

POST-16 EDUCATION (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. 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 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 18-EN.

POLICY OVERVIEW

“Reforms of the scale on which we are embarked must have a clear, overriding purpose. To that end, we are clear that meeting the needs of the learner is at the heart of all our proposals. Scotland’s ability to flourish as a nation is dependent on its people and I am committed to ensuring that we help maximise each individual’s potential. To achieve these aims, I am working towards bringing legislation forward in the second half of next year which will underpin and facilitate our plans.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education, Scottish Government, September 2011¹

2. The Post-16 Education (Scotland) Bill is intended to provide a technical and administrative underpinning for some aspects of post-16 education reform. This wider programme of reform will ensure the system better supports jobs and growth; improves life chances, especially for young people; and is sustainable for the long-term. A reformed post-16 learning system will contribute to the Scottish Government’s purpose targets on improving economic participation and productivity, and, ultimately, increasing economic growth. And it will support a number of national outcomes, especially:

- we realise our full economic potential with more and better employment opportunities for our people;
- we are better educated, more skilled and more successful, renowned for our research and innovation; and
- our young people are successful learners, confident individuals, effective contributors and responsible citizens.

¹ <http://www.scotland.gov.uk/Publications/2011/09/15103949/0>

BACKGROUND: POST-16 EDUCATION REFORM

3. Over the next three years, the reform of post-16 education and training is expected to make a significant contribution to Scotland's economic recovery. Such education and training represents around £7 billion of public investment in the three years between 2012-13 and 2014-15 in support of the *Government Economic Strategy*². It will fundamentally change the provision of skills and other forms of post-16 education by aligning learning to labour market demand.

4. The aim is to make post-16 education more responsive to the needs of learners and employers. By ensuring more positive outcomes for learners, the Scottish Government will improve their life chances and enhance the employability of those young people distant from the labour market, helping move them closer to a job. Higher education students will see further improved financial support arrangements and employers will reap the benefits of post-16 education reform through provision that is better aligned to labour market demand, incentivised by outcomes-based funding.

5. The reforms represent an unprecedented level of change to the system and, in particular, to our colleges where the sector will be based largely around 13 new regions, with associated mergers in most of these regions. But such changes are essential if the Scottish Government is to optimise the performance of the system and its constituent sectors in what will remain an acutely challenging financial climate.

6. The Financial Memorandum summarises the resource implications of the measures set out in the Bill. Beyond the impact of the Bill itself, there will be savings arising from the wider reform programme. The main elements of these relate to college mergers and federations, and higher education student support.

7. All college mergers have the potential to yield substantial, recurrent savings once they have taken place. Savings are projected to be greater in larger, urban colleges than elsewhere, as economies of scale ought to be easier to realise. Estimates of savings are based on recent experience, most notably, the merger which created the City of Glasgow College, and also merger proposal documents and college-level financial estimates. Estimates are net of any costs incurred in preparing for, and implementing, such mergers and federations.

8. Based on the Scottish Government's current understanding of college mergers and federations which are either planned or in progress, the Scottish Further and Higher Education Funding Council (SFC) expects to see efficiencies in the region of £50 million per annum by 2015-16. The Scottish Government is working with the SFC and individual colleges to lend support to the process of college restructuring and to ensure it remains on track.

9. Changes to higher education student support, allowing for a minimum student income of £7,250 for the poorest students and increasing the non-income assessed loan for all students, were announced by the Scottish Government in August 2012. These changes responded to the request by NUS Scotland to increase cash in students' pockets. As a result, the funds available

² <http://www.scotland.gov.uk/Publications/2011/09/13091128/0>

to students increased by £143 million in academic year 2013-14, while saving £30 million per annum in delegated expenditure from academic year 2013-14 onwards.

10. Promoting and monitoring these programme savings and efficiencies is a central element of the reform programme generally.

BACKGROUND: EXISTING LEGISLATION

11. The Further and Higher Education (Scotland) Act 2005 primarily sought to merge the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council to create a single body to fund universities and colleges in Scotland - the Scottish Further and Higher Education Funding Council (SFC). The ambitions of the legislation were to better match learning opportunities to what was needed to strengthen Scotland's economy and society. A central part of this vision was a coherent and relevant system of high quality further and higher education responsive to the needs of learners and the economy, recognising that further and higher education were different from one another but closely linked.

