

## Post-16 Education (Scotland) Bill – Written Evidence to the Education and Culture Committee on the General Principles of the Bill

Colleges Scotland welcomes the opportunity to provide evidence on the general principles of the Post-16 Education (Scotland) Bill. Our response concentrates on the key issues and potential areas of concern arising from these proposals for the college sector.

### Introduction

1. This legislation will mark one of the most significant changes to affect the college sector since incorporation. Colleges have been supportive of the move to regionalisation; a process now well underway. Within the next 12 months, we expect to see mergers and federations being taken forward across Scotland, and new institutions established. The governance arrangements, which are a primary concern of this legislation, will fundamentally alter how those institutions are to be structured, managed and funded in future, and the powers they will have. It would establish regional bodies in a hierarchical structure above colleges in some regions – an entirely new approach for the education sector which will require detailed scrutiny.
2. The Bill would also create new duties on data collection and sharing, widening access and would confer powers on the Scottish Funding Council (SFC) to regularly review provision.
3. The guiding principle for these reforms must be the benefit to the learner, and for the learner to benefit. We see it as essential that colleges remain autonomous bodies with the ability to adapt to the needs of their area or region; determine how best to use their assets and people; to establish new partnerships between or across regions or other education providers to improve the offering to learners; be able to work efficiently and without unnecessary bureaucracy and, crucially, to have clear lines of accountability for the decisions they make on the use of public funds. Below, we discuss some of the potential issues with, and solutions to, ensuring this Bill can meet these aspirations.
4. Colleges Scotland would be pleased to provide further evidence on any of these points.

### College Regionalisation

5. Colleges have welcomed the regionalisation process, and as stated above, change is well advanced. The provisions in this part of the Bill establish new governance and accountability structures for the operation of these regions. Colleges receive a significant proportion of their funding from the public purse, and effective accountability structures must therefore be in place. Our view is that any organisation which delivers services funded by government should be effectively held to account for that activity, regardless of the proportion of funding that represents. It is also important to bear in mind that colleges are autonomous institutions which undertake significant commercial activity, amounting to around 25%<sup>1</sup> of total income, though in some institutions that proportion is far higher.

### Regional Strategic Bodies (Bill Sections 8-13)

6. The most significant concerns about the Bill relate to the ‘two-tier’ nature of the proposed regional strategic bodies and their constituent colleges. The establishment of regional strategic bodies sees a significant shift in powers for funding, strategic approach and the ability of college boards within the region to manage their staff and assets.

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<sup>1</sup> Official Report of the Education and Culture Committee – 15<sup>th</sup> January 2013: Michael Cross “The Government has a deep stake in the outcomes that it expects from the further education sector, as it typically contributes something in the order of 75 per cent of colleges’ income”.

