



Universities Scotland response to the Scottish Government consultation questions on Post-school education and skills reform legislation

Question 1

Which of the three proposals do you prefer?

We see the potential for change to the funding body structure to bring greater beneficial connections within both its policy and operations. In particular, we agree that there is scope to build on the good foundation of diverse pathways available to learners, not least as we look to offer opportunity to individuals of all ages and backgrounds across Scotland, in partnership with employers.

As the Scottish Government considers which option to pursue we note a calculation that must be made between:

- the benefits that might flow from a greater aggregation of duties within one organisation;
- the strategic and operational challenges to any organisation in giving effect to substantial changes in its role and the ongoing delivery of those new duties across a wider group of interests; and
- the opportunity costs of pursuing change, not least at a time of strategic and financial challenge.

We note, therefore, that option 3 might have attraction given the potential for all issues to be considered within a single structure. However, that should be balanced with:

- the substantial short-term challenge of delivering that level of change, including the bringing together of organisations with different purposes in the post-school context;
- the successful operation of such an organisation given the significant diversity of responsibilities that it would hold;
- relatedly, the diverse set of interests that it would work with, in particular a wide range of funded organisations on the one hand, and learners and their families on the other; and
- the need to place such a wide range of duties within the remit of a NDPB, noting that the university sector believes that such a status is essential for the body that has responsibility for funding our sector.

Given the above, a majority of our members support option 2 and consider this to be the best option for the longer term. Some members have a preference for option 3, due to the potential to take a holistic view of all funding and student support issues. Recognising the challenges in effecting change across a complex context, these members consider that option 2 could be a first step to be pursued over the short to medium term.

All members consider that option 2 would appear to be aligned with a number of the recommendations arising from the Skills Delivery Landscape Review. It could be supportive of proposals under Recommendation 6 of that Review including adoption of a colleges and

universities first approach to ensure best value from public investment. However, as noted above, the time and resources required to effect the proposed changes and the related opportunity costs should not be underestimated. Our responses to a number of the consultation questions highlight the considerable complexity required to define the new body's duties and powers appropriately. Pursuing legislative change will take some time and should not slow progress with other non-legislative reform, for example further development of the Graduate Apprenticeship model and a revisiting of how funding can support universities and others to deliver short-cycle provision across our economy.

Central to the proposed changes is the movement of responsibility for the funding of some apprenticeship provision from SDS to SFC. Given the status of SDS, it is only the change to SFC's role in funding provision that will require statutory change. If this is to be done effectively, it will require close attention to not only the formulation of the new specific powers and duties for funding, but also the definition of the wider relationship between the SFC and the new recipients of funding from SFC. It will be a relationship with SFC and, through it with government, that is distinct from that between universities and SFC. Relatedly, we envisage a significant process of organisational change for the SFC which will need to be effected without diminishing its important, broad and complex current role.

This issue comes to the fore in our response to a number of the consultation questions, in particular Question 4.

We note that option 2 will see SAAS take responsibility for student support that is currently held by SFC. This will most directly affect learners in the college sector however we would also expect a resolution of the now recurrent, structural post-budget transfer of resources from SFC to SAAS that has diminished the resources available to universities.

As Scottish Government considers change, we ask that it ensures that the structure ultimately pursued will:

- support the appropriate relationships between government, funding body and the different types of organisation that it funds. We believe that the funding body should have a NDPB status and are pleased to see this reflected in the consultation document;
- relatedly, be configured with the maintenance of the university sector's current ONS classification as a priority. Scottish Government statements to date on this question have been welcome, however there is a need to be watchful for unintended consequences of change, not least given that the decision on classification does not rest with Scottish Government;
- ensure that, when it is seeking to support collaboration between different actors, the statute, and the policy and operation of the funding body that it frames, reflect formally the distinctiveness of each of those actors and their differing operating contexts including established regulatory and accountability systems;
- ensure that the current administration of fees is retained. Taking into account the parameters of the current funding system, while institutions strive to remain within funded places targets, the pre-qualification system of applications makes it impossible to fully predict which students will meet their conditions. There are essential factors impacting each cycle including: student choice, varying cohort sizes in different entry years, varying retention rates, and tolerance thresholds for under and over recruitment.

Against this backdrop, deployment of ‘fees only’ places, where required, is essential to manage fluctuating student demand; and

- ensure that a funding body working with such diverse types of organisations and increased responsibilities should continue to have specified budgets from Scottish Government for universities and for colleges and that it continues to be only organisations defined as ‘higher education institutions’ (“Institutions formerly eligible for funding by the Scottish Higher Education Funding Council” in Schedule 2 of the 2005 Act), that can receive resources from a ‘HE Capital Budget’ (Research). This is essential for the operation of the dual support system and the benefits to Scotland that universities’ leverage of research funding brings. For universities, this would be an important realisation of the principles of transparency and trust noted in the consultation, and of the noted business need for clarity.

