

POST-16 EDUCATION (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Post-16 Education (Scotland) Bill introduced in the Scottish Parliament on 27 November 2012:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 18–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

4. The Bill makes provision in relation to some aspects of the Scottish Government's post-16 education reform programme. The Bill contains provisions covering six areas:

- **University governance:** to allow Ministers, when providing funding to the Scottish Further and Higher Education Funding Council ("SFC"), to impose conditions relating to the need for higher education institutions to adhere to good practice in governance. **(Section 2)**
- **Widening access:** to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups. **(Section 3)**
- **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 post-16 education bodies adhere to such an upper limit. **(Section 4)**
- **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). **(Sections 5 – 13)**
- **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. **(Section 14)**

- **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. **(Section 15)**

5. The majority of the Bill makes amendments to the Further and Higher Education (Scotland) Act 1992 and the Further and Higher Education (Scotland) Act 2005.

6. Throughout these Explanatory Notes various terms are used. The most important terms are as follows:

“the 1992 Act” means the Further and Higher Education (Scotland) Act 1992 [“the 1992 Act” has the same meaning in the Bill (see section 1 of the Bill)];

“the 2005 Act” means the Further and Higher Education (Scotland) Act 2005 [“the 2005 Act” has the same meaning in the Bill (see section 1 of the Bill)];

“fundable post-16 education body” means a body specified in schedule 2 to the 2005 Act [this is what is provided for in section 6(2) of the 2005 Act as amended by paragraph 6(4)(b) of the schedule to the Bill; in practice ‘fundable post-16 education bodies’ are colleges or higher education institutions];

“higher education institution” means a university or any designated institution (within the meaning of section 44(2) of the 1992 Act) [paragraph 6(21)(a)(iii) of the schedule to the Bill inserts a definition in these terms into section 35(interpretation) of the 2005 Act];

“incorporated college” means a college of further education which has a board of management established under the 1992 Act;

“post-16 education body” means any fundable post-16 education body, and any college which is assigned to a regional strategic body under section 7C(1) of the 2005 Act (inserted by section 8(3) of the Bill) [paragraph 6(21)(a)(iv) of the schedule to the Bill inserts a definition in these terms into section 35(interpretation) of the 2005 Act];

“regional board” means a body specified in part 1 of schedule 2A to the 2005 Act [this reflects the definition of “regional board” inserted into section 35(interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill; new schedule 2A to the 2005 Act is inserted by section 8(2) of the Bill];

“regional college” means an incorporated college which the Scottish Ministers designate as a regional college by an order made under section 7A(1) of the 2005 Act [section 7A(1) of the 2005 Act is inserted by section 5(1) of the Bill; see also the definition of “regional college” inserted into section 35 (interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill];

“regional strategic body” means a body specified in schedule 2A to the 2005 Act [this reflects the definition of “regional strategic body” inserted into section 35 (interpretation) of the 2005 Act by paragraph 6(21)(a)(iv) of the Bill; new schedule 2A to the 2005 Act is inserted by section 8(2) of the Bill]; and

“SFC” means the Scottish Further and Higher Education Funding Council established under section 1 of the 2005 Act.

INTRODUCTORY

Section 1: Interpretation

7. Section 1 of the Bill provides that in the Bill “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992 and that “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005.

TERMS AND CONDITIONS OF HIGHER EDUCATION FUNDING

Section 2: Higher education institutions: good governance

8. Section 9(1) of the 2005 Act gives the Scottish Ministers powers to make grants to the SFC and under section 9(2) the Scottish Ministers are able to attach terms and conditions to such grants. Section 2 of the Bill amends the 2005 Act by introducing new section 9A. New section 9A provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must, when making a payment to a higher education institution under section 12(1) of the 2005 Act (SFC’s power to make grants, loans or other payments) impose on that institution a condition that it must comply with any principles of governance or management which the Scottish Ministers consider to constitute good practice in relation to higher education institutions.

9. Certain consequential amendments to section 9 of the 2005 Act in connection with new section 9A (and new sections 9B and 9C) are made by paragraph 6(6) of the schedule to the Bill.

Section 3: Widening access to higher education

10. Section 3 of the Bill amends the 2005 Act to insert new section 9B. Section 9B makes provision about the terms and conditions that the Scottish Ministers can impose when making grants to the SFC under section 9(1) of the 2005 Act (described more fully in paragraph 8 above). New section 9B(1) gives the Scottish Ministers powers to set terms and conditions that are aimed at enabling, encouraging or increasing participation in higher education by people from under-represented socio-economic groups (and subsection (4) describes what is meant by “under-represented”).

11. New section 9B(2) gives power to the Scottish Ministers to impose a condition on the SFC that the SFC (when making a payment to a higher education institution) is itself to make a requirement that the institution complies with a widening access agreement. And the Scottish Ministers are given power to specify the description of such widening access agreements. Section 9B(2) is framed as a particular example of the things that the Scottish Ministers can do in the context of their more general power to impose terms and conditions under section 9B(1).

12. New section 9B(3) then provides a definition of a “widening access agreement”.

13. The intention is that, in the context of exercising the power to impose terms and conditions under new section 9B so as to require the SFC to then require institutions to comply with widening access agreements, those agreements will provide the detail of the range of activities that institutions will have to undertake in order to improve participation in higher education.

14. Amendments made by paragraph 6(6)(i) of the schedule to the Bill will amend the current restriction in the 2005 Act (in section 9(12)(b)) which would otherwise prevent terms and conditions relating to criteria for admission. However, that restriction is removed only for the limited purposes of new section 9B on widening access.

Section 4: Fee cap: students liable for higher education fees

15. Section 4 of the Bill amends the 2005 Act to insert new section 9C. Section 9C makes provision about the terms and conditions that the Scottish Ministers can impose when making grants, loans or other payments to the SFC under section 9(1) of the 2005 Act (described more fully in paragraph 8 above).

16. New section 9C(1) of the 2005 Act provides that terms and conditions of grant under section 9(2) may include a condition that the SFC must:

- (a) when making a payment to a post-16 education body which provides fundable higher education, impose a condition that it must comply with the requirement provided for in section 9C(2);
- (b) when making a payment to a regional strategic body, impose a condition that, when making a payment under new section 12B of the 2005 Act (inserted by section 9 of the Bill) (regional strategic bodies' powers to make grants, loans or other payments) to any of its colleges which provide fundable higher education, that regional strategic body must impose a condition that such college must comply with the requirement provided for in section 9C(2).

17. The requirement provided for in new section 9C(2) of the 2005 Act is a requirement that the post-16 education body receiving the payment must ensure that fees charged by it to students in respect of whom the post-16 education body is authorised or required to charge higher fees in terms of section 1 of the Education (Fees and Awards) Act 1983 (or by any class of such students as may be provided for in an order made by the Scottish Ministers) and who are studying such courses of education as may be provided for in the order, must not exceed the amount set by the Scottish Ministers in the order.

18. New section 9C(3) of the 2005 Act provides that the Scottish Ministers must seek to ensure that, subject to any exceptions which they consider to be appropriate, the order applies only to students who have a connection with the United Kingdom. It also provides that Ministers must seek to ensure that the amount provided for in the order will not result in the students to whom the order applies being charged higher fees per academic year for studying at a post-16 education body than the highest amount of fees per academic year, as set by legislation elsewhere in the UK, that such student would be charged if they chose to pursue any course of higher education in a part of the United Kingdom other than Scotland.