7. **Intention and role of the regional strategic body:** A regional strategic body could, in itself, deliver non-education services, raising the question about whether these bodies are intended to be the vehicle of required support for a regional board, or to be significant organisations in their own right, which acquire premises, financial assets and staff delivering services previously delivered within the colleges.
8. **Future proofing:** Since the publication of *Putting Learners at the Centre*<sup>2</sup> in September 2011 there have been two college mergers completed, and nine further mergers are proposed<sup>3</sup>. The Bill in its current form would appear to assume that these mergers will go ahead as planned, with the parties named, and be completed by the time it is enacted. The Bill will now require amendment to remove the Aberdeen and Aberdeenshire regional board, assuming that the proposed merger of Aberdeen College and Banff & Buchan College goes ahead as intended. In terms of future proofing, it is important to ensure that where structural changes would deliver benefits for learners, there are not additional barriers being created as an unintended consequence of this Bill. The establishment of regional bodies with the power to deliver services, acquire assets and staff, could make it more challenging for such changes to take place within or across regions in future. For example, it would be challenging for a college within a region to merge with a college or regional college outwith that region. In these circumstances, the unintended consequence is that the regional boundaries could potentially act as real barriers to making future changes that could benefit learners.
9. **Ability to meet and exercise functions under 1992 Act:** The Bill does not seek to amend the powers set out for colleges assigned to regional strategic bodies. While the powers of a regional strategic body are in some ways similar to the SFC, they also introduce additional powers for the regional strategic body which would allow decisions to be made on finances, assets, liabilities or obligations of assigned colleges as it would determine. These could present significant issues for the assigned college – in meeting its obligations as an employer, in balancing its finances and in provision for its area and learners.
10. **Ability to transfer staff:** A regional strategic body could require the transfer of staff to itself or to other colleges within its region, as well as across other regional strategic bodies or regional colleges. There are issues here given that the regional strategic body would not be the employer but would be determining employment conditions. There is an impact in terms of the colleges' ability to plan, and on the ability of an individual to determine their place of work. In some cases, assuming for example that a member of staff was seconded from a college in the region to the regional strategic body on curriculum planning across the colleges, or on advising as to funding allocations to those colleges, a conflict of interest could arguably arise.
11. **Asset transfers:** Similarly, the regional strategic body could move assets from colleges to itself, other colleges within its region, other regional strategic bodies or regional colleges. There is an impact here in terms of the colleges' ability to plan its spending and provision, but furthermore there is potentially an impact in terms of commercial activity – if a college has accrued income from non-regional strategic body funded provision, whether that would also be subject to these provisions, and could see, in the most extreme case, the ability of the regional strategic body to transfer financial assets from a successful institution to support one that may be at risk of failing. As is proposed in regard to the Highlands and Islands colleges within the University of Highlands and Islands (UHI), Colleges Scotland proposes that such transfers of staff and assets be made by agreement with the colleges, rather than by order.
12. **Appointment of college principals:** There does not appear to be any precedent for this model in the public sector in Scotland, where the terms and conditions, including the performance review and remuneration of the principal is set by one legal entity but the contract of employment held with another legal entity. This process goes much further than appointment process oversight. Issues of dispute could be difficult to resolve in these circumstances. It is unclear what role the college itself would have in the appointment, yet the college would be meeting the cost of the salary of that principal and would potentially not be involved in setting the level of that salary. There is also the potential for terms and conditions of the principal's post being very different to those of other college staff. Colleges Scotland proposes that appointments be led by colleges and approved by the regional strategic body.

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<sup>2</sup> *Putting Learners at the Centre – Delivering our Ambitions for Post-16 Education*, Scottish Government, September 2011

<sup>3</sup> As at 15<sup>th</sup> January 2013

13. There is also no detail on the procedures for the appointment of the chief officer of the regional strategic body, who would, as described in the Financial Memorandum “*operate at a strategic level, comparable to principal level*”.<sup>4</sup> Colleges Scotland would welcome clarification on the appointment and term of service for these appointees.
14. **Accountability and accountable officers:** The accountability rests with regional strategic body whereas responsibility rest with colleges in a multi-college region. This may impact in terms of equalities or health & safety duties. In terms of financial accountability, it is unclear whether accountability rests with the chief officer of the regional strategic body or the principals of the colleges assigned in the region. The recently published *Overview of College Regionalisation Plans* from the Scottish Government states “*members of the board of management of an incorporated college and members of regional boards, including chairs, would be personally accountable to the person/body who appoints them*”.<sup>5</sup> This requires further scrutiny, currently, boards have collective accountability for decision making, this could therefore possibly constitute a shift from the usual principles of board governance, accountability and liability.
15. **Board membership from the colleges:** The Bill sets out that the membership of a regional college board can be 12-18 members, which will include a chair appointed by Scottish Ministers, two staff members and two student members. Principals may attend the board, but not necessarily be members. In terms of membership of the board, there is therefore no guarantee that all the constituent colleges will be full members. Colleges Scotland would welcome consideration of provisions to ensure that all constituent colleges have a voting member on the regional board, given the powers this board would have to make decisions on the finances, assets and staffing of those colleges.
16. **Costs:** As regional strategic bodies would exist separately to colleges, they will incur additional costs to run, which the Financial Memorandum identified as around £2 million per year, on an ongoing basis. On an individual basis, these estimated costs may prove to be too low, and do not include likely costs for shared services. There may be issues in terms of staff brought into these bodies being able to continue their pension arrangements etc. There are future potential issues in terms of VAT in providing shared services which may also require to be considered. Clarification is also required as to whether these costs will be met from the expected allocations to the sector, and if so, whether those would be met from the national or regional funding allocation, or whether additional monies would be made available. It also proposes for regional strategic bodies to perform functions previously undertaken by the SFC. We would reasonably expect that the activity of the SFC could reduce, and funds be made available for such functions undertaken by the regional strategic bodies, rather than the allocation for teaching provision.
17. **Year end:** For regional strategic bodies, being classified as public bodies sees their year end become March rather than July, following a standard public sector financial year (FY) rather than academic year (AY) in terms of their accounts. This presents a two-fold issue for both clarification on how/whether this applies and the impact on the wider sector. Since the 2005 Act, no order has been laid to officially allow colleges to work to an AY end, which we understand is being considered by SFC and the Scottish Government, and should be clarified for this Bill.

