

## SPICe Briefing


# Post-16 Education (Scotland) Bill

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This Bill briefing has been produced to provide the Education and Culture Committee with information on the provisions in the Post-16 Education (Scotland) Bill. It offers an overview and discussion of the provisions within this Bill, which was introduced on 27 November 2012 by the Cabinet Secretary for Education and Lifelong Learning, Michael Russell. It reflects on the main changes proposed in the Bill, as well as the main implications of these changes. It also briefly considers the financial implications of the measures proposed in the Bill.



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## GLOSSARY OF TERMS

the 1992 Act	The Further and Higher Education (Scotland) Act 1992
the 2005 Act	The Further and Higher Education (Scotland) Act 2005
the Bill	The Post-16 Education (Scotland) Bill as introduced into the Scottish Parliament on 27 November 2012
college of further education	The governing body by which fundable further or higher education is provided, which is not a higher education institution
fundable post-16 education body	A learning provider that is eligible for SFC funding
HEI's (Higher Education Institutions)	A university or other designated institution within the meaning of section 44(2) of the 1992 Act
post-16 education body	A learning provider that is eligible for SFC funding and any college of further education assigned to a regional strategic board
incorporated college	College of further education that has a board of management established under the 1992 Act
SDS	Skills Development Scotland
SFC	The Scottish Further and Higher Education Funding Council established under section 1 of the 2005 Act
UHI	University of Highlands and Islands
Terms associated with the Post-16 Education (Scotland) Bill	
assigned college	College of further education assigned to a regional strategic body by order made under section 7C(1) of the 2005 Act (amended).
fundable body	A learning provider that is eligible for SFC funding (including a regional strategic body)
regional board	A body specified in part 1 of Schedule 2A to the 2005 Act
regional college	A college of further education designed as a regional college
regional strategic body	A body specified in Schedule 2A to the 2005 Act

## EXECUTIVE SUMMARY

- The Post-16 Education (Scotland) Bill has been introduced to provide legislative underpinning to a number of proposed changes affecting post-16 education in Scotland, with a range of provisions that will affect governance and delivery of education within both the college and higher education sectors.
- A significant focus of the Bill is on the legislative measures accompanying the development of college regions, with college mergers resulting in two regional college structures: single college regions (with college boards); and multi-college regions (with regional strategic bodies and assigned colleges working within this structure).
- While a number of the provisions relating to college regionalisation set out in the Bill could be considered to be technical issues – for example, those that set out the constitution of boards and the functions of the new single college boards and multi-college regional strategic bodies/regional boards – there are provisions that would lead to a potential increase in ministerial powers over the college sector. For example, the Scottish Ministers would have powers to remove and replace any board member (although they could not select replacement staff or student members of boards) for reasons relating to board mismanagement.
- There are also provisions that would mean that the new multi-college regions would replace the SFC as the governing body (and funder) of assigned colleges within that region. This would mean that assigned colleges would have little direct contact with the SFC and that the regional strategic bodies would allocate funding and agree the contribution of the assigned college to regional outcomes. This is a significant change to the current arrangements in place.
- As well as the provisions relating to college regionalisation, the Bill proposes to give Scottish Ministers powers to define and put conditions of grant on universities to ensure compliance with good practice measures relating to governance and management in the sector. The sector currently complies with a UK code of practice and is in the process of identifying further good practice measures affecting the sector in Scotland. While a recommendation has been made to set out in statute what good practice in university governance would constitute, the Bill does not set out a definition of good practice or the role that Scottish Ministers might play in defining the code to be used by the sector. There are also questions about what role Scottish Ministers may play in management of universities if this provision in its current wording was to become law.
- Another provision directed only at the higher education sector, is the duty to set widening access agreements. These agreements would be subject to terms and conditions of grant from the SFC. While there is broad support for the sector doing more to widen access, there are concerns about the focus being limited only to people living in the poorest areas of Scotland and the potential for displacement of other students, which may arise given that there are no plans to provide additional funding to support this activity.

- The introduction through the Bill of a tuition fee cap on students from the rest of the UK who study at a university in Scotland is generally supported. However, it has been noted that the cap being set at £9,000 (the same as in England) is too high, given that an honours degree in Scotland takes four years compared with three years in England. The result would be a net cost to the student of £36,000 for tuition fees if studying in Scotland, compared with £27,000 if studying in England.
- There is a new duty set out in the Bill for the SFC to *proactively* review further and higher education, with the intention of ensuring that provision is meeting need and that duplication of effort is avoided. This same duty would also be applicable to regional strategic bodies in multi-college regions. As the SFC currently has powers to review further and higher education, it is not clear whether this provision will significantly change current practice in this area.
- The final substantive provision within the Bill involves giving Scottish Ministers the power to require relevant agencies to share with Skills Development Scotland (SDS) a range of data relating to 16-24 year olds in education. The intension through this duty is to ensure consistency in data sharing over time and between different organisations. While steps have already been taken to improve data sharing (e.g. within different local authority departments), there are a wide range of potential partners that would be required to share data if this provision becomes law. There are also questions about why the focus is limited to learners in the 16-24 age band, with data sharing about all learners offering greater potential to ensure that learning provision is fit for purpose for all students.
- Regarding the financial implications of the proposals set out in the Bill, the Scottish Government highlight that the main costs are estimated to be associated with the progression of college regionalisation. At the same time, the mergers that will occur will lead to significant cost savings in the sector. As a result, no additional funding is anticipated to be needed to support the measures proposed in the Bill. Two areas where costs may be involved, but that are not explicitly recognised by the Scottish Government, are widening access (where there may be additional resources required to take the necessary steps to engage non-traditional students and sustain engagement with higher education) and the administration of data-sharing activity by a range of agencies that would be required to collect and share data on learners with SDS.

## BACKGROUND

### THE POST-16 EDUCATION REFORM AGENDA

*Putting Learners at the Centre: Delivering our ambitions for post-16 education* (Scottish Government, 2011a) was the Scottish Government's pre-legislative consultation on post-16 education reform, published in September 2011. It set out the central aims of the Scottish Government's post-16 education reform agenda. A central concern was to achieve sustainable economic growth 'since a high performing education and skills system is an essential component of building the workforce'. The current economic recession provides an important context for education reform. Notably, the Scottish Government has committed to providing all 16-19 year olds with an appropriate place in post-16 education and training, extending this offer to those aged 20-24 as far as possible. Flexible learning opportunities and skills enhancement to enhance employability forms the central focus of activity directed at young people.

A major consideration of the consultation within *Putting Learners at the Centre* was how colleges, universities, schools and other training providers could work together to provide more coherent service delivery, particularly to the 16 to 24 year old age group. As well as seeking to foster better collaboration between sectors, the paper consulted on ways to improve outcomes, encourage efficiencies and provide the skilled workforce required by Scotland's economy. The paper also asked for views on a number of areas now included in the provisions of the Post-16 Education (Scotland) Bill, namely: widening access to university; reviewing university/college governance; and regionalisation of colleges.

There were 324 responses to the *Putting Learners at the Centre* pre-legislative consultation. In its summary of responses, the Government identified a number of recurring concerns relating to funding pressures and the timescales of proposed reforms (Scottish Government, 2012a). A number of concerns as to 'whether reforms would take adequate account of the needs of more vulnerable learner cohorts such as those with additional support needs or complex needs' were also expressed. Responses highlighted the importance of continuing college provision to support soft skills with a focus on literacy and numeracy, especially to the most vulnerable young people in the 16-19 age group. Related to this was recognition of the importance of 'clear and accessible information, advice and guidance' to staff, boards and students.

Views on college regionalisation were sought through a separate consultation issued jointly by the Scottish Government and the Scottish Funding Council in November 2011 (Scottish Government, 2011b). According to the Scottish Government (2012a), the responses received showed an 'overwhelming support for the proposal to move to a regional model for Scotland's college sector'. Of 83 responses to the proposals only one was 'overtly critical'. However there were some specific concerns raised, for example, about which regions certain colleges should sit within (with Perth College and West Lothian College highlighted as examples).

A range of legislative measures were considered within *Putting Learners at the Centre*. For example:

- A New duty on widening access to higher education.
- A new duty on Scottish Ministers and the SFC periodically to review the number and pattern of fundable bodies.
- A cap on the fees institutions can charge to students from elsewhere in the UK.
- Changes to college and university governance.