12. While the Scottish Government continues to share many of these ambitions, it is clear that the measures set out in the 2005 legislation have not fully delivered the desired outcomes, particularly in relation to the college sector. New and bigger challenges have emerged since 2005, such as unprecedented reductions in public expenditure and increased levels of unemployment, particularly youth unemployment. Responding to this requires a new approach. Reform of post-16 education, supported by new legislation in a small number of areas, is intended to help address this.

CONSULTATION

13. The Scottish Government's pre-legislative paper published in September 2011, *Putting Learners at the Centre*³, provided the context for the Bill. It attracted 324 responses from a range of different stakeholders and individuals, reflecting the breadth of post-16 education reform. (All of the individual responses and an analysis of these are available on the Scottish Government website⁴.) Many of the ideas set out in the consultation have since been reflected in this Bill as well as the wider reform programme. For example, work on improving learner journeys will address many comments made by respondents about the need to create clearer pathways through post-16 learning.

14. An additional consultation on college regionalisation, *College Regionalisation: Proposals for Implementing Putting Learners at the Centre*⁵, was issued jointly by the Scottish Government and the SFC in November 2011. Responses indicated overwhelming support for a move to a regional model for the college sector. These and other responses have contributed to the development of the college regionalisation proposals set out in this Bill.

³ <http://www.scotland.gov.uk/Publications/2011/09/15103949/0>

⁴ www.scotland.gov.uk/Publications/2012/02/2216, www.scotland.gov.uk/Publications/2012/02/4185

⁵ <http://www.scotland.gov.uk/Publications/2011/11/e15115412/link>

15. In addition, reviews of university and college governance by Professors Ferdinand von Prondzynski⁶ and Russel Griggs⁷, respectively, have been published, providing a further basis for our legislative plans on college and university governance. The provisions on college regionalisation and university governance in this Bill were informed by these responses.

16. Discussion with equality groups on the possible impact of the Bill on particular groups has formed part of the equality impact assessment carried out in connection with the Bill and taken on board in its development.

CONTENT OF POST-16 EDUCATION BILL

17. While much reform is being progressed on a non-legislative basis, there are some specific elements that require new legislation in order to be implemented effectively. The Post-16 Education (Scotland) Bill introduces provisions covering six 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

⁶ <http://www.scotland.gov.uk/Publications/2012/02/3646>

⁷ <http://www.scotland.gov.uk/Topics/Education/UniversitiesColleges/17135/CollegeGovernanceReview/FEGovernanceReport>

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.

POLICY OBJECTIVES

18. The policy objectives of the six areas to be included in the Post-16 Education (Scotland) Bill are set out below and cross-referenced to the relevant sections in the Bill.

University governance (Section 2)

“We have commissioned independent reviews of college and university governance from Professors Russel Griggs and Ferdinand von Prondzynski respectively In the light of those reports, we shall consider what further action is necessary, including what action we might take in the event of under-performance, recognising the differences between our colleges and universities.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

19. The Scottish Government’s approach to improving college governance is being pursued largely through the Bill’s proposals for college regionalisation described later below. However, the Bill also introduces a specific legislative provision on good governance in universities and other higher education institutions.

20. Professor Ferdinand von Prondzynski’s review of Higher Education Governance in Scotland⁸ recommended that *“the Scottish Funding Council should commission the drafting of a Code of Good Governance for higher education institutions”*. The Cabinet Secretary for Education and Lifelong Learning welcomed the review and indicated that it provided a basis on which to move forward, working with the sector, to reform higher education governance. He 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.

21. This Scottish Code of Conduct is expected to be completed and endorsed by the Scottish Ministers in the first half of 2013. In the absence of a Scottish Code, the benchmark for good practice would be the existing *Guide for Members of Higher Education Governing Bodies in the UK* currently agreed, on a UK-wide basis through the Committee of University Chairs (CUC).

22. The Bill provides explicit powers for Scottish Ministers to require the SFC to ensure that universities and other higher education institutions adhere to good practice around governance as a condition of funding. In doing so, Ministers expect that the SFC will have regard to ensuring that such governance conditions are applied appropriately for different types of institution.

