

LEGAL STRUCTURE OF SHETLAND UHI

1. Background

The Shadow Board of Shetland UHI considered two options for the legal structure of the new college, incorporated or non-incorporated status and agreed to recommend non-incorporated status as had previously been recommended in the Full Business Case presented by Shetland Islands Council. This was articulated in the Ministerial Merger Business Case (MMBC). During consultations on the MMBC concerns regarding the legal status were raised. The Shadow board further considered the legal status through presentations from and discussion with two UHI principals who each had experience of one of these structures. In its response to the consultation report the Transition Board confirmed the decision that the new college should be non-incorporated.

Many colleges in Scotland are incorporated under the Further and Higher Education (FHE) (Scotland) Acts and, from April 1st 2014, these are classified in the UK as public bodies. The five largest academic partners of UHI are incorporated, the other two, Argyll College and West Highland College, are non-incorporated having been created much more recently.

The university has received communication from the Cabinet Secretary for Education advising that there will be no ministerial involvement in the decision on legal status – this letter is appended to this paper (Annex 2).

2. Rationale for decision

In making the decision to become a non-incorporated college, i.e. a company limited by guarantee and a charity, the following criteria were taken into account:

- Ability to generate and retain surpluses at year end to reinvest in the college's development
- No requirement to provide cash forecast to regional strategic body on monthly basis to prove no funding in advance of need which is resource intensive and adds no value
- No requirement to comply with Public Sector Finance Manual
- No requirement to account at 31st March for adding into whole of government accounts
- Required to comply with many aspects of public sector e.g. FOI, having regard to public sector pay, but without the constraint of being a public body
- Fewer constraints in financial memorandum with RSB regarding areas such as capital projects, insurance, and contingent liabilities
- More autonomy for the board – board appointments made locally rather than by RSB and principal can be appointed without formal RSB approval
- Safeguards would be in place to ensure financial control which would align to the UHI Financial Memorandum (which provides reassurance required for SFC and SG). The memorandum would outline the requirements which must be complied with in return for payment of grant by the RSB, including (but not limited to):
 - The RSB has duties and responsibilities it is required to exercise in order to secure and deliver high quality further and higher learning provision in the localities of its colleges, and monitoring the performance of its colleges
 - Shetland UHI would have to ensure its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for
 - The RSB is accountable to the SFC for the use of public funds provided to it by SFC under the terms of the relevant legislation

- The RSB is responsible and accountable to the SFC for ensuring that funds provided to academic partners are used for the purposes for which they have been given and in ways that comply with the conditions attached to them
- The RSB will seek financial management and other information from Shetland UHI in support of its commitment to efficient regulation.

3. Safeguards

The following safeguards are in place to protect the students and staff of the college and the community which it serves:

- No shareholders so there are no “owners” as such.
- Articles of association of the company set out clearly what the company can and cannot do.
- Not for profit status means that any surpluses from operations can be retained by the college and used only for the purposes set out in the articles.
- Charitable status therefore compliance with Charities Acts and OSCR regulations are essential. An annual return to OSCR will be required.
- Board members are appointed under the guidelines set out by the ministerial code and the articles require that staff and students will always be on the board.
- Articles and Charities Acts set rigorous restrictions on payments to board members – only reasonable payment and only to a minority of board members (excluding principal and staff members).
- Financial memorandum with the University of the Highlands and Islands requires strict adherence to highest governance standards or funding can be withheld.
- Core funding from UHI is predicated on a regional outcome agreement with Scottish Funding Council to which all academic partners are required to contribute. SFC monitor achievement of targets.
- Assigned status must be achieved by the college for UHI to be able to fund it for further education and to achieve this, rigorous standards of corporate governance must be demonstrated.
- All colleges, regardless of status, must comply with the Scottish Code of Good Governance 2016.
- The principal of the college must confirm to the university on an annual basis that all governance and financial requirements are met.
- All colleges, regardless of status, are included in Audit Scotland’s annual review of colleges.
- Regular financial and compliance returns are required to be submitted to the university as the regional strategic body.
- All quality arrangements (Education Scotland and QAA) are linked to core funding.
- The college will be expected to sign up to national bargaining arrangements.