19. New section 9C(4) of the 2005 Act provides that in making provision in the order for the courses of higher education to which it is to apply, Ministers must not do so in a way which discriminates between different postgraduate teacher training courses on the basis of subject matter.

20. New section 9C(5) of the 2005 Act provides that for the purposes of new section 9C references to the United Kingdom include the Channel Islands and the Isle of Man.

21. Certain consequential amendments to section 9 of the 2005 Act in connection with new section 9C are made by paragraph 6(6) of the schedule to the Bill.

COLLEGE REORGANISATION

Section 5: Regional colleges

22. Section 5 of the Bill inserts new sections 7A, 23A and 23B into the 2005 Act. The new section 7A of the 2005 Act enables the Scottish Ministers to designate any incorporated college as a regional college. Before making an order, the Bill requires the Scottish Ministers to consult specified persons.

23. New section 23A(1) of the 2005 Act places a duty on a regional college to exercise its functions with a view to securing high quality “fundable further education” and “fundable higher education” in its locality. These terms are defined in section 5 of the 2005 Act. The duty is framed to recognise that regional colleges are not the sole providers of such education in their localities. The SFC has a similar duty in section 3 of the 2005 Act.

24. Under new section 23A(2) of the 2005 Act, in complying with its duty a regional college must have regard to any fundable further and higher education provided by other post-16 education bodies in the locality of a regional college.

25. New section 23B(1) of the 2005 Act places a duty on a regional college to plan for how it proposes to provide fundable further education and fundable higher education and how it intends to exercise its other functions. When it makes such plans, a regional college must have regard to the importance of ensuring that its funds are used as economically, efficiently and effectively as possible. New section 23B(3) of the 2005 Act places a duty on a regional college to consult specified persons in relation to the exercise of its functions where they consider it appropriate to do so. The list in section 23B(3) can be amended by order made under new section 23B(6) of the 2005 Act. However, the Scottish Ministers cannot modify the entries for trade union representatives (section 23B(3)(a) of the 2005 Act) or students’ associations (section 23B(3)(b) of the 2005 Act).

26. New section 23B(5) of the 2005 Act places a duty on a regional college to seek to secure the collaboration of specified persons, so far as is consistent with the proper exercise of the college’s functions. Again, Scottish Ministers can amend the list by order made under new section 23B(6) of the 2005 Act.

Section 6: Colleges: boards of management

27. Section 6(1) of the Bill inserts a new paragraph 3 into Schedule 2 to the 1992 Act to replace the current paragraph 3 which made provision for the constitution and proceedings of boards of management of incorporated colleges (including the appointment of the principal to the board by right of their position).

28. The effect of the provisions in section 6(1) is to make changes to the size and composition of incorporated college boards, depending on whether they are regional colleges or not.

Regional college boards

29. New paragraph 3(1) of Schedule 2 to the 1992 Act determines that the board of a regional college will have a minimum of 12 members and a maximum of 18 members.

30. Under new paragraph 3(2)(a), the chair of a regional college board will be appointed by the Scottish Ministers. Under new paragraph 3(4) the chair cannot be a member of the Scottish Parliament, the House of Lords, the House of Commons, the European Parliament or the principal of the college. Other board members must also include:

- a) a person elected by the teaching staff of the college;
- b) a person elected by the non-teaching staff of the college; and
- c) two persons nominated by the college students' association.

31. Other members will be appointed by the board. Under new paragraph 3(3) such other members can only be appointed with the approval of the college chair and Scottish Ministers. New paragraph 3(5) makes an exception: regional college boards may appoint the college principal without the approval of the regional college chair or Scottish Ministers. (Under new paragraph 11A - inserted by paragraph 2(4)(f) of the schedule to the Bill - if the principal is not a member of the board, he or she is still to be entitled to participate in board meetings but not to vote.)

Other college boards

32. New paragraph 3A(1) of Schedule 2 to the 1992 Act determines the size of incorporated college boards that are not regional colleges. Such colleges will have a minimum of 7 members and a maximum of 10 members.

33. Under new paragraph 3A(2)(a) of Schedule 2 to the 1992 Act, the chair of a college board will be appointed by the college's regional strategic body (under new paragraph 3A(3), the college principal cannot be appointed as the chair). Other board members must also include:

- a) a person elected by the staff of the college; and
- b) a person nominated by the college students' association.

34. Between four and six other members will be appointed to the college board by the regional strategic body.

35. In addition, the college board may appoint the principal as a member of the board. (Again, under new paragraph 11A, if the principal is not a member of the board, he or she is still to be entitled to participate in board meetings but not to vote.)

General provisions: all incorporated colleges

36. New paragraph 3B makes provision for the conduct of elections to appoint board members to represent college staff. Such elections must be conducted in accordance with rules made by the college board. Before making or changing rules, college boards must consult representatives of staff relevant to the category of persons entitled to participate in the election (in the case of regional colleges, there would be separate elections under new paragraph 3(2)(b) and (c) for teaching and non-teaching staff; for other colleges, elections would cover all staff under new paragraph 3A(2)(b)).

37. New paragraph 3C enables the Scottish Ministers to issue guidance to (a) regional colleges on appointments and extensions of appointments to their boards and (b) to regional strategic bodies on appointments and extensions of appointments to the boards of colleges assigned to them. Guidance on the making of such appointments or the extension of appointments may include guidance on the skills and experience that candidates should possess. The Scottish Ministers may issue different guidance for different purposes, including to different regional colleges/regional strategic bodies.

38. Further amendments to Schedule 2 to the 1992 Act are made by paragraph 2(4) of the schedule to the Bill and they affect the boards of all incorporated colleges. Given the importance of some of these changes, they are explained in the following paragraphs. Paragraph 2(4)(a) removes paragraph 2 (which determined the size of existing college boards) and paragraph 4 (which made provision for the transfer of board membership when incorporated colleges were transferred from local authorities in 1993) of Schedule 2 to the 1992 Act. Paragraph 4 is no longer required as those transfers have now occurred.

39. Paragraph 2(4)(b) of the schedule to the Bill makes some amendments in relation to the provisions for the length of appointments. Under the 1992 Act, appointments were generally for a fixed period of four years. Amended paragraph 5(2) of schedule 2 to the 1992 Act provides that, subject to sub paragraphs (2A) to (2I) (which make provision in relation to extension of appointments and circumstances in which persons appointed require to vacate office):

- a person elected to represent the staff will hold office for a fixed period of four years;
- student members hold office until 31 August following their appointment (this replicates what is currently provided for in paragraph 5(4) of Schedule 2 to the 1992 Act which is repealed by paragraph 2(4)(b)(iii) of the schedule to the Bill); and
- the chair and other members of the board will hold office for a period of up to four years (to be determined by the person making the appointment).

Provision made in sub paragraphs (2A) to (2I) of paragraph 5 of Schedule 2 to the 1992 Act includes provision that any appointment of a person who is the principal of a college as board member may be extended or re-extended, for periods of up to four years, without limit for so long as the person is principal (amended paragraph 5(2D) of Schedule 2 to the 1992 Act) and that where a member of the board is the principal of the college at the time of appointment to the board the person requires to vacate office as board member if the person ceases to be the principal of the college before his or her period of appointment as board member ends (amended paragraph 5(2I) of Schedule 2 to the 1992 Act).

40. Paragraph 5(5) of Schedule 2 to the 1992 Act is amended to enable principals appointed to a board to resign from the board. This is not currently possible as principals are members of the board by virtue of their position.