⁸ <http://www.scotland.gov.uk/Publications/2012/02/3646>

Widening access (Section 3)

“This is a responsibility that is shared between parents, schools, Skills Development Scotland, colleges and universities. There are good examples of this working already, primarily with post-92 institutions who have traditionally recruited rather than selected and who have established good links with local schools and colleges. Central to this is our determined focus on raising standards but also equipping young people with the critical skills they need to be successful in every sphere. This will require universities to broaden their approach to selection.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

23. The SFC already provides funding to higher education institutions through regional coherence funding and specific access programmes that incentivise them to recruit and retain greater numbers of students from disadvantaged backgrounds. Historically, it has proved more difficult to increase these numbers in the more selective institutions. Recent increased pressure on student places has aggravated this.

24. The SFC has collected and published data for a number of years under the banner of ‘Learning for All: Measure of Success’. This data shows that, for example, that only 11% of students attending university in 2010-11 came from the 20% most deprived areas. Improving participation among the most disadvantaged is not about displacing more able students, rather it is about recognising that the potential to succeed can be determined both by an assessment of attainment and the context in which that attainment was achieved. Research shows that those from poorer backgrounds who enter university with lower attainment scores than their more affluent peers can, with the right support, perform just as well and even demonstrate better progression to subsequent study years.

25. The 2011 Manifesto set out the need to “*set achievable but ambitious goals for access to higher education for the poorest students*”. The broad policy objective for including this in the Bill is to improve participation in higher education institutions for currently under-represented socio-economic groups. The Bill seeks to allow Ministers to impose conditions relating to access to higher education for students from widening access backgrounds when providing funding to the SFC.

26. Much of the widening access activity will now be included in individual universities’ outcome agreements, allowing a more focused approach which incentivises this activity with clearly defined targets. These agreements will be tailored to each individual institution and will involve a combination of playing to their historical strengths as well as encouraging them to break new ground. This could include 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 (Section 4)

“At a time of unprecedented financial constraint, our top priority is to ensure the sustainability of post-16 learning and - more specifically - to protect the competitive position of the higher education sector in the face of changes to funding arrangements in England and our commitment not to introduce tuition fees for Scottish-domiciled students in our universities.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

27. Following a decision by the UK Government to increase substantially higher education tuition fees from 2012-13 for students at universities in England, it became necessary for the Scottish Government to consider how this would affect applications to pursue courses of higher education at publicly funded institution in Scotland from students ordinarily domiciled in England.

28. To address concerns about the cross-border flow of students from other parts of the UK and ensure places for Scotland-domiciled students could be protected, changes to secondary legislation were introduced in 2011. These enabled publicly funded institutions in Scotland to set their own higher fees for full-time under-graduate students from the rest of the United Kingdom from academic year 2012-13 rather than such institutions being obliged to charge such students tuition fees at the level set by the Scottish Ministers.

29. But Ministers did not have the power to set an upper limit on the level of higher tuition fees that publicly funded institutions in Scotland could charge full-time under-graduate students from the rest of the UK. In theory, institutions could set their own level of fees as they currently do for international students. In practice, a voluntary agreement has been put in place for academic year 2012-13 which prevents publicly funded institutions in Scotland from charging students from the rest of the UK more per annum than the highest level of tuition fees which institutions in other parts of the UK currently charge such students.

30. The Bill gives Scottish Ministers the power to set such upper limit and, when providing funding to the SFC, to impose conditions with a view to ensuring that institutions adhere to that upper limit when setting their fee levels. Institutions would not be able to charge students from the rest of the UK fees at a higher level than the highest annual amount which they would pay elsewhere in the UK. Linking the tuition fees cap to the maximum fee level in the rest of the UK would ensure that those students eligible for student support from other funding bodies in the UK could access the full amount of tuition fee support required for their course. It is hoped that this would reduce the likelihood of students deciding not to come to Scotland on financial grounds.

31. Institutions would remain free to charge non-EU international students fees on a basis which each institution considers to be appropriate, having regard to the full cost of providing the course.

College regionalisation (Sections 5 to 13)

“By reinvigorating college governance, I want to reinvigorate colleges. This is fundamental to our plans better to meet the needs of learners and employers in a region through a coherent and sustainable curricula offer, with a sharper focus on outcomes; funding based on regional needs; and strong accountability for regional performance.”