Question 2

What do you think are the main advantages of your preferred proposal?

Noting the diversity of views on options across our membership described above, our comments below assume that option 2 is chosen, although most issues would also need to be addressed under option 3.

Noting that the Council will need to have a different statutory, strategic and operational relationship with the different types of organisations that it will fund, we believe that there will be some issues where a student-centred, strategic and policy dialogue for the whole of post school education and training will be beneficial in:

- meeting economic opportunity and demographic challenge, with Scotland seeking to grow its working age population and the proportion of that population that attains a tertiary qualification, and doing so equitably across our population;
- supporting institutions to work closely with students, potential students and employers, including the public sector to make choices in response to demand and to deploy a greater choice of models of provision at all levels to meet these ambitions; and
- from a university perspective, the realisation of the Scottish Government’s intention that public investment made in post-16 education and skills should be on a “colleges and universities first” basis [SG Purpose & Principles]. That is not currently the case under the status quo, proposal one.

To illustrate potential benefit, as we look to enhance the sector’s wide range of work-based learning, we have found the movement of Graduate Apprenticeship (GA) funding from SDS to SFC in 2021 and thereafter, and the inclusion of GA provision within the SFC’s main funding method for universities, to be beneficial to the process of funding (although we note that this provision was absorbed into SFC funding responsibilities without the transfer of any recurrent resource, thereby effectively cutting its capacity to act overall). We are keen to see the further development of the GA framework of disciplines combined with a re-introduction of funding to support short-cycle interventions (‘upskilling’). It is important to note, however, that these could also happen under option 1, the status quo, as no legislative change is required to pursue them. We would value reassurance that SG’s pace in making progress on these changes will not be lessened by the estimated cost (in both time and resources) of bringing option 2 (or 3) into effect.

In parallel, if option 2 is pursued, we see benefit in SAAS taking responsibility for all student support. Organisationally, SAAS is focused on advising students and their families and that role is reasonably well understood across the population. That is not a role that SFC is recognised for widely and, if its role in funding providers is to be expanded, it will be best to have the Council focused solely on that remit and engaging with the relevant stakeholders.

Question 3

What do you think could be the biggest challenges with your preferred proposal?

Our response to this question assumes that option 2 is adopted. As noted above, we envisage that option 3, which is favoured by a minority of our members, would bring further complexity to the processes of change and so many of the issues highlighted below would be amplified.

There will be a challenge in framing legislation that provides for consideration of issues across distinctive sectors, each with its own diversity of actors. Whilst there is merit in considering some issues through the lens of a single ‘system’, effective actions must recognise this distinctiveness and diversity which is evident for example in:

- the differing legal status of funded organisations, including their relationship to the state. For instance, the autonomy of universities is core to the effectiveness of their role, across education and training, and research and innovation;
- relatedly, their distinctive regulatory context;
- the differing strategic importance of organisations and public interest in their sustained operation at a Scotland and local level;
- the fact that SFC acts currently at a UK level, for example:
 - in partnership with the other devolved funding bodies and with UKRI, in ensuring that funding of universities at a devolved level can support success in the dual support system;
 - the ability for students to choose study across the UK on a sustainable basis; and
 - interaction with the other UK funding bodies, OfS and CTER, to ensure that regulation and accountability mechanisms are framed in each devolved setting in a way that does not adversely affect either student choice or the operation of institutions in other parts of the UK; and
- the prominence and importance of both employer and student choice, and how they might often align or sometimes conflict in each context.

Therefore, whilst the consultation document gives prominence to a “system-wide” approach, for example for data and assurance, and has an aim for greater simplification in a number of contexts, proposal 2 will include the challenge of realising the benefits of a more connected and coherent post-16 funding body whilst also recognising and supporting the diversity of sectors and institutions within them. Colleges and universities make distinctly different contributions and that does not always lend itself to “comparable system-wide data or evidence” or

“measures of success” without the risk of doing a great disservice to one or both sectors. The inclusion of private providers would bring a further challenge in this regard.

Considering data specifically, we note our preferred approach in answer to other consultation questions. In the context of challenges arising from option 2, and the prominence of data as one of four business needs listed in the consultation, we note that whilst the SFC currently performs a data function for the college sector, for higher education institutions that is largely under the remit of the Higher Education Statistics Agency (HESA) and UCAS. Nothing in the consultation proposals looks to change that, which is very welcome. However it is therefore necessary to be realistic about how much can, or should, be achieved in regards to “system-wide” data or evidence.

To further illustrate the challenge of complexity, detailed consideration will need to be given to the whole statutory framework for the SFC and how it reflects the greater diversity of sectors that the Council will fund.