41. Paragraph 6 of Schedule 2 to the 1992 Act, which imposed minimum and maximum age requirements on board members, is removed by paragraph 2(4)(d) of the schedule to the Bill.

42. Paragraph 2(4)(d) of the schedule to the Bill also removes paragraph 7 of Schedule 2 to the 1992 Act. Paragraph 7 of Schedule 2 to the 1992 Act makes provision for circumstances in which a person will be ineligible for appointment as a board member. Instead paragraph 2(4)(c) of the schedule inserts a new paragraph 5A into Schedule 2 to the 1992 Act to make new provision on the eligibility of board members. The provisions are identical to the provisions which are being introduced in relation to regional boards as it was considered appropriate to align the eligibility requirements. A person is ineligible for appointment if he or she has (within the last five years) been sentenced to imprisonment of longer than three months, is an undischarged bankrupt or has been removed from office under section 24 of the 1992 Act or section 23N of the 2005 Act (inserted by section 12 of the Bill). Paragraph 2(4)(d) of the schedule to the Bill also removes paragraphs 8 and 9 of Schedule 2 to the 1992 Act which make provision for circumstances in which a person falls to be removed from office as board member. Instead paragraph 2(4)(c) of the schedule to the Bill inserts a new paragraph 5B into Schedule 2 to the 1992 Act to make new provision for removal of board members. A person must be removed from office if the person is sentenced to imprisonment for a period of not less than three months or has become an undischarged bankrupt (new paragraph 5B(1)(a) of Schedule 2 to the 1992 Act). A board member must also be removed from office if the person removing them is satisfied that they have been absent for more than six months or are otherwise unfit or unable to discharge their functions (new paragraph 5B(1)(b) of Schedule 2 to the 1992 Act).

43. Paragraph 2(4)(d) of the schedule to the Bill also removes paragraph 10 from Schedule 2 to the 1992 Act (filling of casual vacancies) as it is no longer required since most board appointments are no longer fixed term appointments. Paragraph 2(4)(g) of the schedule to the Bill removes paragraph 12 of Schedule 2 to the 1992 Act, which makes provision for the appointment of the chair of a college. Such provision is now included in amended paragraph 3 of that Schedule (for regional colleges) and new paragraph 3A of that Schedule (for other colleges). The Scottish Ministers would have powers to remove the chair of regional and other colleges under new section 24 of the 1992 Act (section 7 of the Bill substitutes a new section 24 of the 1992 Act).

44. Paragraph 2(4)(i) of the schedule to the Bill inserts new paragraph 16A into Schedule 2 to the 1992 Act which provides that the principals of colleges that are not regional are to be appointed by their regional governing body on such terms and conditions as the regional strategic body thinks fit. This provision does not affect the contracts of existing principals. However, when those contracts become due for renewal, the regional governing body - not the college - will be responsible for the terms and conditions of the principal. The change to paragraph 17 of Schedule 2 to the 1992 Act (which makes provision for the terms and conditions of college staff) made by paragraph 2(4)(j) of the schedule to the Bill is a consequence of the principal remaining an employee of the college board.

45. Section 6(2) of the Bill allows Scottish Ministers to make arrangements in relation to the boards of management of incorporated colleges in advance of the coming into force of the changes to the composition and structure of boards. Scottish Ministers can appoint persons as board members who will hold office as if appointed under the new paragraph 3(2)(a) or (e) or 3A(2)(a) or (d) of Schedule 2 to the 1992 Act. The Scottish Ministers also have the power to make arrangements for board members who are in office immediately prior to the coming into force of the re-structured boards either to remain in office or to be removed from office.

Section 7: Colleges: mismanagement

46. Existing section 24 of the 1992 Act enables the Scottish Ministers to remove by order members of incorporated college boards if they consider the boards have been or are being mismanaged. By substituting a new section 24, section 7 of the Bill extends the grounds on which Scottish Ministers may remove members.

47. The new section 24 of the 1992 Act enables the Scottish Ministers to remove any or all of the members of an incorporated college's board in circumstances where it appears to the Scottish Ministers that such a board:

- a) has committed or is committing a serious breach of any term or condition of grant made to it either by the SFC (in the case of regional colleges) or by its regional strategic body (in case of other colleges). Such a breach may be a one-off breach;
- b) has committed or is committing repeated breaches of such terms or conditions;
- c) has failed or is failing to provide or secure the provision of education of such standard as the Scottish Ministers consider to be appropriate;
- d) has failed, or is failing to exercise any of its other functions properly; or
- e) has managed or is mismanaging its financial or other affairs.

48. The Scottish Ministers may also remove members if they receive advice from either the SFC (in respect of regional colleges) or regional strategic bodies (in respect of other colleges) that a college fails to meet the criteria set out in section 7(2) of the 2005 to be either a fundable body (in respect of regional colleges) or a college assigned to a regional strategic body (in respect of other colleges).

49. Under new section 24(3), the Scottish Ministers may in such circumstance remove by order any or all board members and where those persons are not the staff or student members, appoint other persons in their place. New section 24(5) provides that such appointments are treated as if they were made under the usual provisions for such appointments. This means that relevant provisions regarding eligibility, length of service etc. apply to them.

REGIONAL STRATEGIC BODIES

Section 8: Regional strategic bodies

50. Section 8 of the Bill makes provision for regional strategic bodies.

51. A regional strategic body is either a regional board set up under this Bill or a body designated by order as such. Three regional boards are established under the Bill, and the University of the Highlands and Islands is specified as a regional strategic body.

52. Section 8(1) inserts a new section 7B into the 2005 Act. New section 7B(1) of the 2005 Act defines a regional strategic body (a body specified in new schedule 2A to the 2005 Act (inserted by section 8(2) of the Bill)) and regional board (a body specified in Part 1 of that schedule).

53. New section 7B(2) of the 2005 Act enables Scottish Ministers to modify new schedule 2A to the 2005 Act by order either to establish, abolish or re-name regional boards, or to add, remove or vary any entries in Part 2 of it. New section 7B(3) of the 2005 Act specifies the persons Scottish Ministers must first consult before making such an order.

54. Section 8(2) of the Bill inserts a new schedule 2A into the 2005 Act. New schedule 2A to the 2005 Act lists regional boards in Part 1 and other regional strategic bodies in Part 2. The University of the Highlands and Islands is the only body listed in Part 2 of that schedule. Three regional boards are established by the Bill:

- Regional Board for Aberdeen and Aberdeenshire Colleges
- Regional Board for Glasgow Colleges
- Regional Board for Lanarkshire Colleges.

55. Section 8(3) of the Bill inserts a new section 7C into the 2005 Act. New section 7C(1) enables the Scottish Ministers to assign colleges of further education to a regional strategic body by order. Paragraph 6(21) of the schedule to the Bill amends section 35 of the 2005 Act (interpretation). A definition of “college of further education” is inserted into section 35 of the 2005 Act. “College of further education” is defined as the governing body of a body (a) by which fundable further education or fundable higher education is provided and (b) which is not a higher education institution. Under new section 7C(4) an order under new section 7C(1) could remove the college from the list of fundable bodies in schedule 2 to the 2005 Act and make such other provision in relation to the college as the Scottish Ministers consider appropriate. New section 7C(5) specifies the persons the Scottish Ministers must first consult before making such an order.

56. New section 7C(2) of the 2005 Act requires a regional strategic body to propose or approve the assignation of a college to it, except where the college concerned is a fundable body, or where the college is assigned to another regional strategic body, immediately before the order. This means that colleges in multi-college regions that are currently fundable bodies (or have previously been assigned to a regional strategic body) can be assigned at the time regional strategic bodies are given their functions.