Michael Russell MSP, Cabinet Secretary for Education and Lifelong Learning, Reinvigorating College Governance: The Scottish Government Response to the Report of the Review of Further Education Governance in Scotland, Scottish Government, June 2012.

32. *Putting Learners at the Centre* signalled the Scottish Government’s intention to introduce a new regional structure for the college sector. The report on the responses to this consultation, published in February 2012, outlined that, “*key considerations mentioned included the need for student representation on boards, transparent recruitment processes for Principals and board members; the need to ensure employer representation and creating rigorous accountability processes without a burdensome level of required administration*” With the exception of the need for transparent recruitment processes for Principals where guidance has already been published, all of these issues have been addressed in the Bill.

33. Professor Griggs’ report on college governance was based on the premise that every region, other than the Highlands and Islands, would have a single college. Where possible, that is what the Scottish Government wants to see. However, Ministers believe firmly that it is a matter for colleges to restructure on a voluntary basis in the best interests of learners.

34. The consultation paper *College Regionalisation: Proposals for Implementing Putting Learners at the Centre*⁹ outlined the advantages of a regional approach as one that would:

- create college groupings of scale, able to plan regionally and deliver locally across Scotland;
- help every community of a reasonable size - and every young person - access appropriate college education;
- enhance the capability to plan and deliver part-time learning, particularly for adults in employment;
- provide a stronger basis to develop further provision for employers;
- create opportunities for colleges in many regions to work more cost-efficiently, for example, through the sharing of services, mergers or collaboration, freeing resource to redirect towards learners;
- strengthen the role and contribution of colleges as important partners within regional networks of agencies and services to the benefit of learners, communities, employers and the wider development of regions; and
- provide a framework for joint working between the school, college and university sectors to ensure more coherent provision and improved articulation between college and university.

⁹ <http://www.scotland.gov.uk/Publications/2011/11/e15115412/link>

35. The Cabinet Secretary has since confirmed 13 college regions. At the time of writing, nine of these regions would be expected to have a single regional college, while the remaining four would be expected to have a regional strategic body working with the colleges in that region. While the current state of structural change in the sector suggests that fewer regional strategic bodies would be necessary in the medium term, there remains a need to support different arrangements in single and multi-college regions.

36. In single-college regions, the college would have additional responsibilities for regional matters. In other regions with more than one college, a new regional strategic body would receive and distribute funding for the region and plan college provision strategically across the region. The regional strategic body would also be responsible for certain appointments to the colleges in the region. In the Highlands and Islands region, the higher education institution, the University of the Highlands and Islands (UHI), would be the regional strategic body. In practice, this function would be delegated to a further education committee of the UHI court. The overall position in relation to each of the 13 regions is summarised below.

<p>Single college regions: regional colleges</p> <p><i>Existing</i></p> <ul style="list-style-type: none"> • Borders • Dumfries & Galloway • Edinburgh • Forth Valley • West Lothian <p><i>Anticipated¹⁰</i></p> <ul style="list-style-type: none"> • Ayrshire • Fife • Tayside • West 	<p>Multi-college regions: regional strategic bodies</p> <ul style="list-style-type: none"> • UHI <p><i>Regional boards</i></p> <ul style="list-style-type: none"> • Aberdeen and Aberdeenshire • Glasgow • Lanarkshire
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37. This approach would allow colleges to be funded on a regional basis consistent with the Scottish Government's ambitions for a more strategic approach. As part of its conditions of grant to the body concerned, the SFC would agree an outcome agreement with each regional college or regional strategic body, with the college or board subsequently accountable to the SFC for the delivery of its outcome agreement. In multi-college regions, regional strategic bodies would agree with each college its contribution to the outcome agreements, and would expect colleges to engage in joint strategic planning. Educational provision would be delivered at the local level, part of a coherent regional offer.

38. Improved public accountability and transparency in the college sector are key objectives of post-16 reform. Both the new board arrangements set out in the Bill and the related appointments would lead to clarity of roles and responsibilities and refreshed talent on boards, helping to realise the full benefits of post-16 education reform.

39. After a transitional period, the effect of the Bill would be that colleges in multi-college regions would cease to be eligible for funding directly from the SFC and would instead be

¹⁰ Anticipated to become a single college as a result of future mergers.

funded by the relevant regional strategic body. The Bill introduces the term ‘post-16 education body’ to refer to learning providers funded either by the SFC or by a regional strategic body.

