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