57. New section 7C(3) of the 2005 Act provides that when proposing or approving the assignation of a college, the regional strategic body should consider the matters set out in section 7(2) of the 2005 Act. These are the same matters the SFC must consider when considering whether to propose or approve the addition of a learning provider to the list of fundable bodies.

58. New section 7C(6) of the 2005 Act provides that any references to a regional strategic body's colleges are references to colleges assigned to the body by order.

Section 9: Funding of and by regional strategic bodies

59. Section 9(1) of the Bill amends section 12 of the 2005 Act (Funding of fundable bodies). The amendments enable the SFC to fund fundable post-16 education bodies and regional strategic bodies. The SFC would be able to fund regional strategic bodies for any purpose. This is, however, constrained in practice by the powers of the regional strategic bodies themselves.

60. Section 9(2) of the Bill confers responsibility on regional strategic bodies to administer funds. The Bill achieves this by inserting new sections 12A and 12B into the 2005 Act.

61. New section 12A of the 2005 Act specifies the funds a regional strategic body is responsible for administering. This is similar to the existing provision made for the SFC in section 11 of the 2005 Act.

62. New section 12B of the 2005 Act confers powers on a regional strategic body to make grants, loans or other payments. This is similar to the existing provision made for the SFC in section 12 of the 2005 Act.

63. New section 12B(1) of the 2005 Act specifies the persons and activities in respect of which regional strategic bodies can support financially. These include the provision of fundable further and fundable higher education by colleges assigned to the regional strategic bodies.

64. Section 12B(2) and (3) of the 2005 Act enables a regional strategic body to impose terms and conditions when it makes a payment under new section 12B(1) of the 2005 Act.

65. Under section 12B(4) a condition imposed under new section 9(5A) of the 2005 Act must make provision that will apply if the colleges fails to comply with the requirement in section 9(6) of the 2005 Act. 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) and amending section 9(6). Section 12B(6) provides that terms and conditions may only be imposed in relation to funds provided to the college by the regional strategic body.

66. Section 12B(7) specifies the persons a regional strategic body must first consult before imposing terms and conditions (unless the body considers that it not expedient to do so).

67. Section 12B(8) specifies certain matters to which a regional strategic body must have regard in making payments.

Section 10: Regional strategic bodies: functions

68. Section 10 of the Bill confers functions on regional strategic bodies. The Bill achieves this by inserting new sections 23C to 23L into the 2005 Act (section 10(1) of the Bill). Some of the duties being conferred are similar to new duties being placed on regional colleges.

69. Under the present 2005 Act, the SFC has certain functions over the bodies which the SFC directly funds. In the main the SFC will not have functions over colleges in multi-college regions, as the SFC will no longer directly fund them (although there are a few exceptions, such as in relation to assessing and enhancing quality of education). One of the intentions behind section 10(1) of the Bill is to confer on regional strategic bodies similar functions over the colleges they will fund.

70. New section 23C of the 2005 Act places a duty on a regional strategic body to exercise its functions with a view to securing high quality “fundable further education” and “fundable higher education” in the localities of its colleges. These terms are defined in section 5 of the 2005 Act. The duty is framed to recognise that colleges are not the sole providers of such education in their localities. New section 23A(1) of the 2005 Act places a similar duty on regional colleges. The SFC has a similar duty in section 3 of the 2005 Act.

71. New section 23D of the 2005 Act places a duty on a regional strategic body to plan for how it proposes its colleges should provide fundable further education and fundable higher education and how it intends to exercise its functions. Colleges assigned to a regional strategic body must have regard to any such plans when exercising their functions. When it makes such plans, a regional strategic body must have regard to the importance of ensuring that its funds are used as economically, efficiently and effectively as possible.

72. New section 23E of the 2005 Act places a duty on a regional strategic body to monitor the performance of its colleges. New section 23E(2) sets out what this may include. New section 23E(2)(a) provides that monitoring performance may include assessing the quality of fundable further education and fundable higher education provided by the colleges. This new section is in addition to section 13 of the 2005 Act, which gives the SFC the function of securing that provision is made for assessing and enhancing the quality of further education and fundable higher education provided by post-16 education bodies. The SFC duty would therefore extend to such education provided by colleges assigned to a regional strategic body. In meeting this duty, the SFC currently secures the services of Education Scotland to review colleges. The SFC will retain this function in respect of quality to enable such services to be secured across all of Scotland’s funded colleges (whether funded directly by the SFC or by a regional strategic body). It is expected that the regional strategic body, in fulfilling the section 23E duty, would rely on reports of Education Scotland. The body would also have powers to require information from colleges under new section 23K(1) of the 2005 Act.

73. New section 23F of the 2005 Act requires a regional strategic body to promote the use by colleges assigned to it of the Scottish Credit and Qualification Framework (which has been adopted by the SFC). The SFC has a similar duty in section 14 of the 2005 Act.

74. New section 23G of the 2005 Act enables a regional strategic body to have efficiency studies conducted into the operations of any college assigned to it. The SFC has a similar power in section 15 of the 2005 Act.

75. New section 23H of the 2005 Act gives a regional strategic body a right in certain circumstances to attend and address meetings of the governing body of colleges assigned to it. The SFC has similar rights in section 16 of the 2005 Act.

76. New section 23I of the 2005 Act sets out certain matters a regional strategic body must have regard to when exercising its functions. The SFC has a similar duty in section 20 of the 2005 Act.

77. New section 23J(1) of the 2005 Act places a duty on a regional strategic body to consult specified persons in relation to the exercise of its functions where the body considers it appropriate to do so. The list can be amended by order made under new section 23J(4). However, new section 23J(5) provides that the Scottish Ministers cannot modify the entries for colleges (section 23J(1)(a)) trade union representatives (section 23J(1)(b)) or students' associations (section 23J(1)(c)). New section 23B(3) of the 2005 Act places a similar duty on regional colleges. The SFC has a similar duty in section 22 of the 2005 Act.

78. New section 23J(3) places a duty on a regional strategic body to seek to secure the collaboration of specified persons, so far as is consistent with the proper exercise of the regional strategic body's functions. New section 23B(5) places a similar duty on regional colleges. The SFC has a similar duty in section 22 of the 2005 Act. The list of persons in section 23J(3) can be amended by the Scottish Ministers by order made under new section 23J(4). However, in terms of section 23J(5) the Scottish Ministers cannot modify the entry for the regional strategic body's colleges (section 23J(3)(a)). New section 23J(6) requires the regional strategic body to promote collaboration between its colleges, and between its colleges and other post-16 education bodies, in relation to the provision of fundable further and fundable higher education.

79. New section 23K(1) of the 2005 Act places a duty on colleges assigned to a regional strategic body to provide that body with such information as the strategic body may reasonably require. Fundable bodies (and others including colleges assigned to regional strategic bodies) are similarly required to provide the SFC with information by virtue of section 22(4) of the 2005 Act.

80. New section 23K(2) to (7) of the 2005 Act enables a regional strategic body to issue directions (of a general or specific nature) to incorporated colleges assigned to it, which the colleges must comply with. New section 23K(4) specifies the persons a regional strategic body must first consult before giving such directions.

