

SPICe Briefing

Post-16 Education (Scotland) Bill – Stage 3

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13/33

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Stage 3 proceedings on the Post-16 Education (Scotland) Bill are scheduled to take place on 25 June 2013.

This briefing summarises the main legislative and non-legislative recommendations made by the Education and Culture Committee in its stage 1 report and the Scottish Government response to these recommendations. It also summarises the key amendments passed at stage 2 and considers the key areas of debate where no amendments were passed.

SPICe briefing 13/05 (Liddell and Macpherson, 2013) provides an overview of the Bill as introduced.



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INTRODUCTION

The [Post-16 Education \(Scotland\) Bill](#) (the Bill) is a Scottish Government bill introduced in the Parliament on 27 November 2012 by Cabinet Secretary for Education and Lifelong Learning, Michael Russell, MSP. The Policy Memorandum that accompanied the Bill emphasised its technical and administrative focus, providing legislative underpinning for aspects of the wider post-16 education reform programme currently taking place. There are six main issues addressed through the Bill:

- University governance (section 2)
- Widening access to higher education (section 3)
- Tuition fees cap (section 4)
- College regionalisation and college governance (sections 5-13)
- Reviews of further and higher education (section 14)
- Data sharing with Skills Development Scotland (SDS) (section 15)

SPICE briefing 13/05 (Liddell and Macpherson, 2013) provides more detail on the provisions in the Bill as introduced.

PARLIAMENTARY CONSIDERATION

The Education and Culture Committee was appointed lead committee for parliamentary consideration of the Bill. Table 1 lists the key dates for parliamentary consideration of the Bill.

Table 1: Summary of Parliamentary Consideration

Bill introduced	27 November 2012
Preliminary discussion (in private)	11 December 2012
Stage 1 – general principles	
Education and Culture Committee	15 January , 22 January , 5 February , 19 February and 26 February 2013
Finance Committee	30 January and 20 February 2013
Sub-legislation Committee	22 January and 19 February 2013
Stage 1 report: Education and Culture Committee	20 March 2013
Stage 1 debate	27 March 2013
Evidence session on draft Scottish Code of Good HE Governance	7 May 2013
Stage 2 – detailed consideration	14 May , 21 May and 28 May 2013
Bill [as amended at Stage 2]	posted online 29 May 2013
Stage 3 – final consideration (plenary)	25 June 2013

STAGE 1 – KEY ISSUES

At stage 1, the lead committee is tasked with reporting on the Bill's general principles. During stage 1, the Committee took oral evidence over five meetings (dates noted in table above). During these deliberations, the Committee noted its support for the Bill's underlying aims and the general direction of policy. However, this support was qualified, with concern raised about specific aspects of the proposed legislation and the approach being adopted through some provisions in the Bill. The key themes raised through stage 1 scrutiny are considered briefly below.

PROMOTING GOOD HIGHER EDUCATION GOVERNANCE

The Von Prondzynski [Review of Higher Education Governance](#) recommended that a code of governance be developed for higher education institutions in Scotland (HEIs). Work to develop a code was taking place while stage 1 deliberations were taking place. While the Bill did not specify the principles of governance to be adopted by HEIs, the Code was anticipated to offer the mechanism that underpinned this provision in the Bill. There was a great deal of support both from Committee members and those providing evidence for the inclusion of good governance in the Bill. However, those involved in HEIs raised concerns that this provision gave too much power to Scottish Ministers to define what the principles of good governance should be. Further, as the Bill states that HEIs would be required “to comply with any principles of governance or *management* which appear to the Scottish Ministers to constitute good practice”, concern was also raised about the Bill straying into areas of university management, which the Committee felt was inappropriate.

Concerns were raised that many of the specific recommendations made in the Von Prondzynski review (including those relating to Principals' salaries and representation on governing bodies) were absent from the face of the Bill. There were also questions raised about the status of any code of good governance that was developed, notably whether it would be voluntary or attached to the condition of grant from the SFC. Alongside this was debate on whether legislation was required to achieve good governance within HEIs.