Review of fundable further and higher education (Section 14)

“We therefore want colleges, universities and the SFC to continue to consider the case and opportunity for further structural change and movement of provision in order to meet Scotland’s changing needs.”

Putting Learners at the Centre: Delivering our Ambitions for Post-16 Education Scottish Government, September 2011

40. *Putting Learners at the Centre* confirmed the Scottish Government’s intention to ensure the SFC continues to secure coherent provision to reduce unnecessary duplication and inefficiency across further and higher education. 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, including the number of regional strategic bodies, and to report the outcome of any review to Ministers. The need for a review would be based on an assessment and analysis by SFC of a range of criteria which would be agreed with 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.

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

41. 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.

42. 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.

43. 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).

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

ALTERNATIVE APPROACHES

50. The wider policy context within which this Bill sits covers a substantial programme of reform across post-16 education. This reform programme will provide for a system better attuned to learner and employer needs and sustainable for the long-term. Much of this is moving forward without the need for legislative support.

51. However, voluntary approaches – for example in relation to widening access and data-sharing – have not been wholly and uniformly successful to date. And there are other areas of policy – such as the tuition fees cap and university governance – where legislation would help achieve consistency across the sector(s). Finally, setting out a clear power for the SFC to review further and higher education would help bring clarity around the SFC’s ability to review the structure and provision of fundable bodies and colleges assigned to regional strategic bodies while taking account of the need to secure best value.

52. On college regionalisation, the Scottish Government gave detailed consideration to whether the policy objectives could be met through non-legislative means, including:

- colleges establishing their own collaborative regional structures;
- the SFC requiring, through an outcome agreement, a commitment from colleges to collaborate and agree how regional funding should be allocated between them; and
- the SFC setting up regional committees with delegated funding powers.

53. However, the Scottish Government concluded these arrangements failed the test of improving public accountability, since the SFC would be unable to hold a single body to account in all regions for the delivery of an outcome agreement. The new arrangements for governance in the college sector, specifically the creation of regional strategic bodies, are essential to achieving the central aim of improving public accountability and require legislation in order to be effective.

54. In summary, the alternative option of not introducing legislation is considered by the Scottish Government to increase substantially the risk that the post-16 reform outcomes of a system better attuned to learner and employer needs and sustainable for the long-term will be jeopardised.

EFFECTS ON EQUAL OPPORTUNITIES

55. An equality impact assessment (EQIA) was undertaken in connection with the Bill to consider the potential impacts of the Bill across the protected characteristics. The results of the assessment will be published on the Scottish Government’s post-16 reform website in due course¹¹.

56. The assessment concluded that two areas in the Bill - the review of fundable further and higher education and university governance - were unlikely to impact on individuals. The remaining policy areas with the potential to impact on individuals were:

¹¹ <http://www.scotland.gov.uk/Topics/Education/post16reform>

- *Widening access:* The Bill's provisions in this area would have a positive impact on those who would normally have been rejected by an HEI in Scotland but who would find it easier to be accepted as a result of the widening access agreements. It is not clear whether there would be a negative effect on any individuals, although there could be some displacement of students if mitigating actions are not put in place.
- *Tuition fees cap:* This would benefit students coming to Scotland from the rest of the UK. The policy would not benefit, but would not change the situation for, students coming from non-EU countries to study in Scotland.
- *College regionalisation:* The provisions of the Bill which remove the upper age limit for college board members would have a positive impact on those that were not previously eligible to participate on a college board due to their age being above that upper age limit. The provisions of the Bill which give the Scottish Ministers the power to issue guidance would give Ministers the opportunity to reinforce the importance of appointing a range of people who reflect Scottish society and this should help advance equality of opportunity for those from groups of the population that were previously under-represented on college boards. The group of people that could see a negative effect would be existing board members who share a protected characteristic, where people with that characteristic are currently over-represented on college boards.
- *Data sharing:* Those people effected most positively would be young people (between 16 and 24) identified as being most at risk of disengaging from learning or training, enabling support to be provided. This would also benefit young people who may not be defined to be at risk or vulnerable, but who require support to maintain or re-engage with learning. No negative impact on individuals is expected, although it is recognised that the provisions of the Bill on data sharing only relate to young people.