81. New section 23L(1) of the 2005 Act enables a regional strategic body to require the transfer of property, rights, liabilities or obligations of an incorporated college assigned to it either to another of its colleges or to itself. New section 23L(2) outlines the purposes for which such a requirement may be made. It would enable, for example, staff etc to be transferred from one college in a region to another, to consolidate particular programmes of learning in particular colleges and staff etc to be transferred from colleges to the regional strategic body to enable that body to provide services to those colleges (e.g. finance and human resource management). New section 23L(5) specifies the persons a regional strategic body must first consult before making such a requirement.

82. New section 23L(3) enables a regional strategic body to transfer any of its staff etc to any college assigned to it or to a regional college or to another a regional strategic body in circumstances specified in section 23L(2)(b) or (c). Situations in which such a power could be used include the following. Where a regional strategic body was delivering shared services

(such as finance and human resource management) to its colleges and one of those colleges was to be designated a regional college, a regional strategic body may wish to transfer staff etc. to the college to enable the college to deliver such services for itself. New section 23L(5) specifies the persons a regional strategic body must first consult before making such an arrangement. A regional strategic body may wish to transfer staff etc to another regional strategic body or a regional college to enable services to be delivered across regions.

83. The provisions of the Bill in relation to the transfer of property by incorporated colleges assigned to a regional strategic body are intended to ensure that such colleges will not be excluded from meeting the charity test set out in section 7 of the Charities and Trustee Investment (Scotland) Act 2005 (“the Charities Act”). In terms of section 7(4)(a) a body is excluded from meeting the charity test where its constitution allows it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose that is not a charitable purpose). While it is not known whether a regional strategic body would seek to become a charitable body, new section 23L(6) ensures that the provisions to transfer property and rights do not adversely affect the ability of colleges to remain as or of regional strategic bodies to become charities, as the subsection requires that any property transferred is to be applied for the purpose of the advancement of education (which is a charitable purpose).

84. New section 23L(8) of the 2005 Act provides that any requirement under section 23L(1) by a regional strategic body to transfer property to a college or to the regional strategic board requires the consent of a non-incorporated college. The consent of an incorporated college is not required.

85. Section 10(2) of the Bill inserts new section 25A into the 2005 Act which enables the Scottish Ministers to issue directions to either the SFC or a regional strategic body where it appears to the Scottish Ministers that the financial affairs of a college assigned to a regional strategic body have been or are being mismanaged. The Scottish Ministers have a similar power of direction over the SFC in existing section 25 of the 2005 Act in respect of bodies funded by the SFC. (The existing section therefore gives the Scottish Ministers powers to issue directions to the SFC where it appears to the Scottish Ministers that the financial affairs of a regional strategic body have been or are being mismanaged).

86. Under new section 25A(1), the Scottish Ministers may direct a regional strategic body to provide financial support to the college concerned. It also enables the Scottish Ministers to direct the SFC to provide financial support to the relevant regional strategic body. In the latter case, section 25A(2) would enable, among other things, the Scottish Ministers to require that any financial support given by the SFC to a regional strategic body was given on the basis that such support would be transmitted by the regional strategic body to the college concerned. Section 25A(3) specifies the persons the Scottish Ministers must first consult before making a direction.

REGIONAL BOARDS

Section 11: Regional boards: constitution

87. Section 11(1) and (2) of the Bill makes provision for the constitution and general powers of regional boards. The Bill achieves this by inserting a new section 23M and new schedule 2B into the 2005 Act.

88. The new schedule 2B sets out details of the status, membership and procedures of the regional boards. For example, it defines their membership, the provisions for appointing the chief officer and other staff and provision for committees and accounts.

89. The general powers of the regional boards are set out in paragraph 14 of schedule 2B. The SFC has similar powers in section 23 of the 2005 Act.

90. Paragraph 18 of schedule 2B enables the Scottish Ministers to modify the schedule by order. Paragraph 18(2) specifies the persons the Scottish Ministers must first consult before making an order.

Section 12: Regional boards: mismanagement

91. Section 12 of the Bill makes provision for the removal of members of regional boards by inserting a new section 23N into the 2005 Act. New section 23N enables the Scottish Ministers to remove by order any or all of the members of a regional board in circumstances where it appears to the Scottish Ministers that such a board:

- a) has committed or is committing a serious breach of any term or condition of grant made to it either by the SFC. Such a breach may be a one-off breach;
- b) has committed or is committing repeated breaches of such terms or conditions;
- c) has failed, or is failing to properly discharge its responsibility to administer funds or exercise any of their other functions properly; or
- d) has managed or is mismanaging its financial or other affairs.

92. As regional boards are not required to meet the criteria to be a fundable post-16 education body (because they are not a learning provider), there is no similar provision in new section 23N along the lines of that in amended section 24(1)(b) of the 1992 Act, which enables the Scottish Ministers to remove board members of regional colleges if those colleges fail to meet such criteria.

93. Under new section 23N(2), the Scottish Ministers may in such circumstances remove by order any or all board members and where those persons are not the staff or student members, appoint other persons in their place. New section 23N(4) provides that such appointments are treated as if they were made under the usual provisions for such appointments. This means that relevant provisions regarding eligibility, length of service etc. apply to them.

Section 13: Establishment and abolition of regional boards: supplemental

94. Section 13 of the Bill inserts new section 23O into the 2005 Act. New section 23O(1) and (2) of the Bill allow Scottish Ministers to make arrangements in relation to the establishment of regional boards either in advance of the coming into force of the provisions in section 8 of the Bill, or in the future before an order is made under section 7B of the 2005 Act. Scottish Ministers may in particular appoint persons as regional board members who are to hold office as if appointed under the new paragraph 3(2)(a) or (e) of the new schedule 2B to the 2005 Act.

95. New section 23O(3) specifies the particular provisions that an order (made under section 7C of the 2005 Act) to abolish a regional board may contain. This includes the transfer of the regional board's staff, property, right, liabilities or obligations.

96. New section 23O(4)(a) ensures any property and rights that were used before the transfer for the advancement of education continue to be used for this purpose. While it is not known whether a regional board would seek to become a charitable body, this provision ensures that the provisions to transfer property and rights do not adversely affect its ability to become a charity.

97. New section 23O(4)(b) ensures that a transfer to a person other than the Scottish Ministers can only occur if the person to whom the transfer is being made has consented to that transfer.

REVIEW OF FURTHER AND HIGHER EDUCATION

Section 14: Review of further and higher education

98. Section 14 of the Bill amends the 2005 Act to insert new section 14A.

99. New section 14A(1) of the 2005 Act empowers the SFC, subject to Scottish Ministers giving their consent, to review the extent to which fundable further education or fundable higher education is being provided by post-16 education bodies in a coherent manner.

100. New section 14A(2) provides that such review may relate to fundable further education or fundable higher education generally or to any particular aspect of it. Section 14A(2) goes on to set out a number of particular examples of the matters which a review under section 14A(1) may look at.

101. New section 14A(3) provides that when the SFC is seeking the consent of the Scottish Ministers to conduct a review it must provide the Scottish Ministers with a case for review setting out the proposed scope of the review which the SFC wishes to carry out. Section 14A(3) also provides that the case for review must explain why the SFC considers that any pre-conditions to the conducting of a review which the Scottish Ministers are empowered to set are met.

102. New section 14A(4) and (5) provide that post-16 education bodies and regional strategic bodies are required to provide the SFC with such information as the SFC may reasonably require for the purposes of conducting a review. Such bodies are also required to make available to the SFC for inspection such accounts and other documents as the SFC may require for the purposes of conducting a review.

