The Deputy Presiding Officer: The result of the division is: For 37, Against 76, Abstentions 0.

Amendment 109 disagreed to.

Amendment 53 moved—[Michael Russell].

The Deputy Presiding Officer: The question is, that amendment 53 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Etnick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 101, Against 12, Abstentions 0.

Amendment 53 agreed to.

The Deputy Presiding Officer: Group 9 is on regional strategic boards: staff transfers etc. Amendment 54, in the name of the cabinet secretary, is grouped with amendments 110, 55 to 59 and 120. I point out that, if amendment 110 is agreed to, I will not call amendments 55 to 59 because of pre-emption.

Michael Russell: As I explained at stage 2, the basic policy intention behind the staff transfer provisions in the bill is twofold. The provisions assist in the sharing of services and ensure that, in multicollage regions, the regional strategic body has the power to give effect to its duty to plan for delivering coherent provision in the region. The judgment to be made in multicollage regions is in balancing the autonomy of the institutions with the ability of a regional body to pursue its regional plans.

I agree with what Mr Findlay seeks to achieve in amendments 55, 56 and 59, and amendment 110, in my name, achieves those things. There is no need to make specific provision for transfers outwith a region. The bodies involved have other powers to effect such transfers, so I am happy to remove the provisions from the bill that deal with such transfers. The Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to all transfers of staff made under new section 23L of the 2005 act as well as to transfers of staff from a regional strategic body to one of its assigned colleges. I know that unions wanted TUPE in the bill, and I have delivered on that.

16:30 Amendment 54 makes it clear that directions under new section 23K cannot be used to direct colleges to transfer staff. I know that some, including the Educational Institute of Scotland, support the balance that we have struck in the bill on the question of consent, but I know that the sector still has concerns, which are reflected in amendments 57 and 58, in the name of Liz Smith. I want to consult more widely on the issue and take the view of organisations that we cannot yet consult, which are the new regional boards. I therefore propose order-making powers that will enable changes to be made in the future; ministers will be under a statutory obligation to consult widely before using such powers and the order will be subject to the affirmative procedure so that there will be full parliamentary scrutiny, as provided for in amendment 120. I think that the amendments that I propose will meet the objections that are dealt with in the amendments from Mr Findlay and Liz Smith. I hope that that will be recognised in the decisions on whether to move the amendments.

I moved amendment 54.

Neil Findlay: Amendments 55 and 56 relate to the ability of colleges to transfer staff between regions. We believe that, in many cases, the distances involved mean that transfers could be problematic, as the commuting distances for those affected will fall outside what is reasonable. I understand that there is established employment law on the issue so, although the Government of course has the right to insert a section on it into the bill, the provision will be difficult to apply in practice. We therefore think that a straight deletion is best.

At stage 2, the cabinet secretary said that it might be beneficial for neighbouring regions to be able to transfer to one another—for example,
when sharing services. Amendment 110 from the Government attempts to clarify that and how, in such a scenario, consultation would be required with colleges, trade union representatives, students and so on, with a view to getting an agreement to the proposed transfer. Although that is a little progress, we still believe that our amendment is more appropriate. Amendment 59 recognises that TUPE applies to the transfer of staff and would write that into the bill.

Liz Smith: I thank the cabinet secretary for the comment regarding the affirmative procedure, because I think that that kind of accountability is essential. As the cabinet secretary said in his remarks, there is concern within the sector that some aspects of the transfer issue are not entirely straightforward or transparent. I am willing to listen on the basis that the minister suggested, so I will not move amendments 57 and 58.

The Deputy Presiding Officer: I call on the cabinet secretary to wind up.

Michael Russell: I have nothing to add.

Amendment 54 agreed to.

Amendment 110 moved—[Michael Russell]—and agreed to.

Section 11—Regional boards: constitution

Amendment 60 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 60 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mile, Nanette (North East Scotland) (Con)
For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgee, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Etritwick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentland) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Meline, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robinson, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Amendment 63 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alaine (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
Macaskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeay, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill ( Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Amendment 63 disagreed to.

Amendment 64 moved—[Michael Russell]—and agreed to.

Amendment 112 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glascow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glascow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Mahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Claydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glascow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamile (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christine (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aliene (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
The Deputy Presiding Officer: The result of the division is: For 53, Against, 59, Abstentions 0.

Amendment 112 disagreed to.

Amendments 65 to 70 moved—[Michael Russell].

The Deputy Presiding Officer: Does any member object to a single question being put on amendments 65 to 70?

Members: Yes.

The Deputy Presiding Officer: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Glackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Costance, Angela (Almond Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Joan (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Mothenwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
The Deputy Presiding Officer: The result of the division is: For 60, Against 53, Abstentions 0.

Amendment 65 agreed to.

The Deputy Presiding Officer: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Collins, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Bob (Caithness, Sutherland and Easter Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Easter) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
McKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, G3 (Clydebank and Milngavie) (SNP)
Roberson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGirr, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 61, Against 53, Abstentions 0.

Amendment 66 agreed to.

Amendments 67 and 68 agreed to.

The Deputy Presiding Officer: The question is, that amendment 69 be agreed to. Are we agreed?
The Deputy Presiding Officer: There will be a division.

**For**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (North East Scotland) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMaho, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (South Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and GALLOWAY) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Surgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Whee,lhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

**Against**

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Ealie, Jim (Edinburgh Southern) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Harvie, Patrick (Glasgow) (Green)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McArthur, Liam (Orkney Islands) (LD)
McGirr, Jamie (Highlands and Islands) (SNP)
McInnes, Alison (North East Scotland) (LD)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 92, Against 22, Abstentions 0.

Amendment 69 agreed to.

The Deputy Presiding Officer: The question is, that amendment 70 be agreed to. Are we agreed?

**Members:** No.

The Deputy Presiding Officer: There will be a division.

**For**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Maxwell, Stewart (South Scotland) (SNP)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dunfermline) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Smith, Drew (Glasgow) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Carlaw, Jackson (West Scotland) (Con)
Brown, Gavin (Lothian) (Con)
Boyack, Sarah (Lothian) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Doman, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graehame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
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McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (Highlands and Islands) (SNP)
McMullan, Stuart (North East Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Anneli (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
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McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Kilngston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milon, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 61, Against 53, Abstentions 0.

Amendment 70 agreed to.

The Deputy Presiding Officer: Group 10 is on collective bargaining. Amendment 1, in the name of Neil Findlay, is grouped with amendments 79 and 2.

Neil Findlay: We have heard for some time from the cabinet secretary that he is committed to collective bargaining in the college sector and that he desperately wants it to be reintroduced but, unfortunately, there is no mention of it in the bill. With that in mind, we moved amendments on the issue at stage 2 and we again seek to introduce them into the bill today. Amendments 1 and 2 aim to put references to collective bargaining in the bill and ensure that the Scottish Government lives up to and fulfils previous commitments.

Let us make it absolutely clear that Scottish Labour has successfully forced the issue on to the agenda. We have successfully brought the issue
into the bill but, rather than accepting our sensible amendments, the cabinet secretary acts in the same manner in which he has acted throughout the passage of the bill, by taking our proposals, creating his own amendment and introducing it at this very late stage in an attempt to claim the credit. It is the same cynical approach that he has taken to so many sections of the bill.

We will, of course, support amendment 79, and I hope that the cabinet secretary will, in his usual gracious manner, recognise the work—[Interruption.] I hope that he will recognise the work that we have put in on this important issue and support amendments 1 and 2.

I move amendment 1.

16:45

Michael Russell: I am absolutely committed to a system of national bargaining for terms and conditions in colleges. I raised the issue well before Mr Findlay was in the chamber, and I have done the—[Interruption.] Members should wait a moment, Presiding Officer. I hope that they will find it interesting to hear from me about the discussions that I have had with Mr Findlay on the matter. I now feel quite at liberty to divulge that information, given that we have just heard what I must say was a misrepresentation of the situation.

I have backed such a system for some considerable time. I have worked with the regional leads and the trade unions, and we now have a framework in place.

Amendments 1 and 2 are exactly the same amendments that were lodged at stage 2. Before stage 2, I asked to meet the Opposition spokespeople from all the parties. Mr Findlay came to that meeting, and it was not lengthy, but I asked him twice, "Are there any amendments that you would like to lodge? Is there anything that I can do to try to bridge the gaps that exist?" The matter that we are now discussing was never mentioned by Mr Findlay—not once.

Members: Oh!

Michael Russell: There we are. He may just have been forgetful at that stage.

When the amendments were lodged at stage 2, I explained to Mr Findlay very positively that I supported what we were both trying to do, and that I would be happy to work with him to lodge amendments that would actually work, as opposed to amendments 1 and 2, which would not work. In fact, if someone wanted national pay bargaining, those are the amendments that they would not lodge, but that is okay: everybody makes mistakes.

I said—[Interruption.] Yes, everybody makes mistakes—and members are about to hear about another one from Mr Findlay.

I said to Mr Findlay, "Come back and have a conversation with me about how we put this in the bill." We had our second meeting. The first meeting was nine minutes long; the second was seven minutes long. At the second meeting, Mr Findlay again wanted only to see the amendments that we were lodging. We shared those amendments, and amendment 79, which is before us now, achieves the aim and objective in question. However, Mr Findlay had already lodged the same two amendments. Was he going to withdraw them? No, he was not. What we have ended up with here is what we have always seen from Mr Findlay: he is the master of grandstanding on this.

Members: Oh!

Michael Russell: Yes.

Now, I am quite—[Interruption.] Gosh! It sounds as if a sea lion has got in here.

I am quite happy to share the credit for bringing forward the issue with any member in the chamber who wants to share it, because I hope that all members will accept that we should not back a balkanisation of pay and conditions in the college sector. It would have been of great credit to the Parliament if, instead of what we have heard from Mr Findlay, we had all said, "Yes, this is a good thing to do—let's do it." What we have heard from Mr Findlay has defined exactly his approach to the bill, which is regrettable. However, I am pleased that, despite those rather wasted 16 minutes of my life talking to him about it, we now have an amendment that we can agree on.

The Deputy Presiding Officer: I call on Clare Adamson to speak briefly, as we are now quite tight for time.

Clare Adamson: I speak in support of amendment 79, which, as the cabinet secretary has said, concerns a very important matter for the further education system. We must understand that the reason why we have lost collective bargaining in the system is the Tory-designed incorporation of the colleges. I fully support the cabinet secretary in his aim of addressing that problem.

Liam McArthur: Amendment 79, which will establish collective bargaining frameworks for college staff, has not come entirely out of left field, but that only raises the question why Mr Russell has sought to wait until stage 3 before showing his hand. I am sure that the committee as a whole would have welcomed the opportunity to take evidence on these provisions at stage 1, if nothing else to get a clearer understanding of the
implications for the different colleges throughout the country and their staff.

I appreciate that the intention is to set up a national advisory committee that will make recommendations, but I assume that the Scottish Government has done some modelling. On that basis, it would be helpful—even at this late stage—to get some idea of what this will mean for the college sector as a whole and across the regions.

Neil Findlay: I intend to press my amendments. If this was such a high principle of the cabinet secretary, he would have put it into the bill. He put nothing into the bill. He relied on us to bring the idea forward, such are his high principles. We introduced it at stage 2, and he knows that.

The cabinet secretary will know all about misleading Parliament, as we all know; we heard that last year.

Finally, the reason why the meetings were so short is that I felt very uncomfortable at the large portrait of the cabinet secretary staring at me in the room. The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMaho, Kenneth (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseannia (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahamne, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mills, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
opposite direction. Amendment 71 would give but we in Scotland seem to be moving in the opposite direction. Amendment 71 would give Scotland's colleges. Implications for the competitive advantage of commercial income. In turn, that has clear implications on colleges' ability to generate additional income. In this way, that has clear implications on colleges' ability to generate additional income.

Reclassification means that such private funding would be treated as public money, which could have major implications for how colleges work, including the independence test for their charitable status and how they work with other institutions such as businesses—John Henderson of Colleges Scotland raised that point earlier in the week. Reclassification would further extend the Government's ability to control colleges, particularly in terms of their borrowing powers. That would be detrimental to the creative and innovative practices of colleges and their ability to be fully competitive. Those are the essential features of the college sector, which allow it to rank alongside rather than be the so-called inferior relative of universities.

Likewise, there is further concern that reclassification might impact on some of the mergers that are in progress, since some of them will rely on the release of reserves that have been built up over several years and might also depend on colleges' ability to generate additional commercial income. In turn, that has clear implications for the competitive advantage of Scotland's colleges.

South of the border, the Government has relaxed controls on governance and borrowing, but we in Scotland seem to be moving in the opposite direction. Amendment 71 would give colleges the power to borrow money to help them to exercise their functions by allowing the regional board to grant such security and indemnity as it sees fit. Amendment 72 would remove the provisions that forbid the actions that I have just outlined. Amendments 81 to 83 would give all other college boards the same powers by amending the 1992 act.

I move amendment 71.

Liam McArthur: We turn to an issue of where power and responsibility should sit between colleges on the one hand and ministers on the other. In many senses, that goes to the heart of the difficulties that I have with the bill, notwithstanding the progress that has been made in a number of areas since stage 2. This is not just a principled objection to the meddling approach that the minister is pursuing; it is borne of legitimate concerns about the consequences for our colleges.

As the ONS has consistently made clear since 2010, the risk is that our colleges are reclassified as public bodies, given the level of ministerial control and intervention. The implications of that for college reserves, income and borrowing powers are serious. Moreover, it is difficult to see what, if any, incentive there would be for our colleges to continue tendering for contracts.

However, it appears that, since being warned of that threat back in 2010, Mr Russell has done little to avert the danger; he has been content to introduce a bill that almost certainly makes the situation more clear cut in terms of ONS definitions. In the absence of any obvious action by the cabinet secretary, Liz Smith’s amendments in the group at least attempt to pick up on the threat.

Removing the need for ministerial approval for the disposal of land and property would allow a degree more discretion for colleges and their boards while providing a little more of the arm's-length relationship that the ONS insists is required to avoid reclassification. On that basis, I encourage the Government to support the amendments, though I do so more in hope than in expectation.

Michael Russell: As I said at education questions earlier, there is a way in which Mr McArthur and Liz Smith could help to influence the matter immediately. They should speak to their colleagues in Westminster and call off the dogs from the UK Treasury, which is involved in an unwelcome set of actions of reclassification.

There is huge inconsistency in the UK Government's approach. The UK Government is backing actions south of the border that include the imposition of a sort of commissar for further education who would intervene in what are called...
failing colleges. [Interruption.] Labour no doubt supports that because it supports almost everything that the Tories and Liberals do. A moment’s rationality would make Labour think that, if that is direct intervention in the college sector south of the border, it is a type of intervention that should demand reclassification of colleges in England similar to the reclassification that we and, I have to say, Wales are suffering.

