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.
This Bill is currently going thought 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 mis-trust.

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/2010/11/111214/0

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 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

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 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.
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 from the Bill’s provisions how it is intended that this will be achieved in practice. 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

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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 £17million 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?

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\(^1\).

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.

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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%. 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.

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 difficult 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

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\(^1\) 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 bulletin¹:

- **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 careleavers 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 careleavers, 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.
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

\(^1\) Official Report of the Education and Culture Committee – 15\(^{th}\) January 2013: Michael Cross “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”.

\(^2\) 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”.\(^4\) 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

\(^4\) 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”. 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
(OSCR). 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, 1\(^{st}\) 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.
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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<th>Committee of Scottish Chairs (CSC)</th>
<th>Signatories</th>
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<td><strong>Signatories</strong></td>
<td>Sir Moir Lockhead, University of Aberdeen</td>
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<td>Mr Eddie Frizzell, University of Abertay Dundee</td>
<td>Mr Mike Salter, Robert Gordon University</td>
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<td>Mr Eric Sanderson, University of Dundee</td>
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University governance

The Bill seeks to give legislative backing to the sector’s work to develop a new Scottish code of higher education governance. The Council agrees that it is essential that universities have a model of governance that is robust, accountable, inclusive and transparent and operate in a culture of continuous improvement.

Widening access

In regard to universities, the Bill seeks to take forward the Government's ambitions on widening access. The Council agrees that further progress on widening access to university as reflected in the Bill is to be commended, in particular the proposal for 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

The Bill seeks to legislate for the regulation of rest-of-UK fees and formalise the cap on fees eligible to be paid by students resident in England, Wales and Northern Ireland, who wish to study in Scotland. The Bill's provisions seek to cap the fees at the same maximum level as charged by institutions in the rest of the UK. The Council agrees with this formalisation through legislation.

College regionalisation

The Bill aims to implement the Government's intention to provide a legislative basis to college regionalisation. In regions with more than one college, multi-college regions, the Bill proposes a new regional strategic body which would receive and distribute funding for the region and plan college provision strategically across the region. For East Dunbartonshire, college provision will be met by colleges within two separate regions, Glasgow and Lanarkshire, and it is essential to ensure that that the further education needs of the population of East Dunbartonshire are met through regionalisation. The main issue for East Dunbartonshire Council is that we will be served by several colleges with proximity to the Council from two different regions: Lanarkshire (Cumbernauld College) and Glasgow (North Glasgow College, Anniesland College and City of Glasgow College). We also have school pupils attending Clydebank College, which is part of West Region, as part of the Vocational Programme in S4 to 6. It is difficult to
predict the impact on EDC of the regionalisation. However it may make it more difficult to influence the learning opportunities provided by colleges.

The Council welcomes the Bill's intention that educational provision would be delivered at the local level as part of a coherent regional offer and that it will be 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. The Bill also stipulates that 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. This will require coordination by colleges, through their regional strategic bodies, to ensure fair provision to local authority areas such as East Dunbartonshire whose locality is within their regions.

**Review of fundable further and higher education**

The Council agrees with the proposal to allow the Scottish Funding Council 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**

It is important to ensure accurate data collection and sharing across the 16 to 24 age group in order to support evaluation of the impact of provision and support across the post-16 learning system. The Council therefore agrees with proposed legislative measures to ensure that all of those responsible for providing learning and training to 16 to 24 year olds must participate in data sharing with Skills Development Scotland.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Edinburgh College

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”1 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,

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1 Bill P.3 lines 30-35
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.
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
Edinburgh University Students’ Association

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*James McAsh*

*EUSA President*
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 recognise 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 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.
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.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Falkirk Council

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 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\(^4\) 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
Education and Culture Committee

Post-16 Education (Scotland) Bill

General Council Business Committee Convenors
of the ancient universities of Scotland

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?
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.
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.

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
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”.\(^4\) Clearly this is not in line with the GIRFEC framework\(^5\) 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


\(^5\) 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
Education and Culture Committee

Post-16 Education (Scotland) Bill

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 worsen as the UK’s welfare reform agenda unfolds.

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.

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
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 Potential¹ 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

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 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.
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
2001 173
2002 156
2003 126

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 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.

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.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Royal Society of Edinburgh

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.

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 \textit{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.

\(^3\) \url{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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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)

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.
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.

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.

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.
Education and Culture Committee

Post-16 Education (Scotland) Bill

Scottish Council for Development and Industry (SCDI)

Introduction

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. 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

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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


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
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 (eg 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:
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.
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.
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 recoding 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.
The Open University in Scotland

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 incomes¹ 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.

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.

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2 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’\(^3\). 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’\(^4\); 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.

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\(^5\) 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 underlie 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-focused. 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-focussed 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

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 under-represented 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 is 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.
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>
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,

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, 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\textsuperscript{4} 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\textsuperscript{5} or public authority”

\textsuperscript{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.

\textsuperscript{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.
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.
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.
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.
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.
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.
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 with WAAs, i.e., what happens to institutions' funding if they fail to comply with a WAA 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.
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
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
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 become 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.
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 Entitlement Card 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 **effectiveness** for learners

A belief the NEC can “**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.