103. New section 14A(6) provides that once the SFC has completed a review it must submit a report to the Scottish Ministers setting out the conclusions it has reached, the reasons for those conclusions and any recommendations it has for action.

104. New section 14A(7) provides that in conducting a review the SFC must have regard to ensuring that public funds provided for fundable further education and fundable higher education are used as economically, efficiently and effectively as possible.

INFORMATION ABOUT YOUNG PEOPLE'S INVOLVEMENT IN EDUCATION AND TRAINING

Section 15: Duty to provide information to Skills Development Scotland

105. Section 15 of the Bill is about the provision of information to Skills Development Scotland (SDS). Section 15(1) gives power to the Scottish Ministers, by means of an order, to require a person to provide information held about a young person to SDS for certain purposes. Those purposes are set out in subsection (1) and relate to SDS's functions. Subsection (4) defines "young person" for the purposes of this section, which captures 16 to 24 year olds.

106. Section 15(2) allows an order (under section 15(1)) to set out the detail of the persons who are to be required to give information (and the intention is that this will be used to specify other organisations that have responsibilities for providing learning and training to young people), the information to be given and the form and manner in which the information is to be given.

107. There is a requirement in section 15(3) for SDS, and any person required to give information, to have regard to any guidance that the Scottish Ministers may issue about giving or using that information.

108. Section 15(5) gives a further order making power to the Scottish Ministers. That is a power to modify the references to SDS within section 15. The expectation is that this power would be used where SDS had a change of name or where another organisation took on the functions that are currently carried out by SDS. Section 15(6) makes provision for the subsection (5) order making power to be used again (so that it is clear that this is not a one-off power).

109. Section 15(7) and (8) make supplementary provision about the order making powers in section 15.

110. Requirements imposed using the power in section 15(1) will not affect the operation of other legislative requirements relating to the sharing of data such as those contained within the Data Protection Act 1998. However, requirements imposed under this section might provide a legal basis for the sharing or using of data under that Act.

GENERAL

Section 16: Modification of enactments

111. Section 16 of the Bill introduces the schedule to the Bill which sets out minor consequential amendments to, and modifications of, other enactments as a result of the Bill. Some of the amendments, particularly in relation to the changes made by paragraph 2(4) of the

schedule in relation to the provisions on boards of management of incorporated colleges, are explained in more detail above.

Paragraph 2(2)(b) of schedule – remuneration of chairs of regional colleges.

112. A regional college board is to pay its chair such remuneration as the Scottish Ministers may determine. There is similar provision for the chairs of regional boards in new paragraph 8(1) of new schedule 2B to the 2005 Act.

Paragraph 6(5) of schedule – orders under sections 7A to 7C: supplemental

113. New section 7D(2) of the 2005 Act allows Scottish Ministers, when making orders under section 7A(1) or 7C(1) of the 2005 Act, to make provisions in relation to the boards of management of incorporated colleges or to make such additional provision as is considered necessary in relation to the change of status of the college. In such an order the Scottish Ministers can make provision about the continuation in office or removal from office of any existing board members once the college's status changes, or about the appointment by the Scottish Ministers of persons as board members, or about deeming any persons who continue in office or who are appointed to hold office as if appointed under the new paragraph 3 or 3A of Schedule 2 to the 1992 Act.

114. In making orders to designate an incorporated college as regional or in assigning colleges to a regional strategic body these provisions require the Scottish Ministers to seek to ensure that every incorporated college is one or the other. Given that it is necessary for the proper functioning of a board that it is one or the other, provision is made for the possible failure of the Scottish Ministers to discharge this responsibility. In such circumstances an incorporated college is to be treated as being designated as a regional college. There is a proviso which enables the Scottish Ministers to make contrary provision. This is to enable the Scottish Ministers, if necessary, to keep some colleges under existing governance arrangements until such time as they are able to be designated as a regional college (or not), perhaps because merger is imminent.

Paragraph 6(9) of schedule – amendment to section 13 of the 2005 Act

115. The SFC duty in section 13 of the 2005 Act is amended to reflect other changes made by the Bill. The duty is now to secure provision for assessing and enhancing the quality of fundable further and higher education provided by fundable bodies and also colleges assigned to a regional strategic body.

Section 17: Ancillary provisions

116. Section 17 of the Bill gives the Scottish Ministers the power, by order, to make supplemental, incidental, consequential, transitional, transitory or saving provisions for the purpose of giving full effect to the Bill.

Section 18: Commencement

117. Section 18 of the Bill deals with commencement of its provisions. Sections 17 to 19 come into force on the day after Royal Assent. The coming into force of section 17 of the Bill will allow the Scottish Ministers, by order, to make supplemental, incidental, consequential,

transitional, transitory or saving provisions for the purpose of giving full effect to the Bill. Other provisions of the Act will be brought into force by order by the Scottish Ministers at different times.

Section 19: Short title

118. Section 19 of the Bill provides that the short title of the Act is the Post-16 Education (Scotland) Act 2013.

FINANCIAL MEMORANDUM

INTRODUCTION

119. This document relates to the Post-16 Education (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 27 November 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. The Memorandum summarises the resource implications of the measures proposed in the Bill.

120. The estimates contained in the memorandum are compiled from financial planning information provided by the Scottish Government Education and Lifelong Learning portfolio’s two main Non-Departmental Public Bodies: Skills Development Scotland (SDS); and the Scottish Funding Council (SFC). The figures and projections provided within this memorandum are the best current estimates available for the costs and savings we expect as a direct result of the provisions of this Bill.

121. This Financial Memorandum does not address the financial aspects of the wider post-16 education reform programme of which this Bill forms a part. This matter is discussed in the accompanying Policy Memorandum for the Bill.

BACKGROUND

Purpose of Bill provisions

122. The Bill provides the requisite legal base for some aspects of post-16 education reform. There are six areas where primary legislation is required to deliver the Scottish Government’s policy aims, and the Bill therefore includes provisions in the following areas:

- **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.
- **Widening access:** to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups.

- **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 post-16 education bodies adhere to such an upper limit.
- **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).
- **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.
- **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.

COSTS

Summary

123. It is expected that some of the provisions associated with the Bill will result in a re-alignment of existing activities and will, therefore, have no net impact on overall costs. Where additional costs for new activity, positions and duties do arise, these are detailed below. These are expected to be met from existing budgets after allowing for efficiency savings arising from the wider reform programme.

SUMMARY OF ESTIMATED COSTS			
	2013-14	2014-15	2015-16
University governance	None	None	None
Widening access	Marginal	Marginal	Marginal
Tuition fees cap	None ¹	None	None
College regionalisation	<p>Total of up to £360k. Total comprises:</p> <p><u>Regional chairs</u> Appointment of chairs of nine regional colleges and three regional boards – up to £90k in total.</p> <p><u>Regional boards</u> <i>Costs per board</i> Appointment of board members – up to £90k <i>Cost of three boards</i> £270k</p>	<p>Total of up to £1,896k for regional boards² and regional colleges (estimated costs set out below), plus marginal cost to other bodies. Total comprises:</p> <p><u>Regional boards</u> <i>Costs per board</i> Staff £430k Non-staff £110k Chair £20k One-off start-up £12k Total = £572k <i>Costs of 3 boards</i> £1,716k</p> <p><u>Regional colleges</u> <i>Costs per chair</i> £20k <i>Costs of 9 chairs</i> £180k</p>	<p>Total of up to £1,860k for regional boards and regional colleges (estimated costs set out below), plus marginal cost to other bodies. Total comprises:</p> <p><u>Regional boards</u> <i>Costs per board</i> Staff £430k Non-staff £110k Chair £20k Total = £560k <i>Costs of 3 boards</i> £1,680k</p> <p><u>Regional colleges</u> <i>Costs per chair</i> £20k <i>Costs of 9 chairs</i> £180k</p>
Review of fundable FE and HE	None	Approximately £150k no more than every 4 to 5 years (expected range between nil and £300k in any one year)	
Data sharing	Marginal ³	Marginal	Marginal

¹ The introduction of the tuition fees cap would ensure that the UK Government and other devolved administrations do not incur annual costs in excess of those which would be incurred if the student studied elsewhere in the UK.