The last of these points was examined in more detail through individual reviews of governance in higher education (led by Professor Ferdinand von Prondzynski (von Prondzynski, 2012)) and governance of further education (led by Russel Griggs (Griggs, 2012)).

## EXISTING LEGISLATION

The main legislation in place at present that affects further and higher education in Scotland is the Further and Higher Education (Scotland) Act 1992 (the 1992 Act) and the Further and Higher Education (Scotland) Act 2005 (the 2005 Act). The majority of the Post-16 Education (Scotland) Bill (the Bill) involves making amendments to these two pieces of legislation.

### Current college governance

Until 1993, publicly funded colleges were run by local authorities. Under the 1992 Act (c.37), most of these colleges were established as incorporated colleges with boards of management<sup>1</sup>. The 1992 Act gave Ministers the power to establish, merge or close these incorporated colleges, and also granted Ministers the power to remove board members in cases of mismanagement (section 24).

All incorporated colleges are registered charities; although the legal requirement that charities must not be subject to Ministerial direction does not apply<sup>2</sup>. The Scottish Further and Higher Education Funding Council (SFC) provides the majority of funding to colleges. The SFC was established in 2005 to replace separate funding bodies for colleges and universities, although its statutory role goes further than just providing funding. Bodies eligible for SFC funding are referred to as 'fundable bodies'. Under the 2005 Act, the SFC has duties to ensure that fundable bodies have accountable officers, a complaints system, arrangements for taking into account student support needs and, when deciding which courses to run, arrangements in place to take account of other provision available. The SFC must also ensure that colleges have suitable provision for governance (section 7 of the 2005 Act). It is also entitled to address meetings of college governing bodies (section 16 of the 2005 Act).

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<sup>1</sup> Most funded colleges of further education in Scotland are incorporated colleges. The exceptions are: Shetland and Orkney, which have remained under local authority control and do not have a board of management as set out in the 1992 Act. In addition, Newbattle Abbey and Sabhal Mór Ostaig are not incorporated colleges.

<sup>2</sup> The [Charity Test \(Specified Bodies\) Scotland Order 2008](#) disapplied Section 7 (4)(b) of the 2005 Act in relation to listed Scottish colleges.

## Current university governance

Universities have responsibility for their own governance arrangements. A mix of constitutional arrangements exist among different higher education institutions (HEI's) depending on when the university was established. For example, governance arrangements in the four oldest universities (the 'ancient' universities) have a statutory base under the Universities (Scotland) Acts 1858 to 1966. There is a Senate, which is the supreme academic body of the university, presided over by a Principal, who is effectively the 'chief executive' of a university, a University Court, that is responsible for setting mission and strategy, the finances and administration of the university and holding the Principal to account for delivery of mission and strategy, and a General Council, which is a corporate body of all senior academics and graduates. This is all presided over by the Chancellor, who is effectively the titular or nominal head of the university.

The university sector expanded in the 1960's. The universities that emerged at this time operate under a Royal Charter that sets out the overall constitution, and statutes that give more detail as to how the university should operate in practice. Arrangements in these universities commonly include a Court, which is the supreme governing body, and Senate as the supreme academic governing body.

The next phase of expansion occurred when a number of educational establishments offering higher education<sup>3</sup> qualifications were given university status as a result of provisions in the 1992 Act. These 'post-1992' universities and other specialist institutions<sup>4</sup> are governed in law by a mixture of provisions, including the 1992 Act and relevant company law where the university has status as a company limited by guarantee (Universities Scotland, 2011a).

## Conditions of grant

A number of the provisions in the Post-16 Education (Scotland) Bill seek to amend section 9 of the 2005 Act, which granted Scottish Ministers the power to make, and attach conditions to, grants provided to the SFC as follows:

### "9 Funding of the Council

- (1) The Scottish Ministers may make grants to the Council
- (2) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose"

There is a [Financial Memorandum](#) in place that sets out the formal relationship between the SFC and the funded further and higher education institutions in Scotland (referred to as 'fundable bodies'<sup>5</sup>). The foundation of this relationship is the provision of funding by the SFC to the governing bodies of these fundable bodies.

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<sup>3</sup> These institutions were: Robert Gordon University; Edinburgh Napier University; the University of the West of Scotland; Glasgow Caledonian University; and the University of Abertay, Dundee.

<sup>4</sup> Including two new universities created since 1992: Queen Margaret University (granted university status in 2006) and the University of Highlands and Islands (established in 2011) and three small specialist institutions: the Scottish Agricultural College; the Glasgow School of Art; and the Royal Conservatoire of Scotland (formerly the Royal Scottish Academy of Music and Drama).

<sup>5</sup> Under the terms of the 2005 Act, a fundable body is a body specified in Schedule 2 of the 2005 Act; notably colleges and higher education institutions.



The constitutional arrangements for the relationship are laid down in the relevant statutes and instruments of governance that establish the autonomy of the institution and the powers and duties of the SFC.

This document emphasises the importance of partnership to ‘assist delivery of Scottish Government policies and to secure best value from the investment of funds’. It specifies a range of conditions that colleges and universities are required to comply with as part of the terms and conditions attached to SFC funding. The mandatory conditions attached to the financial memorandum refer to repayment of grant specifically in relation to funding for capital projects. General conditions are also attached to teaching grants, such as delivery of outcome agreements. In the event of non-delivery of any condition of grant, SFC can consider pursuing a ‘claw back’ of funding.

The majority of claw-back that has taken place within universities has been associated with either exceeding or failing to fill the allocation of funded student places. Within colleges, claw-back has been associated more with a lack of take-up of bursaries, student support and fee waiver funds. On a number of occasions the SFC has clawed back funds from colleges as a result of colleges not meeting weighted student unit of measurement (WSUM) targets.<sup>6</sup>

## THE BILL

The Post-16 Education (Scotland) Bill (the Bill) (Scottish Parliament, 2012a) was introduced on 27 November 2012 by the Cabinet Secretary for Education and Lifelong Learning, Michael Russell. The documents produced to accompany the Bill emphasise its *technical and administrative* focus, describing the Bill as providing legislative ‘underpinning’ for certain aspects of the wider post-16 education reform programme currently being pursued.

There are six distinct areas of provision within the Bill, covering:

- University governance (section 2)
- Widening access (section 3)
- Tuition fees caps (section 4)
- College regionalisation and governance (sections 5-13)
- Review of further and higher education (section 14)
- Data sharing (section 15).

Each of these areas are discussed in more detail below.

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<sup>6</sup> Each college receives a large portion of its SFC funding as a grant to deliver a determined volume of student activity. To calculate the volume of student activity, a student unit of measurement (SUM) is used, which is equivalent to 40 hours of student study time. To reflect the cost of delivering different subjects, a set of weightings is applied based on teaching and learning costs associated with specific courses and students. Based on this weighting, colleges have a weighted student unit of measurement (WSUM) applied to calculate the total that they will receive as their teaching grant.

## UNIVERSITY GOVERNANCE (SECTION 2)

Section 2 of the Bill deals with university governance and seeks – through the addition of section 9A into the 2005 Act – to grant Scottish Ministers power to attach a condition to the grant made to the SFC to ensure that HEI's comply with 'any principles of governance or management which appear to the Scottish Ministers to constitute good practice'.

This issue was one that was raised first in *Putting Learners at the Centre* (Scottish Government, 2011a), which set out the Scottish Government's desire for further and higher education governance 'to be sufficiently transparent to secure learner and taxpayer confidence, balancing accountability for public funds with the right degree of institutional freedom and flexibility' (p.56).

This issue was also raised through the recommendations in the von Prondzynski (2012) *Review of Higher Education Governance*. Notably that 'the key principles of governance and management' of higher education in Scotland be set out in statute. While the Bill seeks to set out in statute that there should be compliance with 'any' principles of governance or management that appear to the Scottish Ministers to constitute good practice, the Bill does not set out what those principles should be; so does not go as far as the von Prondzynski review suggests.

The review also states: "given the increasing divergence... between the Scottish and English systems of higher education, it may be timely to consider a specifically Scottish code of good governance, which could then also take into account the recommendations of this panel" (p.25/6). A number of specific aspects of university governance were raised in the von Prondzynski review, many of which could influence any future Scottish code of good governance that might be developed:

- The conditions applying to the establishment of new universities.
- The key structures of university governance and management.
- The role and composition of governing bodies and academic boards.
- The role and appointment of university principals.
- The status of student associations.
- Principles of academic freedom and institutional autonomy.