We will not allow education policy to be driven in that way from outside Scotland, either by accounting practice or by hostility from the UK Government, so we are taking a number of actions to assist colleges. I would like to ensure that the bill did the same, but it is impossible to do that, because the classification issue is reserved to Westminster. Liz Smith’s amendments would not nullify the ONS’s classification of colleges or mitigate the effects. I would like to think that it was possible to do that, but it is not possible. Unfortunately, Liz Smith is wrong or misled on the matter.

Amendments 71, 72 and 81 to 83 would mean that regional boards and incorporated college boards could borrow money without legal constraint—just think about that. They could also grant securities and give guarantees or indemnities as they saw fit. No matter what members think of them, regional boards and incorporated college boards are public bodies. Given the percentage of public funding that colleges receive, controls are not only appropriate but essential. College assets have been built up largely as a result of public investment. Colleges are public assets. It would be wholly inappropriate to have colleges’ finances managed in the proposed way. As the amendments would not nullify the ONS classification, they are ineffective and irresponsible.

Other aspects of the nature of the relationship between colleges and the Government in Scotland mean that reclassification would continue to apply. The relationship between the Government and colleges is founded on strong partnerships. It has associated governance arrangements, which we are strengthening in the bill in order to improve democratic accountability. We should remember that that was a key element of the thinking behind the bill. Democratic accountability was vastly diminished by what took place in 1992 and 1993.

We cannot work our way around ONS reclassification in the proposed way. In my view, ONS reclassification is politically driven and we need to recognise that and do as much practically on the ground as we can. That is what we will try to do. The amendments would not do that and would lead us down some very dangerous paths.

Liz Smith: It is extraordinary that the cabinet secretary says that we are being irresponsible, when the situation in Scotland is one of reversing the autonomy of colleges. The colleges are very clear about the danger of the situation. In fact, a substantial amount of money comes from private funding. There are extraordinary dangers in completely reclassifying colleges as public bodies. That is why I will press my amendments.

17:00

The Deputy Presiding Officer: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glascow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
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Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glassgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mackenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
McLeod, Margaret (Dumfries and Galloway) (SNP)
McPherson, Alasdair (Highlands and Islands) (SNP)
McQuillan, John (Glasgow) (SNP)
McCulloch, Margaret (Central Scotland) (Ind)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McDonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McGhee, Bill (Perthshire South and Kinross) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
McIntosh, Ken (Edinburgh Eastern) (SNP)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Margaret (North East Scotland) (SNP)
Mcgrady, David (Glasgow Kelvin) (SNP)
McKay, Alex (Dumfries) (SNP)
McKenzie, Mike (Highlands and Islands) (SNP)
McIntyre, Kezia (Glasgow) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 51, Against 61, Abstentions 2.
Amendment 71 disagreed to.
Amendment 72 moved—[Liz Smith].

The Deputy Presiding Officer: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Amendment 72 disagreed to.

The Deputy Presiding Officer: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springfield) (Lab)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
Mcnee, Duncan (Greenock and Inverclyde) (Lab)
Mctaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)

The Deputy Presiding Officer: The result of the division is: For 51, Against 61, Abstentions 2.

Amendment 72 disagreed to.
The Deputy Presiding Officer: There will be a division.

For

Ballie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fahy, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Amendment 76 disagreed to.

Amendment 75 moved—[Liz Smith]—and agreed to.

Section 13A—Further education institutions: good governance

Amendment 76 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.
Bibby, Neil (West Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baillie, Jackie (Dumbarton) (Lab)

For division.

The question is, Amendment 4 be agreed to. Are we agreed?

The result of the division is: For 35, Against 75, Abstentions 0.

The Deputy Presiding Officer: The result of the division is: For 35, Against 75, Abstentions 0.

Amendment 76 disagreed to.

After section 13A

Amendment 4 moved—[Jenny Marra].

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)

Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glascow) (Green)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davies, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
 FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)

Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus ( Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McLeod, Lewis (North East Scotland) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Scott, David (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 35, Against 75, Abstentions 0.
The Deputy Presiding Officer: The result of the division is: For 40, Against 73, Abstentions 0.

Amendment 4 disagreed to.

Amendments 77 and 78 moved—[Marco Biagi]—and agreed to.

After section 14

Amendment 79 moved—[Michael Russell].

The Deputy Presiding Officer: The question is, that amendment 79 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
The Deputy Presiding Officer: The result of the division is: For 101, Against 12, Abstentions 0.

Amendment 79 agreed to.

Amendment 80 moved—[Clare Adamson]—and agreed to.

Schedule—Modification of enactments

Amendment 81 moved—[Liz Smith].

The Deputy Presiding Officer: The question is, that amendment 81 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Murray, Stewart (Clackmannanshire and Dunblane) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 101, Against 12, Abstentions 0.

Amendment 79 agreed to.

Amendment 80 moved—[Clare Adamson]—and agreed to.

Schedule—Modification of enactments

Amendment 81 moved—[Liz Smith].

The Deputy Presiding Officer: The question is, that amendment 81 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Murray, Stewart (Clackmannanshire and Dunblane) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross- shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
the changes that were made at stage 2 in affirmative procedure provides consistency with The change from the negative procedure to the college boards of management to be modified. (Scotland) Act 1992 that allows the powers of section 12 of the Further and Higher Education relation to an existing order-making power in brief.

Smith and make people feel better, so I will be 92, 93, 116 to 118, 94 and 98.

cabinet secretary, is grouped with amendments amendments. Amendment 84, in the name of the he is prepared to do so.

Amendments 82 and 83 not moved.

Amendment 81 disagreed to.

Amendments 82 and 83 not moved.

The Deputy Presiding Officer: We move to group 12. As we have exceeded the agreed time limit, under rule 9.8.4A, I consider it necessary to allow the debate on group 12 to continue beyond the limit to allow those with a right to speak on the amendments in the group to do so. The cabinet secretary may, of course, accept interventions if he is prepared to do so.

Group 12 comprises minor and consequential amendments. Amendment 84, in the name of the cabinet secretary, is grouped with amendments 92, 93, 116 to 118, 94 and 98.

Michael Russell: I would like to emulate Liz Smith and make people feel better, so I will be brief.

Amendment 84 changes the procedure in relation to an existing order-making power in section 12 of the Further and Higher Education (Scotland) Act 1992 that allows the powers of college boards of management to be modified. The change from the negative procedure to the affirmative procedure provides consistency with the changes that were made at stage 2 in response to concerns that were raised by the Subordinate Legislation Committee. It provides additional parliamentary scrutiny.

Amendment 92 ensures that the Education Act 1994 continues to apply to incorporated colleges.

The principal effect of amendment 93 is to add two new criteria to the fundable body list. First, it ensures that colleges and universities seek to ensure that there is a students association. That is a big step forward for colleges and I am glad that it is happening. Given the way in which the bill has been framed, the requirement will also apply to assigned colleges and learning providers that are directly funded by the funding council. Under the reform process, benefit for all learners should be at the heart of everything that we do. Autonomous, sustainable and appropriately funded student associations will help us to achieve that.

The second criteria in relation to fundable bodies addresses the constitutional arrangements for the type of regional strategic body that is also a university or college that is eligible for funding. Many individuals and groups have expressed serious concerns about safeguarding the nature of the UHI’s delivery of FE arrangements in its region. I pay tribute to Dr Michael Foxley and his working group, which made a series of important recommendations in that regard.

As I confirmed to Mr MacArthur, amendment 93 adds to the fundable body criteria for certain learning providers that are eligible to receive funding from the funding council. In practical terms, it means that the funding council will need to be satisfied that the UHI is delivering the arrangements in the manner agreed to by the UHI working group and articulated in its report. The UHI is an important issue for most people and I hope that that will be welcomed by the Parliament.

Amendment 94 amends section 9(4) of the Further and Higher Education (Scotland) Act 2005. It is technical in nature and I will not go into it any further.

Amendment 98 requires the funding council to inform regional colleges and regional strategic bodies of the socioeconomic groups, skills needs and economic, social and cultural issues that it has identified in Scotland that are relevant to them in discharging their duties.

Amendments 116 to 118 clarify ministers’ powers in new section 7D of the 2005 act as they extend to incorporated colleges.

I move amendment 84.

Amendment 84 agreed to.

Amendments 85 to 88 moved—[Michael Russell].
The Deputy Presiding Officer: The question is, that amendments 85 to 88 be agreed to. Are we agreed?

Alex Fergusson (Galloway and West Dumfries) (Con): On a point of order, Presiding Officer. Should the Parliament not be asked whether it agrees that a single question be put on the amendments?

The Deputy Presiding Officer: Yes, you are absolutely right. Does any member object to a single question being put on amendments 85 to 88?

Members: Yes.

The Deputy Presiding Officer: We will therefore take the amendments individually.

The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Joe (Dundee City West) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Goldie, Annabel (West Scotland) (Con)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Dumfries and Galloway) (Con)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patrica (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 63, Against 17, Abstentions 32.

Amendment 85 agreed to.

Amendments 86 to 88 agreed to.

Amendment 115 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 115 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dunde City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyle and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
The Deputy Presiding Officer: The result of the division is: For 52, Against 60, Abstentions 0.

Amendment 115 disagreed to.

Amendments 89 to 91 moved—[Michael Russell].

The Deputy Presiding Officer: The question is, that amendment 89 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dorman, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robinson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watson, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Russell (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (East Dunbartonshire) (Lab)
Lamont, John (East Dunbartonshire) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Martin (Glasgow Provan) (Lab)
McDonald, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milk, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 63, Against 48, Abstentions 0.

Amendment 89 agreed to.

The Deputy Presiding Officer: The question is, that amendment 90 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Lothian) (SNP)
Crawford, Bruce (Sirling) (SNP)
Cunningham, Roseanna (Forthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahamie, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk West) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Roberson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumbries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutland) (Lab)
Lamont, John (Edinburgh, Oxbridge and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Highlands and Islands) (LD)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 62, Against 49, Abstentions 0.

Amendment 90 agreed to.

The Deputy Presiding Officer: The question is, that amendment 91 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Lothian) (SNP)
Crawford, Bruce (Sirling) (SNP)
Cunningham, Roseanna (Forthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahamie, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk West) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Roberson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Killmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (Dumfries and Galloway) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urqhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyclack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 63, Against 48, Abstentions 0.

Amendment 91 agreed to.

Amendment 2 moved—[Neil Findlay].

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyclack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Kelly, James (Rutherglen) (Lab)
The Deputy Presiding Officer: The result of the division is: For 32, Against 79, Abstentions 0.

Amendment 2 disagreed to.

Amendments 92, 93, 116 to 118, 94 to 98, 119, 120 and 99 moved—[Michael Russell].

The Deputy Presiding Officer: Does any member object to a single question being put on the amendments?

Members: Yes.

The Deputy Presiding Officer: We will go through the amendments individually.

Amendments 92, 93, 116 to 118, 94 to 98, 119 and 120 agreed to.

The Deputy Presiding Officer: The question is, that amendment 99 be agreed to. Are we agreed?

Members: Yes.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Lisa (East Kilbride) (SNP)
Fergusson, Alex (Kilmarnock and Irvine Valley) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linthgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Strathkelvin and Bearsden) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonagh, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paton, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Stewart, John (Central Scotland) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Lisa (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linthgow) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Strathkelvin and Bearsden) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonagh, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paton, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Stewart, John (Central Scotland) (SNP)
The result of the division is: For 60, Against 49, Abstentions 0.

Amendment 99 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments. Thank you all.

The Deputy Presiding Officer: The result of the division is: For 60, Against 49, Abstentions 0.

Amendment 99 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments. Thank you all.

The Deputy Presiding Officer: The result of the division is: For 60, Against 49, Abstentions 0.

Amendment 99 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments. Thank you all.
Post-16 Education (Scotland) Bill: Stage 3

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-07108, in the name of Michael Russell, on the Post-16 Education (Scotland) Bill.

17:25

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Today is a good day for learners in Scotland: we have given final consideration to a bill that shows what can be achieved when the Government, the Parliament and stakeholders work together for the benefit of Scotland.

I said during the stage 1 debate that my hope was that the final iteration of the bill would be a product of partnership. I am delighted to say that that is exactly what it has turned out to be.

I thank the members of the Education and Culture Committee for their thorough consideration of the bill. In particular, I thank Stewart Maxwell for his professional and fair-minded approach in chairing its proceedings. I thank the Subordinate Legislation Committee and the Finance Committee for their valuable contributions to scrutiny of the bill, and I thank my officials and the officials of the many organisations that have worked closely with us to improve the bill at each stage.

The depth and quality of positive engagement and constructive debate between the Government and stakeholders has been excellent. That has resulted in a stronger bill that is supported by staff and students, and by colleges and universities.

It is a bill that has scope and ambition; it was never going to be possible for everyone to agree on everything. Stakeholders have argued passionately and persuasively—but usually pragmatically—for the amendments that they believed would improve the bill. Despite some distractions, this has been what I would call a mature and enlightened approach to developing legislation, and I commend all those who have contributed to it.

There have been important changes to the bill, which have improved what I believe was already a good bill. The amendments are indicative of this Government’s determination to listen, its commitment to working in partnership and its focus on producing high-quality legislation. We listened when the university sector told us that the term “management” in the governance provisions represented an unintentional threat—it came from another piece of legislation—to institutional autonomy. We listened when the college sector told us that assigned colleges needed larger boards, and we listened when staff and students told us that they should be consulted on development of the widening access agreements.

We have accepted amendments from across the chamber. We have listened because we are a Government that forms its policies—whenever we can—on the basis of consensus and agreement on what will provide the best outcome, which on this occasion is the best outcome for learners in Scotland. We listened because we understand where the knowledge and expertise on Scottish education lies. It lies in the sector, in the staff and the students who have made our post-16 education system a good system that can be better.

The fruits of our partnership are clear in the amended bill, which will be voted on shortly. It tackles head on the problem of underrepresentation of people from our deprived communities who, for too many generations, have lacked the opportunities but not the talent or the ambition to succeed.

The Victorian Liberal politician and rector of the University of Aberdeen, Mounstuart Grant Duff, once said:

“There is no investment of national energy that so quickly brings fame to a nation, as energy invested in acquiring knowledge.”

However, for decades—perhaps even for centuries—widening access to higher education has been something that we aspire to; something that we would like to achieve some day. That day is dawning because the bill establishes widening access as one of the core matters to which the Scottish Further and Higher Education Funding Council must have regard in exercising its functions. It enshrines widening access agreements in primary legislation and it enables ministers to drive widening access forward by identifying—in consultation—the priority groups on which the efforts of institutions must focus.

The bill also makes substantial improvements to the governance of both the college and university sectors, delivering appropriate levels of assurance for the substantial investment that the state makes of about £1.6 billion every year.

In the college sector, the bill will ensure that statutory regional chairs are appointed through the public appointments process, which ends the reign of self-appointed and, sometimes, self-perpetuating boards, thereby dramatically improving governance and accountability. It also makes provision for the governing bodies of colleges and universities to have explicit regard to equalities duties in appointing new governors, which makes clear the Government’s desire that the concern about lack of diversity on governing bodies be addressed. We could do more with the
full powers of a normal Parliament—and that will come.