² These costs do not include UHI, which is not a regional board.

³ Total costs of £52k to be incurred in years 2011-12 and 2012-13.

124. The remainder of this section details the cost and savings implications of each of the six policy areas in turn.

University governance

125. As described above, this provision would relate to conditions set by Scottish Ministers in providing funding to the SFC to require good practice in governance across universities and other higher education institutions (HEIs). Good practice would, in future, relate to the Scottish Code of Conduct recommended in Professor von Prondzynski's independent HE Governance Review⁴. Until this is developed, the benchmark would be a current UK-wide guide on governance, already agreed by all Scottish HEIs.

Costs to Scottish Government

126. No additional costs are expected: SFC would monitor this condition as part of its normal duties.

Costs to local authorities

127. None identified.

Costs to others

128. Good practice in governance is already expected to be a core part of the activities of universities and other HEIs. The measures contained within the Bill effectively codify the activity required and the net financial impact is expected to be nil.

Widening access

129. The Bill seeks to allow Scottish Ministers to impose conditions relating to access to universities and other higher education institutions for under-represented socio-economic groups when providing funding to the SFC. If such conditions were imposed, the SFC could require universities to comply with widening access agreements which would sit within the wider outcome agreements currently being developed by the SFC in partnership with the university sector on a non-statutory basis. Outcome agreements would formalise a university's commitment to accept more students from non-traditional backgrounds. These might cover, for example, people living in areas representing the most deprived 20% (MD20) or 40% (MD40).

130. The agreements are expected to apply for up to three years but will be reviewed annually. They would include targets specific to each institution taking into account its historical performance in widening participation.

Costs to Scottish Government

131. There would be no new or additional budget required for widening access activity as a result of the Bill.

⁴ <http://www.scotland.gov.uk/Publications/2012/02/3646>

Costs to local authorities

132. No costs from the Bill have been identified.

Costs to others

133. The Bill would place a duty on universities and other higher education institutions to agree with the SFC what actions they will take to widen access. 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.

Tuition fees cap

134. The Bill seeks to give Scottish Ministers the power to set an upper limit on the level of annual tuition fees which fundable bodies can charge full time UK students pursuing courses of higher education at a fundable body who are not entitled to be charged tuition fees at the level set by the Scottish Government; and to allow Scottish Ministers to impose a condition, when providing funding to it, that the SFC make it a condition of any funding paid by it to fundable bodies that such bodies adhere to such upper limit in setting tuition fee levels.

Costs to Scottish Government

135. The amount of teaching grant paid by the SFC to universities and other higher education institutions would not change as a result of these proposals.

Costs to local authorities

136. No costs from the Bill have been identified.

Costs to others

137. Tuition fee loans for students from the rest of the United Kingdom are funded by the UK Government (Department for Business, Innovation and Skills), the Welsh Government and the Northern Irish Executive. The introduction of the cap on the level of fees charged to such students would ensure that those bodies do not incur annual costs in excess of those which would be incurred if the student studied in a part of the UK other than Scotland.

College regionalisation

138. The Bill would support reform of further education colleges in Scotland and, in particular, make provision for thirteen college regions. Through this regional approach and the associated mechanism of regional outcome agreements, the Scottish Government, with the SFC, would be able to ensure college provision is more sharply aligned with employer and learner needs at the national, regional and local levels. Regionalisation is central in reshaping the college sector so it is better able to contribute to the Scottish Government's ambitions for jobs and growth.

139. The financial implications of this part of the Bill centre on the creation of new regional boards that would be required in multi-college regions other than in the Highlands and Islands.

There are expected to be no more than three such regions. The continued focus of college boards on the merits of a single college regional structure means their number is likely to reduce further.

140. Such boards would enter into an outcome agreement with the SFC so that funding was provided to the board on the basis of that agreement. Each board would, in turn, ensure strategic planning of college provision across their region, and allocate funding to colleges within the region accordingly. In addition, the boards could deliver shared services to colleges. Each board would determine the best value approach to securing shared services for its region.

141. The regional boards would not be registered for VAT and would therefore be unable to claim recoverable VAT on non-business activities. The cost estimates provided in this memorandum include, where appropriate, VAT.

Costs to Scottish Government

142. The costs associated with the establishment of up to three regional boards would relate principally to a small number of staff to ensure that the board can administer effectively the funding it receives from the SFC. The boards will be held to account by the SFC for the delivery of agreed outcomes. Boards would in turn be able to hold colleges to account for the funding they received from the boards and for agreed outcomes.

143. Ultimately, it would be a matter for boards to determine how best to discharge their functions, meeting any efficiency and other requirements placed on them by the Bill and by the SFC. As fundable bodies, boards would be required to meet the terms and conditions of any grant paid to them by the SFC. The SFC also has specific powers to secure the promotion or carrying out of studies designed to improve the economy, efficiency and effectiveness in the management or operations of a fundable body. Regional boards might conclude that utilising the existing infrastructure of colleges would be the most effective and cost-efficient means of discharging their functions. If they were to do so, the estimates of costs would be significantly lower than described below.

144. Estimates of costs have been developed with the support of a college assistant principal HR professional seconded to the Scottish Government and assume:

- a) the chief officer of a regional board would operate at a strategic level, comparable to principal level. The post holder would be responsible for regional planning, holding colleges to account for their agreed contribution to regional delivery and with overall accountability for the delivery of the region's outcome agreement. Costs are expected to vary by region and are at the lower end of current college principal salaries. If the post holder had significant strategic financial and curriculum expertise, the posts outlined in b) and c) below may not be required at such a high level (if at all).
- b) a finance role would not need to be at a strategic level if accountability for financial strategy rested with the chief officer, but the board would need an accountant and accounting systems. This post might not be required if this was within the expertise of the chief officer.
- c) since a key regional board activity would be strategic curriculum planning, the estimate assumes the appointment of a strategic curriculum lead. This post might not be required if this is within the expertise of the chief officer

- d) the integration or shared arrangement of ICT systems is likely to be an important regional board activity, so a senior ICT post has been assumed.
- e) administrative support would be required, including servicing of the board. (This is not envisaged to be a full-time role.)
- f) the estimate does not include any shared services that the board might deliver to colleges. Such services are likely to involve the transfer of staff, equipment and budget from colleges to the board.

145. Full year annual costs for 2014-15 and 2015-16 for each of the three regional boards are therefore estimated to be up to:

- Staffing: £430k including employer costs; and
- Other costs: £110k including VAT.

146. These estimates would be lower if existing college infrastructure was used as described above, although they assume the use of the college ICT network. In addition, further additional set-up costs of £12k for each board in financial year 2014-15 would be expected. This would include the setting up of an office as well as of financial and other processes.