In response to this recommendation, the Cabinet Secretary for Education and Lifelong Learning has asked the Committee of Scottish Chairs of HEI's to develop a code of 'good higher education governance' for Scotland. Work on developing this code has started and is to be completed during the first half of 2013. Asking Scottish Chairs of HEI's to develop the code is argued to offer the opportunity to engage universities in defining their own governance rules, reinforcing principles of university autonomy and academic freedom (von Prondzynski, 2012).

As it stands, the Bill seeks to give Scottish Ministers powers to ensure that universities in Scotland comply with a set of principles of good practice in relation to governance and management that have not, as yet, been defined or agreed. It is not currently clear what will happen once the code has been drafted. Will it then be scrutinised or consulted on as part of its sign off and will the Scottish Ministers play

any role in signing it off and stating clearly that this code will form a binding condition of grant to HEI's?

It is also not clear whether the code that is devised will be that chosen by Scottish Ministers to define good practice, and so form any condition of grant with the SFC. There are also questions about the potential for scrutiny of any chosen measures selected by the Scottish Ministers use to define good practice (whether this code or some other criteria). These questions highlight a lack of transparency in the detail and implications of this provision for governance of the higher education sector.

## **Current university governance code of practice**

Scottish universities currently sign up to the *Governance Code of Practice and General Principles for Higher Education Institutions*. This is a UK code of practice produced by the Committee of University Chairmen (CUC) in November 2004 and revised in 2009 (Committee of University Chairmen, 2009).

In its response to the consultation on the von Prondzynski review, Universities Scotland (2011b) set out some of the 'expected behaviours' that all Scottish universities should adhere to, as documented in the CUC Code of Practice. These include:

- A governing body of no more than 25 members represents a benchmark of good practice.
- The governing body shall have a majority of independent members, defined as both external and independent of the institution.
- In appointing new members, full consideration shall be given to the desirable capabilities, based on a full evaluation of the balance of skills and experience of the current members.
- Support for members of governing bodies should be available in the form of induction for new members and opportunities for continued development in accordance with individual needs.
- Members of governing bodies should actively participate in regular meetings and conduct themselves in accordance with the highest standards of behaviour in public life.
- There should be balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities.

Universities Scotland suggest that the current CUC code is enforceable through financial penalties set out in the SFC's financial memorandum (specifically sections 11-12<sup>7</sup>). All Scottish universities that sign-up to the CUC code do so on a 'comply or explain' basis. As such, should an individual institution not comply, it is required to provide an explanation for this within its annual audited financial statements.<sup>8</sup>

In contrast to the views put forward by Universities Scotland, the Scottish Government consider that further powers are needed to ensure there is a specific condition of grant on HEI's to ensure good governance and management in the sector. The Scottish Government argue that, under section 9 of the 2005 Act, as it

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<sup>7</sup> The Financial Memorandum can be found [here](#).

<sup>8</sup> Personal communication with Universities Scotland.

currently stands, Scottish Ministers *cannot* impose a condition of grant of the type that the Bill seeks to impose through the insertion of section 9A into the 2005 Act<sup>9</sup> whereby, the SFC in making grants to fundable HEI's, would be subject to compliance with a set of principles of good governance and management.

## **WIDENING ACCESS (SECTION 3)**

The Bill proposes inserting section 9B into the 2005 Act, adding a new provision specifically aimed at widening access to HEI's:

Scottish ministers may...impose terms and conditions for the purposes of enabling, encouraging or increasing participation in fundable higher education by persons belonging to any socio-economic group which they reasonably consider to be under-represented in such education.

Legislative measures to promote widening access within the higher education sector were initially proposed by the Scottish Government in the pre-legislative consultation *Putting Learners at the Centre* (Scottish Government, 2011a). In that document it was suggested that financial penalties could be imposed on universities 'conditional on achievement'. The exact means by which institutions would work to widen access have not been specified within the documents produced to accompany the Bill, or within the pre-legislative consultation document. However, Scottish Government, with the SFC, has stated that it intends to agree actions with universities on a yearly basis through the use of 'widening access agreements'. Whether efforts towards widening access are judged by inputs (for example having school outreach programmes in place) or outcomes (an increased number of students from less-privileged backgrounds completing degree programmes) is not currently clear.

In its current form, the 2005 Act prevents Scottish Ministers from imposing terms and conditions on university admissions. The Scottish Government is of the view that legislation is required to provide the Scottish Ministers with powers to impose conditions focusing on university admissions. What is perhaps interesting, is the chosen focus only on socio-economic under-representation in HEI's. The Bill suggests a focus on people living in the areas with highest deprivation (SIMD20 and SIMD40<sup>10</sup>). There are concerns raised by those responding to the provisions in the Bill that this focus potentially risks overlooking those students who do not live in these areas but who may also be under-represented in HEI's, for example some groups of older learners (aged over 24 years) or people who live in rural areas of Scotland. There are also questions about the lack of recognition of the resource implications of ensuring retention rates and providing suitable support to students who may find adjustment to the university environment more difficult. Ensuring that students receive appropriate advice, pastoral support and learning opportunities that meet their needs could involve additional resources for universities that have not been highlighted in any of the legislative or pre-legislative documentation.

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<sup>9</sup> Personal communication with officials in the Scottish Government.

<sup>10</sup> SIMD refers to the Scottish Index of Multiple Deprivation. This is the primary measure used by the Scottish Government and the SFC as it identifies small area concentrations of multiple deprivation. Postcodes are ranked and divided into quintiles. Those ranked in the bottom quintile are referred to as SIMD20 and in the bottom two quintiles as SIMD40.

## Recent widening access efforts and outcome agreements

There have been various examples of voluntary widening access activity pursued in recent years. These have focused on: improvements in retention rates; introducing more flexible forms of educational provision; and promoting opportunities for articulation<sup>11</sup> from colleges to universities.

The Scottish Government paper *Building a Smarter Future: towards a sustainable Scottish solution for the future of higher education* (Scottish Government, 2010) notes that widening access measures have 'not produced the step change in participation that we would have liked' (p.13). Ministerial guidance was sent to the SFC in September 2011 advising it to secure improved outcomes in higher education through 'outcome agreements', which were to form a condition of SFC grant to HEI's (Scottish Government, 2011c).

In the first round of outcome agreements published for 2012/3, widening access is a core area on which all 19 HEI's have set out actions and targets as appropriate to their context and mission. These first round outcome agreements were negotiated once the HEI's had commenced undergraduate recruitment, so reflected institutions' activity along with planned changes. For example, the University of Glasgow (2012) outcome agreement set out the institution's ambition to increase the number of enrolments by students living in the 20 per cent most deprived areas by one per cent (around 32 students) by academic year 2014/15. The focus is specifically on increasing participation in professional degrees (Law, Dentistry, Medicine, Veterinary Medicine, Accountancy and Education). The University of Strathclyde's (2012) outcome agreement sets out a commitment to increase the number of students gaining entry from college by 30 per cent over three years and will be setting targets for participation among under-represented groups from academic year 2013/14, including entrants from the 20 per cent and 40 per cent most deprived areas as well as from low progression schools and people who were looked after by a local authority. Finally, the University of Dundee (2012) emphasises the importance of improving *retention* rates among poorer students as well as increasing enrolments.

Outcome agreements for 2012/13 for all nineteen HEI's can be accessed via the [SFC website](#). In a news release from [Universities Scotland](#) when the outcomes agreements were published (7 December 2012) it is noted that:

Widening access is a complex problem.... There are actions universities can take to bring about change in the short-term and the sector shares the conviction to do that. It will take a much longer, combined effort on the part of Government, schools, colleges and universities to bring about a lasting step-change in widening access in Scotland.

The outcome agreements that have been produced are cited as being largely aspirational, although delivery of these outcomes now forms a condition of grant that will be monitored by the SFC. The change that would be introduced through the Bill is that the widening access activity, currently situated within the outcome

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<sup>11</sup> 'Articulation' is a term used when a place at university (usually entering second or third year of the degree programme) is made available to a college student from a specific college, course, backgrounds or onto specific programme (e.g. completion of a specific HNC or HND).

agreements, would have a statutory underpinning. This would mean implications for future funding should an institution fail to meet agreed outcomes relating to widening access.