For instance:

- Section 7 of the 2005 Act sets out aspects of providers’ operations that must be in place for the Council to recommend to Ministers that a provider can be a funded body. Would such requirements be placed on all providers receiving funding from the new body? If not, this different status and relationship will need to be defined and reflected in the remainder of the statute and operationally.
- Section 9 of the 2005 Act includes conditions that Ministers may and may not place on grants paid to the Council. These conditions ensure that, it is universities, in the context of student and employer choices, that determine their mix of provision between disciplines. Any necessary definition of difference of approach to be taken by the Council in funding provision delivered by different sectors / actors should be defined in legislation. This is important both for securing the best outcomes and for the sustaining of universities’ autonomy and current ONS classification. As we note in our answer to Q1, the question of ONS classification must be to the fore as Scottish Government considers legislation.

To illustrate the wider range of responsibilities that will need to be considered, examples of the SFC duties and responsibilities that we would wish to see continue are:

- limits on the terms and conditions that can be set out by Ministers as they fund the Council, such as reference to particular programmes of learning, courses of education or research [Section 9 (12) of the 2005 Act];
- provision for the body, when making payments, to require the institution to comply with any principles of governance which appear to the body to constitute good practice (currently discharged by compliance with the sector-owned HE governance code) [Section 9A of the 2005 Act];
- the ability of Ministers to make payments to the Council to pursue outcomes such as restructuring or collaboration [Section 10 of the 2005 Act];
- clarity that terms and conditions cannot be imposed by the funding body on funds that have not come from that body [section 12 of the 2005 Act];

- a requirement for the funding body to have regard, when it is making payments, to the desirability of encouraging fundable bodies to maintain or develop funding from other sources and preserving any distinctive characteristics of particular fundable bodies [Section 12 (6) of the 2005 Act];
- a responsibility for the funding body for securing provision made for assessing and enhancing the quality of education [Section 13 of the 2005 Act];
- provision for the funding body to consider the ‘coherence’ of fundable provision and to have regard to Scotland’s skills needs. Whilst these parts of the 2005 legislation might be revisited to give greater clarity, it would be important for the funding body to have such a role and focus, for instance in the context of considering provision of strategically important subjects. It will be important to define this in the context of the Scottish Government’s intention for skills planning; and supporting student and employer choice. We note that the consultation rightly places emphasis on a student-centred approach and that should include the importance of supporting students’ choices;
- enable the funding body to provide Ministers with advice, both on request and “whenever it considers it appropriate to do so” [Section 17 of the 2005 Act];
- safeguard academic freedom (see Section 26 of the 2005 Act and Section 23 of the Higher Education Governance (Scotland) Act 2016); and
- definition of the requirements that Ministers may place on the Council [Section 24 of the 2005 Act].

Building on the matters to which the Council should have regards [Section 20 of the 2005 Act], we believe that the new funding body should have duties to:

- ensure that teaching, research and knowledge exchange by higher education institutions is supported to be excellent in international terms, note that, in answer to question 11 below, we suggest that the Council could usefully conduct fuller, evidence-based assessments of the international position overall;
- aligned with Purpose and Principles (P&P) ‘Globally Respected’ outcomes, support the financial sustainability and competitiveness of universities and have regard to the UK and international context within which institutions operate;
- again aligned with P&P outcomes, have regard to the Dual Support system; the relative funding policy decisions across the UK; and success of higher education institutions in Scotland within it;
- have regard to the autonomy of higher education institutions. This is important since there is a very strong correlation between universities’ autonomy and their positive contribution to society: see for instance the EUA Autonomy Scorecard¹ for international evidence on the trend towards autonomy in a range of European countries so that universities can make the strongest possible contribution. Further, the question of autonomy is related closely to that of ONS classification which we have highlighted in response to other consultation questions;

¹ <https://www.eua.eu/publications/reports/university-autonomy-in-europe-iv-the-scorecard-2023.html>

- promote the interests of diverse learners e.g. including mature learners, part-time learners, and learners from disadvantaged backgrounds/ with characteristics that are linked to disadvantage (e.g. disability);
- promote specialist provision in learners' interests. (This would be a measure, alongside others, to ensure that a body with a very wide post-school remit gives sufficient focus to specialist provision e.g. in the creative disciplines, responding to student choice and ambition);
- maintain students' choices for mobility across the UK (note that this should be an objective shared, if option 2 is pursued, with SAAS); and
- enable proposals for collaboration from universities, colleges and others, in the interests of meeting learners' needs, enhancing Scotland's research and innovation capacity and thereby achieving social and economic benefits. This would be effected by deployment of strategic funding, be it directly by SFC and / or the Council working with other funders to leverage resources.

These challenges are surmountable with due consideration. The 2005 Act carefully defines the relationship between the Council and colleges on the one hand, and with higher education institutions on the other. The same approach would be required if further categories of organisations were to be added.

