

## MSP Briefing – Post-16 Education (Scotland) Bill Debate

Wednesday 27 March 2013

Colleges Scotland supports the broad aims of the Post-16 Education (Scotland) Bill. This briefing comments on aspects of the Bill where concerns still exist which will affect the college sector and particularly, highlights those provisions of the Bill that could be enhanced at Stage 2.

### 1. Guiding Principles

The guiding principle for these reforms must be the benefit to the learner, and for the learner to benefit. It is seen as essential that colleges:

- retain optimal autonomy with the ability to adapt to the needs of their region and local area
- determine how best to utilise their assets and people;
- establish new partnerships between or across regions or other education providers to improve the offering to learners;
- are able to work efficiently and without unnecessary bureaucracy;
- have clear lines of accountability for the decisions they make on the use of funds.

### 2. College Regionalisation (Section 5-13)

There are current examples of successfully merged regional colleges which demonstrate the positive benefits of operating at a regional level whilst continuing to deliver at a local level.

The provisions in this part of the Bill establish new governance and accountability structures for the operation of the newly formed regions. Since colleges receive a significant proportion of their funding from the public purse, effective accountability structures must therefore be in place. It is also important to bear in mind that colleges undertake significant commercial activity, amounting to around 25%<sup>1</sup> of total income, though in some institutions that proportion is higher.

The provisions within the College Regionalisation section of the Bill can be summarised into two main areas, namely governance reform and structural changes.

#### 2.1 Governance Reform

We believe that an underpinning principle of good college governance should be to ensure that boards are accountable; are appointed and act transparently; carry out their duties with probity and focus on the sustainable success of colleges and their students over the long term.

To deliver the principle of good college governance and build upon the good practice which already exists widely within the sector, we propose a code of governance/conduct to be adhered to, underpinned by an audit system to validate assurance.

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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'.

### 2.1.1 Code of Governance/Conduct

Colleges Scotland would seek similar proposals as for universities in the Bill – to remove the requirement for Ministerial approval of board appointments (except for the chair of regional colleges and regional strategic boards) and replace with agreement to abide by a code of governance produced by the sector in partnership with the Scottish Government. Abiding with this code would be a condition of grant from the Scottish Funding Council (SFC), and in the case of assigned colleges, from the regional strategic body. Such a code should contain a formal, rigorous and transparent procedure for the appointment of board members.

The removal of Ministerial approval of board appointments would restore the balance between centralised and local accountability/responsibility.

### 2.1.2 Principals membership of the Board

There was debate at Stage 1 of the Bill on whether a college principal should automatically become a member of the relevant college board.

Colleges Scotland considers the principal as 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 is considered important for the most effective running of a board. In line with principles of good governance, this would mirror arrangements for university principals to be members of governing bodies.

Colleges Scotland considers it vital that principals (regional and assigned colleges) are members, by rights of position in the same way that it is important that there are staff and student members on boards as of right. We also consider that boards be of sufficient size to carry out their duties and have an appropriate balance of skills, experience, independence and knowledge.

### 2.1.3 Age of Board Members

Colleges Scotland proposes that there should be a minimum age stipulated for appointees to a board to be set no lower than 16 years of age. This would ensure that college boards were in line with the position of registered companies.

## 2.2 **Structural Changes**

To assist with understanding the structural changes proposed within the Bill, the following definitions are included:

- *A regional strategic body would be established for the University of the Highlands and Islands (UHI);*
- *Regional strategic bodies (known as ‘regional boards’) would also be established for both the Glasgow and Lanarkshire regions;*
- *Individual colleges within these regions would be known as ‘assigned colleges’*
- *Other colleges would be the single college in a particular region and would be known as ‘regional colleges’.<sup>2</sup>*

Colleges Scotland has particular concerns to ensure the smooth operation of the relationships within multi-college regions resulting from the ‘two-tier’ structure of the regional strategic body and their assigned colleges.

### 2.2.1 Transfer of Assets and Staff

The Bill proposes that regional strategic bodies have the ability to transfer assets and staff by direction in multi-college regions. Colleges Scotland propose that such transfers are carried out by agreement, as is set out in the Bill for the Highlands and Islands region, rather than by direction.

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<sup>2</sup> Official Report of the Education and Culture Committee – 2nd Report, 2013 (Session 4) – 20<sup>th</sup> March 2013

Colleges Scotland has a concern that, otherwise, this provision could impact upon the commercial activity of colleges and reduce the incentive to operate in this fashion as financial rewards may not be retained within the institution. These rewards are often accrued in the form of reserves.