## **Possible displacement effects**

The process of academic selection is made by individual universities. Each university has its own entry requirements that differ by course, depending on the requirements associated with that subject or area of study. Entry can be based on a range of indicators, including qualifications, grades and non-academic criteria such as experience or test results. In practice, it is understood that academic selection involves assessment of a range of information that is submitted as part of the university application. Decisions about admission will vary depending on the specific criteria applied by the individual university.

In December 2012, the Scottish Government announced an increase in the number of funded places at universities in Scotland – over 700 extra places in academic year 2013/14 (see [press release](#), 18 December 2012). The aim is that these extra places will be filled by students from the 40 per cent most deprived areas of Scotland. There are also plans to increase the number of Higher National<sup>12</sup> student places – 1,000 additional places for students who articulate from college into year two or three at university in 2013/14. This activity is pursued with the express intention of expanding ‘guaranteed articulation’ between colleges and partner universities.

These extra places are being provided to mitigate any potential ‘displacement’ effect of this focus on widening access. The aim is to ensure that no eligible student is denied a place at university as a result of the Scottish Government’s widening access policy. The funds for these extra places has already been allocated to the sector through the Spending Review settlement. The aim is to target resources at the ‘most selective’ institutions, i.e. those that do not traditionally recruit students from deprived areas.

While targeted funding in academic year 2013/14 for a number of university places to be made available to specific groups of students could mediate any potential displacement, there is no indication that funding will be available in future years to ensure that risk do not reappear. There is also limited evidence regarding the potential groups at risk of displacement as a result of a focus on widening access. For example, if the focus is on widening access for students from SIMD40, will any potential displacement impact more on students from high performing schools or will it mean that other groups who have more commonly been the focus of widening access measures in the past (e.g. mature students) may be those at greater risk of displacement as the Bill will prioritise SIMD40 over other groups that have been targeted in the past?

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<sup>12</sup> Higher National Certificates (HNC) and Higher National Diplomas (HND) are qualifications that offer practical skills and theoretical knowledge. They can be used to evidence skills to employers or the credits achieved can be used to transfer into second or third year of university (through articulation).

## University participation by students from deprived areas

Table 1 shows the proportion of young Scottish-domiciled university entrants in academic year 2010/11 that are from the most deprived data zones in Scotland. This data shows the wide disparity in the student demographic that exists between institutions. For example, 9.2 per cent of young Scottish-domiciled entrants to the University of Aberdeen came from the 40 per cent most deprived data zones in Scotland, while the comparable figure for young entrants to the University of West of Scotland was 39.7 per cent. Other measures are used to capture participation rates among people living in rural areas of Scotland, and measures to address this under-representation are also reflected in HEI's strategies.

**Table 1: Percentage of young Scottish-domiciled entrants by institution and core public funding, 2010/11**

Institution	20% most deprived data zones	40% most deprived data zones	SFC teaching grants as a % of total institution funding
Aberdeen, University of	2.2%	9.2%	36.1%
Abertay, University of	12.3%	29.2%	55.8%
Dundee, University of	7.4%	19.8%	36.2%
Edinburgh College of Art	2.2%	14.1%	69.2%
Edinburgh Napier University	8.7%	23.4%	53.3%
Edinburgh, University of	3.4%	12.9%	29.1%
Glasgow Caledonian University	14.7%	31.1%	58.3%
Glasgow School of Art	5.0%	19.3%	48.8%
Glasgow, University of	7.9%	19.5%	34.2%
Heriot-Watt University	6.8%	18.8%	28.9%
Highlands and Islands, University of the	5.1%	24.7%	45.4%
Queen Margaret University, Edinburgh	7.2%	19.7%	42.7%
Robert Gordon University	3.9%	13.1%	44.6%
Royal Conservatoire of Scotland	5.3%	23.4%	62.0%
Scottish Agricultural College	6.1%	18.5%	24.4%
St Andrews, University of	2.6%	10.1%	12.6%
Stirling, University of	8.2%	23.8%	39.3%
Strathclyde, University of	10.4%	24.9%	41.1%
West of Scotland, University of the	20.2%	39.7%	69.3%
<b>Total</b>	<b>9.1%</b>	<b>22.9%</b>	<b>37.2%</b>

Source: Higher Education Statistics Agency (2012)



Those universities with the lowest rates of participation by students from deprived areas tend also to be those least dependent on SFC teaching grants (as a percentage of total income). Universities are legally autonomous institutions and have always enjoyed significant autonomy in how they allocate their funding. This is particularly the case in those institutions where there is proportionately less reliance on public funding. Any legislative change that leads to greater Ministerial power over universities, if this is to be implemented successfully, would need to consider in more detail how best to manage the varied level of reliance on public funding in different institutions, and how this diversity might affect the relationship between individual institutions, the SFC and the Scottish Ministers.

## **TUTIONS FEES CAP (SECTION 4)**

The Bill proposes inserting section 9C into the 2005 Act. This would allow the Scottish Ministers to set the maximum tuition fee level that universities can charge non-Scottish-domiciled UK students each year. The maximum fee proposed in the Bill is £9,000 per year. The maximum (or 'cap') of £9,000 that is in place for academic year 2012/13 is the result of a voluntary agreement made in June 2011 between the Scottish Government and the university sector in Scotland (see Scottish Government [press release](#)).

This voluntary agreement was made in light of changes to tuition fee arrangements made at UK level. These changes included the UK Government allowing universities in England to increase the maximum tuition fee charge to students studying in English universities to £9,000. At the same time, full time students from the rest of the UK (RUK) studying at HEI's in Scotland were no longer entitled to be charged tuition fees at the level set by Scottish Ministers. Under these arrangements, the Scottish Ministers did not have powers in place to impose a 'cap' on the maximum tuition fee that could be charged to RUK students. This explains the development of the voluntary agreement in HEI's in Scotland for academic year 2012/13.

Section 4(3)(b) of the Bill would limit the level by which Scottish Ministers could increase RUK fees to ensure that fees charged to RUK students studying in Scotland do not exceed the maximum amount the student would expect to pay should they have chosen to study elsewhere in the UK. However, those responding to the provisions in the Bill have pointed out that as an honours degree in Scotland takes four years to complete, and only three years in England, the cap being set at £9,000 would actually mean a RUK student studying in Scotland would incur tuition costs of £36,000 rather than a total of £27,000 if the student was to go to university in England. This would suggest that the maximum amount a RUK student would pay to study in Scotland would actually be higher than if that same student chose to study in England.

The cap proposed would only apply to RUK students; with the Bill explicitly preventing Ministers from any involvement in setting international (non-EU) tuition fees. These fees currently range from around £9,000 per year at Glasgow Caledonian University to £16,600 per year for non-medical courses at the University of Edinburgh. The reasons for not setting a cap on fees to international students is



not entirely clear and some of the responses to the provisions in the Bill have criticised this exclusion.