We note that Welsh Government has pursued changes that have similar objectives to those set out in this consultation and the approach there may provide useful points of reference as Scottish Government develops its proposals.

Question 4

Are there any other factors you think we should consider in making a decision?

As noted in our answer to Question 1, we are concerned about the significant opportunity cost of pursuing complex change at a time when all of the sectors funded under option 2 are facing significant financial challenges. For universities those challenges include both cuts to funding through SFC and decline in income sources that are now needed to cross-subsidise the tuition and research funded by SFC. The level of that cross-subsidy is increasing each year as Scottish Government funding falls in real terms.

We are sympathetic to the proposed change to responsibility for funding apprenticeship provision, and have noted the value in this already having moved to SFC for Graduate Apprenticeships. As noted above, we believe that change to support graduate apprenticeships and the wider range of work-based learning and short-cycle education and training should be pursued at pace now. It would be concerning if the pursuit of structural change to the funding body landscape were to slow that progress.

Relatedly, and beyond the creation of the body in statute, there is the important question of its operation and culture. It will need to operate in a way that reflects the differing relationship with the range of distinctive groups of organisations that it funds. In this context, we note that the current SFC is a relatively small organisation in terms of staff numbers although it allocates a

significant proportion of the resources under consideration² to support a very large volume of learning, research and innovation activity. There will be complexity in bringing this organisation together with a potentially larger number of staff from SDS, (and SAAS under option 3) bringing experience of a different system and set of funded organisations, many with a very different relationship to systems of public regulation and accountability. That complexity will be manifested not just in processes of administration of public funds but, very importantly, in different organisational cultures. Whilst some time ago now, the challenging experience in Wales of forming ELWa, a similar initiative of bringing together responsibilities for a range of distinctive post-school activity, pointed to the importance of focusing on governance and management. [BBC NEWS | Wales | Education body damned by report](#)

We expect that, alongside questions of management and culture, there will be operational issues such as IT systems that will need to be resolved. Our members that engage with both SFC and SDS funding systems note considerable difference in the funding method and reporting.

The 2005 Act specifies ‘Fundable Bodies’, noting those that were previously funded by the SFEFC and those by the SHEFC. The relevant Schedule is referred to in other sections of the legislation allowing for definition of how different sections of the Act apply to universities, colleges or both. If a new funding body were to have responsibility for allocation of funding to other providers then these would need to similarly be defined in legislation, allowing for differentiation in the application of Sections of an Act.

The legislation would need to address the question of organisations that offer provision for which students pay and have access to some support from SAAS but where SFC funding is not provided, see for example: [Private colleges and training providers - SAAS](#). Our assumption is that current policy would continue and the new funding body (under option 2) would not offer funding to such organisations.

The consultation notes that option 2 does not focus on “careers improvement”. Universities Scotland is an active member of the Careers Collaborative and we have been working alongside other partners to enhance our own careers education provision and contribute to broader work across education. As the responsibilities for careers improvement are taken forward, be that by the Careers Collaborative and SDS or by others, we note that:

- universities want to continue to offer a close partnership with that service, including access to the latest information on the diversity of university pathways – and we think that there is scope to improve this aspect of current non-university advice;
- relatedly, the provider of that advice should have a good ongoing understanding of the careers services offered by universities to their students and alumni; and
- there will be a need to consider possible policy developments at the intersection of reserved and devolved powers, for instance a possible merger of Job Centres and the National Careers Service³.

² In 2022-23 SFC had 119 staff and allocated £2bn [Our annual report - Scottish Funding Council \(sfc.ac.uk\)](#) In the same year, SDS had a total revenue of £227m and 1500 staff [annual-report-and-financial-statements-2022-23-signed.pdf \(skillsdevelopmentscotland.co.uk\)](#)

³ <https://www.gov.uk/government/news/back-to-work-plan-will-help-drive-economic-growth-in-every-region>

The SFC has an existing duty to secure the quality of education it funds in colleges and universities. As above, we believe this should remain. However, it would seem appropriate for the new SFC to have some oversight of quality for the provision it funds in private providers.

We would not want to see responsibility for quality in private providers derail existing arrangements in colleges and universities. SFC has been working with the sectors, NUS Scotland, QAA Scotland, Education Scotland, sparqs (which supports student partnership in quality) and College Development Network to develop a new tertiary quality framework, which launched in August 2024. This has taken significant work and for the first time will see colleges and universities within the same framework. It builds on previous frameworks, particularly the internationally recognised enhancement-led approach in the universities, the significant history of student partnerships in quality assurance and enhancement in both colleges and universities, and the peer-led review model. This new framework meets international standards, which is essential for universities in order to attract international students and continue partnerships with universities overseas.

