

## Pillar 1 - Paper 2 - Governance

### Summary

This paper provides an overview of the governance framework that underpins Scotland's college sector, explaining how legislation, public sector classification, charitable status and funding conditions shape how colleges are governed, funded and held to account. It is intended to inform work under Pillar One of the College Sector of the Future programme.

Scotland's college governance system is shaped by a mix of laws, public-sector rules and charity obligations - essentially a balance between giving colleges freedom to run themselves and ensuring strong public oversight. As noted in the main paper the framework *"is characterised by an intersection of legislation, public sector controls and charitable obligations."*

Three main Acts informing college governance are:

[The Further and Higher Education \(Scotland\) Act 1992](#)

[The Further and Higher Education \(Scotland\) Act 2005](#)

[The Post-16 Education \(Scotland\) Act 2013](#)

Regionalisation created 13 regions. Most have a single college, but three originally had multiple colleges overseen by Regional Strategic Bodies (RSBs). After recent reforms, only UHI remains as an RSB.

Colleges fall into two groups:

- Non-incorporated colleges (5) - including companies limited by guarantee, trusts, and the last local-authority-run college (UHI Argyll, Newbattle Abbey, SMO, UHI Shetland, UHI Orkney).
- Incorporated colleges (19) - governed under the 1992 Act.

In 2014, the ONS reclassified incorporated colleges as public bodies, mainly because government controls appointments, borrowing and strategic direction. This limits financial autonomy, prevents borrowing, and places liabilities on the public balance sheet.

Almost all publicly funded colleges (except UHI Orkney) are also registered charities, meaning boards must meet OSCR requirements around care, conflicts of interest and compliance.

Colleges must also follow the SFC Financial Memorandum, the Code of Good Governance, and wider SFC governance expectations - all designed to ensure proper use of public money and consistent national standards.

## Governance

### Background

This paper forms part of evidence being collated as part of Pillar 1 of the College Sector of the Future workstream. It provides information on the legislative background governing the status of Scotland's colleges - including their classification as public bodies and charities - and the practical implications of these frameworks. Their legal status - whether as public bodies, charities, incorporated colleges, or assigned colleges - shapes their governance obligations, accountability mechanisms, funding arrangements and strategic autonomy.

This paper contains information concerning matters for which agencies other than those involved in the development of this paper have responsibility for. Accordingly, the material is provided with the intention of providing an overview for the purposes of this paper. Further information or clarity on specific matters should be sought from the relevant responsible agencies.

### Legislative foundations of the college sector in Scotland

The legislative framework governing colleges sets clear roles in terms of the respective functions of colleges, the SFC and the Scottish Ministers. A summary of relevant legislative provisions that underpin the respective functions, duties and responsibilities is provided at Annex A. This is intended to be a summary of key provisions for the purposes of this paper and links to specific provisions are included for further information.

[The Further and Higher Education \(Scotland\) Act 1992](#) ("the 1992 Act") fundamentally reshaped the governance of colleges in Scotland, removing them from local authority control, incorporating the colleges and establishing statutory boards of management with responsibility for the financial and strategic management of individual colleges, and defining their powers, duties and accountability mechanisms. The 1992 Act also gives the Scottish Ministers the power to establish, close or merge incorporated colleges.

[The Further and Higher Education \(Scotland\) Act 2005](#) ("the 2005 Act") was introduced to modernise and integrate the funding and oversight of Scotland's post-16 education system. The main purpose of the Act was to dissolve the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council, and create the Scottish Further and Higher Education Funding Council (now known as the SFC). The 2005 Act sets out the powers and duties of Ministers and the SFC in regard to further and higher education and funding in Scotland. As part of this, it created a framework of "fundable bodies"<sup>1</sup> (the fundable post-16 education bodies are listed in [schedule 2](#)). The 2005 Act also improved governance and quality assurance mechanisms, and brought colleges within the remit of the Scottish Public Services Ombudsman.