### **Regional Colleges and Colleges within a Regional Structure (Bill Sections 5-6)**

18. The provisions for regional colleges are generally welcome and present fewer concerns than those relating to the regional strategic bodies and the colleges which are constituent.
19. **Principal membership of the board:** The principal is effectively the chief executive and board membership ensures that the role is not seen as lower in stature. This provides for equality among all the members, which Colleges Scotland considers important for the most effective running of a board, in line with principles of good governance. Colleges Scotland proposes that the college principal remains a member of the board. We see this as an important principle for regional colleges and assigned colleges, and would mirror arrangements for university principals to be members of governing bodies.

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<sup>4</sup> *Post 16 Education (Scotland) Bill – Financial Memorandum, p25, para 144 (a)*

<sup>5</sup> *Overview of College Regionalisation Plans, Scottish Government, 10<sup>th</sup> January 2013, page 2, para 6*

20. **Chair appointment and remuneration:** In terms of the use of the public appointments system, it is hard to justify such a process for one member of a college board, but not for others. The chair is intended to be 'first among equals' and there is a risk of being seen to elevate the chair through this measure in appointment and remuneration, as well as in how they are accountable. Other board members, excluding staff and student members should be appointed in adherence to a code of conduct, rather than by Ministerial approval. A further issue of consistency is in the scenario that emerges where a chair can be remunerated for their position on a small college board, but a chair of a substantially larger college board, offering perhaps many times the level of provision, but within a multi-college region, would not.
21. **Board membership:** The removal of an upper age limit for board membership is welcome, however there may be merit in considering setting a lower limit of at least 16 years. The Bill also proposes to end the exemption for local council members to chair college boards, however as councils can be competitors in terms of post-16 provision, there is a potential for conflict of interest which may require further consideration. Similarly, the Bill does not appear to prevent a member of staff of a college being the chair of the board which could potentially present a conflict of interest.
22. **Board size:** For colleges within a multi-college region, their board size is very limited. These boards could be managing substantial resources – meaning larger colleges could have smaller boards. There are potential issues here in ensuring that committees of the board can be populated, without presenting the risk that the same members form the quorum, and have a burden of work above that of those in regional colleges. There is also potentially an issue about whether the staff member is drawn from teaching or support, which is a move from current arrangements where both have members.
23. **Charitable status:** The Scottish Government have given assurances that charitable status will not be affected by these provisions, but given the extent of change, and new Ministerial powers, we would welcome the Education and Culture Committee seeking information and clarification from the Office of the Scottish Charity Regulator (OSCR). The issue is particularly important for those colleges within a multi-college region, given the powers that the regional strategic board have to move assets and liabilities. Trustees of such an assigned college would not have direct control over the assets and liabilities of that charity, and therefore may not be able to act in the best interests of that charity.
24. **Terms of appointments and reappointment:** The Bill proposes a change that would allow ongoing reappointment of board members without limit. There is a potential risk of stagnation within boards' membership as a result. This is another area which requires debate as to what would be optimal for robust board operation.
25. **Transitional arrangements and Ministerial powers:** It would be helpful to have clarification on the intention of the Minister as to whether or how the powers in this section on appointing new board members or removing existing ones would be used, and for what purposes, as well as what transitional arrangements would be put in place to go from existing boards, including such appointees, and those appointed under provisions set out in the Bill. Colleges Scotland would propose that other college board members are appointed by adhering to a code of conduct rather than by Ministerial approval.

#### Highlands and Islands Region and UHI

26. **Unique approach:** The Highlands and Islands region will be in a different situation to that of other regions. Our reading of the provisions would see the regional strategic body being the University Court, but there is no detail as to how this would work in practice. The working group on the future structure and functions of the UHI<sup>6</sup> recommended the establishment of a further education (FE) committee of the University Court which would have delegated powers to plan and allocate funding for FE provision. Its chair would be a member of the University Court and members of the FE committee would include the chairs of boards of the assigned colleges. Movement of staffing and assets would be subject to the permission of the colleges. It is unclear from the Bill or associated documents whether that will be the intended arrangement.