## COLLEGE REGIONALISATION (SECTIONS 5 TO 13)

### Overview

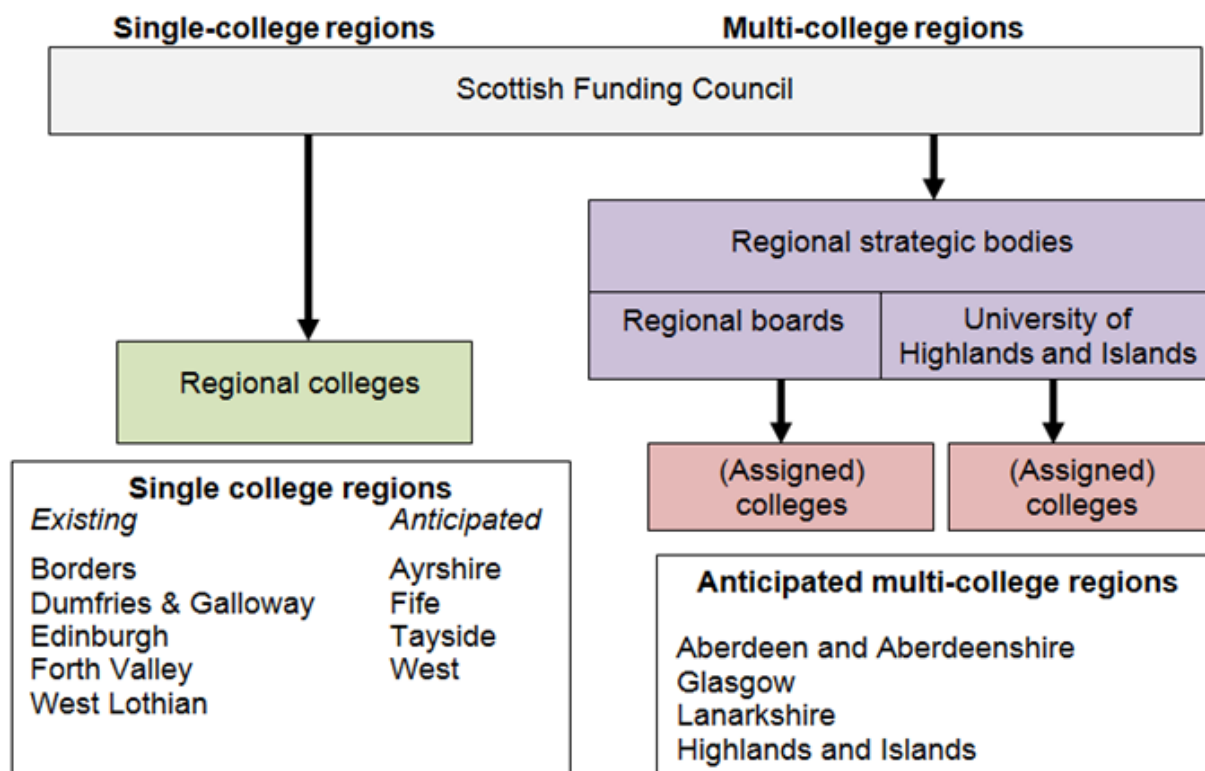
The Government's vision for college provision and its reasons for pursuing a more regionalised approach are set out in the joint SFC and Scottish Government consultation paper *College Regionalisation: proposals for implementing 'Putting Learners at the Centre'* published in November 2011 (Scottish Government, 2011b). The consultation emphasised the importance of refocusing provision so that it is 'more sharply aligned with employer and learner needs', as well as encouraging a move towards a more 'needs-based' approach to funding, conditional on agreed *outcomes* rather than agreed levels of activity. It was the Scottish Government's preference – and a conclusion made by Griggs (2012) – that each Scottish region (except the Highlands and Islands) should have only one college. A number of college mergers took place during 2012, with further mergers planned for 2013, leading to plans for a total of 13 college regions across Scotland (see map at Annex 1).

Griggs (2012) noted that college regionalisation is a key development for Scotland's colleges. A number of organisations, in response to this planned change, recognised that regionalisation of colleges could offer potential advantages to learners and staff. College regionalisation is broadly supported as it is thought to offer greater potential for 'coherent provision' across each region. However, concern has been raised in consultation responses about the potential for the regional structure to lead to colleges being less responsive and accountable at the local level.

In response to the consultation on college regionalisation, the Scottish Government has accepted that, in some areas of Scotland, regional mergers will be more complex than originally anticipated. As colleges should come together on their own volition, the Bill proposes some single-college regions and a small number of regions with multiple colleges.

An overview of the plans for college regionalisation in Scotland as they stand at January 2013 can be found on the Scottish Government's website (Scottish Government, 2013). Diagram 1 illustrates the new governance structure that is currently being developed for the new college regions, that will be unpinned by legislation as set out in this Bill. This shows that in single-college regions there will be **college boards** that would deal directly with the SFC, negotiating on funding issues and outcome agreements for that region. In multi-college regions (including Highlands and Islands), assigned colleges would retain their own boards. The new **regional strategic bodies** that are being set up, would perform specific functions, including funding assigned colleges and - in relation to incorporated colleges only – making certain appointments to the assigned college boards. In these multi-college regions, the SFC would negotiate with the regional strategic body (RSB) on funding and regional outcomes for the region. It would then be a matter for the regional strategic bodies (RSB's) to allocate funding to the individual (assigned) colleges in their area, while also agreeing their contributions to regional outcomes.

## DIAGRAM 1 – OVERVIEW OF COLLEGE REGIONALISATION PLANS



A similar structure to the new regional boards in multi-college regions is planned for the University of Highlands and Islands (UHI) – which would be a fourth RSB. UHI has a slightly different arrangement in place as it would liaise with the SFC as RSB for the assigned colleges in the region. The UHI also has a role in higher education provision in the region, with a separate fundable body in place that is accountable to the SFC for delivery of higher education provision in the region (see Scottish Government 2013 for more on this point). Annex 2 provides more detail on aspects of the planned governance arrangements associated with each of three types of board structure that would operate if this Bill, in its current form, was to become law.

The majority of the Bill sets out the provisions associated with the functioning and governance arrangements associated with the working of these new regional college arrangements. Many of the provisions are technical in nature, for example involving the development of constitutional frameworks for the new merged colleges and new RSB's. However, there are developments that would change and extend the powers that are held by the Scottish Ministers, specifically in relation powers over the new regional colleges and regional boards (but not UHI or incorporated colleges that will become assigned colleges<sup>13</sup>).

The majority of the provisions would apply only to 'incorporated colleges' – i.e. those with a board of management as set up through the 1992 Act – whether in single or

<sup>13</sup> The reason for this limitation is that UHI and incorporated colleges already have their functions and constitutional arrangements defined through legislation – mainly through provisions in the 1992 Act and the 2005 Act.

multi-college regions. There are provisions that relate to the function of regional colleges in single-college regions, including the role of the board of management and responses to mismanagement by the board. There are also a range of provisions focusing on the function of RSB's within multi-college regions, including their role and involvement in funding matters. Finally, there are provisions that apply only to the newly established regional boards (not the UHI<sup>14</sup>) in the multi-college regions, which set out the constitution of these new boards, responses to mismanagement and the potential for establishment or abolition of regional boards in the future.

## **Incorporated College Boards (Sections 5 to 6)**

The Bill proposes to insert section 7A into the 2005 Act. This would give Scottish Ministers the power to designate, through secondary legislation<sup>15</sup>, any incorporated college as a regional college. A more significant change is associated with section 6(1), which proposes to insert a new paragraph 3(2)(a) into Schedule 2 to the 1992 Act. This would allow Scottish Ministers to appoint chairs of regional college boards. Previously all boards appointed their own chair without Ministerial involvement.

In its consultation response to *Putting Learners at the Centre*, Scotland's Colleges (2012), expressed concern about the proposals regarding board appointments:

We would be concerned, given that colleges are autonomous bodies with charitable status, if the sector were to adopt a model akin to public bodies in external appointees... The Audit Scotland report *The Role of Boards* highlighted the difficulties of the public appointment process in terms of time and expense, with appointments often unfilled. The college appointment system is cost effective and efficient. To offer more transparency, there could be independent representation on selection panels or an external element introduced in appointing principals and chairs. Best practice advocates that college principals are not involved in the appointment of board members and this could be enshrined in law or in a code of conduct.

## **College Boards: Mismanagement (Section 7)**

Section 24 of the 1992 Act allows the Scottish Ministers to remove and replace some or all incorporated college board members on the basis of mismanagement of the affairs of the board<sup>16</sup> - except the college principal. The Bill seeks to replace section 24 with new provisions that would give the Scottish Ministers power remove *all* incorporated college board members from a college board – including the principal – for reasons of mismanagement. The grounds for removal of board members set out in the Bill are:

- Serious or repeated breaches by the board of terms or conditions of funding grants.

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<sup>14</sup> These provisions only cover regional boards, not the UHI, as this is already operating and the legislation setting out the constitution and function of this body is set out in the 2005 Act.

<sup>15</sup> Through the development of secondary legislation and after consultation with the relevant college, local authority and the SFC.

<sup>16</sup> The principal is at present a board member by right of their position. The Bill would change that, with college boards having powers to appoint the principal to the board.

- Failure of the board to provide or secure the provision of appropriate standard of education.
- Failure of the board to exercise any other functions properly.
- Mismanagement by the board of its financial or 'other affairs'.
- Circumstances where Ministers have been informed by the SFC or a RSB that a college no longer meets the criteria to be funded.