WIDENING ACCESS

There was general agreement that widening access to higher education to students from under-represented socio-economic groups was to be welcomed. There was some discussion on progress made to date and whether legislation would assist in focusing HEIs on this issue, or whether more policy attention and resources targeted at achieving widening access would be sufficient. Some debate also took place on who should be the focus of widening access activity (e.g. those living in areas of deprivation or other under-represented groups) and on how the legislation would result in better outcomes from widening access activity (both by making clear the emphasis Ministers are placing on making progress and giving widening access agreements a statutory footing).

TUITION FEES CAP

This provision was included in the Bill to empower Scottish Ministers to take action to ensure that students from other parts of the UK (RUK), when coming to study at universities in Scotland, would not be charged more than they would pay if they had chosen to study in another part of the UK. Those questioning this provision suggested that an annual cap could potentially result in many RUK students being charged more for taking an honours degree in Scotland than if they did a similar programme at a university in another part of the UK, given that honours degree programmes in Scotland commonly take four years, while an honours

degree commonly takes three years in other parts of the UK. A fee cap for the total degree programme, rather than an annual cap was one issue raised. The other was that provision ought to be made to empower Scottish Ministers to set the same 'set fee level' across all universities in Scotland, rather than each institution being able to set its own fee rate up to the maximum cap set by Scottish Ministers.

COLLEGE REGIONALISATION

College regionalisation forms a central focus of the Bill. The [Review of Further Education Governance in Scotland](#) (the Griggs review) proposed that Scotland's colleges merge around regional boundaries, reducing significantly the number of colleges in Scotland. This regional model was suggested to improve the delivery of college education to better meet the needs of both students and the local labour market. A number of colleges have already decided to 'merge' and such mergers have been, or will be, taken forward using existing powers of the Scottish Ministers under the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). The Bill takes forward other legislative aspects of college regionalisation.

There was some discussion about whether regionally based college provision would adequately meet local need, being able to deliver college education in locations and across subjects where students would be able to access them. While college mergers are currently being pursued, not all mergers are being progressed as was proposed in the Griggs review. In some areas, instead of a single college for the region, multi-college regions are being formed (in Glasgow, Lanarkshire and the Highlands and Islands). The Bill sets out governance arrangements for the two types of incorporated college¹ (regional colleges in single-college regions and 'assigned' colleges in multi-college regions). It also includes Ministerial powers to remove members of incorporated college boards for reasons of failure and mismanagement, while current legislation (set out in section 24 of the 1992 Act) provides for the removal of board members only on the grounds of mismanagement.

Some witnesses suggested that the new structures created with college regionalisation are overly complex and are concerned about how they will work in practice. There were questions raised about the potential for a reduction in autonomy and accountability of assigned colleges², which would be funded by regional strategic bodies rather than having a direct relationship with the SFC. The creation of regional strategic bodies in multi-college regions (either "regional boards" or the University of the Highlands and Islands) was noted by some witnesses to result in a new layer to college governance. With regional strategic bodies taking on many of the functions currently performed by the SFC, assigned colleges would be more distant from funding and governance decision-making. If something were to go wrong it was highlighted that there is no clear line of communication or role for the SFC to engage directly with assigned colleges³.

Some discussion took place on the potential threat to colleges charitable status as a result of the creation of regional strategic bodies in multi-college regions. While the Office of the Scottish Charity Regulator (OSCR) confirmed that charitable status should not be affected, it did highlight a specific issue affecting assigned colleges. As the Bill gives regional strategic bodies significant powers in relation to assigned (incorporated) colleges, a situation could arise where there is a conflict between the interests of the college and of the region. The Scottish Government note that there would be a legal obligation on assigned colleges to comply with the

¹ An 'incorporated' college is a college with a board of management under the Further and Higher Education (Scotland) Act 1992.

² 'Assigned' colleges would be colleges in multi-college regions that are 'assigned' to a regional strategic body. The regional strategic body would be responsible, among other things, for funding these colleges.

³ Amendments were made to the Bill at stage 2 to address this concern.

directions of the regional strategic body. Charity legislation recognises that charity trustees must obey the law; “following such a direction would therefore not compromise their role as charity trustees.”⁴

Questions were raised as to whether the powers that the Bill will give Scottish Ministers to take action against mismanagement, including financial mismanagement, would result in too much centralisation of power to Scottish Ministers. There was also discussion about membership of college boards, including whether Principals should be members of college boards, with divided opinion on this between different organisations. There was also discussion on whether the Bill goes far enough in stipulating the range of representatives that should participate in college boards, with students cited in the Bill, but not trade unions. There was also a lack of clarity as to whether staff representatives on boards should be drawn from both teaching and support roles, and whether the Bill should make this clearer. The Bill also does not make explicit reference to the need to engage with enterprise and employment stakeholders⁵.