57. This work has also identified some associated equality impacts that would not be attributable directly to the Bill provisions, but would result from the impact of the wider post-16 education reform programme. These issues will be considered as part of the implementation of the programme.

EFFECTS ON HUMAN RIGHTS

58. The Scottish Government has considered if the Bill's provisions on widening access and the tuition fees cap raise any issues in relation to the European Convention on Human Rights, particularly in relation to Article 2 of Protocol 1 to the European Convention on Human Rights (right to education, which includes a right of access to educational establishments) when read with Article 14 of the Convention (prohibition of discrimination in the enjoyment of rights and freedoms set forth in the Convention). The Scottish Government is satisfied that these policies on widening access and the tuition fees cap pursue legitimate aims. To the extent that any terms and conditions which Scottish Ministers are minded to impose under section 9B or capping tuition fees for students coming to Scotland from the rest of the UK will give rise to a difference in treatment in the enjoyment of the Article 2, Protocol 1 right to education on any of the grounds enumerated in Article 14 of the Convention, the Scottish Ministers will require to be satisfied that they are a proportionate means of achieving the legitimate aims.

59. The Scottish Government has considered if the Bill's provisions on data sharing raise any issues in relation to the European Convention on Human Rights, particularly in relation to the

Article 8 right to respect for private and family life. To the extent that the policy will engage this right, the Scottish Government is satisfied that it pursues a legitimate aim which is necessary in a democratic society and that the means chosen to achieve the aim are proportionate.

60. The Scottish Government has also considered if privacy implications would arise as a result of the Bill, specifically in relation to data-sharing, and to that end has completed a privacy impact checklist. This has helped confirm that the new duty would create no new technology or identity handling procedures. However, it would place a responsibility on partners to use a multi-organisational approach to sharing data.

61. SDS, who own the 16+ Learning Choices Data Hub shared with all partners, has conducted a full Privacy Impact Assessment.¹² In that context, all partners are participating in legal and governance frameworks to ensure that all data sharing is appropriate and legally compliant. There are no exemptions to legislative privacy protections. The Scottish Government has concluded that there is no requirement to undertake a full scale privacy impact assessment for the Bill.

EFFECTS ON ISLAND COMMUNITIES

62. The overall effect of this policy will be to move decision-making slightly closer to island communities. Four island colleges currently receive funding directly from the SFC - Shetland College, Orkney College, Sabhal Mòr Ostaig and Lews Castle College. Shetland College, Orkney College and Lews Castle College would be expected to be funded by UHI rather than the SFC, bringing a greater focus to the regional needs of the Highlands and Islands. For the purposes of further education provision, Sabhal Mòr Ostaig would continue to receive funds directly from the SFC. Nonetheless, the Scottish Government understands that Sabhal Mòr Ostaig would be fully engaged in college strategic planning in the Highlands and Islands through its partnership with UHI.

EFFECTS ON LOCAL GOVERNMENT

63. The Bill's provisions on data-sharing would have a minor impact on local government, requiring the collection and sharing of data on young people to support progression through education, training and employment. However, all local authorities are already committed to this approach. The impact of the Bill will, therefore, be to improve existing good practice in this area.

EFFECTS ON SUSTAINABLE DEVELOPMENT

64. The need to develop a Strategic Environmental Assessment (SEA) on the Bill was considered in the context of the Environmental Assessment (Scotland) Act 2005 and published guidance on Strategic Environment Assessments (SEAs). The Scottish Government considered any potential environmental impacts against defined criteria in a SEA pre-screening report, which will be published separately via the SEA Gateway database¹³.

¹² This is available on request from SDS.

¹³ <http://www.scotland.gov.uk/Topics/Environment/environmental-assessment/sea/SEAG>

This document relates to the Post-16 Education Bill (SP Bill 18) as introduced in the Scottish Parliament on 27 November 2012

65. The SEA pre-screening report confirmed that, as the Bill provides a technical and administrative underpinning for wider post-16 education reform and is not expected, on its own, to have any significant environmental impact, it is exempt under the Environmental Assessment (Scotland) Act 2005. However, the Bill would require the new regional strategic bodies to have regard to sustainable development which should help to ensure a small but positive contribution to sustainable development in the medium to longer term.

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POST-16 EDUCATION (SCOTLAND) BILL

POLICY MEMORANDUM

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