While the 1992 Act did allow the Scottish Ministers to remove or replace incorporated board members (except the principal), the terms of any perceived mismanagement were not previously defined in legislation. The new powers in this Bill would allow the Scottish Ministers to remove any or all board member(s) and replace them with new board members of their own choosing – although they could not appoint the replacement staff or student board members. While the Scottish Ministers would have the power to remove a college principal from the board as a result of mismanagement, this power would not extend to removal from their role a member of college staff (see Scottish Government (2013) and Annex 2 for more).

This issue of tackling mismanagement was not explicitly reflected in the pre-legislative consultation document *Putting Learners at the Centre* (Scottish Government, 2011a). Nor was this an issue that took centre stage in the Griggs (2012) report. Consequently, it is not clear from responses to these documents what views stakeholders have about the new powers that would be available to the Scottish Ministers as a result of this provision in the Bill. While the reasons for potential removal of a board member are listed in the Bill, removal for failure to 'exercise any other functions properly' could be seen as a very broad and all-encompassing criteria open to different interpretations.

## **Regional Strategic Bodies (Sections 8 to 10)**

As illustrated in Diagram 1 above, RSB's would sit between the SFC and assigned colleges in multi-college regions. The four RSB's would receive and distribute funding from the SFC across the assigned colleges in the region. While some of the provisions in these sections of the Bill are technical in nature (e.g. those relating to the constitution and functions of RSB's), there are provisions accompanying the organisation of these new RSB's that could lead to significant change in the organisation and management of the college sector.

Section 8 of the Bill seeks to insert sections 7B and 7C into the 2005 Act to enable the Scottish Ministers, by means of secondary legislation, to establish regional boards, designate other bodies as RSBs and assign non-regional colleges to one of the RSBs. As with other provisions, the Bill notes a requirement that Scottish Ministers consult with the college, the SFC and local authorities before making such an order, although there is no provision for consent to be required to make such an order.

Within section 9 of the Bill, provision is made for funding arrangements to be put in place between RSBs and the SFC, as well for funding arrangements between the RSBs and assigned colleges. Through these provisions, RSBs would be responsible for administering funding to assigned colleges, including attachment of terms and conditions to the payments made to assigned colleges in the region. This would also involve RSBs negotiating with each assigned college over the college's contribution

to the delivery of regional outcomes and engaging in joint strategic planning for the region (Scottish Government, 2012b). This provision would allow RSBs to attach terms and conditions to assigned colleges, including the repayment of funds if the college failed to meet the agreed terms.

The Bill seeks to give dominance to the decisions and actions of RSBs over boards of assigned colleges. New provisions included in the 2005 Act would give RSBs powers to issue directions - 'of a general or specific nature' - which incorporated (assigned) colleges would have to comply with. Although RSB must *consult* with colleges, trade unions, and where appropriate, student associations, when issuing directions, there is no requirement to seek the *agreement* of these groups. These provisions would also give regional boards (not UHI<sup>17</sup>) powers to transfer staff, property and equipment from one incorporated college to another (or indeed to itself). Again there is a requirement to consult, but not to seek consent. RSBs could also transfer staff to another RSB or regional college 'to enable services to be delivered across regions' (Scottish Parliament, 2012c).

According to the Explanatory Notes (Scottish Parliament 2012c) accompanying the Bill, provisions relating to the transfer of property by those colleges assigned to a RSB have been included in the Bill 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 addition of section 23L(6) to the 2005 Act would provide that any property or rights transferred under section 23L must be for the purpose of the advancement of education (since that is a charitable purpose). While it is not known whether RSBs would seek to register as charitable bodies, the Bill seeks to ensure that the provisions to transfer property and rights do not adversely affect the ability of colleges to remain as - or RSBs to become - charities.

In section 10 of the Bill, provisions focus on the functions and duties of RSBs. Some are very similar to those affecting college boards (in single-college regions) e.g. requiring RSBs to secure the 'coherent provision of high quality' further and higher education in the region. In addition, RSBs would have planning and monitoring functions, including assessing the quality of education and the impact of its colleges on 'the well-being of [current] and former students'. As with similar provisions applying to college boards (in single college regions), these provisions are intended to provide legislative underpinning to the regionalisation of colleges and with this to set out arrangements regarding the functions of RSB's.

It is worth noting that a provision to review the quality of college provision has been a function of the SFC since 2005 when Education Scotland was contracted to review colleges at least once every four years. As well as the SFC retaining this role, it is expected that RSBs would also use the Education Scotland review reports to monitor the performance of assigned colleges in their region. Whether Education Scotland would provide regional reports to the RSBs as well as their report to the SFC is, however, unclear.

The provisions in these sections have the potential to result in significant change in the college sector; with assigned colleges within multi-college regions having little (if any) direct contact with the SFC. This was not an issue that was directly picked up in

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<sup>17</sup> The provisions are different for UHI; where transfers require the consent of colleges.

the consultation responses to *Putting Learners at the Centre* or the proposals for its implementation (this is partly as multi-college regions were not considered at that time). Several respondents to the pre-legislative consultation did, however, highlight concerns about individual colleges being asked to take responsibility for delivery of outcomes when they were not involved in agreeing these outcomes (Scottish Government, 2012a). This does suggest that there has been some concern raised about the implications of decision-making moving to the regional level, and that this might also apply to the role of assigned colleges within the regional structure.

## **Regional Boards (Sections 11 to 13)**

In these sections of the Bill, provisions are set out for the constitutional arrangements affecting new regional boards in multi-college regions. Again there are elements of the provisions proposed that are relatively technical, involving the establishment and constitutional arrangements surrounding regional boards. For example, section 11 highlights that regional boards would be able to employ staff under terms and conditions determined by the regional board, although the SFC could give directions regarding the appointment and terms of conditions of such staff. It is anticipated that staffing costs in establishing regional boards constitute the majority of the costs associated with the implementation of the provisions in this Bill (see Financial Implications section).

One of the provisions that is potentially farther reaching is the proposed powers for Scottish Ministers to remove the chair and other members of a regional board if they become ineligible for this function because they have been sentenced to a period of imprisonment of more than 3 months or become an un-discharged bankrupt. Scottish Ministers could also remove a chair or other member if they were satisfied that they had been absent from meetings for more than 6 months or were 'otherwise unable or unfit to discharge their functions'. The Bill and accompanying paperwork does not give details as to what would constitute being 'unable or unfit to discharge their functions' or information on how this might be assessed.

Similarly, these sections of the Bill propose to grant Scottish Ministers powers to remove any or all of the members of a regional board in certain specific circumstances including where there is evidence of the board mismanaging its 'financial or other affairs'. Neither the Bill nor its accompanying documentation define what might constitute 'financial mismanagement' or set out what might constitute 'other affairs' as referred to in this section of the Bill. Offences leading to removal of boards or individual members could include serious breaches of conditions of grants and failure to 'properly discharge its responsibility to administer funds' provided to it for its assigned colleges. As elsewhere in the Bill, any member of a board could be removed by Scottish Ministers under this provision. Ministers could also appoint any new members as a replacement (although not the staff and student members).

Section 13 of the Bill sets out provisions allowing Scottish Ministers to make arrangements to establish regional boards either in advance of section 8 coming into force (the establishment of RSBs) or prior to any order being made in relation to

section 8. This provision would also allow the Scottish Ministers to establish or abolish a regional board (not the UHI<sup>18</sup>).

## Transition Arrangements

Given the changes required to achieve college regionalisation, it is expected that transition arrangements would be pursued by colleges (as proposed within the provisions laid out in section 13 of the Bill). The transition arrangements are intended to allow incorporated college boards to become either a college board within a single-college region or a college board assigned to a RSB in a multi-college region. As the size and composition of boards in the new regional structure would be different from those that apply to the current incorporated college boards, time would be needed to make the necessary changes to board structures in line with the new requirements – whether to increase the total membership or reduce it in line with the requirements of the board structure. Section 6(2) seeks to grant Scottish Ministers powers to allow board members to continue in office or to remove board members and to appoint the chair and ordinary members of these boards. Ministers could also make provision for the continuation in, or removal from, office of existing board members. They could also appoint board members (under section 7D of the 2005 Act) when designating an incorporated college as either a regional college (in a single-college region) or as an assigned college within a RSB.