Governance of the Scottish Funding Council

Question 5

Should the 2005 Act be amended to remove the restrictions in respect of Board appointments?

We believe that a limit on the length of term and on re-appointments are good principles of governance. We are therefore opposed strongly to the proposal. As written, the consultation would seem to suggest a removal of this limit. Our answer is primarily in response to this proposal. We also offer our views if the intention was to propose greater flexibility in terms, within an upper limit that is aligned to best practice.

We note that the Code of Practice for Ministerial Appointments to Public Bodies in Scotland set out by the Commissioner for Ethical Standards in Public Life in Scotland⁴ specifies that:

The Scottish Ministers may reappoint a board member to the same position or extend a member's appointment term provided:

- (i) the member's performance has been properly appraised as being effective during the current term and*
- (ii) that the member's total period of appointment will not exceed 8 years.*

That Code therefore points to a member having a term of office on appointment which may be renewed up to the limit noted.

The Code notes the consideration of balancing “*the continuity provided by reappointment and term extensions with the opportunity to increase the diverse range of relevant skills, knowledge and experience on a board by making a new appointment through open competition*”.

We are not convinced by the assertion in the consultation document that “*This [the current arrangements] does not provide sufficient flexibility to allow for effective succession planning nor to respond quickly to pressures or temporary challenges*”.

⁴ https://www.ethicalstandards.org.uk/sites/default/files/publications/Code_of_Practice.pdf

Further, the Scottish Code of Good Higher Education Governance offers helpful guidance on this issue:

“Lay members who are appointed by the governing body must be appointed for a given term, which may be renewable, subject to satisfactory performance. The renewal of any appointment must not be automatic but should be recommended by the nominations committee or equivalent. Service beyond three terms of three years, or two terms of four years, should be avoided (exceptions, such as retention of a particular skill or expertise, may be permitted, but must be notified to the SFC). After this point members should normally retire and be replaced by new members”⁵

Therefore, with appropriate care, succession planning should be manageable within the current arrangements under the 2005 Act. In doing so, any new Council would be aligned with practice across a wide range of other organisations, including universities, that adopt such limits on terms of office.

If there are temporary challenges in terms of membership then these should be dealt with effectively through governance processes and related decision-making. If the Council were to consider that it is faced unexpectedly with a deficit in expertise then we see no obstacle to it engaging advice from organisations and / or individuals beyond Council members to inform the business of its Board.

Finally, if, as noted above, the proposal for consultation is whether the Council should have greater flexibility in terms of office up to a maximum of 8 years so that membership changes can be better managed, we would expect that this would be a temporary challenge linked to the process of change to the Council. As noted above, in normal operation, terms of 3 or 4 years would be appropriate and effective.

Question 6

If SFC takes on responsibility for all apprenticeship funding, what additional skills, knowledge and experience should be considered for SFC Board members?

Any change in responsibilities should be reflected in the expertise across the Board and therefore there would be merit in an adjustment to the assessment of the balance of skills, attributes and experience across the Board membership. There may, resultantly, be a case for a small increase in the size of the Board and this should be provided for in any upper limit in the number of Board members that is defined in statute.

This consultation is focused rightly and strongly on learning and skills, and on the Scotland context. We encourage Scottish Government to ensure that, alongside reflecting these issues in the experience of Board members, there is also a strong focus on the student voice; on research; and on the international context as it considers the membership of the Board as a whole. We make suggestions below in answer to Question 7 which may assist in that regard.

Question 7

Do you have any other comments or suggestions for governance of the SFC Board or other aspects of SFC governance?

⁵ See para 21, page 10 <https://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2023/04/GOOD-HE-GOVERNANCE-A4-REPORT-2023.pdf>

The consultation rightly considers the governance of the Board of the new funding body. Alongside our comments on the skills and background that the statute should specify as needing to be taken into account as the overall Board membership is considered, we suggest that, to enhance the proposal:

- as noted above, the student voice; research expertise; and an international perspective on post school skills, research and innovation funding should be listed within a section of the statute that seeks to define the skills and experience that need to be given regard to in the appointment of Board members;
- that there is provision in the statute, as there is in the 2005 Act, for a Research Committee;
- the statute should specify that the Chair of that Research Committee should be the Vice Chair of the Board, (note that this is the approach taken in Wales in the governance of the Commission for Tertiary Education and Research); and
- there should be a focus on ensuring that, alongside meeting elements of the Board skills matrix, individuals appointed either have prior experience of service on NDPB boards or are offered a full training on this as part of their induction.

Enhanced functions for the Scottish Funding Council

Question 8

Do you think we need to introduce new duties on organisations receiving public funding to provide better information to SFC?

If the SFC takes responsibility for funding organisations beyond universities and colleges, we believe that more and / or different information from these organisations, many of them in the private sector, will need to be considered.