Only a limited number of the provisions in the Bill relate to the University of the Highlands and Islands (UHI), which plays a unique role in delivering higher education across the region⁶. The Bill establishes the University Court at UHI as regional strategic body. The report of the [Working Group on the Future Structure and Function of the University of the Highlands and Islands](#) recommended that a new further education regional board should be established with delegated powers to plan and allocate funding for further education across the region. Concern was raised that the Bill does not make explicit the role played by this FE board. Rather, as UHI is the regional strategic body, any further education board established by the University would be a sub-committee of the University Court; which would then decide what powers to delegate to the FE board.

UHI is the only Scottish college region where there are unincorporated colleges (colleges that do not have boards of management established under the 1992 Act). Some information has been produced by the Scottish Government on how unincorporated colleges will fit within college regionalisation plans⁷. At this point, each unincorporated college is still to decide whether to become assigned or not.

REVIEWS OF FUNDABLE FURTHER AND HIGHER EDUCATION

While the SFC can currently conduct studies to improve the efficiency and effectiveness of any fundable body, the Bill seeks to allow the SFC to review whether fundable further and higher education is being provided in a coherent manner. The Scottish Government suggest that this provision offers the SFC greater strategic oversight of post-16 education in order, for example, to reduce unnecessary duplication across different institutions. Concerns were raised about the risk to autonomy of colleges and universities if the SFC used this power to close courses or force institutional mergers. The Scottish Government and SFC denied this was the purpose of these reviews. The Scottish Government also highlighted the role that the Scottish Parliament would play in scrutinising the recommendations of any SFC review that was conducted, if it chose to do so.

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http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Bills/Scottish_Government_letter_to_John_Henderson_Colleges_Scotland_6_March_2013.pdf

⁵ See stage 1 Committee report and Scottish Government response where there is discussion of this issue.

⁶ UHI delivers higher education through its academic partners and under the provisions in the Bill will be responsible for funding colleges to deliver further education across the region.

⁷ <http://www.scotland.gov.uk/Topics/Education/post16reform/hefegovernance/Plans>

DATA SHARING

This provision will allow Scottish Ministers to make secondary legislation to impose a legal duty on relevant bodies to share data with Skills Development Scotland (SDS) on all young people aged 16-24 taking part in learning in order that those that have disengaged, or are at risk of doing so, can be identified and action taken. The work to gather data on young people has been on-going so the Bill did not anticipate significant financial cost in pursuing this provision or extension of activity already taking place. While there were some misunderstandings about the extent of this provision (e.g. some saw it as only applying to colleges), the Committee came to the view in its stage 1 report that the focus of this provision in the Bill was relatively small and technical.

COMMITTEE RECOMMENDATIONS

On completion of stage 1 evidence gathering, the Committee reported its support for the Bill's underlying aims and general direction of policy. However, this support was qualified. Concerns were noted about a lack of information limiting the potential to adequately scrutinise the Bill and a number of its provisions. Table 2 draws out the key legislative and non-legislative recommendations made by the Committee in its stage 1 report, and the Scottish Government's response to these recommendations.