An article in [The Times Educational Supplement for Scotland](#) (TESS) (published in July 2012) noted concern about significant ministerial control over the process of college regionalisation, including the role played by Ministers in selection of regional leads who have been appointed to aid transformation within the thirteen college regions. It is argued that, with these regional leads playing a central role in the college reform process, the Minister has significant influence over the direction of college reform in each region. This influence is likely to extend far beyond the one year tenure as college funding was to be allocated to regions for the first time in academic year 2012/13.

The article highlights the role of these regional leads in distribution of the region's funding. They are also said to be likely to play a key role in recruiting principals. There are questions about the objectivity of these regional leads, especially as the individuals appointed to these roles have longstanding relationships within the sector. They are also at the centre of the creation of regional boards in the new multi-college regions, outcome agreements agreed for the region and decisions about provision and strategy within the region, while also being accountable to the SFC for delivery of the outcome agreements. Professor Griggs and the education secretary are of the view that this measure ensures a level of accountability within the further education sector that has previously been lacking.

This accountability is also provided through the role played by the Cabinet Secretary for Education and Lifelong Learning in the appointment of the first round of board members. As the TESS article suggests, there is potential that these ministerial appointments and board approvals further increase ministerial control of the sector. That said, in college boards in single-college regions, members who join the board

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<sup>18</sup> The reason that UHI is not included is that its constitution and rules of governance are already set out in statute (the 2005 Act)



after this initial round would generally be appointed directly by the board, subject to chair and ministerial approval, while the chair and ordinary members of incorporated college boards assigned to RSB's would be appointed by the RSB. Guidance is to be issued by the Scottish Government on making appointments in order to ensure that appointments made are 'outcome based' and meet the demands of the region.

## **REVIEW OF FURTHER AND HIGHER EDUCATION (SECTION 14)**

Section 14 of the Bill seeks to define the SFC's powers to review further and higher education provision by inserting section 14A into the 2005 Act. The focus is on ensuring that *coherent provision* is delivered across the post-16 education sectors to 'secure best value for the public purse' (Scottish Government, 2012b; p.10). Through this provision, the SFC would be granted broad powers to review 'any particular aspect' of fundable further or higher education, with explicit provision granted to review the types of courses offered and ways to improve collaboration between the institutions providing them. The SFC would be required to identify barriers to coherent provision, forming a 'case for review' presented to Ministers for approval prior to the review's commencement. During the review, all relevant colleges and universities would be required to comply and assist the SFC, providing the SFC with 'such accounts and other documents, as the [SFC] may reasonably require'. Once the review was completed, the SFC would then report back to the Scottish Ministers, setting out their conclusions and making recommendations for improvement. The Bill does not set out the intended process thereafter, specifically in relation to what the Scottish Ministers might do with the information they receive.

Under powers granted by section 3 of the 2005 Act, the SFC currently has responsibility to 'secure... coherent provision'. As part of this responsibility, it can review provision of funded further and higher education. Through the Bill, the SFC would be further empowered to review the extent to which fundable further or higher education is provided by post-16 education bodies, with a focus on pursuing a more *proactive* review process. What is not clear is how this proactive process of review should be done and what organisations should be involved. Specifically, it is not explicit how the role performed by the SFC would differ from what it is currently able to do under powers conferred by section 3 of the 2005 Act.

## **DATA SHARING (SECTION 15)**

*Putting Learners at the Centre* identified a need for improved data sharing between Skills Development Scotland (SDS) and agencies such as local authorities, colleges and Job Centre Plus (JCP). The Scottish Government has highlighted how improved data sharing can assist with delivery of *Opportunities for All*, specifically Activity Agreements – bespoke packages of learning and support for 16 and 17 year olds disengaged from school, employment or training.

Section 15 of the Bill provides the legislative underpinning to data sharing, providing Scottish Ministers with the power to require relevant agencies to share with SDS a range of data relating to all 16-24 year olds in education. SDS would have responsibility for maintaining, on behalf of partners, an integrated set of data for each young person in order to create a 'robust identification, tracking and monitoring system'. The Bill would give Scottish Ministers powers to make secondary legislation creating the duty for data to be shared. The secondary legislation would set out



which bodies would be required to share data with SDS, the data they would be required to share and the form and manner in which it would be shared.

A range of activity has been pursued to improve data sharing as part of the Scottish Government's policy focus on post-16 transitions linked to *Curriculum for Excellence* and *Opportunities for All* (focused on ensuring that every 16-19 year old who is not currently in employment, education or training is offered a place in learning or training) (Scottish Government, 2012c). This activity has covered a number of areas, including supporting local authorities to better align social work and education records, improving links with colleges and developing data sharing protocols with the Student Awards Agency Scotland. The ultimate aim of this work is to draw together information about 16 to 24 year olds to provide SDS with a baseline of information that can be used to identify what learning and training young people are participating in and any support needs these young people may have.

Ensuring consistency in both the type of data shared and the number of organisations involved in collecting and sharing data forms a central reason for this provision being set out in statute. Having greater consistency of data is thought to provide SDS with the data required to meet the requirements of *Opportunities for All* (Scottish Government, 2012b). While the activity to deliver data to meet the needs of *Opportunities for All* goes some way to addressing the provision set out in section 15, the Bill goes further than this age group, it is not clear from the Policy Memorandum (Scottish Parliament, 2012b) accompanying the Bill, which organisations are required to provide data to assist with this provision. The Explanatory Notes accompanying the Bill state that the concern is to capture data on young people up to the age of 24 who are participating in education in Scotland. What is not clear is why the legislation would be limited to the collection of data about young people, and not also ensure that there is adequate information about learners from a wider age group. Further, with significant work involved not just in the development of systems and processes to effective and consistent data sharing among schools, colleges and universities, there does not seem to be adequate recognition given to the potential administrative costs of management of data sharing by all organisations involved.

## **FINANCIAL IMPLICATIONS**

As part of the Bill documentation, a Financial Memorandum (FM) was produced. This is situated within the Explanatory Notes accompanying the Bill (Scottish Parliament, 2012c). It sets out the Scottish Government's analysis of the financial implications of the measures proposed through the Bill. The FM seeks to differentiate and highlight a distinction between the direct costs associated with the proposals set out in the Bill and any expected efficiency savings/costs resulting from the wider post-16 education reform programme.

The FM notes that 'some of the provisions associated with the Bill will result in a realignment of existing activities and will, therefore, have no net impact on overall costs'. Any costs associated with the provisions in the Bill are expected to be met from existing budgets, after allowing for efficiency savings achieved through the wider reform programme. The main area where costs are anticipated is through college regionalisation, notably through the development of regional boards in multi-college regions and the resulting staff and IT costs of this development (see page 22

of the Explanatory Notes for a fuller breakdown of estimated costs). Total estimated costs for college regionalisation are: £360,000 (2013/14); £1,896,000 (2014/15); and £1,860,000 (2015/16).

The wider post-16 education reforms, and associated financial savings of these reforms, provides one of the main justifications for pursuing college regionalisation. With college reform situated within the wider public service reform agenda initiated through the *Commission on the Future Delivery of Public Services* (Christie, 2011), colleges have been encouraged to work together to reduce costs and improve outcomes. The Policy Memorandum accompanying the Bill notes that all college mergers have the potential to yield substantial, recurrent savings, notably in large urban areas where economies of scale are easier to realise. The Scottish Government have estimated savings based on recent mergers - for example, the merger that created the City of Glasgow College – with efficiencies in the region of £50 million per year by 2015-16 expected.

A number of those responding to the consultation on post-16 education reform highlight concern about the cuts in funding to the sector at the same time as legislative measures are being introduced that have significant implications for the role played by Scotland's colleges. For example, the Royal Society of Edinburgh (2011) in its consultation response to *Putting Learners at the Centre* noted concern about the financial implications when colleges are, on the one hand, being asked to play a key role in delivering the Scottish Government commitment to providing all 16-19 year olds with a place in post-16 education and training, while, on the other hand, experiencing significant budget cuts. The suggestion is that the pressure to achieve this policy target could have serious implications for education provision for learners outside this age group.

The Audit Scotland (2012) report: *Scotland's Colleges: current finances, future challenges* notes that 'mergers can be costly, complex and time-consuming'. Some of the costs of change have been met through the Scottish Government's £15 million College Transformation Fund (see press release [here](#)) available in 2012/13 to help colleges meet the costs of voluntary redundancies resulting from mergers. However, colleges are also likely to have to draw on their own resources when preparing for regionalisation. Audit Scotland stated that the financial memorandum accompanying the Post-16 Education Bill should provide 'a detailed assessment of the benefits and costs of regionalisation, including the funding of merger costs' (Audit Scotland, 2012). The Financial Memorandum that has been produced does not provide this level of detail.