The bill will pave the way for the re-introduction of national pay bargaining in the college sector, which is an important step towards ending what I have called the balkanisation of pay and conditions that was set in train by Michael Forsyth in the early 1990s. It protects the rest of the United Kingdom’s students from ever having to pay more for a Scottish education than they can access in fee support from their own Administrations. They would have been better served had that monetisation of higher education never started south of the border.

The bill contains innovative provisions that will allow Skills Development Scotland to share and receive information in more structured ways, which will be critical to helping young people who are at risk of dropping out of education, and it establishes the legal structures that are necessary for the proper operation of a regional college system, with all the acknowledged benefits that that will deliver. It does not tinker around the edges or skirt round the issues. It will deliver real reform for the benefit of learners and of Scotland as an essential part of a wider reform programme.

It is important to reflect on the remarkable progress that has been made since the publication of “Putting Learners at the Centre” in September 2011—just 21 months ago. That paper set out our ambitious plans to reform the college sector, to maximise its potential and to ensure that it delivers the best possible outcomes for learners and makes the best possible contribution to the Scottish economy. At the heart of the paper lay the belief that colleges of scale, distinction and influence—educational powerhouses that could transform learning opportunities for learners in their regions—are the best way to remove unnecessary competition and wasteful duplication, and thereby to allow a stronger focus on delivering better outcomes.

In those 21 months, college leaders have seized on the opportunities that the reform programme presents by setting in train an unprecedented programme of no less than 10 college mergers. Once those structural changes are complete, we will reap the full benefits of reform. We look forward to more strategic planning of provision, with a sharper focus on the needs of employers, which will simultaneously improve the life chances of learners and generate the skills that are necessary to drive forward our economy.

Regionalisation will maximise the impact of colleges and will ensure that provision always leads somewhere positive, whether that be to higher learning or to employment. It will help to create closer links between schools, colleges and universities, and will result in better-quality provision through the emergence of innovative centres of excellence in specific curriculum areas. Underpinning all that are the outcome agreements, which for the first time are making crystal clear the relationship between public funding and what institutions are expected to deliver.

The reform process also applies to the university sector. Our universities are already among the best in the world, so there is no need for a revolution, but improvement is always possible. The bill will widen access and increase accountability. The outcome agreements will provide absolute clarity on the arrangement that exists between the state and the universities, which can only help both sides.

We have no intention of moving away from our commitment to free education, and we have removed tuition fees for about 125,000 students. We have backed those students to succeed with by far the best student support package that is available anywhere in the United Kingdom. In this academic year, we have invested a further £10 million to create an additional 2,089 funded places. Those places are targeted at recruitment and retention of students from Scotland’s most deprived communities. They will increase articulation from college to university and boost skills for growth. Additional places are being provided in key sectors that are likely to have the greatest impact.

Our post-16 reforms will ensure that Scotland is truly a nation where there is opportunity for all. I urge members across the chamber to put aside the differences that have divided us during the bill’s consideration and to consider the bill on its merits and on the basis of the benefits that it will deliver for people all over Scotland.

There are no political or practical reasons for opposing the bill. It will extend access to our poorest communities. To oppose the bill would be to oppose more accountable and representative governance, and to oppose a return to national pay bargaining in the college sector. Worst of all, to oppose the bill would be to oppose the efforts of the students, staff and institutions that have worked so hard to help create the bill in its present form. I urge Parliament to come together and to unify in backing the judgment of those who know Scottish education best, who are now backing the bill.

I move,

That the Parliament agrees that the Post-16 Education (Scotland) Bill be passed.

17:33

Neil Findlay (Lothian) (Lab): As a member of the Education and Culture Committee, I have been
involved in scrutinising the Post-16 Education (Scotland) Bill from the outset. I have observed its passage at close hand, as it has gone through each stage of the legislative process, and I have to say that it has not been a pretty sight.

I will be frank. As a relatively new member of this place, the bill is the first significant piece of proposed legislation that I have observed at all stages of its passage through Parliament. I expected policy making and the legislative process to be much, much better. I was led to believe that the committee system was one of the Parliament’s great strengths. Turning ideas and policies into legislation and creating the laws of this land is the role of the committees and this chamber. As such, it is right that legislation must be properly scrutinised rather than rushed, and the rationale for introducing it must be made clear from the outset. On both those counts, the bill has failed miserably.

The reality is that this has been a shambolic botch job from the beginning. During the committee’s evidence session with the bill team, it became clear that the team that was dealing with the detail of the bill was just as unsure of the bill’s purpose and that detail as we were. I am not criticising those public servants, who were doing their jobs to the best of their ability, but am simply sympathising with their plight.

Then we had discussions with the stakeholders—the universities, the colleges, the trade unions, the students, the National Union of Students Scotland, the local authorities and the charities—almost all of whom had very serious concerns about the bill and its content. Such was the extent of our genuine concerns, which were shared with the other two Opposition parties on the committee, that we called for the bill to be withdrawn. At the time, I called the bill “a dog’s breakfast”; on reflection, I want to withdraw that charge because I now realise that that was an unfair slight on the pet food industry. In any case, the bill should have been withdrawn and brought back in a more coherent and comprehensible state. That would have been the right and responsible thing to do. Our motivation was the production of good legislation and the avoidance of bad, but—true to fashion—the cabinet secretary blustered on regardless.

There has been some improvement during the bill’s progress through the parliamentary system, although I have to say that that would not have been difficult. Had the cabinet secretary filled 42 pages with randomly selected words from the dictionary, we could have amended them into a more coherent piece of legislation with fewer amendments than we have witnessed to date. Let us be honest—it could not have been any worse. David Belsey of the Educational Institute of Scotland exemplified the confusion very eloquently when he said about the new colleges structure:

“If it’s the Government’s wish to create a nationally incoherent FE structure with a myriad of different types of colleges, governing bodies and funding mechanisms with separate regulations for each, then this Bill is the way to go about it.”

That comment was about a structure that the cabinet secretary described as “simple”. It was so simple that the sections of the bill relating to colleges required more than 110 amendments to get the bill into the state that it is in today.

Of course, most of those amendments came from the cabinet secretary himself. With every dozen amendments that he lodged, the case for withdrawal became stronger and stronger. This is a bill that had the cabinet secretary almost pleading with the committee to come forward with amendments to bail him out—and come forward we did. We lodged amendments on college regionalisation, on equal opportunities, on trade union representation, on collective bargaining, on widening access further than the government proposes, and on many other areas. What happened? All 76 amendments that were lodged by the cabinet secretary and most of the Scottish National Party amendments were agreed to, but how many of the 48 stage 2 amendments that were lodged by Labour were accepted? Surprise, surprise! Not one was accepted, and neither were the vast majority of amendments from the other Opposition parties. So much for the great unifier—so much for cabinet secretary’s commitment to working together to improve the bill. All the amendments that we lodged reflected the concerns of third-party groups and stakeholders, but all were voted down and rejected and the same thing has just happened during today’s stage 3.

This is a bad bill. Much of what is in it could have been achieved without legislation. It centralises power in the cabinet secretary’s hands—

Chic Brodie (South Scotland) (SNP): I have listened to all Neil Findlay’s comments and complaints, but I think that the trade unions should understand his position on this matter. Is he actually going to vote against a bill that paves the way for national pay bargaining? If so, what has become of the Labour Party?

Neil Findlay: If we end up not voting for the bill, that does not mean that we are against everything in it. Mr Brodie’s argument is nonsensical. We have argued our case constructively throughout the process, and the cabinet secretary has rejected it time and again. I will take no lectures from Chic Brodie or anyone else on this matter.
As I have said, it is a bad bill. Much of what is in it could have been achieved without legislation. It centralises power, compromises autonomy and accountability, confuses college governance, has limited ambition with regard to widening access and fails to challenge gender bias in our higher education governance.

The bill was hurried and badly thought out. It sought to cover the tracks of a disastrous colleges policy that was based on cuts to courses, jobs and places and was not aimed at improving opportunities for our young people. It is a fundamentally flawed bill with the stamp of the cabinet secretary all over it.

17:40

Liz Smith (Mid Scotland and Fife) (Con): I do not doubt for a minute that this is an important time in further and higher education—particularly given the significant challenges that our colleges and universities face—or that the Scottish Government has a duty to consider whether Government has a legislative role to play in assisting them with meeting those challenges.

That said, the scope of the bill should have been clear. The Scottish Government's intentions, the reasons behind the bill and—more important—the evidence for why it was necessary should have been clear. Parliamentarians should have been left in no doubt at all about what the bill was designed to do, and there ought to have been a very clear signal from colleges and universities that they were receptive to the proposed changes.

There ought also to have been a very clear message that the Scottish Government, the colleges and universities and the Scottish Further and Higher Education Funding Council were largely in agreement that the bill was capable of delivering the policies that will best deliver excellence in our institutions, maintain and increase their international reputation, and respond to the economic and social needs of local economies.

From day 1, none of that has been clear. Despite the Scottish Government's protestations that new legislation is essential, many people in the sector did not share that view; indeed, colleges and universities struggled to see the powerful evidence that would prove that case. What was it that they were not doing properly in respect of their current structures, that could not be achieved by outcome agreements or, fundamentally, that was holding back education?

I repeat what I said at stage 1. The Scottish Conservatives had some sympathy with the principles of the bill, especially the desire to widen access, but as time passed and after lengthy and tortuous committee examinations of a large amount of evidence, we increasingly came to the view that the bill was both unnecessary and open to all kinds of unintended consequences that could be detrimental to both sectors.

Apart from the presentational problems that created the need for unnecessarily complex deliberations at stage 2, major policy issues are involved. I want to look at those issues in the context of the increasingly competitive international situation for our universities and the need for an increasingly diverse and competitive college sector that is best able to serve the needs of local economies.

The good governance that exists is not in doubt; I do not believe that it ever was. If there had been compelling evidence that there were serious examples of bad governance and that they were harming education and holding back our institutions, a case might have been made for legislation. The policy memorandum did not explain any problems, and Professor von Prondzynski was at pains to say that he thought that the existing structures were "largely excellent". That rather begged the question why the Scottish Government was so intent on such an unnecessary overhaul.

I fully respect the views of NUS Scotland and the University and College Union, and I looked carefully at the claims that they made, many of which were in the context of social justice, but I could find little in their arguments that suggested that the operations of our colleges and universities were, in fact, damaging education.

The focus on widening access should not be in our colleges and universities, although they are important; the fundamental focus should be in our schools, because if we were doing things a little bit better in them, we would not need to have any kind of positive discrimination in favour of any groups of students.

On autonomy in the sector, we should look around the world—it does not really matter where. The Organisation for Economic Co-operation and Development, the World Bank and the Shanghai university tables make it plain that success is greatest in the nations in which Governments are less rather than more involved. In Finland in 2010, the state was removed from universities because it was stifling autonomy and holding back research and development, innovation and knowledge exchange.

To sum up—I will return to this issue at the end of the debate—I cannot see compelling evidence that makes the bill necessary. I ask the Government to come back yet again to explain why we should have to go through radical reform when that compelling evidence is not visible.
The Deputy Presiding Officer: Thank you very much. Before we move to the open debate, because of the number of members who wish to take part in the debate, I invite the Minister for Parliamentary Business, on behalf of the Parliamentary Bureau, to move, under rule 11.2.4, a motion to move decision time tonight to 6.25 pm.

Motion moved,

That, under Rule 11.2, Decision Time begin at 6.25 pm.—[Joe FitzPatrick.]

Motion agreed to.

The Deputy Presiding Officer: We turn to the open debate, with speeches of four minutes, please. I call Marco Biagi, to be followed by Neil Bibby.

17:45

Marco Biagi (Edinburgh Central) (SNP):

Thank you, Presiding Officer. I am very grateful for the chance to speak in the debate, which until a few seconds ago I did not think I would have.

The bill is not the first step in widening access, nor is it the last. At 6.25 we will not be able to say “job done” and move on. The price of widening access is eternal vigilance against the social and economic inequalities that will, for as long as they exist, try to pull young people and their life paths in different directions.

The amendments that I proposed earlier built on amendments that I proposed at stage 2, and I worked on them collaboratively with the cabinet secretary. However, they also built on actions that I took further back when, as a student representative, I argued long and hard to bring down barriers to access. Indeed, they built on the steps that I took as a 17-year-old from a state school and a family with no background in higher education, when I packed my bags and went off to study at Scotland’s oldest university.

Since I have been in politics, there has been no pulling up the ladder; instead, I have always tried to give a leg-up. Abolishing tuition fees and increasing support for living costs to record levels opens the door, but as MSPs we must ensure that more is done to help students across the threshold. The lead measure in the bill for widening access is the system of targets. I believe that targets must change behaviour in institutions so that they make their approaches and reaching out stronger, higher and deeper, because the status quo is just not an option. When the higher education sector receives more than £1.5 billion a year of ever-scarcer public money, all institutions have to recognise that widening access is something that they do and that it is not someone else’s problem.

The stark statistics of the past decade speak for themselves—usually through the Scottish index of multiple deprivation. I have been as much of a critic of the SIMD as anyone else; I do not think that it represents parts of my constituency adequately, and I believe that it is far too blunt a tool. However, I criticise the SIMD as someone who wishes to see another yardstick for measuring socioeconomic disadvantage rather than something completely different being measured.

I believe that the bill now strikes the right balance of flexibility and prescription. Universities come in all shapes and sizes, so the approach for each will need to be tailored accordingly. We need only look at the example of two institutions that are headquartered in my constituency: the Open University in Scotland and the University of Edinburgh, whose different approaches make for a striking contrast.

My successful amendment at stage 2 enshrined the participation of staff and students in the widening access agreements that will be set out with each of the institutions and which will guide the approaches. My hope was that by doing that we would ensure that the approaches would be better designed and would ultimately have a greater chance of success. It is absolutely crucial that the targets are successful.

In the same vein, I also proposed an amendment to ensure the review of widening access overall. I say to those who are sceptical about the targets that they should wait to see that review’s findings on how they have been working. Indeed, I ask of anybody who is critical of the bill’s provisions on widening access: if not this bill, what bill, and if not through targets, how? We must deliver change.

Students come in all shapes and sizes, too. We know from study after study and pilot after pilot that when students who have been separated by background, privilege and advantage all their lives sit down next to one another in the same laboratories and lecture halls, those who had been excluded rise to the challenge. That is not social engineering; that is the evidence of countless studies. I think that when the glorious diversity of our nation is reflected in the labs and lecture halls, then and only then will our job be done.

The Deputy Presiding Officer: Many thanks. I now call Neil Bibby, who has four minutes, to be followed by Stewart Maxwell.

