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 responded. 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.

1 RSE response to Putting Learners at the Centre (December 2011)
2 RSE response on the Governance of Higher Education in Scotland (September 2011)
RSE response on the Report of the Review of Further Education Governance in Scotland (February 2012)
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.

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\(^3\) [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 go beyond this. The code should therefore operate on a ‘comply or explain’ basis. This is 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\(^5\) 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

\(^5\) *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)