As noted in other sections of our response, the requirements placed on the different types of funded organisations should be calibrated to the funding and wider regulatory and accountability relationship with those organisations. It should also reflect the evidenced track record of the organisation being funded. Statute should support this by making a clear distinction between the different types of organisation receiving funding; their relationship with the Council; and the role and scope of powers that Ministers have in that funding relationship.

We believe that the information provided currently by universities, either directly to SFC or indirectly through a range of channels, is sufficient to provide insight on outcomes; emerging strategic issues; and the effectiveness of policy. As we note under Q9, there are rare occasions where there is a need for SFC to respond to rapidly emerging strategic issues by seeking additional data from universities because of the time lag in production of formal statistics. The recent downturn in international recruitment is an example of this.

We note that the recently published SFC [Outcomes Framework and Assurance Model](#) has the intention of:

- reducing the burden for institutions, by making greater use of existing data and sources of information and significantly reducing the requirement for written commentary; and
- providing SFC with an agreed framework through which it can monitor the full breadth of institutional performance.

In addition to the most prominent sources of data on the sector, (eg. [The Higher Education Statistics Agency](#) (HESA) and the [Universities and Colleges Admissions Service](#) (UCAS)⁶, the sector provides information through a range of other routes, for example:

- statutory reporting such as Public Bodies Climate Change Duties Reporting; and
- interaction with over 100 Professional and Statutory Bodies⁷.

It is important to recognise that some of these data sources are also used in a wider UK and global setting. For example, as input data for UK and international rankings which, in turn, are significant in the profile of institutions and their attractiveness to potential students from rUK around the world. Such rankings are also context in the formation of teaching and research partnerships.

Furthermore, HESA data enables institutions to benchmark across the UK, which many find very helpful even with the differing policy contexts. There is also a long running time series that can be helpful for institutions and SFC. We think any changes to data collections should support continued engagement with the UK-wide data collections.

Question 9

Do you think there is a need to strengthen existing systems and processes for collecting data?

We do not believe that there is a need to strengthen systems and processes for collecting data about higher education institutions. We have made comment on these processes in answer to questions 3 and 8. There are areas, however, where the Council might consider either new data, or better use of existing data, to inform its work.

We believe that, with a statutory footing, the Council itself could engage more fully in creating evidence on funding and performance in other countries to support an assessment of whether it is meeting its purpose and the ‘system outcomes’ under the ‘Globally Respected’ outcome of the Scottish Government’s [Purpose and Principles for Post-School Education, Research and Skills](#). We explore this more in answer to Question 11.

There are a number of policy issues that could be addressed better with changes to data collection and sharing within government, for instance the ability to use links between existing data sets to better follow learners through their journey; potentially short courses (upskilling); or the enhancement of assessing widening access. For the latter, there has been a longstanding consensus that data on students in receipt of free school meals should be made available to inform policy but this has yet to happen. Further, there has been a longstanding view that the development and delivery of a ‘unique learner number’ system would enhance greatly the delivery of policy. We do not believe that such opportunities require a solution in legislation on funding body reform and therefore look forward to a continuing discussion with Scottish Government about such enhancements as part of ongoing policy development.

We would also wish to see the Council consider the use of data with care, both in its dialogue with universities and in advising Ministers. The use of single, sometimes proxy, measures can

⁶ UCAS is an independent charity and the UK's shared admissions service for higher education

⁷ The Higher Education Better Regulation Group [found](#) that institutions interact with over 130 such bodies.

have limitations and should be complemented with a more rounded assessment of performance. Relatedly, there is often a time lag in the publication of key data sources for the university sector due to unavoidable aspects of the academic and wider operational cycles of large, complex institutions. The SFC is well placed to understand this and take a view as it advises Ministers as to whether to work with the sector to gather data on a current issue if it is of strategic significance. Such an approach has been taken in 2023 and 2024 on patterns of international student recruitment.

Question 10

Do you think there is a need to strengthen existing systems and processes for reporting and publishing data?

We have noted in our response to question 8 that higher education institutions already provide a significant volume of information through a range of channels which should meet needs for reporting.

Aligned with the intention under the SFC's new Outcomes Framework, we believe that there would be scope to strengthen the existing systems by making greater use of this existing data to reduce the current volume of reporting and / or negate the need to create new reporting and data collections.

Whilst this significant volume of data is reported, it is not always published and, if it is, it is often not in a form that is readily accessible to learners. The SFC has enhanced its publication of data however it would be useful to explore what further enhancements might be made in the presentation of data already collected.

One example is graduate apprenticeships. Recognising that SFC has only taken responsibility for funding this provision relatively recently, we would value the Council offering more granular data, drawing on the information held.