Table 2: Recommendations in Stage 1 Report and Scottish Government response

GOVERNANCE OF HIGHER EDUCATION	
Committee recommendations	Scottish Government response
Clarification from Cabinet Secretary on whether requirement that 40 per cent of university governing body members being female is a matter for the Scottish code of good higher education governance or for the Bill.	The Committee of Scottish Chairs has been asked to ensure issues of equality and diversity are addressed in the code. This government's approach on equalities has been "to rely on non-legislative measures and it is right that we do this. However, I am fully committed to looking at this issue and will continue to reflect on matters in considering whether to bring forward any amendment to this provision at stage 2."
The Scottish Government should confirm how the legislation and new Scottish code will avoid straying into inappropriate areas of university management.	Will give consideration to whether it is necessary or appropriate for the Scottish Government to seek to amend section 2 of the Bill at stage 2. It will be for the sector to decide, in drafting the code, how this balance is achieved, but this is an issue that the code is expected to address.
WIDENING ACCESS TO HIGHER EDUCATION	
Committee recommendations	Scottish Government response
Clarification sought on whether there is a need to establish a shared understanding across universities of exactly who would be considered to be part of an under-represented socio-economic group.	The key measure at the national level for identifying under-represented socio-economic groups is the SIMD indicator, and under-represented socio-economic groups is the focus of the legislation. Negotiations between individual institutions and the SFC on widening access are also likely to identify additional indicators / identifiers specific to the institutions circumstances and mission. For example, in relation to the need to target widening access activities in relation to particular vocations or the subjects they teach.
Clarification sought as to whether there is merit in widening access to include groups who are under-represented other than as a result of their socio-economic status.	The focus of the legislation on under-represented socio-economic groups does not, of course, prevent the on-going development and adoption of best practice in relation to widening access for others persons or groups. Progress towards the achievement of Athena Swan Awards (supporting women into science) and the Buttle Awards (which recognises good practice in supporting Care Leavers) are good examples of progress in this area.
Investment in widening access welcomed. Confirmation sought that this priority will continue as a core part of widening access activity in future years. The Committee also seeks further information on how widening access funding is allocated to individual institutions, including any guidance directing	Widening access is ultimately about the achievement of positive outcomes from higher education for the individual and Scotland. Retention remains a continuing priority.

institutions toward access or retention focused activity.	
Committee notes that its report on the 2013-14 draft budget called for the SFC to provide an annual update on the extent to which it has delivered the priorities set out in ministerial guidance. Now request that these updates be extended to cover the progress that is being made on access and retention.	As indicated in the Scottish Government's response to the Committee's report on the 2013/14 draft budget, officials have agreed with the SFC the submission of an annual report setting out the success of institutions in meeting Government priorities. The Cabinet Secretary agrees in principle with the Committee's suggestion. Officials will explore with the SFC the best way of achieving this
Welcome reassurances from the Cabinet Secretary that future planning of outcome agreements and widening access agreements will involve comprehensive consultation with both students and trade unions.	Students and staff will be involved in the annual process of agreeing and developing outcome and widening access agreements through the committees managing the process in each institution. In addition, NUS attend the SFC's Widening Access Committee. This provides a national student perspective to aid SFC engagement with outcome / widening access agreements
COLLEGE REGIONALISATION	
Explanation sought on why the requirement to have 50 per cent of the board with private sector experience has been changed given the commitment to align learning to labour market demand.	The Griggs review recommended that members of boards be "selected using an outcome based approach to determine the skills necessary to carry out their task". Close working with employers will be a crucial element of the sector's success in the future. However, the current provision in the 1992 Act does not effectively meet the needs of boards today, as it does not acknowledge that, in addition to experience, skills are important too.
Explanation sought on the underlying principles behind the approach to board appointment and composition taken in the Bill.	As above, the focus is on skills and experience. The Bill proposes that Ministerial guidance be produced on appointing members based on these principles. The Scottish Government will consult with stakeholders on the content of that guidance. An amendment was made to the Bill requiring such consultation (see Table 3).
Further detail sought on the extent of the consultation held on the costs arising from college regionalisation.	There was expertise within the Scottish Government to assist with developing the Financial Memorandum. The estimates for staff and non-staff costs of regional boards involved gathering comments from a group of individuals that the then Scotland's Colleges brought together as an informal sounding board for the college regionalisation policy proposals that are now reflected in the Bill. The group included five people: four college principals (one of whom is also a regional lead) and a college chair. Papers were also copied to the Chief Executive of Scotland's Colleges. An initial estimate of costs for regional boards (including staff and non-staff costs) was shared with the group. Officials also sought the views of the SFC.