17:49

Neil Bibby (West Scotland) (Lab):

At stage 1, along with other Opposition parties, Labour called for the bill to be delayed and redrafted because we felt that it was a bad bill that was incoherent, confused and clumsy. Unfortunately, our calls at
stage 1 were not heeded and the SNP Government used its majority to carry on regardless. As a result, nearly 200 amendments were lodged at stage 2 and more than 100 amendments were lodged to be debated at stage 3 today. For the cabinet secretary's benefit, I confirm that that means that the number of amendments has gone down, rather than up, between stage 2 and stage 3, but that is testament to our view that the bill was badly drafted. That view is backed up by the fact that the cabinet secretary has lodged more than 100 amendments of his own. Today, the bill may be less bad as a result of the Labour amendments lodged by the Labour Party and some Labour amendments lodged by Mike Russell, but many of our other suggestions were rejected during the process, and the bill is not fit to be supported.

A significant number of outstanding issues still need to be addressed. Some of those, but not all, might be dealt with through the higher and further education governance codes, which will need further scrutiny by the Parliament before their implementation by the Scottish funding council. Those issues include local representation on college boards and whether principals may participate in board meetings where board appointments and the principal’s pay are being discussed. However, the governance codes alone will not suffice because some provisions in the bill do not go far enough, some raise unanswered questions and some could have unintended consequences.

As Neil Findlay said, much that is in the bill could have been achieved without legislation. The bill centralises power in the hands of the cabinet secretary without sufficient checks—the cabinet secretary rejected a number of amendments today that would have provided those checks. The bill compromises autonomy and accountability, confuses college governance, has limited ambition and, I think, pays lip service to widening access. The bill also fails to challenge gender bias in our higher education governance arrangements by simply restating United Kingdom legislation. Worst of all, the bill will do nothing to create a single college place.

In the time remaining, I want to focus on the issue of widening access, which is an aim that I am sure we all fully support. As I have said previously, questions need to be raised about university admissions policies, but questions need to be raised about Scottish Government policy, too. The Scottish Government has not stated by how much the bill will improve access and it has not set a target or a timescale. In today's newspapers, Michael Russell is quoted as saying that a further 16,000 young people from deprived backgrounds “could” obtain a degree. The question is not how many could do so but how many will do so. The cabinet secretary cannot tell us because all of that is still to be negotiated with the institutions.

Michael Russell: The estimate is 16,000. Can the member explain how many would benefit if the bill did not go through? Given that you will not support the bill, how many would you achieve?

Neil Bibby: This is your bill, cabinet secretary—

The Deputy Presiding Officer: Speak through the chair, please.

Neil Bibby: I am asking how many young people from deprived backgrounds will get into university as a result of the bill, but there is no answer from the cabinet secretary.

When challenged on that point by the committee, the cabinet secretary said that he did not expect an overall target to be set. If the Government was serious about widening access, it would be serious about answering such questions. Officials even downplayed the possibility of financial penalties if universities did not meet targets, although the cabinet secretary has now talked up that possibility. All the bill’s aims are to be achieved without any additional budget—and without any displacement, either. If that sounds too good to be true, that is because it probably is.

As a last line of defence, Mike Russell may now desperately say that other parties are voting against widening access, but he and the SNP know all about voting against widening access. SNP members voted against widening access when they slashed college budgets in 2011 and in 2012. SNP back benchers even applauded and cheered the vote to cut college budgets, and, therefore, widening access, in February this year—that is not to mention that they voted to cut the bursaries of the poorest students in Scotland.

The Deputy Presiding Officer: You must conclude.

Neil Bibby: This has not been a good year for Mike Russell. He misled Parliament about college budgets, he had a well-publicised and embarrassing spat with a college chair over a spy-pen and now, to cap off the year, he can take his SNP poodles with him on the bill but he cannot take with him this Parliament, which he apparently wants to disrupt.

17:54

Stewart Maxwell (West Scotland) (SNP): The committee has had an interesting journey taking the bill through. We were involved in a very intense process with a lot of difficult and, I think, interesting evidence on what is a very complex bill that deals with a number of areas, but—I will come
on to this point in a moment—that is what Parliament and its committees are supposed to do. I am not surprised, but I am disappointed, by Labour’s reaction to having to engage in that difficult process.

To speak briefly as the convener of the Education and Culture Committee, I thank all the committee members for their work and effort and for their dedication to going through the bill and treating it with the seriousness that it obviously deserved. I thank all the witnesses who gave us oral evidence as well as those who submitted written evidence—they certainly deserve our thanks. I particularly thank the clerking team and the Scottish Parliament information centre for their efforts in supporting us through the process.

Throughout all the stages of the bill, some members, particularly Labour Party members, have argued that the bill is a dog’s breakfast, a shambles and badly drafted. Their argument is based on the fact that there have been so many amendments. There have been a lot of amendments, with 196 at stage 2 and 115 at stage 3. However, if that is the definition of a badly drafted bill, the Land Reform (Scotland) Bill was an utter disaster, because for it there were 492 amendments at stage 2 and 215 at stage 3. What an utter catastrophe that legislation must be, Mr Bibby and Mr Findlay. You must be absolutely ashamed of it.

Neil Findlay: Will the member take an intervention?

Stewart Maxwell: No, because I have only four minutes.

There were 255 amendments at stage 2 for the Planning etc (Scotland) Bill; 387 for the Adoption and Children (Scotland) Bill; 271 for the Protection of Vulnerable Groups (Scotland) Bill; and more than 340 for the Antisocial Behaviour etc (Scotland) Bill. I will not go over all the rest of it. Clearly, it is your view that all those bills, which I think have become good legislation, were a dog’s breakfast, a shambles and badly drafted. Those were all Labour-Lib Dem bills. I would be interested to hear how you defend your view of those bills, given the criticisms of the bill that we are considering today.

The Deputy Presiding Officer: Could you speak through the chair, please, Mr Maxwell?

Stewart Maxwell: Apologies, Presiding Officer.

Frankly, it is shameful for Labour members to come to the Parliament and do somersaults by saying that they support widening access for the poorest students but will vote against the bill that will create the very process that will achieve that. It will create spaces and a future for some in our poorest communities. It is shameful that Labour members pretend that they are in favour of widening access but will vote against the processes that will achieve that. We have already scrapped tuition fees in this country. That is one part of the jigsaw, but the other parts include the student support that Marco Biagi mentioned and the parts of the bill that will widen access and allow many people to become students. I am therefore happy to support the proposals.

I am also pleased that we are introducing a tuition fee cap. Although that was not supported by some people in the university sector, I am delighted that we have put it in place. I am also delighted by the additional places that the cabinet secretary has announced in the past few months.

There has been a lot of debate, discussion and disagreement about the governance issue—Liz Smith in particular raised the matter. However, just because the current system does not have fundamental flaws, that does not mean that it cannot be improved. That is what we are doing through the bill. We are improving the system and moving to a better level of governance, which is to be welcomed.

I am delighted that, finally, we are bringing together the sector under collective pay bargaining, which is the right thing to do. That has been lacking for far too long but, again, the Labour Party will vote against it at decision time tonight.

17:58

Liam McArthur (Orkney Islands) (LD): Like the Education and Culture Committee convener, I thank all those who gave evidence to the committee, as well as the clerks, SPICE and committee colleagues for their generally good natured forbearance through what was a difficult process, as the convener conceded.

As will have been evident from my comments earlier this afternoon, I remain unconvinced about the necessity of the bill. By working constructively through stages 2 and 3, we have made improvements in various areas and limited potential damage in others. However, once the Scottish Government had railroaded through the bill at stage 1—let us not forget that it secured the support of no party in the Parliament save the Scottish National Party—the die was cast. Even an avalanche of amendments—we have debated about 115 of them at stage 3—has been insufficient.

Despite what we have heard from the cabinet secretary and some of his colleagues, that does not mean that a vote against the bill constitutes disagreement on the broad policy objectives—it does not. I firmly believe that widening access to our universities is essential to ensuring that...
everyone has an opportunity to fulfil their potential. Likewise, improving the governance and accountability of our colleges and universities is an issue on which consensus reigns.

The ambition to deliver high-quality further and higher education to students of all ages in all parts of the country—and indeed beyond—is shared by members on all sides of the chamber. Although—as Stewart Maxwell said—we can point to excellence in our colleges and universities now, that does not mean that improvements are not necessary or not possible.

We appear to agree on the policy objectives, but we do not agree on the means by which to achieve them. As I said at stage 1, we as a Parliament should seek to legislate only when necessary, or when alternatives to legislation do not exist or would not deliver the outcomes that we seek to achieve.

All too often, we seem happier passing laws than checking subsequently to find out whether those laws are doing what they were intended to do. That is perhaps not surprising, as it is always comforting to point to a new piece of statute when we are asked what we, as politicians, have done to address a particular problem.

The SNP managed—by using its majority, against the wishes of every other party in the chamber—to push the bill through at stage 1, thereby ensuring that there would be legislation. However, the case for a legislative approach remains unconvincing, and the legislation seems to be more a comfort blanket for ministers than anything else.

College regionalisation, for example, is already well under way, accelerating a process that has been on-going for years. Indeed, the Education and Culture Committee approved the closure and transfer of another half-dozen colleges at its meeting yesterday.

I accept that improvements have been made to the bill since stage 1, but the case for using the legislation itself to deliver the changes has not been made. Similarly, the case for legislation on widening access seems—withstanding Marco Biagi’s thoughtful comments—to be more symbolic than anything else.

Progress in that area has been far too slow, and NUS Scotland has argued that

> "It is important to create a defined link between the public funding universities receive, and the public benefit they provide."

That may be the case, but it is not a justification for legislation. The minimum income guarantee will help, and fair access agreements are now in place. Such agreements can, along with the funding levers that ministers have at their disposal, help to ensure that access becomes core to the mission of our universities.

I welcome the recognition that a broader definition is needed for underrepresented groups, including those with learning difficulties, but I believe that fair access agreements that are linked to funding carrots and sticks could achieve the same ends.

I entirely accept that improvements are needed to governance. In areas such as staff and student representation and the need for greater diversity, transparency and accountability, the way in which our universities and colleges are run is ripe for reform. Again, however, I question whether that requires to be underpinned by legislation. Having robust codes of good governance—adherence to which would be mandatory for securing public funding—seems as effective an approach and would run less of a risk of compromising the responsible autonomy that is the hallmark of the world’s most successful universities.

Our colleges and universities are critical to our success as a nation—economically, socially and culturally. It is right that we focus on helping to ensure that they are well run, accountable and diverse in their make-up in every sense, and that they provide opportunities for all to fulfil their potential. Those are shared ambitions. I regret that the vote that took place at stage 1 set us on a path that prioritised ministers’ desire to pass a bill over a serious rethink about how best to achieve those shared ambitions. That is indeed regrettable.

18:02

Liz Smith: Throughout the bill process, from the very early days, I have listened carefully to the Scottish Government, to my colleagues in the Opposition parties and to the witnesses from the colleges and universities. I hope that I have been assiduous in considering each aspect of the bill.

At the start of the stage 1 process, the Scottish Government asked us to judge the bill and examine its context on the basis of three specific criteria: whether it would provide better support for jobs and economic growth; whether it would improve the life chances of students; and whether it would fundamentally change the provision of skills so as to link learning to demand.

The Scottish Conservatives took the Scottish Government at its word, and throughout the process we have listened carefully to a wide range of stakeholders—across the university and college sectors and in the wider economy—to find out how they view the bill with regard to those principles.

I commend the convener of the Education and Culture Committee on being very good and fair in convening meetings during what has been a
tortuous bill process. As he has said, there has been no particular objection to many of the general policy objectives, but there has been a great deal of concern about the detail.

I share the concern of the Labour and Liberal parties about whether legislation is in fact required, particularly on various aspects of widening access and governance. It is very clear that we all want to see the same ambitions, but I have never been persuaded—and neither has the Conservative Party at large—that the evidence points to legislation being essential.

We heard the cabinet secretary argue time and again that there has been far too much duplication of courses in our colleges and that the 1992 legislation, which the Conservatives brought in, has prevented the college sector from moving forward. However, that legislation allowed colleges to increase their flexibility and respond better to the needs of their local area. I find it difficult to see why the cabinet secretary thinks that the 1992 legislation has been so detrimental. Indeed, it is often thrown up by many of the colleges as something that has given them extra autonomy and flexibility.

I repeat that the Scottish Conservatives are firmly in favour of widening access, but we have a grave difference of opinion with the Scottish Government about where that focus should be. We believe that the focus should be on schools. I noticed two weeks ago that Ferdinand von Prondzynski said that we should be starting in nursery schools when it comes to widening access, and I entirely agree with that. We would not be in this situation if we were able to ensure that everyone in schools had a much fairer choice in terms of success. Raising aspirations is crucial, particularly in schools in which there has not been a tradition of going to college or university, and that is where the policy focus should be. It is, in many respects, far too late by the time we come to tertiary education.

The fact that the Opposition parties oppose various elements of the bill is one thing, but the fact that the further and higher education sectors have raised significant concerns about its drafting and the way in which it has progressed is quite another. The points that have been put to us by the colleges and universities have formed our opinion.

This has been a difficult process. I hope that we cannot be accused of taking it lightly. I hope that we have been serious about looking at the aims of the bill but, as far as I can see, there is no compelling evidence for why the bill is necessary. On that basis, the Scottish Conservatives will not support it at decision time.

18:07

Hugh Henry (Renfrewshire South) (Lab):

There can be no doubt that the wellbeing of universities and colleges is significant to Parliament and everyone in Scotland. The better our colleges and universities operate and deliver, the better it is for Scotland. It is unfortunate therefore that, in a bill of such significance, we have reached this situation. It is a wasted opportunity for the Parliament to come together and deliver something that would make a lasting and significant difference to our colleges and universities.

The cabinet secretary said that it was the Government’s intention to listen, but I do not see any evidence of that, unless he meant that he was going to listen to himself and to his own party. There was certainly no evidence of listening to anything that any of the Opposition parties proposed in the Education and Culture Committee. It is unusual for such a significant bill to get to stage 3 in Parliament and not have the support of other parties. I hope that the cabinet secretary will reflect on that and ask why.

The cabinet secretary said that there was no political reason to oppose the bill, and he is absolutely right. Scottish Labour is not opposing the bill for political reasons but because it was badly conceived, badly constructed and badly designed, and it has been badly delivered in the process. This has been a wasted opportunity.

There is a range of areas in which we think that the opportunity has been wasted. Jenny Marra made the points about gender equality eloquently. I cannot for the life of me fathom why the Government could not reach out and grasp the opportunity given by Scottish Labour—by Jenny Marra—to do something about what we all recognise is completely and utterly unacceptable.

It is disappointing that the Scottish Government refused to take the opportunity to go further in its attempts to widen access. I do not just mean by doing more about the number of young people from disadvantaged communities who go to university. I concur with Liz Smith about the widening access debate starting in the early years and coming through school, so that our young people, irrespective of their background, are ready, able and confident to go to university because of their abilities and not their financial circumstances. That investment needs to be made, and yet the evidence, in council area after council area throughout Scotland, is that councils, irrespective of their political leadership, are struggling to deliver essential education and services in the early years.

