

Consultation on Good College Governance

Response from the Scottish Charity Regulator

1. Background

1.1 The Scottish Charity Regulator

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 24,000 charities registered in Scotland, of which 24 are further education colleges.

2. Consultation response

QUESTION 9: Should Ministers have powers to direct (a) incorporated colleges and (b) Regional Boards?

Regional Boards are not Scottish charities, and OSCR has no view on powers of direction over these bodies. As regards powers to direct incorporated colleges, as stated at 3.8, incorporated colleges have been excepted by order from the ministerial direction requirements of section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005, and the proposed powers would therefore not affect the charitable status of incorporated colleges.

QUESTION 10: If Ministers were to have such powers (1) should they be limited to circumstances where they consider a board is not governing appropriately? (2) should Ministers' powers be (a) in addition or (b) instead of the current power of direction that vests with regional strategic bodies?

(1) OSCR notes the arguments set out for Ministerial powers of direction. While the arguments for powers for Ministers to act where they consider a board is not governing appropriately are clearly set out, the arguments for an unlimited power are less clear. In paragraph 3.13 it is suggested that:

'It is possible that limiting the use of any direction-making power to a board, that in Ministers' view is not governing appropriately, may in practice mean that the power cannot be used with the speed that may, when necessary, be required.'

It would be helpful to clarify what the circumstances are which would require the use of a direction-making power, other than a view that a board is not governing appropriately. It would also be helpful to clarify what would justify greater urgency in making a direction than a view on the part of Ministers that a board was not governing appropriately.

(2) OSCR has no particular view on where a power of direction should sit. However, giving a power to Ministers in addition to the existing power for regional strategic bodies would involve adding more complexity to the already complex picture of powers of direction over college boards set out in paragraphs 3.9 to 3.12. It is not clear why this would be desirable.

3. Conclusion

OSCR has welcomed the opportunity to respond to this consultation and looks forward to the development of the legislation.

Should you wish to discuss any aspect of the response please contact:

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