<p>Clarification sought on plans (statutory or non-statutory) on the delegation of powers within UHI from the university court to the further education regional board.</p>	<p>The Bill designates UHI as the regional strategic body. The Bill is unable to designate a committee of the university. It is a matter for the UHI Court to determine what matters are delegated to any of its committees. The Bill also allows Scottish Ministers to make alternative arrangements (such as UHI no longer being the regional body) if the arrangements UHI make do not meet Ministerial expectations.</p>
<p>COLLEGE REGIONALISATION - REGIONAL BOARDS AND ASSIGNED COLLEGES</p>	
<p>Concerns raised about potential difficulties in the working relationship between regional boards and assigned colleges raising question about what measures the Scottish Government will take to ensure effective working practices.</p>	<p>Funding decisions will be made collaboratively by regional strategic bodies and assigned colleges involving consultation and collaboration as appropriate. Where mismanagement is identified, Scottish Ministers would have the power (under the Bill) to give the SFC or regional strategic body directions about the provision of financial support. Given the views expressed, further reflection on the respective and relative roles and accountability of the SFC, regional boards and assigned colleges will be pursued⁸.</p>
<p>REVIEW OF FUNDABLE FURTHER AND HIGHER EDUCATION</p>	
<p>Invite the Cabinet Secretary to consider whether the Bill requires amendment to clarify whether reviews will impact on course provision and the number of HEIs.</p>	<p>This is an important and necessary change that will give SFC explicit powers to initiate a formal review of the extent to which certain elements of further and higher education are being delivered in a coherent manner. There is no intention for Scottish Ministers or the SFC to direct institutions on what and how they should teach.</p>
<p>Explanation sought on how the SFC review powers will sit alongside powers to be held by regional boards to review assigned colleges.</p>	<p>This provision focuses on the SFC's role in pursuing broad reviews, while regional boards would review quality and efficiency of individual colleges. The latter may, where relevant, feed into any SFC review pursued.</p>

⁸ The power was amended at stage 2, giving any necessary directions to the SFC.

STAGE 2 – KEY AMENDMENTS

Stage 2 offers an opportunity for any member of the Parliament to propose textual amendments to a bill, although only members of the lead committee taking forward the bill can vote on any amendments that are lodged.

For this Bill, a total of 191 amendments were lodged, with 92 agreed. The amendments were considered over three meetings of the Education and Culture Committee (14 May, 21 May and 28 May 2013). Forty per cent (76) of the amendments were lodged in the name of the Cabinet Secretary for Education and Lifelong Learning, Michael Russell (the Cabinet Secretary). Annex 1 sets out information on the sections of the Bill that amendments were lodged against and the total number of amendments agreed, not agreed, withdrawn and pre-empted for each section of the Bill.

Table 3 provides information on some of the key amendments that were agreed, either by the whole Committee or by division.

Table 3: Amendments agreed

Amendment	Discussion	Outcome
12, Liz Smith	Proposed leaving out references to management in Section 2 of the Bill. Broad support for amendment, with the Cabinet Secretary noting: "The university sector has expressed concerns about the word and that its inclusion would allow ministers to interfere in the day-to-day operation of institutions, but that was never the intention. Clearly, that would be undesirable."	Agreed
7, Michael Russell	Proposed that the SFC (rather than Scottish Ministers) identify the principles of good governance that higher education institutions should comply with. Broad agreement with this change. Liz Smith stated: "I am happy to support amendment 7 on the basis that the temptation for ministers to interfere in some of the decisions will be removed—or, more accurately, reduced—which is welcome."	Agreed
8, Joan McAlpine	Put forward to make it clear that the widening access provision in the Bill allows Scottish Ministers to identify any group of people that share a social or economic characteristic and are underrepresented as the focus of activity to increase participation. It was felt this amendment was needed to reassure stakeholders who were concerned about the limitations of the SIMD measure that was discussed at stage 1.	Vote – 6 For 1 Against 1 Abstention
9, Michael Russell	Lodged to clarify that the tuition fee cap would be chargeable per academic year rather than a cap being set for a course as a whole.	Agreed
72 and 86, Michael Russell	Two of a number of amendments lodged that focus on consultation. These two proposed that consultation be required with relevant trade unions and student associations prior to Scottish Ministers making an order designating a college as a regional college or assigning it to a regional strategic body.	Agreed
162, Joan McAlpine	Sought to clarify the issues that a regional college should have regard to in exercising its functions. Lodged in	Agreed