Finally, as noted earlier, there are potential financial implications associated with the changes proposed in the Bill that have not, so far, been considered. These include for example, resourcing widening access both around admissions processes and measures to support successful retention/completion of higher education, as well as the cost of administering systems to ensure consistency of data collection and sharing about learners in a range of educational settings.

## ANNEX 1: MAP OF NEW COLLEGE REGIONS

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Scottish Funding Council OSKW9912 (2012).

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## ANNEX 2: SUMMARY COMPARISON OF COLLEGE SECTOR BOARDS

	Existing incorporated college board	Proposed in Bill			
		Board of management of regional college	Board of management of assigned college which is an incorporated college <sup>5</sup>	Regional boards	Other types of regional strategic body
<b>Key Duties</b>	Managing and conducting their college – section 12(1) of the 1992 Act	Managing and conducting their college – <b>existing</b> section 12(1) of the 1992 Act  Coherent, high quality provision  Consultation  Collaboration  Planning, including economy, efficiency and effectiveness	Managing and conducting their college – <b>existing</b> section 12(1) of the 1992 Act  Have regard to plans of regional strategic body <sup>6</sup>  Provide regional strategic body with such information as it may reasonably require <sup>7</sup>  Comply with directions issued to it by regional	Coherent, high quality provision  Consultation  Collaboration  Planning, including economy, efficiency and effectiveness  Have regard to particular matters (e.g. skills needs, support needs of students)  Promotion of credit and	Coherent, high quality provision  Consultation  Collaboration  Planning, including economy, efficiency and effectiveness  Have regard to particular matters (e.g. skills needs, support needs of students)  Promotion of credit and

<sup>5</sup> This table is generally not relevant to assigned colleges which are not incorporated colleges. However, some of the duties do apply to assigned colleges which are not incorporated colleges. These are indicated.

<sup>6</sup> This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges.

<sup>7</sup> This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges.

			strategic body  Comply with any requirement made by regional board concerning the transfer of staff and property etc <sup>8</sup> .	qualification framework	qualification framework
<b>Powers</b>	As outlined in section 12(2) of 1992 Act.	As outlined in section 12(2) of 1992 Act. Not amended by Bill.	As outlined in section 12(2) of 1992 Act. Not amended by Bill.	<u>Similar to SFC</u> Administration of funds  Funding of colleges  Efficiency studies  Right to address meetings of college governing body  Information  General powers <sup>9</sup>  <u>Other</u>  Appointments to assigned colleges	<u>Similar to SFC</u> Administration of funds  Funding of colleges  Efficiency studies  Right to address meetings of college governing body  Information  <u>Other</u>  Appointments to assigned colleges

<sup>8</sup> On regional strategic bodies' powers in relation to transfer of staff and property etc. see proposed new section 23L of the 2005 Act which would be inserted by section 10(1) of the Bill. This duty applies to both assigned colleges which are incorporated colleges and to assigned colleges which are not incorporated colleges (albeit with some differences). Regional boards would have powers to make requirements of assigned colleges which are incorporated colleges without their consent.

<sup>9</sup> The Bill makes provision for regional boards to have certain general powers – see paragraph 14 of new schedule 2B to the 2005 Act which would be inserted by section 11(2) of the Bill.



				which are incorporated colleges  Performance monitoring  Directions  Transfer of staff and property etc.  Provision of goods and services	which are incorporated colleges  Performance monitoring  Directions  Transfer of staff and property etc.
<b>Board size</b>	10-16	12-18	7-10	12-18	No provision in Bill <sup>10</sup>
<b>Chair</b>	Appointed by board from among their number.  Not remunerated  Not student, college employee, principal or member or employee of local authority	Appointed by Scottish Ministers.  Remunerated  Not principal, MSP, MP, MEP or member of House of Lords	Appointed by regional strategic body  Not remunerated  Not principal  Ministerial guidance on how appointment is made and skills and experience	Appointed by Scottish Ministers  Remunerated  Not MSP, MP, MEP or member of House of Lords	
<b>Staff members</b>	One teaching staff	One teaching staff	One staff member	One teaching staff	

<sup>10</sup> Size, composition etc. of the governing body of any other body specified as a regional strategic body will vary depending on the type of body and the terms of its constitution.

	One non-teaching staff	One non-teaching staff		One non-teaching staff	
<b>Student members</b>	One student member	Two student members	One student member	Two student members	
<b>Other members</b>	<p>One member appointed by local enterprise company</p> <p>Other members appointed by board</p> <p>At least half of board members (not being staff or full-time students) to have experience are shown capacity in "industrial, commercial or employment matters or the practice of any profession"</p>	<p>Appointed by regional college board with approval of chair and of Scottish Ministers</p> <p>Ministerial guidance on how relevant appointments are made and skills and experience of board members</p>	<p>Appointed by regional strategic body</p> <p>Ministerial guidance on how relevant appointments are made and skills and experience of board members</p>	<p>Appointed by regional board with approval of chair and of Scottish Ministers</p> <p>Ministerial guidance on how relevant appointments are made and skills and experience of board members</p>	
<b>Principal</b>	<p>Principal appointed (and terms and conditions set) by college board.</p> <p>Principal employed</p>	<p>Principal appointed (and terms and conditions set) by college board.</p> <p>Principal employed by</p>	<p>Principal appointed (and terms and conditions set) by regional strategic body</p> <p>Principal employed by</p>		

	by college board  Principal is a member of college board by right of their position	college board  College board able to appoint principal to board  If not a board member, principal able to attend board meetings	college board  College board able to appoint principal to board  If not a board member, principal able to attend board meetings		Principals of assigned colleges able to attend meetings of regional board
<b>Periods of office of board members</b>	[See paragraph 5 of Schedule 2 to the 1992 Act]  Appointments are generally for a fixed period of 4 years  Student member – hold office until 31 August following appointment  Staff members - fixed length of 4 years  If someone leaves office before their period expires, their replacement can only be appointed for the	[See paragraph 5 of Schedule 2 to the 1992 Act as it would be amended by the Bill]  Appointments are generally for up to 4 years. They can be extended up to another 4 years  Student members – hold office until 31 August following appointment  Staff members – fixed length of 4 years  After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person	[See paragraph 5 of Schedule 2 to the 1992 Act as it would be amended by the Bill]  Appointments are generally for up to 4 years. They can be extended up to another 4 years  Student member – hold office until 31 August following appointment  Staff member – fixed length of 4 years  After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person	[See paragraph 7 of Schedule 2B to the 2005 Act which would be inserted into the 2005 Act by the Bill]  Appointments are generally for up to 4 years. They can be extended up to another 4 years  Student members – hold office until 31 August following appointment  Staff members – fixed length of 4 years  After appointment, a person is eligible for re-appointment. There is no overall bar on the length of time a person	



	<p>remainder of that four year term. After appointment, someone is eligible for re-appointment. However, a person cannot serve on a college board for more than 12 years.</p> <p>Principal - In office while principal</p>	<p>may serve on a board</p> <p>Where principal appointed board member this would be for up to 4 years; can be extended or re-extended for periods of up to 4 years, ceases at any time when not principal</p>	<p>may serve on a board</p> <p>Where principal appointed board member this would be for up to 4 years; can be extended or re-extended for periods of up to 4 years, ceases at any time when not principal</p>	<p>may serve on a board</p>	
<b>Age limits of board members</b>	Chair and board members cannot be under 16 or over 70 when appointed.	None	None	None	
<b>Removal of board members</b>	With the exception of the principal, board members can be removed by Scottish Ministers on grounds of mismanagement – section 24 of 1992 Act.	Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 24 of the 1992 Act (section 7 of the Bill would substitute a new section 24 of the 1992 Act)	Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 24 of the 1992 Act (section 7 of the Bill would substitute a new section 24 of the 1992 Act)	Board members can be removed by Scottish Ministers on grounds of failure or mismanagement as set out in proposed new section 23N of the 2005 Act (section 12 of the Bill would insert a new section 23N into the 2005 Act)	

	Principal cannot be removed from board	Principal can be removed from board	Principal can be removed from board		
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