If, as he said, the cabinet secretary thinks that Scotland has the best student support package,
why does the Government persist in financially penalising poorer students by cutting grants in order to generate funds to give wealthier students access to cheap loans? We should not penalise the poor to help the better-off. That is a perverse notion. It is something that the cabinet secretary could have addressed in order to widen access, and he refused to do so.

There is a trend in the bill that is deeply worrying and indeed a bit scary. I remember the debates before the Parliament was created in which some people in Scotland feared that power, control and services would begin to be centralised in the Scottish Parliament and the Scottish Government. They were told that that would not happen. Yet, since 2007, we have seen a clear trend towards the centralisation of power under the control of ministers. The bill does that in spades: we are seeing more centralisation, more ministerial influence and more ministerial control. That is the wrong way to take things forward.

The cabinet secretary described the bill as real reform. Does he believe that the chaos that has been caused in our further education sector is positive reform? No one outside Parliament sees what is happening as positive. Staff and students are worried and we are seeing people at each other’s throats at a local level, where they see services and courses beginning to drift away. Others are scared to speak out because they fear for their positions, particularly with the mergers. All the while, more and more power is coming into the hands of the minister. That is the wrong way to go.

The Deputy Presiding Officer (Elaine Smith): I call Michael Russell to wind up the debate. Cabinet secretary, you have a maximum of eight minutes.

18:13

Michael Russell: Two weeks ago, I had a visit in my constituency office from the former MSP for Argyll and Bute, Jim Mather. Those in the chamber who know him will know that he would recommend a number of books to me. He recommended a management book that was, he said, particularly relevant because it addressed the issues that one finds in public life when new ideas are promulgated. The book outlines four types of opposition. The first type of opposition is to say, “We don’t need it—yet.” The second type of opposition is to say, “We don’t need it—period.” The third type of opposition is to ask endless questions of detail to stop it from happening. If all that fails, the fourth type of opposition is character assassination. We have seen all of that. I want to cut through all that today—

Liz Smith: Will the cabinet secretary take an intervention?

Michael Russell: No, I am sorry, but I would like to make some progress. I have only eight minutes.

It is essential that we recognise what the bill achieves and address the consequences for those parties that will not support the things that are being established today. The bill will deliver stronger widening-access provisions, establishing widening access at the heart of what the Scottish funding council and the institutions do.

Secondly, the bill will create structures for a reformed college sector that will deliver better outcomes for learners and businesses. That is accepted across the sector. If people vote against the bill, they will be voting against better outcomes for learners and businesses.

The bill will pave the way for national pay bargaining in the college sector. Anyone who votes against the bill will be voting against that.

Neil Findlay: Will the minister take an intervention?

Michael Russell: No, thank you. I would like to make some progress.

The bill will address the lack of equality on the governing bodies of our post-16 institutions. It will do that to the limit of the Scottish Parliament’s powers. Anyone who votes against the bill will be voting against progress on gender issues.

The bill will improve governance across both sectors. There is no doubt about that. It takes on board the recommendations of two independent reviews—I stress that the reviews were independent.

The bill puts in place mechanisms to prevent young people from dropping out of education. It also does things for student associations.

There is the shopping list. If the bill does not pass, those things will not come to pass. That is important.

Neil Findlay: Will the minister take an intervention?

Michael Russell: No, I will not.

Neil Findlay: Oh, come on.

Michael Russell: I would like to make some progress, Presiding Officer.

The Deputy Presiding Officer: Order.

Michael Russell: I do not recognise any ideological objections from Labour at all; I simply recognise oppositionalism. However, I recognise the Tories’ ideological objections to what we are
trying to achieve in this bill, so I want to address one or two of the points that Liz Smith raised. I was surprised when Liz Smith defined the way in which reform should come about. She said that we would have to ensure that a sector that is being reformed is in agreement. I will use two words to question that point: Michael Gove. It is simply not true that, when reform is under way, everyone will agree with it. However, I am glad about the wider level of support that we have across the sector, and I will quote three people’s views on the bill.

Professor Sir Timothy O’Shea, the principal of the University of Edinburgh, said:

“We are very supportive of the whole bill in terms of intentions with regards to widening participation, greater efficiency of the sector and greater accountability”.

John Henderson, the chief executive of Colleges Scotland, said:

“Colleges support the principle of reform and there is much in this Bill to be welcomed.”

Robin Parker, of the National Union of Students Scotland, said:


The impression that has been given—intentionally or unintentionally—that nobody supports the bill, and that it has simply been dreamed up and put on the statute book, is incorrect. The bill is supported across the sector. It is also the result of a lengthy and detailed process.

Again, someone who was observing this debate having just arrived from Mars might think that no work at all had been done to get the sector onside and involve it in the process.

Stewart Maxwell was right to say that the bill is controversial and complex. It requires some hard work from members to understand how the sector will change and improve and to participate in the improvement of the bill. We have seen that from most sides of the chamber. However, what we did was publish a set of intentions around putting learners at the centre. Then, there were two independent reviews of governance—not one, but two—which were wide ranging and had representation from across the sector. The reviews were unanimous in their recommendations, with one exception. Following that, we consulted widely. Then we published a bill. Then, at stage 1, considerable evidence was taken. After that, there was a process of amendment—there was not a particularly detailed set of amendments in terms of numbers, but the process took place. We listened at stage 1 and stage 2 and, when we came to stage 3, there were further improvements to the bill.

Again, someone who had just arrived from Mars might believe that the Government lodged thousands of amendments to burden the poor members of the committee. However, fewer than half of the stage 2 amendments—76 out of 191—were lodged by the Government. None of those represented a major policy shift, but they were developed to improve the bill for the benefit of learners.

Similarly, out of 120 stage 3 amendments, 58 came from the Government and, again, they were amendments that resulted from our having listened to the sector. Indeed, 17 of those amendments were the result of Labour members making points in the committee with which I agreed. I would have been happy to accept improved amendments from Labour had they come forward, but none did. On national pay bargaining, the same amendments that could not have effect and the same amendments that would not have achieved the effect were simply slapped down again without discussion. That is not the hard work that we need to improve a bill.

Fortunately, the sector has behaved differently. It has worked closely with the Government and some members of the committee—Mr McArthur, for example, worked on the University of the Highlands and Islands amendments along with the Highlands and Islands MSPs to do something that was important—and we ended up with a much-improved bill.

That is the purpose of legislation. The much-vaunted system that we have in the Parliament improves legislation as we go along. If some members do not understand that and are not prepared to put the effort in, that is tough, because the job of legislating is to put the effort in. Now we have a piece of legislation that works for Scotland. [Interruption.]

The Deputy Presiding Officer: Order. The cabinet secretary is closing.

Michael Russell: The bill will improve the situation for learners in Scotland. Therefore, I go back to the point with which I opened. If anybody in the chamber votes against the bill, here is what they are voting against. They are voting against widening access—it is not possible to support widening access and vote against it. They are voting against a reformed college sector delivering better outcomes for learners and businesses. They are voting against national pay bargaining in the college sector. They are voting against measures to improve gender balance on the boards of the governing bodies of colleges and universities. [Laughter.]

The Deputy Presiding Officer: Order.

Michael Russell: Ah, I wondered how long it would be before Mr Findlay started to laugh at the
things that need to happen in Scotland. He would vote against governance across both sectors and mechanisms to help the young people of Scotland.

That is what members vote against if they vote against the bill. I quote Robin Parker again: “The legislation must happen.” That is what students are saying. I hope that the Parliament is listening.
Decision Time

18:31

The Deputy Presiding Officer (Elaine Smith):

There are four questions to be put as a result of today's business. The first question is, that motion S4M-07108, in the name of Michael Russell, on the Post-16 Education (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)

Against
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, John (East Ayrshire and Kirkcaldy) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 65, Against 51, Abstentions 0.

Motion agreed to,
That the Parliament agrees that the Post-16 Education (Scotland) Bill be passed.
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Post-16 Education (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about the support for, and the governance of, further and higher education institutions, including provision for the regionalisation of colleges; to make provision for reviews of how further and higher education is provided; to make provision for sharing information about young people’s involvement in education and training; and for connected purposes.

Introductory

1 Interpretation

In this Act—

“the 1992 Act” means the Further and Higher Education (Scotland) Act 1992,

“the 2005 Act” means the Further and Higher Education (Scotland) Act 2005.

Terms and conditions of higher education funding

2 Higher education institutions: good governance

After section 9 of the 2005 Act insert—

“9A Higher education institutions: good governance

The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance which appear to the Council to constitute good practice in relation to higher education institutions.”.

3 Widening access to higher education

After section 9AA of the 2005 Act, inserted by section 13A, insert—

“9B Widening access to fundable higher education

(1) The Scottish Ministers may, under section 9(2), impose terms and conditions for the purposes of enabling, encouraging or increasing participation in fundable higher education by persons belonging to any socio-economic group which they reasonably consider to be under-represented in such education.
(2) The Scottish Ministers may, in particular, impose a condition that the Council, when making a payment to a higher education institution under section 12(1), must require the institution to comply with a widening access agreement which makes provision in relation to—

(a) any socio-economic group which the Scottish Ministers reasonably consider to be under-represented in fundable higher education; and

(b) other socio-economic groups, if any, which the Council and the institution agree are under-represented in fundable higher education.

(3) A “widening access agreement” is an agreement between a higher education institution and the Council under which the institution is to take actions specified in the agreement for the purposes of enabling, encouraging or increasing participation in fundable higher education provided by the institution by persons belonging to socio-economic groups which are under-represented in fundable higher education (either generally or in such education provided by the institution).

(3A) Before entering into a widening access agreement in pursuance of this section, a higher education institution must consult—

(b) the representatives of any trade union which the institution recognises or which otherwise appears to it to be representative of its staff; and

(c) the institution’s students’ association.

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

(4A) The Scottish Ministers, the Council and higher education institutions 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 this section.”.

4 Fee cap: students liable for higher education fees

After section 9B of the 2005 Act, inserted by section 3, insert—

“9C Fee cap: students liable for higher education fees

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1)—

(a) where the payment is made to a fundable post-16 education body which provides fundable higher education, impose on that body a condition that it complies with the requirement set out in subsection (2);

(b) where the payment is made to a regional strategic body, impose on that body a condition that it must, when making a payment under section 12B(1) to any of its colleges which provides fundable higher education, impose on the college a condition that it complies with the requirement set out in subsection (2).

(2) The requirement is that the post-16 education body to whom the payment is made is to secure that the fees paid to it—
(a) by persons in respect of whom it is authorised or required to charge higher fees by virtue of regulations made under section 1 of the Education (Fees and Awards) Act 1983 (c.40) (or by such class of such persons as the Scottish Ministers may by order specify);

(b) in connection with their attending in an academic year such courses of education as the Scottish Ministers may by order specify,
do not exceed such amount as the Scottish Ministers may by order specify.

(3) The Scottish Ministers, when making an order under this section, must seek to ensure—

(a) that, subject to any exceptions which they consider appropriate, it applies only in relation to fees payable by persons who have a connection with the United Kingdom; and

(b) that the amount of fees payable by a person attending any course of education provided by a post-16 education body in any particular academic year does not exceed the maximum amount of fees which that person would by virtue of any enactment be liable to pay if attending any higher education course provided elsewhere in the United Kingdom during that year.

(4) The Scottish Ministers may not specify courses under subsection (2)(b) in such a way as to discriminate between different 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.

(5) References in this section to the United Kingdom include references to the Channel Islands and the Isle of Man.”.

5 College reorganisation

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);

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

(ab) the college’s students’ association;

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

(c) the Council; and
After section 23 of the 2005 Act insert—

"Regional colleges: functions

23A Regional colleges: 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 colleges: 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;

(ga) 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) 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—

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

(zb) the regional college’s students’ association;

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

(b) 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;

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

(cea) The Open University;

(d) The Skills Development Scotland Co. Limited;

(e) the Scottish Qualifications Authority; and

(f) 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 or any such person or type of person.

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

23ZBA 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.
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.

(4A) 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.

(5) 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.

(6) 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.

(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) 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 (4A).

(9) 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 (4A); and
(b) whether a socio-economic group so determined is under-represented in fundable further education or fundable higher education.”.

5 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”);

(aa) the principal of the college;

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

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

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

(e) other members appointed by the board.

(3) An appointment made in pursuance of sub-paragraph (2)(e) 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”);

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

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

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

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

3B(1) An election to appoint members in pursuance of paragraph 3(2)(b) or (c) or 3A(2)(b) or (ba) 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)(b) or 3A(2)(b), 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)(c) or 3A(2)(ba), 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).

(1A) 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 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.

(2) 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 (e) or, as the case may be, 3A(2)(a) or (d) 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.

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.

(3) 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 (e) or 3A(2)(a) or (d) of Schedule 2, appoint another person in place of the removed member.

(3A) Before making an order under subsection (3)(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 (3)(a) to the board and the member.

(5) An appointment made under subsection (3)(b) has effect as if made under the provision of Schedule 2 under which the removed member was appointed.”.

Regional strategic bodies

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 of the 2005 Act insert—
“SCHEDULE 2A  
(introduced by section 7B(1))

REGIONAL STRATEGIC BODIES

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 Assignation 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 assignation.

(3) For the purposes of considering whether or not to propose or approve any assignation 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.

(4A) 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.

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

(za) the regional strategic body (except where not already established);
(a) every college to which the order relates (except any not already established);
(aa) 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;

(ab) the students’ associations of the colleges to which the order relates;

(b) the Council;

(c) any local authority for an area in which any of the colleges to which the order relates is situated; and

(d) any other person appearing to the Scottish Ministers as likely to be affected by the order.

(5A) 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).

(5B) 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.

(6) 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 (c.40), 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.”.

Regional strategic bodies: functions

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

“Regional strategic bodies: functions

23C 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.

23D 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.
Performance monitoring

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

(2) This may, in particular, include—
   (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.

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.

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.

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.
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.

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.

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

(5) 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.

(6) 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.

(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) 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 (4A).

(9) 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 (4A); and

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

23J 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;
(ha) 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).

(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;

(aa) 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;

(ab) the students’ associations of its colleges;

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

(c) 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;

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

(da) The Open University;

(e) The Skills Development Scotland Co. Limited;

(f) the Scottish Qualifications Authority; and

(g) 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 or 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.

23K 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;

(d) 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

(e) 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.

23L 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);
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).”.

Regional boards

Regional boards: constitution

(1) After section 23L of the 2005 Act, inserted by section 10, insert—

“Regional boards: constitution etc.

23M Regional boards: constitution

Schedule 2B makes provision about the constitution of a regional board, about the general powers of such a board and about certain administrative and other matters with respect to such a board.”.

(2) After schedule 2A of the 2005 Act, inserted by section 8(2), insert—

“SCHEDULE 2B
(introduced by section 23M)

REGIONAL BOARDS

Regional boards

1 (1) References in this schedule to “the board” are references to a regional board specified in Part 1 of schedule 2A.

(2) The board is to be known by the name by which it is described in that Part.

Status

2 (1) The board is a body corporate.

