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2 July 2025

Dear Convener,

## **TERTIARY EDUCATION AND TRAINING (FUNDING AND GOVERNANCE) (SCOTLAND) BILL – FOLLOW-UP TO STAGE 1 EVIDENCE SESSION**

Following the Stage 1 evidence proceeding on 28 May 2025 on the Bill, I am writing to provide further information and clarification on the various areas raised at the session.

### **Staff transfer**

Andrew Mott, Scottish Government Head of Legislation and CLD, said, “*the SFC has 140 or 150 people — or something like that; I would need to check the exact number. As the minister has said, we need to work out the exact number of staff who will be transferred, but the estimate in the financial memorandum is that it will be something like 150 to 175 full-time-equivalent posts. It will be, roughly speaking, a number equivalent to the existing cohort in the SFC.*”

To clarify, the SFC was estimated to have 190 FTE staff in 2024 and the number of SDS staff that might transfer was estimated to be between 148.4 FTE and 176.6 FTE staff in the financial memorandum. On the basis of these numbers, the number of staff to be transferred is estimated to be less than the number of staff in the SFC, although it could be close to a doubling in size.

### **Transitional costs**

The financial memorandum estimates the transition costs to be in the range from £2.7 million to £5.3 million over 2025-26 and 2026-27 combined. These figures do not include the pension shortfall payment as there is currently large uncertainty on the number of staff that may transfer from SDS to the SFC.

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There is significant work to do to determine who might be transferring, the terms and conditions of transfer and the associated costs. My officials are engaging with the SFC and SDS with a view to narrowing down the range of cost estimates as quickly as possible. As I have committed to the Committee, I will provide as much information as I can on costs before the Stage 1 debate in September 2025.

### **SFC Board recruitment**

In the evidence session, I referred to vacancies on the SFC Board (formally the Council): “*I think that we currently have one vacancy on the council, and we have four coming up*”. I want to clarify that the SFC currently have two vacant positions on the SFC Board, the position of chair and a board member. There are also three members due to end their second and final term in October 2025. We currently have an appointment process underway for the position of chair and are due to advertise for four board members. Therefore, five new board appointments will be made in 2025, including a new chair.

### **Threshold for notifications to the SFC**

The Committee highlighted Universities Scotland’s concerns on the thresholds for notifying the SFC of certain matters (section 7 of the Bill). The Bill does not set out any thresholds and Universities Scotland are concerned that they are sufficiently high. The intention is for Scottish Ministers to prescribe situations where there is potentially serious jeopardy to post-16 education bodies or to the SFC’s ability to perform its functions. The policy memorandum provides a few examples of the types of situations where this might be warranted.

These regulations are to be made under the affirmative procedure. The Bill also requires consultation with the SFC, post-16 education bodies and other appropriate stakeholders as part of preparing any such regulations. My officials will continue to explore Universities Scotland’s concerns with them with a view to providing suitable reassurances.

### **Power to direct funding**

The Convener questioned whether a provision that will allow Scottish Ministers to direct or ring-fence funding on specific purposes was needed. I want to clarify that funding allocations for higher education, colleges and apprenticeships are determined by the Scottish Budget process. Scottish Ministers then set out their strategic guidance on priorities for the SFC through the Letter of Guidance.

I would also like to clarify that the powers in the Bill for Ministers to give grants to the SFC in respect of its new functions are expressly framed for those purposes. I have outlined below the provisions in the Bill that give Scottish Ministers the ability to be very clear about the specific purposes for which apprenticeship and work-based learning funding is to be used, and the SFC must use that funding only for those purposes.

- Section 4 of the Bill inserts new section 12I into the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”) which enables the Scottish Ministers to make grants to the SFC for the purpose of securing the delivery of Scottish apprenticeships and work-based learning. Those grants may be subject to such terms and conditions as Ministers consider appropriate.

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- Section 5 of the Bill also inserts a new section 12J into the 2005 Act, which contains a corresponding obligation on the SFC to administer all grants made to it under section 12I for the purpose of securing the delivery of Scottish apprenticeships and work-based learning. In doing so, the SFC will secure that delivery through appropriate training providers and the Bill gives Ministers the power to set out criteria those training providers must meet.

The Bill also expands the SFC's overarching duties. Section 1 of the Bill amends section 3 of the 2005 Act to provide that, in exercising its functions, the SFC is to do so for the purpose of securing the coherent provision (as a whole) of high quality fundable further and higher education, Scottish apprenticeships and work-based learning. Section 2 of the Bill (amending section 4 of the 2005 Act) also establishes a general duty on the Scottish Ministers to provide support for Scottish apprenticeships and work-based learning. This is to be achieved by way of grants to the SFC for these purposes, as well as any such other means considered appropriate, and is to such extent as Ministers may determine. This is the same level of obligation as currently applies for supporting further and higher education.

In relation to Ministers making specific directions regarding higher education institutions, they are independent autonomous institutions and the funding structure under the 2005 Act respects this. In general, decisions on the allocation of funding to individual institutions are the responsibility of the SFC in consideration of its full range of functions and duties. In very exceptional circumstances, Ministers may have a more involved role where there is the appearance that the financial affairs of a post-16 education body have been or are being mismanaged (under section 25 of the 2005 Act). That is something to be considered very carefully and the Convener will be aware the Cabinet Secretary for Education made a statement on the University of Dundee in light of this on Tuesday 24 June 2025.

### **Information on SDS director liabilities**

The SDS Board had requested a formal letter of assurance from the Scottish Government confirming that SDS Directors will be exempt from personal liability for any costs or financial deficits arising directly or indirectly from the proposed reforms.

On 19 March 2025, Neil Rennick, Scottish Government Director-General Education and Justice, wrote to Frank Mitchell, SDS Chair, to explain that the circumstances in which Directors could find themselves personally liable are very limited. These include situations such as breaches of Director's duties or making personal guarantees. The SDS Memorandum and Articles of Association provide the Directors of SDS with clear indemnification against potential claims. Therefore, the Scottish Government does not consider that a formal letter of assurance is necessary.

### **Stage 2 amendments**

Some members mooted potential Stage 2 amendments to the Bill. My officials would be happy to engage with members on the detail of their potential Stage 2 amendments with a view to finding workable solutions to problems and concerns identified by members. Where amendments to the Bill are needed, it's in all our interests to make sure that they work as intended and in the wider context of the Bill and the 2005 Act.

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## **Stakeholder engagement**

I mentioned to the Committee that I was due to meet with the Scottish Trades Union Congress (STUC) on 29 May 2025. However, this meeting will now take place on 24 July 2025. I have also met with Women's Enterprise Scotland, Scottish Training Federation and the Federation of Small Businesses over the last couple of weeks.

My officials have also engaged with trade unions and I plan to hold a roundtable with them after summer recess.

I hope the Committee finds this helpful.

Yours sincerely,

**GRAEME DEY MSP**

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