	recognition of the importance of the new regional structure and to ensure regional colleges do not become insular or consider only their own interests while ignoring the bigger national picture. It would give regional colleges similar duties to those the Bill already stipulates for regional strategic bodies. Concerns were raised that the amendment is too restrictive in listing issues that regional colleges should have regard to.	
29, 31, 39, 63, 64, 65 and 69, Liz Smith	A number of amendments were lodged by Liz Smith that make explicit that college principals should be represented on college boards. The Cabinet Secretary noted: "There are strong arguments on both sides of the issue, and I have carefully considered both. On balance, I have been persuaded that the best course is to remove any doubt about the membership of principals, even though that goes against the Griggs recommendations."	Agreed
77, 79 and 92, Michael Russell	These three amendments were lodged to increase the minimum size of boards of regional college boards, regional boards and assigned college boards (for incorporated colleges). The Cabinet Secretary noted: "there has to be an adequate balance between places that are reserved for specific members—for example, students and staff—and those who are there because of their specific skills". These amendments would ensure consistency in the maximum size of incorporated college boards across all colleges.	Agreed
165 and 189, Michael Russell	Narrowing the grounds by which Scottish Ministers can remove members of incorporated college boards and regional boards, framed in terms of boards failure to effectively discharge their duties. These amendments replace the word "functions" with "duties"; the view was that "function" had to potential to lead to Scottish Ministers being able to intervene in a wider than desirable range of circumstances.	Vote 7 For 2 Against
150 and 155, Michael Russell	Drawing on the governance provisions in Section 2 for higher education, mirroring these for the college sector, these amendments allow Scottish Ministers to impose conditions on the SFC to require (a) colleges funded by the SFC; (b) regional strategic bodies; and (c) assigned colleges to comply with such principles of good governance that the SFC determines constitute good practice.	Agreed
104, Michael Russell	Section 15 of the Bill allows Scottish Ministers to require by order any person to provide information about a young person to SDS. This amendment was lodged to extend this provision so that SDS would also be required to share data about a young person with education providers.	Vote – 7 For 2 Abstentions

During discussion of the amendments lodged, a number were recognised as important although the current wording of the amendment was not accepted by the Cabinet Secretary. In these cases, the Cabinet Secretary proposed potentially coming forward at stage 3 with revised amendments on these themes.

Table 4 provides information on the amendments that were discussed during stage 2 deliberations as areas for potential amendments to be lodged by the Cabinet Secretary at stage 3, while Table 5 highlights lodged amendments that were not agreed by the Committee.

Table 4: Stage 3 amendments not agreed – being considered by the Scottish Government

Lodged by	Discussion	Response from the Cabinet Secretary	Outcome
13, Jenny Marra	Amendment proposed introducing a gender quota on board membership of 40 per cent. There was broad agreement with the principle of this amendment (although not everyone agreed on being this prescriptive on membership). Some concern was raised as equality not devolved; powers not available to legislate in this area.	The Cabinet Secretary stated: “Over the coming weeks I want to explore the issue further with the Minister for Commonwealth Games and Sport, who has responsibility for equality issues, and I encourage Jenny Marra and others to come forward to discuss the matter with ministers. There will be a willingness to have that discussion to ensure that we find for stage 3 an amendment that keeps us within devolved competence—alas—but which signals our very clear intention to make progress on improving diversity and equality in governance structures.”	Vote – 2 For 7 Against
22, Marco Biagi	Amendment 22 aimed to ensure regular (3 yearly) reviews of widening access. Agreement that that reviews important, but concern that this amendment too limited in focus	The Cabinet Secretary stated: “I intend to lodge an amendment at stage 3 that would place a duty on the funding council to review access in a more expansive and significant way. I ask Marco Biagi to withdraw the amendment”	Withdrawn
60, Marco Biagi	Amendment proposed giving the SFC powers on widening access. There was support noted for widening access measures, but different views on how this should be achieved and how far the legislation should recognise the role of other stakeholders (e.g. schools and colleges) in supporting widening access activity.	The Cabinet Secretary stated: “There are technical issues with amendment 60 that require to be ironed out. It does not make it clear whether it is ministers or the council who are to identify the particular socioeconomic groups to which the duty is related. In addition, if the amendment is to relate to further education, it should probably also capture collaboration with or between regional strategic bodies... I ask Marco Biagi to withdraw amendment 60 on the understanding that I will return with a similar amendment at stage 3.”	Withdrawn
26 and 28, Liz Smith	These amendments were introduced to ensure greater clarity on the charging of fees to Wales-domiciled students who study in Scotland. The Cabinet Secretary disagreed that the wording of the amendments would increase clarity; rather his view was the amendment would add further ambiguity.	Although not explicitly stating that an amendment will be introduced at stage 3, the Cabinet Secretary stated: “I would consider stage 3 amendments that helped with the matter in any sense, but the proposed changes under Liz Smith’s amendments would introduce ambiguity to an already clear provision. I therefore cannot accept them. I would have accepted any such suggestion if it really clarified matters...”	Vote – 4 For 5 Against
156, 157, 172, 173, 174 and 180, Neil Bibby	Amendments lodged to ensure that colleges support regional economic regeneration / social inclusion. Proposed given the important role colleges play in both tackling youth	The Cabinet Secretary noted that concerns about economic and social regeneration / social inclusion are useful additions to the Bill. However, “they need to be better integrated into the Bill.” Amendments are to be lodged at stage 3 to take forward	Vote – 4 For 5 Against