Colleges Scotland has carried out analysis of the cash and reserves position of the college sector with the findings shared with the Education and Culture Committee members (Thursday 7 March 2013). A summary paper is available to view on the Colleges Scotland [website](#), and a pertinent extract is noted below:

*'For 2011/12 colleges had £178m in cash, to cover £131m of short-term liabilities – leaving £47m. In responding to Colleges Scotland, members indicated that a further £5.1m is committed for spending in the future. The Scottish Funding Council (SFC) provides guidance that colleges should aim to have, as a minimum, the equivalent of two months cash available to cover expenditure. The £42m remaining would equate to roughly 19 days. These funds can be a cushion, and having that cushion is prudent and good practice.'*

#### 2.2.2 Approval of Assigned College Board Membership

The board of the regional strategic bodies will effectively be a new layer of governance. There is provision in the Bill for these boards to approve assigned college board members. We propose that this be dealt with in the same way as proposed for regional colleges in terms of abiding by the code of governance (as noted above), with the condition of grant being set by the regional strategic body. The chair of the regional strategic body should approve the appointment of the chair of the assigned college and this process should be transparent and in adherence to the code of governance.

#### 2.2.3 Membership of Regional Strategic Bodies

Colleges Scotland propose that chairs of each of the assigned colleges also become members of the regional strategic board, by rights of position. As currently drafted within the Bill there is no right of representation on the regional board by the assigned college board members.

#### 2.2.4 Principal Appointment to Assigned Colleges

The Bill provides for the regional strategic bodies to appoint the principal of assigned colleges. Colleges Scotland propose the removal of the provision where principals' appointment and terms and conditions are set by the regional strategic body, to instead be set by the assigned college and appointments approved by the regional strategic body.

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 chief executive 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.

#### 2.2.5 Size of Assigned College Boards

The size of assigned college boards are proposed as 7-10 members. Colleges Scotland would propose a higher limit of up to 18, as per regional colleges.

#### 2.2.6 Highlands and Islands Regional Strategic Body

In the Highlands and Islands, the regional strategic body proposed for the University of the Highlands and Islands (UHI) is of a different nature to that of the regional strategic bodies (known as 'regional boards') of Glasgow and Lanarkshire. One of the main differences is that the UHI must gain agreement to any changes, rather than by direction, as is the case for the regional strategic bodies of Glasgow and Lanarkshire.

Colleges Scotland would propose to set out in the Bill safeguards in terms of the operations of UHI as funding and setting strategic direction for further education (FE) in the region – that funds for FE in the Highlands and Islands region must be determined by a sub-committee of the UHI Court, including representatives from all assigned colleges, as a condition of grant.

## 2.3 Charitable Status

Currently, all incorporated colleges have charitable status. The Education and Culture Committee have sought clarification from the Office of the Scottish Charity Regulator (OSCR) as to whether the Bill could affect this status. OSCR confirmed it would not but highlighted a particular issue around assigned colleges:

*'In essence, there is an overall duty on the members of a college board, including assigned college boards, to act in the interests of the college. OSCR noted that the Bill gives regional boards 'significant powers' over assigned colleges, notably the power to give them binding directions, and stated that:*

*"it is possible to conceive of a situation (though it may not be particularly likely) where a regional board gives a direction to a college which, though it perhaps may be in the interests of education in the region as a whole, the charity trustees do not feel to be in the specific interest of the college. Charity trustees in such a case might feel themselves to be in a complex and conflicted position".<sup>3</sup>*

Some of our proposed changes to the Bill could help with this issue.

## 3. Widening Access (Section 3)

The purpose of this provision is *'to allow Ministers, when providing funding to the SFC, to impose conditions relating to access to higher education institutions for under-represented socio-economic groups'<sup>4</sup>.*

In many parts of Scotland, there are examples of existing good relationships between colleges and universities. This provision will expand those relationships and develop partnerships further. Through this provision, the Scottish Ministers may impose a condition that higher education institutions are to comply with a widening access agreement. Colleges Scotland welcomes this and looks forward to working with partner universities to achieve this aim.

### Colleges Scotland

This briefing has been provided by Colleges Scotland for MSPs' information. Colleges Scotland rebranded in December 2012, replacing *Scotland's Colleges*. More information can be found on [www.collegesscotland.ac.uk](http://www.collegesscotland.ac.uk).

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<sup>3</sup> Official Report of the Education and Culture Committee – 2nd Report, 2013 (Session 4) – 20<sup>th</sup> March 2013

<sup>4</sup> Official Report of the Scottish Parliament Post-16 Education (SP Bill 18) – 27<sup>th</sup> November 2012: Policy Memorandum, paragraph 17.