(2) The board—

(a) is not a servant or agent of the Crown;

(b) has no status, immunity or privilege of the Crown,
and its property is not to be regarded as property of, or held on behalf of, the Crown.

Membership

3 (1) The board is to consist of no fewer than 15 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”);

(aa) subject to sub-paragraph (3A), the chairing member of each of the board’s colleges;

(b) a person appointed by being elected by the teaching staff of the board’s colleges from among their own number;

(c) a person appointed by being elected by the non-teaching staff of the board’s colleges from among their own number;

(d) two persons appointed in accordance with paragraph 4; and

(e) up to 10 other members appointed by the board.

(3) A person is not eligible for appointment as the chairing member 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 chief officer of the board.

(3A) A person is disqualified from being part of the board in pursuance of sub-paragraph (2)(aa) if the person has previously been removed from the board under section 23N.

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

(a) the chairing member; and

(b) the Scottish Ministers.

(5) In appointing members under sub-paragraph (2)(e) and in extending the period of appointment of any member so appointed, the board 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).

(5A) Before issuing guidance under sub-paragraph (5), the Scottish Ministers must consult—

(a) any regional board to which the guidance relates;

(b) the board of management of any college of further education which is, or which the Scottish Ministers consider likely to be, assigned to the regional board by order under section 7C;
(c) the local authority for any area in which such a college is situated;
(d) the students’ association for each such college;
(e) the representatives of any trade union which is recognised by any such college 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.

(6) Different guidance may be issued for different purposes.

Student members

4 (1) The students’ associations of the board’s colleges are each entitled to nominate students for appointment in pursuance of paragraph 3(2)(d).
(2) Where only two students are so nominated, those students are to be so appointed.
(3) Members are otherwise to be so appointed by being elected by the students of all the board’s colleges from among the students so nominated.
(4) Sub-paragraphs (1) to (3) do not apply where only two colleges are assigned to the board and, in such a case, the students’ association of each college is to appoint one member from among the students of their respective colleges.

Election of staff and student members

5 (1) An election to appoint members in pursuance of paragraph 3(2)(b) or (c) or 4(3) is to be conducted in accordance with rules made by the board.
(2) Before making, varying or replacing election rules, the board must consult—
(a) its colleges;
(c) in the case of rules about elections in pursuance of paragraph 3(2)(b), the representatives of any trade union which any of its colleges recognise as being, or which otherwise appears to the board to be, representative of the teaching staff of its colleges;
(ca) in the case of rules about elections to be held in pursuance of paragraph 3(2)(c), the representatives of any trade union which any of its colleges recognise as being, or which otherwise appears to the board to be, representative of the non-teaching staff of its colleges; and
(d) in the case of rules about elections in pursuance of paragraph 4(3), the students’ associations of each of its colleges.
**Disqualification from membership**

6 (1) A person is not eligible for appointment as a member of the board if the person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;

(b) is an undischarged bankrupt; or

(c) has been removed from office under section 24 of the 1992 Act (in relation to any college) or section 23N of this Act (in relation to any regional board).

(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;

(e) who has been adjudged bankrupt (and has not been discharged); or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

(3) This paragraph does not apply in relation to persons appointed in pursuance of paragraph 3(2)(aa).

**Terms and conditions**

7 (1) Subject to the other provisions of this Act—

(a) the chairing member holds and vacates office on such terms and conditions as the Scottish Ministers may determine; and

(b) other members (unless holding office in pursuance of paragraph 3(2)(aa)) hold and vacate office on such terms and conditions as the board may in each case determine.

(2) Subject to sub-paragraphs (3) to (8), paragraph 9 and section 23N—

(a) the chairing member is to hold office for such period (not exceeding 4 years) as the Scottish Ministers may determine;

(aa) a member appointed in pursuance of paragraph 3(2)(aa) is to hold office until the person ceases to be a chairing member of any of the board’s colleges;
(b) a member appointed by being elected in pursuance of paragraph 3(2)(b) or (c) is to hold office for 4 years;

(c) a member appointed in pursuance of paragraph 3(2)(d) is to hold office until 31 August following appointment; and

(d) a member appointed under paragraph 3(2)(e) is to hold office for such period (not exceeding 4 years) as the board may determine.

(3) The Scottish Ministers may extend the period of appointment of the chairing member for a single further period not exceeding 4 years.

(4) The board may extend the period of appointment of a member it appoints for a single further period not exceeding 4 years (but such an extension has effect only if approved by the chairing member and the Scottish Ministers).

(5) The chairing member is to vacate office if the chairing member becomes a person of the type described in paragraph 3(3).

(6) A member appointed under paragraph 3(2)(b) or (c) is to vacate office if the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of one of the board’s colleges before the member’s period of appointment ends.

(7) A member appointed in pursuance of paragraph 3(2)(d) is to vacate office if the member ceases to be a student of one of the board’s colleges before the member’s period of appointment ends.

(8) On ceasing to be a member, a person is eligible for reappointment (provided that the person is not ineligible by virtue of any other provision).

Remuneration and allowances

8 (1) The board is to pay to its chairing member such remuneration as the Scottish Ministers may in each case determine.

(2) The board is to pay to its members such allowances as the Scottish Ministers may in each case determine.

Resignation and removal of members

9 (1) The chairing member may by giving notice in writing to the Scottish Ministers resign office as a member.

(2) Any other member (except for a member appointed in pursuance of paragraph 3(2)(aa)) may by giving notice in writing to the board resign office as a member.

(3) The Scottish Ministers must, by giving notice in writing to the chairing member, remove the chairing member from office if—

(a) the chairing member—

   (i) is sentenced as mentioned in paragraph 6(1)(a);

   (ii) has become a person to whom paragraph 6(1)(b) applies; or

   (iii) is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23 of this Act (in relation to any other regional board); or
(b) they are satisfied that the chairing member—
  (i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
  (ii) is otherwise unable or unfit to discharge the functions of the chairing member.

(4) The board must, by giving notice in writing to the member, remove any other member from office if—

(a) the member—
  (i) is sentenced as mentioned in paragraph 6(1)(a); or
  (ii) has become a person to whom paragraph 6(1)(b) applies; or

(b) it is satisfied that the member—
  (i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
  (ii) is otherwise unable or unfit to discharge the functions of a member.

(5) Sub-paragraph (4) does not apply in relation to a member appointed in pursuance of paragraph 3(2)(aa).

(6) The Scottish Ministers must, by giving notice in writing to the member, remove a member (other than the chairing member) from office if the member is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23N of this Act (in relation to any other regional board).

(7) Where a member removed under sub-paragraph (6) was appointed under paragraph 3(2)(e), the Scottish Ministers may appoint another person in place of the removed member.

(8) An appointment made under sub-paragraph (7) has effect as if made under paragraph 3(2)(e).

**Staff**

10 (1) The board may (subject to any directions given under sub-paragraph (4)) appoint a chief officer and such other employees as it considers appropriate on such terms and conditions as the board may determine.

(2) The board may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed by the board.

(3) Arrangements under sub-paragraph (2) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities; and

(b) the establishment and administration of pension schemes.

(4) The board must comply with any directions given by the Council as regards—

(a) the appointment of employees;

(b) terms and conditions determined under sub-paragraph (1); or
Proceedings of the board

11 (1) The board may regulate its own procedure (including any quorum).

(2) The validity of any proceedings of the board is not affected—

(a) by a vacancy in membership (or in a category of membership); or

(b) by any defect in the appointment of a member.

Committees

12 (1) The board may establish committees.

(2) The board is to determine—

(a) the composition of any committees;

(b) the terms and conditions of membership of any committee; and

(c) the procedure (including any quorum) of any committee.

(3) A committee may include persons who are not members of the board (but such persons are not to be entitled to participate in making decisions).

(4) The board is to pay to the members of its committees (whether or not they are also members of the board) such allowances as the Scottish Ministers may determine.

Participation at meetings

13 Unless the chairing member determines otherwise, a person who is the principal of one of the board’s colleges but who is not a board member is entitled to participate in any deliberations (but not in making decisions) at meetings of the board.

General powers

14 (1) The board may (subject to paragraphs (2) to (9)) do anything that is necessary or expedient for the purpose of or in connection with the exercise of its functions, including in particular—

(a) acquiring and disposing of land and other property;

(b) entering into contracts;

(c) investing sums not immediately required for the purpose of the discharge of its functions;

(d) accepting gifts of money, land or other property;

(e) forming or promoting (whether alone or with another) companies under the Companies Act 2006.

(2) The board may not borrow money.

(3) The board is not to—

(a) give any guarantee or indemnity over or in respect of any property; or
(b) create any trust or security over or in respect of any property, without the written consent of the Scottish Ministers.

(4) The board is not to dispose of any property to which this sub-paragraph applies without the written consent of the Scottish Ministers.

(5) Consent, for the purposes of sub-paragraphs (3) or (4), may be given—

(a) in respect of any case or class of case; and

(b) subject to such conditions as the Scottish Ministers may determine.

(6) Consent, for the purposes of sub-paragraph (4), is not required for a disposal of land which is or forms part of property to which that sub-paragraph applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.

(7) But the board is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which sub-paragraph (4) applies.

(8) Where property to which sub-paragraph (4) applies is disposed of, the board is (after deduction of such expenses as appear to the Scottish Ministers to have been reasonably incurred in the disposal) to pay to the Scottish Ministers such portion of the proceeds or value of the consideration for the disposal as the Scottish Ministers may, after consultation with the board, determine.

(9) Sub-paragraph (4) applies to—

(a) any property which has been acquired, improved or maintained wholly or partly, or directly or indirectly, out of funds provided by the Council under section 12; and

(b) any proceeds of, or any consideration for, the disposal of any such property.

Goods and services

The board may, for the purposes of providing support for the provision of fundable further education or fundable higher education, provide (and make charges in respect of the provision of) goods or services—

(a) to any of its colleges;

(b) to any other post-16 education body;

(c) to any other regional strategic body; or

(d) to any other person.

Delegation of functions

The board may authorise—

(a) the chairing member;

(b) any of its committees; or

(c) any of its employees,

to exercise such of its functions to such extent as it may determine.
(2) Sub-paragraph (1) does not affect the responsibility of the board for the exercise of its functions.

**Accounts**

17 (1) The board must—

(a) keep proper accounts and accounting records;

(b) prepare a statement of accounts in respect of each yearly period ending on 31 March; and

(c) send the statement of accounts to the Scottish Ministers, in accordance with such directions as the Scottish Ministers may give.

(2) The Scottish Ministers must send the statement of accounts to the Auditor General for Scotland for auditing.

**Modification**

18 (1) The Scottish Ministers may by order modify this schedule (other than paragraph 2) by varying, adding to or removing any provision relating to a regional board’s constitution, functions or administrative arrangements.

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

(a) any board to which the order relates; and

(b) such other persons as they consider appropriate.”.

**Regional boards: mismanagement**

After section 23M of the 2005 Act, inserted by section 11(1), insert—

“23N Mismanagement of regional boards

(1) This section applies where it appears to the Scottish Ministers that a regional board—

(a) has committed or is committing—

(i) a serious breach of any term or condition of a grant made to it under section 12(1)(c); or

(ii) repeated breaches of such terms or conditions;

(b) has failed or is failing—

(i) properly to discharge its responsibility for administering the funds made available to it under that section in respect of its colleges; or

(ii) to discharge any of its duties properly; or

(c) has mismanaged, or is mismanaging, its financial or other affairs.

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

(a) remove any or all of the members of the regional board; and

(b) where a removed member was appointed under paragraph 3(2)(a) or (e) of schedule 2B, appoint another person in place of the removed member.
(2A) Before making an order under subsection (2)(a), the Scottish Ministers must consult the Council.

(3) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (2)(a) to the board and the member.

(4) An appointment made under subsection (2)(b) has effect as if made under the provision of paragraph 3 of schedule 2B under which the removed member was appointed.”.

13 Establishment and abolition of regional boards: supplemental

After section 23N of the 2005 Act, inserted by section 12, insert—

“23O Establishment and abolition of regional boards: supplemental

(1) The Scottish Ministers may make such arrangements as they consider appropriate in anticipation of the establishment of a regional board by virtue of an order under section 7B or the coming into force of section 8 of the Post-16 Education (Scotland) Act 2013.

(2) They may, in particular, appoint on terms and conditions determined by them persons who are, from the day on which the board is established, to hold office as if appointed under paragraph 3(2)(a) or, as the case may be, (e) of schedule 2B.

(3) An order under section 7B(2)(a) which abolishes a regional board may, in particular, make provision—

(a) for the transfer of the regional board’s staff, property, rights, liabilities or obligations to such other person as may be specified in the order;

(b) for the Scottish Ministers to pay any expenses incurred in connection with the abolition;

(c) imposing such duties or conferring such additional powers in relation to the abolition as the Scottish Ministers consider appropriate;

(d) for the exercise of any of the regional board’s functions by any member of the board specified in the order;

(e) appointing a person to administer the abolition (and giving that person such powers and duties as appear to the Scottish Ministers to be necessary or expedient for such purposes as are specified in the order).

(4) Such an order—

(a) must ensure that any transferred property and rights which, before the transfer, were to be applied for the purpose of the advancement of education are to continue to be applied for that purpose after the transfer,

(b) may contain provision for the transfer of staff, property, rights, liabilities or obligations only if the person to whom the transfer is being made (apart from the Scottish Ministers) has consented to the transfer.

(5) This section does not prejudice the generality of powers conferred by section 34(2) or by section 17 of the Post-16 Education (Scotland) Act 2013.”.
Further education institutions: good governance

13A Further education institutions: good governance

After section 9A of the 2005 Act, inserted by section 2, insert—

“9AA Further education institutions: good governance

(1) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment under section 12(1) to a college of further education which is a fundable post-16 education body, require it to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.

(2) The Scottish Ministers may, under section 9(2), impose a condition that the Council must, when making a payment to a regional strategic body under section 12(1), require it—

(a) to comply with any principles of governance which appear to the Council to be appropriate in relation to such a body; or

(b) to impose, when making a payment to any of its colleges under section 12B(1), a condition requiring the college to comply with any principles of governance which appear to the Council to constitute good practice in relation to colleges of further education.”.

Duties of Funding Council in relation to widening access

13B Council to have regard to desirability of widening access

(1) Section 20 of the 2005 Act is amended as follows.

(2) After subsection (4) insert—

“(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.”.

(3) After subsection (6) insert—

“(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.”.

13C  Council to review progress with widening access

After section 19 of the 2005 Act insert—

“19A  Reviews of progress with widening access

(1) The Council must conduct reviews of the extent to which progress is being made in enabling, encouraging and improving participation in fundable further education and fundable higher education by persons belonging to socio-economic groups which the Council reasonably considers to be under-represented in such education.

(2) The first such review must be completed before the end of the period of three years beginning with the date on which this section comes into force.

(3) Subsequent reviews must be completed before the end of the period of three years beginning with the date on which the immediately preceding review was completed.

(4) On completing a review, the Council must provide the persons mentioned in subsection (5) with a report of the review which—

(a) sets out the conclusions 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.