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<sup>1</sup> A fundable body is a body that is eligible to receive funding from the Scottish Funding Council and includes the post-16 education bodies listed in schedule 2 of the 2005 Act as well as regional strategic bodies listed in schedule 2A of the 2005 Act.

[The Post-16 Education \(Scotland\) Act 2013](#) (“the 2013 Act”) introduced major reforms across Scotland’s college sector, amending the 1992 and 2005 Acts to introduce regionalisation. Its overall purpose was to improve governance, accountability, regional coordination, educational quality, and access, while restructuring colleges into a more coherent and efficient system.

### College regionalisation

The original intentions of college regionalisation were to reduce duplication of provision, streamline quality learner pathways and ensure closer alignment to regional economies. This led to significant reform across the college landscape with the formation of 13 college regions; 10 regions with a single regional college and three multi-college regions. This structure was selected based on a balance of ensuring regional colleges were large enough to be financially sustainable and strategically coherent, but small enough to remain locally responsive.

In the single-college regions, there is a single college incorporated under the 1992 Act, which is designated as a “regional college” within the meaning of the 2005 Act. These colleges were given the power and control to receive and be accountable for public funding from the SFC; to decide how to manage the resources at their disposal; and with obligations to plan and provide education and skills curriculum for the benefit of the learner, regional economy and community. Regional colleges have a direct funding and accountability relationship with the SFC bound by a financial memorandum. Each regional college is governed by a board of management, the Chair of which is appointed by the Scottish Ministers.

In the multi-college regions, a new statutory body - a “regional strategic body” (RSB) - was created to fulfil the aims of college regionalisation, with colleges within a region working collaboratively. Colleges within these regions were assigned to the RSB and referred to as “assigned colleges”. The RSB receives funding from the SFC and is bound by a financial memorandum between the SFC and the RSB. Colleges which are assigned to the RSB are funded by the RSB and in turn are bound by a financial memorandum between the RSB and themselves which sets the conditions of funding. The RSB decides how its funding should be allocated to its assigned colleges and monitors the assigned colleges’ financial performance and progress towards delivery of activity targets.

Since regionalisation, further governance reforms have been implemented and, with the recent (2025) dissolution of the Glasgow and Lanarkshire RSBs, the only remaining RSB is the University of the Highlands and Islands (UHI). The following colleges are assigned under the 2005 Act to UHI:

- UHI Argyll
- UHI Inverness
- UHI Moray
- UHI North, West and Hebrides
- UHI Orkney

- UHI Perth

### **Incorporated vs non-incorporated**

Incorporated colleges are those incorporated under the 1992 Act. There are currently 19 incorporated colleges in Scotland.

Colleges not within the 1992 Act's remit are referred to as non-incorporated colleges and have differing constitutional arrangements. There are currently 5 non-incorporated publicly-funded colleges. Their governance arrangements take various forms:

- UHI Argyll is a company limited by guarantee registered in Scotland and is assigned to UHI.
- UHI Orkney is the only remaining local authority controlled college and is assigned to UHI (while also separately listed as a fundable body under the 2005 Act).
- UHI Shetland is not assigned to UHI, it is undergoing SFC assessment following a previous merger.
- Newbattle Abbey College operates under a Governing Deed of Trust set up on 1937 and is a fundable body under the 2005 Act.
- SMO is governed by a board of directors and is a fundable body under the 2005 Act.

### **Public Body status**

From 1993 to 2014, colleges were not classified as public sector bodies by the Office for National Statistics (ONS). The ONS is the UK's independent authority responsible for producing the National Accounts and public finance statistics. To do this accurately, it must decide which organisations belong inside or outside the public sector for statistical purposes. ONS classifications are not discretionary policy decisions: they are made by applying internationally agreed frameworks. This ensures UK statistics are comparable with other countries, methodologically robust and credible to markets, auditors and international institutions.

An organisation is classified to the public sector if government has the ability to control its general policy or programme, even if it is operationally independent, raises its own income or is set up as a company, trust or charity. As set out by international guidance, key indicators the ONS considers include:

- Who appoints or removes board members
- Who controls strategic decisions
- Ownership or voting rights
- Government powers over borrowing, direction or dissolution.