Relatedly, as noted in our response to question 9 and others, we believe that the Council should publish analysis to offer an international context to consideration of the position of the sectors in Scotland that are within its remit. We do not believe that this would require further information from higher education institutions in Scotland.

Finally, sector data sources such as HESA follow a clear publication schedule. There would be value in SFC setting out a fuller schedule for its key, recurrent publications. Further, it would be helpful if the Council formalised its usual practice of engaging with the sector in advance if it wishes to remove or add data collections.

Question 11

What information about funded organisations would you most like to know and why?

SFC and Scottish Government collects and holds a significant breadth and depth of information on higher education institutions. There is a strong understanding of the outcomes from the university sector and of its operation, including the ability to compare with institutions across the UK, drawing on HESA data.

The Council's Purpose, set out in its Strategic Plan for 2022-27, is:

“to sustain a world-leading system of tertiary education, research and innovation that enables students to flourish; changes lives for the better; and supports social, economic and environmental wellbeing and prosperity”.

Further, the Scottish Government’s Purpose and Principles, which have informed the proposals in the consultation, list “globally respected” as one of small set of principles for post-16 education. Under that principle, the Scottish Government wants to see ‘system outcomes’ that include:

- *Scotland's post-school system is internationally recognised for research, teaching, and innovation, leveraging substantial funding from international and domestic sources.*
- *Providers attract and retain a highly trained teaching, innovation, and research workforce with global reach and impact.*
- *Scotland's internationally competitive economy is underpinned by world-leading research, teaching, innovation and knowledge exchange, driving inward investment and productivity.*

However, it is notable that the SFC’s published analyses do not routinely include a comparison with sectors globally. When one looks at recent patterns of investment by other countries, we see them increasing their investment in their post school systems, whilst Scotland has reduced levels of investment. We also see the profile of the university sector in Scotland as a whole declining in international league tables, whilst those countries making additional investment have seen their profiles either improve or remain strong in the face of strong global competition.

We believe that information on the international context, including the structures and approaches that are successful, is essential to understand whether the Council’s purpose, and the Purpose and Principles, are being delivered.

As for the potential for the Council taking responsibility for the funding for a wider range of activity, we believe that there would be merit in the Council being able to consider some outcomes from across the different sectors on a comparable basis. Whilst this might appear straightforward, we anticipate that this would require significant expert work to ensure that the data can be relied upon for the purposes of accountability and policy evaluation.

Question 12

What, if any, additional powers should SFC have in order to help ensure the post-school education and skills system operates effectively?

We have set out in our response to question 3 where we believe that the Council’s current powers might be enhanced, or new powers and duties could be considered.

For ease, the key elements are restated here.

There will be a challenge in framing legislation that provides for consideration of issues across distinctive sectors, each with its own diversity of actors. Whilst there is merit in considering some issues through the lens of a single ‘system’, effective actions must recognise this distinctiveness and diversity which is evident for example in:

- the differing legal status of funded organisations, including their relationship to the state. For instance, the autonomy of universities is core to the effectiveness of their role, across education and training, and research and innovation;

- relatedly, their distinctive regulatory context;
- the differing strategic importance of organisations and public interest in their sustained operation at a Scotland and local level;
- the fact that SFC acts currently at a UK level, for example:
 - in partnership with the other devolved funding bodies and with UKRI, in ensuring that funding of universities at a devolved level can support success in the dual support system;
 - the ability for students to choose study across the UK on a sustainable basis; and
 - interaction with the other UK funding bodies, OfS and CTER, to ensure that regulation and accountability mechanisms are framed in each devolved setting in a way that does not adversely affect either student choice or the operation of institutions in other parts of the UK; and
- the prominence and importance of both employer and student choice, and how they might often align or sometimes conflict in each context.

Therefore, whilst the consultation document gives prominence to a “system-wide” approach, for example for data and assurance, and has an aim for greater simplification in a number of contexts, proposal 2 will include the challenge of realising the benefits of a more connected and coherent post-16 funding body whilst also recognising and supporting the diversity of sectors and institutions within them. Colleges and universities make distinctly different contributions and that does not always lend itself to “comparable system-wide data or evidence” or “measures of success” without the risk of doing a great disservice to one or both sectors. The inclusion of private providers would bring a further challenge in this regard.

Considering data specifically, we note our preferred approach in answer to other consultation questions. In the context of challenges arising from option 2, and the prominence of data as one of four business needs listed in the consultation, we note that whilst the SFC currently performs a data function for the college sector, for higher education institutions that is largely under the remit of the Higher Education Statistics Agency (HESA) and UCAS. Nothing in the consultation proposals looks to change that, which is very welcome. However it is therefore necessary to be realistic about how much can, or should, be achieved in regards to “system-wide” data or evidence.