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<sup>6</sup> Working group on future structure and functions of the University of the Highlands and Islands, report to the Cabinet Secretary for Education and Lifelong Learning, 1<sup>st</sup> October 2012

27. **Funding:** Funding for further education provision would therefore flow through the University Court, rather than directly to the college. While we would hope that this supports a joined up approach to provision and learner journeys, it is important that this does not see FE and higher education (HE) funding enter a competitive scenario or present any conflict of interest. The cost of establishing these arrangements is assessed to be marginal in the Financial Memorandum, however it would both be unlikely and concerning if there were not moves within UHI, as the body deciding on the distribution of funding for FE to several colleges, to ensure it had the appropriate expertise and capacity in place to make analysis of the impact of such decisions, as would be expected of the SFC.

#### Other Issues

28. **New funding formula:** A further change that will occur as part of the reforms will be a new funding formula for college provision. Consultation on this new approach is expected this year from SFC. There is a potential issue to consider in terms of the new multiple funder approach this Bill will develop, with funds derived from SFC for regional colleges, regional strategic bodies for their constituent colleges, and UHI for the Highlands and Islands colleges, as well as Skills Development Scotland (SDS) for any continuing initiatives such as the Employability Fund. This approach will have a significant resulting impact for colleges, particularly those in multi-college regions on how they can plan provision and ensure accountability and transparency. This should be considered within the general principles of the Bill. The Education and Culture Committee has previously identified in the budget process lack of clarity in the terms used and approach to funding.

29. **Unincorporated colleges:** It is unclear to what extent the Bill will impact on the unincorporated colleges and those funded by local government. Assuming such colleges are not affected by the legislation, some of them would nonetheless sit within a regional structure in which the decision making process will rest within a regional college board, and that relationship requires clarification.

#### **Data Collection and Sharing with Skills Development Scotland (Bill Section 15)**

30. **Compliance based approach:** This section of the Bill has not previously been the subject of detailed consultation with the college sector, and has significant implications to be considered. The aim to centrally record the activity of all young people has great merit, but could be more difficult and costly to achieve than is indicated in the policy and Financial Memorandum. It may require major investment in ICT infrastructure. The recent report from Audit Scotland: *Scotland's colleges – Current finances, future challenges* highlighted the risks arising from poorly planned and managed ICT projects.

31. The current way records of students and of applications are kept within the sector is not uniform. For example, at application stage, some colleges record applications from each student for all courses, while some record each application to a course, though an individual may apply to more than one course. Overall performance data is returned to the SFC electronically at year end, which is used to assess colleges against key performance indicators (KPIs). It is not clear how the required data would be collected and how frequently, but would likely be required to be continuously updated, for example for any circumstance where a young person might change or leave a course. An individual signifier will be required for each young person to allow them to be tracked across institutions and public bodies, which will be developed by SDS. This may require a centralised database system that institutions could access, such as used by the UK Border Agency (UKBA) to record compliance on Tier 4 which has presented challenges for education institutions. Or, it may be based on paper returns, which are currently used by SDS for the New College Learning Programme compliance. The likely impact of whichever system chosen is of significant and ongoing administrative activity, involving new ways of recording and monitoring data including for example, recognising data protection issues, as well as ensuring SDS are informed of any changes as they happen, to meet compliance requirements.

32. It is hard to see how this would not have additional costs both in terms of systems and staff time. These issues may be present for other organisations as the system will have to support information received from schools, universities, Department for Work and Pensions (DWP), training providers and potentially employers. These are key issues for consideration, and we are not convinced such activity could be subsumed within existing costs, as they would require significant additional activity.

33. **Assessment of risk:** The criteria for collection include not only quantitative data, but also potentially qualitative data, for the number of young people at risk of disengaging with education. It is not clear how this would be measured, but as above may involve additional activity beyond data sharing and collation to make such assessments. These provisions require careful consideration for the impact they would have.

#### **Review of Further and Higher Education (Bill Section 14)**

34. **Barriers to change:** As was described above (paragraph 8) there requires to be effective future proofing of this legislation. The ability for SFC to consider provision and potential efficiencies is positive and should be focused on ensuring effective regional delivery, rather than protecting or being restricted by the boundaries of that region. Delivery for the learner must be paramount and flexibility for colleges to seek to meet any future needs or adapt to change should not be restricted or unnecessarily complicated.

35. **Other providers:** It would also be helpful for SFC in conducting such reviews to be empowered to consider provision being delivered by other funders, such as SDS, to ensure the system is being considered in full.

#### **Widening Access (Bill Section 3)**

36. Colleges Scotland welcomes these provisions for HE. In improving access it would be worth investigating duties on colleges and universities to work with each other in and across regions to seek to improve widening access opportunities, for example through articulation routes.