147. The Bill also provides that Scottish Ministers would appoint the chairs of regional colleges and of regional boards. It is estimated that the associated costs to the Scottish Government of this in 2013-14 would be up to £90k in total. This would include staff costs, advertising and any travel and subsistence costs of external members of appointment panels. On a similar basis, the costs associated with the appointment of members to each of the regional boards could be up to £90k per board in 2013-14.

148. The Bill makes provision to require regional boards to pay their chairs as Scottish Ministers may in each case determine. This will be in line with the Scottish Government Public Sector Pay Policy for Senior Appointments. Based on a time commitment of an illustrative one day per week, it would be reasonable to assume annual pay of between £10k and £20k per annum.

149. The plans would see the number of college bodies funded by the SFC fall to fifteen, comprising the regional bodies in the thirteen regions, Newbattle Abbey College and Sabhal Mòr Ostaig, with the latter two colleges continuing to receive funding directly from the SFC.

Costs to local authorities

150. No costs from the Bill have been identified.

Costs to regional colleges

151. Regional colleges would have specific new duties that would sit alongside colleges' existing duty under section 12(1) of the Further and Higher Education (Scotland) Act 1992 of "managing and conducting their college". These additional duties would be:

- a duty to exercise its functions for the purpose of securing the coherent provision of high quality further education and higher education within the region in which it provides education; and
- a general duty, in the exercise of its functions, to consult (where it considers it appropriate to do so) and to seek to secure collaboration of certain persons (where consistent with the regional college's functions).

152. While new to colleges in a statutory sense, these duties cover matters already expected of them. The 2007 skills strategy – *Skills for Scotland: A lifelong skills strategy*, for example, outlined the Scottish Government's expectations that learning providers "*consider themselves as part of one system*". It is on this basis that we estimate no additional costs to arise from these duties. Regional strategic bodies would have similar duties, the estimated costs of which are subsumed within the costs of the regional boards outlined earlier.

153. As with regional boards, the Bill makes provision to require regional colleges to pay their chairs such remuneration as Scottish Ministers may in each case determine. This will be in line with the Scottish Government Public Sector Pay Policy for Senior Appointments. Based on an illustrative time commitment of one day per week, it would be reasonable to assume annual pay of between £10k and £20k per annum.

Costs to other colleges

154. Colleges assigned to regional strategic bodies would be under new duties to act in accordance with any directions issued to them (this would apply only to incorporated colleges); to have regard, where appropriate, to any plans developed by their regional strategic body; and to provide information required by their regional strategic body. Any additional costs cannot be accurately estimated as they depend on the nature of those directions, plans and requirements.

Costs to University of the Highlands and Islands

155. The Bill designates the University of the Highlands and Islands (UHI) as the regional strategic body in the Highlands and Islands. As such, UHI would have a funding role and certain duties and powers in relation to colleges assigned to it. Any net increase in costs would be marginal.

Costs to Education Scotland

156. The Bill would bring regional strategic bodies within the scope of the SFC duty to assess and enhance the quality of education. For college education, this duty is discharged through Education Scotland reviews. A likely result of the Bill is that Education Scotland would, as part of its review of colleges in a region, also review regional boards. Taking the reform package as a whole, the level of Education Scotland services is likely to remain at current levels. In future, this would include the review of regional colleges, regional boards and colleges assigned to regional strategic bodies.

Costs to others

157. The Bill would extend the remit of the Standards Commission for Scotland, the Scottish Public Services Ombudsman and the Scottish Information Commissioner to include statutory

regional boards. This has the potential to increase their work slightly. Any net increase in costs would be marginal. Moreover, wider college reforms would see the overall number of college bodies decrease.

Review of fundable further and higher education

158. The introduction of legislation here is intended to ensure the SFC is able to review proactively the structure and provision of fundable further and higher education, and to report the outcome of any review to Scottish Ministers. Such a review would take as a central principle the need to secure best value for the public purse. It would draw together available evidence and identify recommendations for improving the delivery of post-16 education in Scotland.

Costs to Scottish Government

159. The review would be triggered only when the SFC identify a need for it, and with subsequent agreement from Scottish Ministers. Based on previous similar activity by the SFC, the Scottish Government estimate the cost of a review on aspects of further and higher education would be approximately £150k, although the eventual cost would be determined by the scope of the review. SFC would nonetheless meet any such costs from its existing budgets and staffing structure.

160. The Scottish Government has not defined a specific period of time within which the SFC should conduct a review. The SFC should continually consider whether a case existed for a review. However, any review would be conducted at a point that allowed the efficacy of the existing structure within the sectors to be considered. If a review was necessary, Scottish Ministers do not envisage it taking place more than once in any Parliamentary session.

161. There are significant margins of uncertainty around this cost, not least because a review would not be required most years and so the consequential costs in those years would be nil. While most reviews would be expected to cover an aspect of further and higher education, the Bill would also support a more comprehensive review. In those unexpected circumstances, the maximum cost of a full review of further and higher education is estimated to be £300k.

Costs to local authorities

162. None identified.

Costs to others

163. None identified.

Data sharing

164. The Bill would strengthen the Scottish Government's policy aim to provide for a robust identification, tracking and monitoring system for young people between the ages of 16 and 24 moving through the learning system by giving Scottish Ministers the power to make secondary legislation to require relevant bodies to share data with Skills Development Scotland (SDS) on all such young people. This would in turn allow the Scottish Government and its partners to plan, support and monitor the transitions a young person makes through post-16 learning; would

enable partners to be aware when someone disengages from learning or training; and would allow them to collaborate in deploying the necessary interventions to re-engage that learner in education, training or employment.

Costs of the policy

165. The costs involved in improving data tracking and monitoring to meet these policy aims are being subsumed within regular staff resource, technological improvement and work already undertaken by data sharing partners. The focus of these improvements falls mainly on software solutions and will help set longer-term IT integration between partners. This expenditure took place in 2011-12, or is expected to take place in 2012-13 and is therefore included in this financial memorandum for information only. However, these costs are not as a direct consequence of the Bill.

166. There is a set of one-off costs to establish the technical solutions needed for effective data sharing. These costs are estimated to be £52k over financial years 2011-12 and 2012-13. Each is subject to negotiation among partners on how they will be apportioned. But given their minimal scale we do not envisage a significant problem achieving a resolution.

167. Data sharing would also require staff resource across all partner organisations. This investment would improve the utilisation of existing resources and continue to improve their deployment through a more coherent system supported by technical development. Any resource implications from this work would, therefore, be subsumed within planned resources, with a minimal impact on existing staff resource.

168. We have been unable to model the cost savings from more efficient service delivery in advance of data sharing taking place since there is no robust information with which to work. However, the planned evaluation of data sharing includes a commitment to analyse these service delivery efficiencies as practice develops.

Costs to Scottish Government

169. SDS would incur a proportion of the total capital IT costs of approximately £10k. This is expected to be within existing budgetary provisions.

Costs to local authorities

170. Local authorities are estimated to incur a share of total capital IT costs of £18k in 2012-13. This is expected to be within existing budgetary provisions.

Costs to others

171. Colleges are estimated to share capital IT costs of £24k in 2012-13. This is expected to be within existing budgetary provisions.

**SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE
COMPETENCE**

172. On 27 November 2012, the Cabinet Secretary for Education and Lifelong Learning (Michael Russell MSP) made the following statement:

“In my view, the provisions of the Post-16 Education (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

**PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE
COMPETENCE**

173. On 27 November 2012, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Post-16 Education (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Post-16 Education (Scotland) Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

POST-16 EDUCATION (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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