(5) Those persons are—

(a) the Scottish Ministers;

(b) each regional strategic body; and

(c) each post-16 education body.

(6) The bodies to which this subsection applies must provide the Council with such information, and make available such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.

(7) Subsection (6) applies to—

(a) regional strategic bodies; and

(b) post-16 education bodies.

(8) For the purposes of subsection (1), 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) 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 (1).

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

(a) which groups are to constitute “socio-economic groups” for the purposes of subsection (1), and

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

Review of further and higher education

“14A  Review of fundable further and higher education

(1) The Council may, with the consent of the Scottish Ministers, review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner.

(2) A review may relate to—

(zg) any aspect of the funding or provision of fundable further education or fundable higher education (generally or in particular areas); or

(g) any aspect of the legislation or administrative framework which governs the funding or provision of fundable further education or fundable higher education.

(3) When seeking the consent of the Scottish Ministers to conduct a review, the Council must provide a case for review which—

(a) describes the scope of the proposed review; and

(b) explains why it is satisfied that any pre-conditions to conducting a review which the Scottish Ministers may determine are met in relation to the proposed review.

(3A) When conducting a review, the Council must consult—

(a) the governing body of any post-16 education body and any regional strategic body to which the review relates;

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

(c) any body which appears to the Council to be representative of trade unions in Scotland;

(d) the students’ association of any post-16 education body to which the review relates; and

(e) any body which appears to be the Council to be representative of the interests of students of post-16 education bodies generally.

(4) The bodies to which this subsection applies must provide the Council with such information, and make available for inspection such accounts and other documents, as the Council may reasonably require for the purposes of conducting a review.
Subsection (4) applies to—
(a) post-16 education bodies; and
(b) regional strategic bodies.

(6) On completing a review, the Council must provide the Scottish Ministers, and any post-16 education body and regional strategic body to which the review relates, with a report of the review 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.

(7) The Council, when conducting and reporting on a review, must have regard to the importance of ensuring that public funds provided for fundable further education and fundable higher education are used as economically, efficiently and effectively as possible.”.

Collective bargaining framework for college staff

14A Collective bargaining framework for college staff

After section 15 of the 1992 Act insert—

“15A Collective bargaining framework for college staff

(1) Before making regulations under section 3(6) of this Act which prescribe requirements which relate to collective bargaining arrangements in respect of any contracts entered into in pursuance of section 12(2)(h)(i) of this Act, the Scottish Ministers must—
(a) establish an advisory committee, to be known as the National Pay and Conditions Advisory Committee for Scotland’s Colleges, for the purpose of making recommendations to them, by such time as they may specify, about—
(i) the outcomes which the regulations should seek to achieve; and
(ii) how the regulations should seek to achieve those outcomes; and
(b) have regard to any recommendations made by the committee.

(2) When making any such regulations, the Scottish Ministers must have regard to the desirability of ensuring that the regulations are framed in accordance with any guidance issued by the Advisory, Conciliation and Arbitration Service (ACAS) which relates to the form of schemes which govern how employees’ terms and conditions may be negotiated or determined.

(3) A committee established under subsection (1)(a) above is to be comprised of—
(a) 4 persons who appear to the Scottish Ministers to be representative of the interests of boards of management;
(b) 4 persons who appear to the Scottish Ministers to be representative of the interests of trade unions recognised by boards of management or who otherwise appear to them to be representative of the teachers and other staff employed by boards of management;
(c) a person appointed by the Council (such person being a member of the Council or an employee of the Council); and

(d) other persons appointed by the Scottish Ministers.

(4) The Scottish Ministers may—

(a) make or authorise the Council to make further provision about the constitution, remit or procedure of the committee,

(b) provide or authorise the Council to provide the committee with financial or other support (including by paying allowances to members of the committee in respect of expenses).”.

Equal opportunities

14B Equal opportunities: post-16 education bodies etc.

After section 26 of the 2005 Act insert—

“26A Equal opportunities: post-16 education bodies etc.

(1) Every post-16 education body and regional strategic body must, when making appointments to its governing body or exercising any of its other functions, do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

(2) In subsection (1), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c.46).”.

Information about young people’s involvement in education and training

15 Duty to provide information to Skills Development Scotland

(1) The Scottish Ministers may, by order, require a person to provide information the person holds about a young person to The Skills Development Scotland Co. Limited for the purposes of enabling or assisting it—

(a) to monitor that young person’s involvement in education or training,

(b) to provide advice or support as regards that young person’s education or training,

(c) to exercise any of its other functions in relation to that young person.

(2) Such an order may specify—

(a) the persons who are to be required to provide information,

(b) the information, or type of information, which must be provided, and

(c) the form and manner in which it is to be provided.

(2A) The Scottish Ministers may, by order, require The Skills Development Scotland Co. Limited to provide information it holds about a young person to such persons who provide education or training to young persons as may be specified in the order.

(2B) Such an order may specify—

(a) the information, or type of information, which must be provided, and

(b) the form and manner in which it is to be provided.
(3) The Skills Development Scotland Co. Limited and any person who is required to provide information by virtue of this section must have regard to any guidance issued by the Scottish Ministers about the provision or use of such information.

(4) In this section, “young person” means a person aged over 15 and under 25.

(5) The Scottish Ministers may, by order, modify this section—

(a) by replacing the references in subsections (1), (2A) and (3) to the person to whom information is to be provided in pursuance of subsection (1) and who may be required to provide information in pursuance of subsection (2A) with references to such other person as they consider appropriate, or

(b) where that person changes its name, by modifying references to that person in subsections (1), (2A) and (3) to reflect that change of name.

(7) An order under this section may make different provision for different purposes.

(9) An order under subsection (1) or (2A) is subject to the affirmative procedure.

(10) An order under subsection (5)(a) is subject to the negative procedure.

**General**

**16 Modification of enactments**

The schedule to this Act (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

**17 Ancillary provision**

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for the purposes of giving full effect to any provision made by, or by virtue of, this Act.

(2) An order under this section may make different provision for different purposes.

(3) An order under this section—

(a) if it adds to, replaces or omits any part of the text of this or any other Act, is subject to the affirmative procedure,

(b) is otherwise subject to the negative procedure.

**18 Commencement**

(1) This section and sections 17 and 19 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

**19 Short title**

The short title of this Act is the Post-16 Education (Scotland) Act 2013.
SCHEDULE
(introduced by section 16)
MODIFICATION OF ENACTMENTS

Education (Scotland) Act 1980 (c.44)

1 (1) The Education (Scotland) Act 1980 is amended as follows.

(2) In section 73ZA—
(a) in subsection (3), for “fundable” substitute “post-16 education”,
(b) in subsection (4), for “fundable” substitute “post-16 education”.

(3) In section 73A—
(a) in subsection (10), for “fundable” substitute “post-16 education”,
(b) in subsection (11), for “fundable” substitute “post-16 education”.

Further and Higher Education (Scotland) Act 1992 (c.37)

2 (1) The 1992 Act is amended as follows.

(1A) In section 3—
(a) in subsection (6), after “Act” insert “and the Further and Higher Education (Scotland) Act 2005”,
(b) after subsection (6) insert—
“(7) Before making regulations under subsection (6), the Scottish Ministers must consult—
(a) the boards of management to which the regulations relate;
(b) any regional strategic body for a college of further education which has such a board;
(c) the students’ association of each such college;
(d) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally;
(e) the Council;
(f) any body which appears to the Scottish Ministers to be representative of colleges of further education;
(g) the representatives of any trade union which is recognised by a board of management to which the regulations relate or which otherwise appears to the Scottish Ministers to be representative of its staff;
(h) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland; and
(i) any other person appearing to the Scottish Ministers as likely to be affected by the regulations.”.

(1B) In section 5—
(a) in subsection (1), after “situated” insert “, the persons mentioned in subsection (1A)”,
(b) after subsection (1) insert—

“(1A) Those persons are—

(a) the Council; and

(b) where the proposal is to exercise the power under section 3(1)(b) or (c) or 44 of this Act—

(i) the board of management of the college or colleges concerned;

(ii) any regional strategic body for such a college;

(iii) the representatives of any trade union which is recognised by any such board of management or which otherwise appears to the Scottish Ministers to be representative of its staff;

(iv) the students’ association of each such college.”.

(2) In section 12—

(a) in subsection (2)(d), after “Act” insert “or of the Further and Higher Education (Scotland) Act 2005”,

(b) after subsection (4) insert—

“(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.”.

(3) In section 36(1)—

(a) omit the word “and” appearing after the definition of “interest in land”;

(b) after the definition of “land” insert—

““regional college” means a college of further education designated as a regional college by order made under section 7A of the Further and Higher Education (Scotland) Act 2005; and

“regional strategic body” has the same meaning as in that Act of 2005.”.

(3A) In section 60—

(a) in subsection (1), after second “Act” insert “or which falls within subsection (2A)”,

(b) after subsection (2) insert—

“(2A) An order falls within this subsection if—

(a) it is made under section 3(5) of this Act and makes provision other than provision varying the maximum or minimum number of members of a board of management established in pursuance of Part 1 of this Act; or

(b) it is made under section 12(8) of this Act.”

(2B) An order falling within subsection (2A) is subject to the affirmative procedure.”.

(4) In Schedule 2—

(a) omit paragraphs 2 and 4,

(b) in paragraph 5—
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Schedule—Modification of enactments

(i) in sub-paragraph (1), for the words from “6” to the end of the sub-
paragraph substitute “5A and 5B below, a member of the board—
(a) if appointed in pursuance of paragraph 3(2)(a) as the chairing member of 
the board of a regional college, holds and vacates office on such terms 
and conditions as the Scottish Ministers may determine;
(b) if appointed in pursuance of paragraph 3A(2)(b) to (e) as a member of 
the board of a regional college, holds and vacates office on such terms 
and conditions as the board may determine;
(c) if appointed in pursuance of paragraph 3A(2)(a) or (b) to (d) as a 
member of the board of a college which is not a regional college, holds 
and vacates office on such terms as the regional strategic body may 
determine; and
(d) is, on ceasing to hold office, eligible for re-appointment.”,
(ii) for sub-paragraph (2) substitute—
“(2) Subject to sub-paragraphs (2A) to (2H) below—
(a) a member appointed by being elected in pursuance of paragraph 3(2)(b) 
or (c) or 3A(2)(b) or (ba) is to hold office for 4 years;
(b) a member appointed in pursuance of paragraph 3(2)(d) or 3A(2)(c) is to 
hold office until 31 August following appointment; and
(c) each other member of the board (including the chairing member) is to 
hold office for such period (not exceeding 4 years) as is specified in the 
member’s terms of appointment.
(2A) The Scottish Ministers may extend the period of appointment of the chairing 
member of a regional college for a single further period not exceeding 4 years.
(2B) The board of a regional college may extend the period of appointment of a 
member appointed under paragraph 3(2)(e) for a single further period not 
exceeding 4 years (but such an extension has effect only if approved by the 
chairing member and the Scottish Ministers).
(2C) A regional strategic body may extend the period of appointment of a member it 
appoints under paragraph 3A(2)(a) or (d) for a single further period not 
exceeding 4 years.
(2E) The chairing member of a regional college is to vacate office if the member 
becomes a person of the type described in paragraph 3(4) of Schedule 2.
(2EA) The principal of a college is to vacate office on ceasing to be the principal.
(2F) A member appointed under paragraph 3(2)(b) or (c) or 3A(2)(b) or (ba) is to 
vacate office if the member ceases to be a member of the teaching or, as the 
case may be, non-teaching staff of the college before the member’s period of 
appointment ends.
(2H) A member appointed in pursuance of paragraph 3(2)(d) or 3A(2)(c) is to vacate 
office if the member ceases to be a student of the college before the member’s 
period of appointment ends.”,
(iii) omit sub-paragraphs (3) and (4),
(iv) in sub-paragraph (5), for the words from “such” to “purpose” substitute “—
(a) in the case of the chairing member of the board of a regional college, the Scottish Ministers;
(b) in the case of any other member of the board a regional college, the board;
(c) in the case of any member of the board of a college which is not a regional college, the regional strategic body."

(c) after paragraph 5 insert—

“5A (1) A person is not eligible for appointment as a member of the board if the person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;
(b) is an undischarged bankrupt; or
(c) has been removed from office under section 24 of this Act (in relation to any college) or section 23N of the Further and Higher Education (Scotland) Act 2005 (in relation to any regional board).

(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);
(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);
(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;
(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;
(e) who has been adjudged bankrupt (and has not been discharged); or
(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

5B (1) The relevant person must remove a member of the board from office (by giving notice in writing to the member) if—

(a) the member—

(i) is sentenced as mentioned in paragraph 5A(1)(a); or
(ii) has become a person to whom paragraph 5A(1)(b) applies; or
(b) the relevant person is satisfied that the member—

(i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
(ii) is otherwise unable or unfit to discharge the member’s functions.
In sub-paragraph (1), “relevant person”—

(a) in the case of the chairing member of the board of a regional college, means the Scottish Ministers,

(b) in the case of any other member of the board of a regional college, means the board of management of that college,

(c) in the case of a member of the board of a college which is not a regional college, means the regional strategic body for that college.

(3) The Scottish Ministers must, by giving notice in writing to the member, remove a member from office if the member is removed from office under section 24 of this Act (in relation to any other college) or section 23N of the Further and Higher Education (Scotland) Act 2005 (in relation to any regional board).

(4) Where a member removed under sub-paragraph (3) was appointed under paragraph 3(2)(e) or 3A(2)(d), the Scottish Ministers may appoint another person in place of the removed member.

(5) An appointment made under sub-paragraph (4) has effect as if made under the provision under which the removed member was appointed.

5C Paragraphs 5A and 5B do not apply in relation to the principal of the college.”;

(d) omit paragraphs 6 to 10,

(e) in paragraph 11(1), for “paragraphs 12 and” substitute “paragraph”;

(g) omit paragraph 12,

(h) in paragraph 16, after “Act” insert “and paragraph 16A below”,

(i) after paragraph 16 insert—

“16A The appointment of a principal of a college which is not a regional college, and the terms and conditions of such an appointment, have effect only if approved by the regional strategic body for the college.”.

Education Act 1994 (c.30)

2A In section 21(2)(b) of the Education Act 1994, for the words from “, or” to “4(1)” substitute “is established in pursuance of Part 1”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

3 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000, after the entry for “Quality Meat Scotland” insert—

“A regional board (within the meaning of the Further and Higher Education (Scotland) Act 2005)”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

4 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

(2) In section 3—

(a) in subsection (7)—
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Schedule—Modification of enactments

(i) omit the word “or” appearing after paragraph (b),
(ii) after paragraph (c) insert “, or
(d) add to it an entry relating to a regional strategic body (within the meaning of that Act).”,
5
(b) in subsection (8), for “fundable” substitute “post-16 education”.

(3) In Part 3 of schedule 2, in paragraph 92(1), after “2005 (asp 6)” insert “and any college of further education which is assigned to such a fundable body by order made under section 7C(1) of that Act”.