	unemployment and supporting older learners who are seeking opportunities to retrain.	these issues, within the context of the Bill.	
132, 133, 135, 146 and 147, Neil Findlay	These amendments were lodged to ensure staff representation (both lecturing and non-lecturing unions) on college boards would draw from trade union membership.	The Cabinet Secretary stated: "I agree that it is important that the role of unions is recognised in governance structures, but ... I cannot support the amendments as drafted. However, I can give an assurance that there will be at least two staff members on all incorporated college boards and regional boards. I wish to reflect further on whether they are appointed by means of an election involving all staff, by means of trade union nomination or by means of something that mixes the two. I will return with amendments at stage 3."	Vote – 4 For 5 Against
43, Liam McArthur	The Highlands and Islands is the only region where colleges are to be managed by a non-FE body (UHI). This is noted as presenting potential difficulties for future funding and governance structures, with colleges raising concerns that the recommendations made by the UHI working group may not be delivered. Amendment 43 was lodged to put in place safeguards to ensure that FE provision is considered separately from HE provision, to ensure that money flows from the SFC to colleges.	The Cabinet Secretary recognised the issues raised, but was concerned that the wording of the amendment - in proposing that governance principles should extend to "administrative arrangements when allocating funds" - contradicts the focus taken in other sections of the bill. The current wording of this amendment was thought not to be sufficiently accurate or precise to achieve the aims the Scottish Government wish to achieve. The Cabinet Secretary stated: "I have no doubt that UHI must deliver the agreed governance structure... If I am not sufficiently reassured on that point within the next few weeks—that is, by stage 3—I will lodge an amendment to achieve that end."	Withdrawn
44, 45, 46, 47, 48, 49, 50, 51, 52 and 53, Liz Smith 142, 144 and 145, Neil Findlay	As originally drafted, it was felt that there was an implication in the Bill that regional strategic bodies (except UHI) could require assigned colleges to move staff or assets as they decide. There were concerns raised about this as it suggests one body having control over staff contracts and asset movement, while lines of accountability lie elsewhere. Further, there is established employment law on transfer of staff that would make current provisions in the Bill difficult to implement in practice. These amendments lodged to address these concerns.	The Cabinet Secretary noted that the basic policy intention behind the staff transfer provisions is to share services and ensure that, in multi-college regions, the regional strategic body has the power to give effect to its duty to plan for delivering coherent provision in the region. The bill differs for UHI as it would be inappropriate for such transfers in the UHI region to be decided without consent. The Cabinet Secretary suggested that it was not clear that this same requirement would be appropriate in other regional boards as there are cases where transfer between regional colleges or regional strategic bodies might be appropriate in supporting the delivery of shared services across two regions. He stated: " <i>My offer, therefore, is to look at the issues with the members involved and to have discussions to try to find a way forward.</i> "	Vote – 4 For 5 Against