To further illustrate the challenge of complexity, detailed consideration will need to be given to the whole statutory framework for the SFC and how it reflects the greater diversity of sectors that the Council will fund.

For instance:

- Section 7 of the 2005 Act sets out aspects of providers’ operations that must be in place for the Council to recommend to Ministers that a provider can be a funded body. Would such requirements be placed on all providers receiving funding from the new body? If not, this different status and relationship will need to be defined and reflected in the remainder of the statute and operationally.

- Section 9 of the 2005 Act includes conditions that Ministers may and may not place on grants paid to the Council. These conditions ensure that, it is universities, in the context of student and employer choices, that determine their mix of provision between disciplines. Any necessary definition of difference of approach to be taken by the Council in funding provision delivered by different sectors / actors should be defined in legislation. This is important both for securing the best outcomes and for the sustaining of universities' autonomy and current ONS classification. As we note in our answer to Q1, the question of ONS classification must be to the fore as Scottish Government considers legislation.

To illustrate the wider range of responsibilities that will need to be considered, examples of the SFC duties and responsibilities that we would wish to see continue are:

- limits on the terms and conditions that can be set out by Ministers as they fund the Council, such as reference to particular programmes of learning, courses of education or research [Section 9 (12) of the 2005 Act];
- provision for the body, when making payments, to require the institution to comply with any principles of governance which appear to the body to constitute good practice (currently discharged by compliance with the sector-owned HE governance code) [Section 9A of the 2005 Act];
- the ability of Ministers to make payments to the Council to pursue outcomes such as restructuring or collaboration [Section 10 of the 2005 Act];
- clarity that terms and conditions cannot be imposed by the funding body on funds that have not come from that body [section 12 of the 2005 Act];
- a requirement for the funding body to have regard, when it is making payments, to the desirability of encouraging fundable bodies to maintain or develop funding from other sources and preserving any distinctive characteristics of particular fundable bodies [Section 12 (6) of the 2005 Act];
- a responsibility for the funding body for securing provision made for assessing and enhancing the quality of education [Section 13 of the 2005 Act];
- provision for the funding body to consider the 'coherence' of fundable provision and to have regard to Scotland's skills needs. Whilst these parts of the 2005 legislation might be revisited to give greater clarity, it would be important for the funding body to have such a role and focus, for instance in the context of considering provision of strategically important subjects. It will be important to define this in the context of the Scottish Government's intention for skills planning; and supporting student and employer choice. We note that the consultation rightly places emphasis on a student-centred approach and that should include the importance of supporting students' choices;
- enable the funding body to provide Ministers with advice, both on request and "whenever it considers it appropriate to do so" [Section 17 of the 2005 Act];
- safeguard academic freedom (see Section 26 of the 2005 Act and Section 23 of the Higher Education Governance (Scotland) Act 2016); and

- definition of the requirements that Ministers may place on the Council [Section 24 of the 2005 Act].

Building on the matters to which the Council should have regards [Section 20 of the 2005 Act], we believe that the new funding body should have duties to:

- ensure that teaching, research and knowledge exchange by higher education institutions is supported to be excellent in international terms, note that, in answer to question 11 below, we suggest that the Council could usefully conduct fuller, evidence-based assessments of the international position overall;
- aligned with Purpose and Principles (P&P) ‘Globally Respected’ outcomes, support the financial sustainability and competitiveness of universities and have regard to the UK and international context within which institutions operate;
- again aligned with P&P outcomes, have regard to the Dual Support system; the relative funding policy decisions across the UK; and success of higher education institutions in Scotland within it;
- have regard to the autonomy of higher education institutions. This is important since there is a very strong correlation between universities’ autonomy and their positive contribution to society: see for instance the EUA Autonomy Scorecard⁸ for international evidence on the trend towards autonomy in a range of European countries so that universities can make the strongest possible contribution. Further, that question of autonomy is related closely to that of ONS classification which we have highlighted in response to other consultation questions;
- promote the interests of diverse learners e.g. including mature learners, part-time learners, and learners from disadvantaged backgrounds/ with characteristics that are linked to disadvantage (e.g. disability);
- promote specialist provision in learners’ interests. (This would be a measure, alongside others, to ensure that a body with a very wide post-school remit gives sufficient focus to specialist provision e.g. in the creative disciplines, responding to student choice and ambition);
- maintain students’ choices for mobility across the UK (note that this should be an objective shared, if option 2 is pursued, with SAAS); and
- enable proposals for collaboration from universities, colleges and others, in the interests of meeting learners’ needs, enhancing Scotland’s research and innovation capacity and thereby achieving social and economic benefits. This would be effected by deployment of strategic funding, be it directly by SFC and / or the Council working with other funders to leverage resources.

ENDS

⁸ <https://www.eua.eu/publications/reports/university-autonomy-in-europe-iv-the-scorecard-2023.html>