The EIS is pleased to provide evidence to the Committee as part of its consideration of the Post-16 Education Bill. The EIS is the sole union recognised for collective bargaining on behalf of Scotland’s FE lecturers. The EIS is one of two unions recognised for collective bargaining for HE academic staff in Scotland’s Universities and HEIs, with some HEIs recognising solely the EIS for these staff.

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. re-deployment 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 Minster’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.