Table 5: Stage 3 amendments - not agreed

Lodged by	Discussion	Outcome
18, Mark Griffin	Amendment 18 sought to put responsibility for drafting widening access agreements in the hands of the individual institution rather than the SFC. The institution would be under an obligation to consult representative trade unions and its students association. The Cabinet Secretary responded by stating: “I am happy to support the principle that an element of consultation with the staff and students of institutions should be injected into the process of widening access agreements... Although in practice the widening access agreements will be the result of negotiation between the [SFC] and institutions... it is ultimately for the [SFC] to specify what actions an institution must take based on those negotiations. Therefore, it is more appropriate that the duty to consult is placed on the [SFC], given that the council has the authority to specify what actions an agreement should contain.”	Vote – 2 For 7 Against
25 and 27, Neil Findlay	Amendments 25 and 27 sought to: “as a bare minimum, reduce the fee cap to ensure that the cost is faced across the entire degree and is equalised between Scotland and the rest of the UK, not just across academic years.” The Cabinet Secretary rejected this amendment as the Bill seeks to formalise the voluntary tuition fee cap that is currently in place, with amendments 25 and 27 detracting from that arrangement.	Vote – 2 For 7 Against
26 and 28, Liz Smith	Amendments 26 and 28 were lodged to ensure absolute clarity on the charging of tuition fees, with concern raised that the current wording in this section “does not avoid a possible interpretation that the fees charged by Scottish universities to Wales-domiciled students would have to be at the maximum of the Welsh university rate.” The Cabinet Secretary responded by stating: “I have looked again at the detail of the drafting... I am satisfied that the bill as drafted does not allow for the ambiguity that is claimed.”	Vote – 4 For 5 Against
32 and 33, Liz Smith	Amendment 32 would allow other board members in an assigned college to be appointed by the board. Amendment 33 would remove the requirement for other members of assigned college boards to be appointed by the regional strategic body. These amendments were argued by the Cabinet Secretary to have the cumulative power of appointing the members of an assigned college board and in effect removing the power of the regional strategic body and hands it to the college. The Cabinet Secretary raised concerns that this would result in assigned college boards being self-appointed, so this amendment was not supported.	Vote – 4 For 5 Against
131, Neil Findlay	Amendment 131 was lodged to “ensure that consultation with regional colleges is carried out as a matter of course rather than when considered appropriate. Consultation should be inclusive and regarded as a good thing. Amendment 131 would remove the discretionary element.” The Cabinet Secretary responded by stating that this amendment: “has a technical deficiency, in that although it would place a regional college under a duty to consult persons listed in proposed new section 23B(3), it would mean that no provision was made for the purpose—the why—of that consultation or for when such consultation was required. Both matters are addressed in proposed new section 23B as drafted. Amendment 131 therefore would give rise to uncertainty on what was required of a regional college. Amendment 131 would also unintentionally introduce an inconsistency in what is required in terms of consultation on the part of regional colleges under	Vote – 2 For 7 Against

	proposed new section 23B on the one hand, and regional strategic boards under proposed new section 23J on the other.”	
184 and 185, Neil Bibby	Amendments 184 and 185 relate to participation at board meetings. Neil Bibby stated “Amendment 184 adds a line about circumstances that would give rise to a material conflict of interests. An example of that could be to exclude a principal from a discussion on setting his or her salary. I listened to what the Cabinet secretary said about the chair having discretion, but I think that more clarity is required, as is required for amendment 185, on whether the principal should not in any circumstance attend board meetings that appoint board members.” The Cabinet Secretary responded by suggesting that these amendments “seek to constrain the discretion of the chair and to have participation decided on a case-by-case basis. Under existing principles of administrative law, the chair would be expected to act reasonably. That seems to be sufficient.”	Vote – 2 For 7 Against
196, Neil Bibby	Amendment 196 sought to give chairs of assigned colleges (in line with chairs of regional boards and boards of regional colleges) the same right of protection under the code of public appointments. The Cabinet Secretary noted that “the amendment is technically deficient, given that... only ministerial appointments can fall within the Public Appointments Commissioner’s remit”, while chairs of assigned colleges would not be appointed by Scottish Ministers.	Vote – 2 For 7 Against

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ANNEXE 1: AMENDMENTS

	Cabinet Secretary	SNP	Labour	Conservative	Lib-Dem	Total
Section 2	1		1	1		3
Section 3		3	8		5	16
Section 4	1		3	2		6
Section 5	5	2	6			13
Section 6	7	1	5	10		23
Section 7	3		1	3		7
Section 8	5					5
Section 9				1	1	2
Section 10	7	1	11	13		32
Section 11	11	3	10	2		26
Section 12	1			1		2
Section 13	1			2	1	4
Section 14	3	2			1	6
Section 15	6				1	7
Schedule	25		3	8	3	39
Agreed	76	8		8		92
Not agreed			48	31	5	84
Withdrawn		4		1	5	10
Pre-empted				3	2	5
Total	76	12	48	43	12	191

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