In order to determine public sector control, the ONS applies a set of core principles, or “indicators of control”, in accordance with the nature of the entity and in line with standard international frameworks. In some cases, a single indicator alone can be sufficient to determine public sector control, for example the right to appoint or remove governing board members. In other cases, holistic analysis of a number of separate indicators may collectively indicate control, and the ONS will come to a view based on the totality of the strength of evidence.

Given the nature of a holistic assessment, it is not possible to pre-empt an ONS decision or definitively state what effect a single action may have on the cumulative risk of classification as a public body. The only set “threshold” for reclassification is that the ONS has determined that public sector control exists.

ONS operates independently of government and classifications are evidence-based and published transparently. The ONS does not itself impose controls but classification triggers the application of public-sector finance, accounting and control regimes. ONS classification decisions can have direct consequences for government finances as a body classified as public sector brings its debts and liabilities onto the public balance sheet. Government must manage the activity of public bodies in order to protect public finances.

Following a UK-wide review of educational institutions by the ONS, the ONS reclassified all incorporated colleges as public sector bodies due to the degree of government control over incorporated colleges, effective from 1 April 2014. Restrictions were placed on retaining surpluses, using reserves and borrowing independently.

At the time of the ONS reclassification, work was underway to significantly reform the governance arrangements via college regionalisation following [the review by Professor Griggs](#), which recommended even stronger government control over colleges. The Scottish Government decided to proceed with regionalisation plans and not take steps to repeal existing powers with a view to colleges being reclassified as private sector bodies, as was the case in England (although they were again reclassified as public bodies in 2022 following further reforms).

Whilst colleges retained autonomy by being incorporated colleges, ONS ruled they were effectively controlled by government in financial and operational terms.

A number of factors surrounding college governance influence their classification as public bodies:

- a. Funding dependency - most income derived from government funding.
- b. Lack of financial autonomy - colleges cannot freely borrow without the consent of Scottish Ministers under the 1992 Act.
- c. Public sector governance - college boards appointed under public policy rules and oversight (e.g. ministerial chair appointments); Scottish Ministers have powers to merge or close colleges; Scottish Ministers have powers to remove board members.

- d. Statutory obligations - colleges have certain duties in legislation and are required to meet a number of public service delivery goals.
- e. Control over key decisions - strong influence over strategic and operational priorities from SG/SFC.

The idea of colleges being reclassified as private sector bodies has been mooted several times since the reclassification of colleges as public bodies in 2014. The Cumberford-Little report in 2020 recommended that the Scottish Government revisit at college reclassification and more recently (2021), in response to a recommendation to explore ONS classification of incorporated colleges as part of the SFC's Review of Coherent Provision, the Scottish Government noted it would not explore this further, noting "colleges should remain part of the public sector, fulfilling their invaluable public service missions in this context." The Scottish Government committed to exploring greater financial flexibility for colleges, which is being taken forward by the Colleges Tripartite Alignment Group.

In order for colleges to no longer be classified as public sector bodies, certain statutory and governance controls held by the Scottish Ministers and SFC would need to be removed or significantly reduced, in order for colleges to be demonstrably autonomous from government. For example, powers around appointing and removing board members, and the ability to close, merge and otherwise change the constitution of a college would need to be reconsidered. Controls and influence around oversight of strategic and financial decisions by the SFC and SG would have to be significantly reduced. Statutory functions would likely have to be amended to reduce direct ministerial policy influence.

The use of non-legislative means (e.g. conditions of grant funding) as a means of exerting government control would also be of relevance even if statutory powers did not exist.