Freedom of Information (Scotland) Act 2002 (asp 13)

5 In paragraph 49 of schedule 1 to the Freedom of Information (Scotland) Act 2002, after “Council” insert “or a regional strategic body (within the meaning of the Further and Higher Education (Scotland) Act 2005)”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

5A In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, after the cross-heading “Offices” insert—

“The chairing member of the board of management of a college of further education which is designated as a regional college by order under section 7A of the Further and Higher Education (Scotland) Act 2005

The chairing member of a regional board established by or in pursuance of section 7B of that Act”

Further and Higher Education (Scotland) Act 2005 (asp 6)

6 (1) The 2005 Act is amended as follows.
(2) In section 3—
(a) in paragraph (a), for first “fundable” substitute “post-16 education”,
(b) in paragraph (b), for “fundable” substitute “post-16 education”.
(3) In section 4(1)—
(a) in paragraph (a), for third “fundable” substitute “post-16 education”,
(b) in paragraph (b), for “fundable” substitute “post-16 education”.
(4) In section 6—
(a) for subsection (1) substitute—
“(1) In this Act, “fundable body” means—
(a) any body specified in schedule 2; and
(b) any regional strategic body (see section 7B).”,
(b) in subsection (2)—
(i) after “fundable” insert “post-16 education”,
(ii) for “that schedule” substitute “schedule 2”.

(4B) In section 7—

(a) in subsection (2)—

(i) after paragraph (f) insert—

“(fa) arrangements for the purpose of seeking to ensure that the interests of the body’s students are represented by a students’ association;”

(ii) in paragraph (h), for third “fundable” substitute “post-16 education”,

(iii) omit the word “and” appearing after paragraph (h),

(iv) after paragraph (h) insert—

“(ha) where the body is a regional strategic body, procedures and arrangements for the administration by the body of the funds mentioned in section 12A(2) and for the exercise of its other functions as a regional strategic body; and”,

(b) after subsection (2) insert—

“(2A) Paragraph (ha) of subsection (2) applies only where the Council is considering whether to remove the entry relating to the body concerned from schedule 2.”,

(c) in subsection (4), for “(h)” substitute “(ha)”.

(5) After section 7C, inserted by section 8(3), insert—

“7D Orders under sections 7A to 7C: supplemental

(1) This subsection applies to—

(a) any order under section 7A(1) which designates a regional college (or which revokes such a designation); and

(b) any order under section 7C(1) which assigns a college of further education to a regional strategic body (or which revokes such an assignation).

(2) An order to which subsection (1) applies may—

(a) make provision about the membership of the board of management of the college of further education concerned,

(b) make such additional provision (not being provision mentioned in paragraph (a)) as is considered appropriate in relation to the change of status of the college concerned.

(2A) Subsection (2)(a) applies only where the college of further education concerned is one whose board of management is established in pursuance of Part 1 of the 1992 Act.

(3) Provision under subsection (2)(a) may include provision—

(a) authorising the Scottish Ministers to make arrangements for, or otherwise providing for, the continuing in office, or the removal from office, of persons who are members of the board immediately before the day on which the designation or assignation has, or ceases to have, effect;

(b) for the appointment by the Scottish Ministers, on terms and conditions determined by them, of persons who are to be members of the board from that day;
(c) deeming persons who continue in office, or who are appointed in pursuance of sub-paragraph (b), to hold 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 may be specified in the order.

(3A) But such an order may not make provision in pursuance of subsection (3)(b) under which a person appointed to a board of management is to hold office otherwise than as if appointed under paragraph 3(2)(a) or (e) or, as the case may be, 3A(2)(a) or (d) of schedule 2 to the 1992 Act.

(4) Subsections (1) to (3A) do not prejudice the generality of powers conferred by section 34(2).

(5) The Scottish Ministers must, in pursuance of sections 7A to 7C, seek to ensure—

(a) that every college of further education whose governing body is established in pursuance of Part 1 of the 1992 Act is either—

(i) designated as a regional college; or

(ii) assigned to a regional strategic body; and

(b) that at least two colleges of further education are assigned to each regional board.

(6) Where, despite subsection (5)(a), a college of further education whose governing body is so established is not so designated or assigned, the college is (subject to any contrary provision made under section 33 or 34(2) of this Act or section 17 of the Post-16 Education (Scotland) Act 2013) to be treated for the purposes of this Act, the 1992 Act and any other enactment as having been designated as a regional college.

(7) Nothing in subsections (5) and (6) affects the power to make an order under section 7C(1) in relation to a college of further education whose governing body is not so established.”.

(6) In section 9—

(a) in subsection (3)—

(i) in paragraph (b), for the words from “the” to “both)” substitute “any of the conditions referred to in subsections (4) to (5A)”,

(ii) after paragraph (b) insert—

“(e) include any terms or conditions referred to in sections 9A to 9C.”,

(b) in subsection (4), for the words from second “is” to second “specify” substitute “—

(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; or
(ii) when making a payment to any of its colleges under section 12B(1), to impose on the college a requirement to comply with any matters concerning post-16 education bodies or any class of them as the Scottish Ministers may specify.

(c) in subsection (5)(a), after “fundable” insert “post-16 education”,

(d) after subsection (5) insert—

“(5A) The condition is that—

(a) when making a payment to a regional strategic 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 section 12) to impose on the regional strategic body a condition that it must, when making a payment to any of its colleges under section 12B(1), impose on the college a condition making the requirement referred to in subsection (6).”,

(e) in subsection (6), for “fundable”, in both places, substitute “post-16 education”,

(f) in subsection (8), after “fundable”, in both places, insert “post-16 education”,

(g) in subsection (9), after “fundable” insert “post-16 education”,

(h) in subsection (11)—

(i) for “in so far as provided for in subsection (4)” substitute “where imposed in pursuance of subsection (4)(a) or (b)(ii) or section 9A or 9AA”,

(ii) after “Council” insert “or a regional strategic body”,

(iii) omit the word “fundable”,

(i) in subsection (12)—

(i) in paragraph (a), after “(7)” insert “and in section 9C”,

(ii) omit the word “or” appearing after paragraph (a),

(iii) in paragraph (b), omit sub-paragraph (ii),

(iv) after paragraph (b) insert—

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

(j) in subsection (13)(c)—

(i) in sub-paragraph (ii), for “fundable” substitute “post-16 education”,

(ii) in sub-paragraph (iii), for “fundable bodies” substitute “post-16 education bodies, and such regional strategic bodies,”.

(7) In section 10—

(a) in subsection (2)(a)—

(i) for “the fundable” substitute “post-16 education”,

(ii) after second “bodies” insert “and restructuring involving regional strategic bodies”,

...
(b) in subsection (2)(c), for “the fundable bodies” substitute “post-16 education bodies and, where appropriate, between those bodies and regional strategic bodies”,

(c) in subsection (6), for “fundable” substitute “post-16 education”.

(8) In section 11—

(a) in subsection (1)—

(i) omit the word “and” appearing after paragraph (a),

(ii) after paragraph (a) insert—

“(aa) providing support (whether financial or otherwise) to regional strategic bodies; and”,

(b) in subsection (3)—

(i) in paragraph (a), after third “fundable” insert “post-16 education”,

(ii) in paragraph (b), after “fundable” insert “post-16 education”,

(iii) in paragraph (c), after “fundable” insert “post-16 education”,

(iv) in paragraph (d), after “fundable” insert “post-16 education”.

(9) In section 13—

(a) in subsection (1), for third “fundable” substitute “post-16 education”,

(b) in subsection (2), for “fundable” substitute “post-16 education”.

(10) After section 13 insert—

“13A Performance of regional strategic bodies

The Council is to secure that provision is made for—

(a) assessing; and

(b) enhancing,

the performance of regional strategic bodies.”,

(11) In section 14—

(a) in subsection (1), after “fundable” insert “post-16 education”,

(b) in subsection (2)(a)—

(i) omit the word “or” appearing after sub-paragraph (i),

(ii) in sub-paragraph (ii) for “body; and” substitute “post-16 education body; and”,

(iii) after sub-paragraph (ii) insert—

“(iii) any regional strategic body; and”.

(12) In section 18(2)(a), after “body” insert “or of any of a regional strategic body’s colleges”.

(13) In section 20—

(a) in subsection (3), for “fundable” substitute “post-16 education”,

(b) in subsection (4), for “fundable” substitute “post-16 education”,

...
(c) after subsection (9) (as inserted by section 13B), insert—

“(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).”.

(14) In section 22—

(a) in subsection (2)—

(i) in paragraph (a), for “the fundable bodies; or” substitute “post-16 education bodies and regional strategic bodies; (aa) any body which appears to the Council to be representative of trade unions in Scotland; or”;

(ii) in paragraph (b), for “fundable bodies” substitute “post-16 education bodies generally”;

(aa) in subsection (5)—

(i) at the end of paragraph (f) insert “; and

(fa) The Skills Development Scotland Co. Limited”;

(ii) omit paragraphs (g) to (i);

(ab) omit subsection (6),

(ac) in subsection (7), for “subsections (5) and (6)” substitute “subsection (5)”,

(b) in subsection (8), for the words from “promote” to “bodies” substitute “—

(a) promote collaboration between post-16 education bodies; and

(b) promote such collaboration between post-16 education bodies and regional strategic bodies as it considers appropriate.”.

(15) In section 24—

(a) in subsection (2), after “7” insert “, 14A”,

(b) in subsection (3), for “fundable body” substitute “post-16 education body or to a particular regional strategic body”.

(16) In section 25—

(a) in subsection (1)—

(i) for first “fundable” substitute “post-16 education body or regional strategic”,

(ii) omit second “fundable”,

(b) after subsection (1) insert—

“(1A) A direction made under subsection (1) in relation to any of a regional strategic body’s colleges may, in particular, require the Council to provide such financial support to the regional strategic body as may be specified in the direction (subject to such terms and conditions as may be so specified).”,

(c) in subsection (2), for the words from second “the” to “concerned” substitute “—
(a) the Council;
(b) the body to which the direction relates; and
(c) where that body is assigned to a regional strategic body by an order
    made under section 7C(1), the regional strategic body “.

(16A) After section 25 insert—

“25A Provision of information

(1) A person mentioned in subsection (2) must provide the Scottish Ministers with
    such information as they may reasonably require for the purposes of or in
    connection with the exercise of any of their functions under this Act.

(2) Those persons are—

(a) a regional strategic body; or
(b) a college of further education which is—
    (i) a regional college; or
    (ii) assigned to a regional strategic body by order made under section
        7C(1).”.

(17) In section 26—

(a) in subsection (1), for “fundable” substitute “post-16 education”,
(b) in subsection (2), for “fundable” substitute “post-16 education”,
(c) in subsection (3), for “fundable”, where it appears in paragraphs (a) and (b),
    substitute “post-16 education”.

(18) In section 28—

(a) in subsection (1), after “body” insert “or of any of a regional strategic body’s
    colleges”,
(b) in subsection (3), after “12” insert “or, as the case may be, by a regional strategic
    body under section 12B”.

(19) In section 31, for “fundable” substitute “post-16 education”.

(20) In section 34(4)—

(a) in paragraph (b), for “7(1) or (4)” substitute “7(4)”,
(b) omit the word “or” appearing after paragraph (b),
(c) after paragraph (b) insert—

“(ba) an order under section 7(1) (other than an order which is made only in
    consequence of a body changing its name or being closed);
(baa) an order under section 7B(2)(a) which establishes a regional board;
(bab) an order under section 7B(2)(b) which adds or removes an entry (but
    not including an order which removes an entry relating to a body which
    has been closed, wound up or has otherwise ceased to exist);
(bb) an order under section 7C(1) for which a proposal or approval under
    section 7C(2) is required;”
(bba) an order under section 9C(2) (other than an order which does no more than increase the amount specified in a previous order by an amount that is no greater than the amount which the Scottish Ministers, having had regard to any retail price index, consider is required in order to maintain the value of the previously specified amount in real terms);”

(bbb) an order under section 23L(11);”

(d) after paragraph (c) insert “; or

(ca) an order under paragraph 18 of schedule 2B (other than an order which does no more than vary the minimum number of members of a regional board or vary the maximum number of members which may be appointed in pursuance of paragraph 3(2)(e)),”.

(21) In section 35—

(a) in subsection (1)—

(i) after the definition of “the 1992 Act” insert—

““college of further education” means the governing body of a body—

(a) by which fundable further education or fundable higher education is provided; and

(b) which is not a higher education institution;”,

(ii) in the definition of “fundable body”, for “6(2)” substitute “6(1)”,

(iii) after the definition of “fundable higher education” insert—

““fundable post-16 education body” is to be construed in accordance with section 6(2);

“higher education institution” means an institution which is—

(a) a university; or

(b) a designated institution (within the meaning of section 44(2) of the 1992 Act);”,

(iv) after the definition of “the Parliament” insert—

““post-16 education body” means—

(a) any fundable post-16 education body; and

(b) any college of further education assigned to a regional strategic body by order made under section 7C(1);

“recognised”, in relation to a trade union, has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992;

“regional board” is to be construed in accordance with section 7B(1)(b);

“regional college” means a college of further education designated as a regional college by order made under section 7A(1);

“regional strategic body” is to be construed in accordance with section 7B(1)(a);”,

(b) in subsection (2), omit “fundable” in each of the seven places where it occurs,

(c) after subsection (2) insert—
“(3) In this Act—

(a) any reference to the locality of a college of further education is a reference to any locality in which the college provides fundable further education or fundable higher education (other than by way of distance or open learning); and

(b) any reference (other than in sections 23A and 23C) to the locality in which fundable further education or fundable further education is provided does not include reference to any such education which is provided by way of distance or open learning.”.

(22) In schedule 1, in paragraph 4—

(a) the existing provision becomes sub-paragraph (1); and

(b) after that sub-paragraph insert—

“(2) A person is disqualified from appointment as a member of the Council if that person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;

(b) is an undischarged bankrupt; or

(c) has been removed from office under section 24 of the 1992 Act (in relation to any college) or section 23N of this Act (in relation to any regional board).

(3) For the purposes of sub-paragraph (2)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;

(e) who has been adjusted bankrupt (and has not been discharged); or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

(4) A person is disqualified from holding office as a member of the Council if that person—

(a) is sentenced as mentioned in sub-paragraph (2)(a);

(b) has become a person to whom sub-paragraph (2)(b) applies; or

(c) is removed from office as mentioned in sub-paragraph (2)(c).”.
Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

In the definition of “further education institution” in paragraph 15 of the Protection of Vulnerable Groups (Scotland) Act 2007, after “(asp 6)” insert “or a college of further education which is assigned to a regional strategic body by order made under section 7C(1) of that Act”.

Post-16 Education (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about the support for, and the governance of, further and higher education institutions, including provision for the regionalisation of colleges; to make provision for reviews of how further and higher education is provided; to make provision for sharing information about young people’s involvement in education and training; and for connected purposes.

Introduced by: Michael Russell
On: 27 November 2012
Bill type: Government Bill