### Charitable status of colleges

With the exception of UHI Orkney, all other publicly funded colleges in Scotland hold charitable status. Colleges in Scotland that hold charitable status are regulated by the Office of the Scottish Charity Regulator (OSCR) and must comply with the Charities and Trustee Investment (Scotland) Act 2005. As charities, colleges must meet the "charity test" which means, among other things, they must:

- a. Have only charitable purposes
- b. Provide public benefit
- c. Use their funds and property only for charitable purposes
- d. Allow fair access to the benefit they provide
- e. Not be, or exist to advance, a political party.

Charitable status provides tax efficiencies but adds regulatory obligations. For example, OSCR's permission is required before making certain changes and there are annual reporting

requirements. There are some benefits to having charitable status, including financial benefits such as tax and rates reliefs.

As charitable Trustees, college Board members themselves have some general and specific duties under the Act and as [outlined by OSCR](#).

The general duties include to act in the interests of the charity, and in particular:

- Ensure the charity operates consistently with its purposes
- Act with care and diligence
- Manage conflicts of interest
- Comply with the Charities Act (specific requirements) and any other applicable legal duty or requirement

The specific duties include:

- Ensure Charity details on OSCR Register are accurate and up to date
- Consent/ notification required for certain changes
- Financial records - required to keep proper accounting records, have accounts audited, and file accounts and report on activities to OSCR annually
- Charities Accounts (Scotland Regulations) 2006
- Providing information to public - publicising charitable status, provision of copies of Constitution and accounts

The consequences for charitable Trustees of misconduct (including mismanagement), i.e. any action by charity trustees which may result in a significant loss or harm to the charity, are outlined in the Act. However, for some professionals, including accountants, there may also be other professional or regulatory consequences.

### **Governance Codes and other expectations**

The SFC uses a structured system of outcomes-based accountability, engagement, monitoring, and intervention to ensure that colleges and universities deliver what is expected in return for public funding. The SFC maintains scrutiny of institutional governance to ensure public funds are managed responsibly.

It is a mandatory condition of receiving SFC funding that colleges comply with [the Financial Memorandum with Fundable Bodies in the College Sector](#). This sets out the relationship between the SFC and colleges, the conditions under which public funds are provided and the financial, governance and sustainability requirements colleges must meet.

It is a condition of SFC funding that colleges comply with [the Code of Good Governance for Scotland's Colleges](#). The Code is based on key principles around governance for colleges and sets mandatory principles around leadership, accountability, effectiveness and collaboration. The SFC has also published [the SFC's Expectations of Good Governance report](#) designed to enhance good governance in colleges and universities.

## Annex A

### Key Legislative Provisions

This Annex provides a summary of relevant legislative provisions within the various pieces of legislation that set out the functions, duties and responsibilities of colleges, the SFC and Scottish Ministers. It should be treated as a summary only and considered alongside the specific provisions to ensure accuracy.

#### **Further and Higher Education (Scotland) Act 1992:**

Section 12 of the 1992 Act sets out the core duties and powers of a college board of management, including (but not limited to):

- boards have a duty to manage the college and ensure it provides suitable and efficient further education to students;
- a board may delegate the performance of its functions to the chair, a committee or a member of staff (in practical terms often through a Scheme of Delegation);
- boards shall not borrow, give any guarantee or indemnity, or create any trust or security without the prior written consent of Scottish Ministers.

Schedule 2 of the 1992 Act sets out the constitution and proceedings of a board of management of a college.

Section 24 of the 1992 Act gives Scottish Ministers the power to remove board members (other than the principal) in certain circumstances e.g. financial mismanagement.

#### **Further and Higher Education (Scotland) Act 2005:**

Section 23A-D of the 2005 Act sets out a range of statutory functions that regional colleges must comply with. These functions are primarily focussed on meeting the needs of the locality within which the college is situated, although it also provides that in exercising its functions, a regional college is to have regard to the UK and international context when carrying out its activities.

Section 23E-O of the 2005 Act sets out a range of statutory functions that regional strategic bodies must comply with and the requirements of an assigned college to provide information and comply with directions from the RSB.

Section 22(4) and (5) require colleges as fundable bodies to provide the SFC with such information as it may reasonably require for the purposes of or in connection with the exercise of its functions.