Enterprise and Culture Committee

12th Report 2004

Stage 1 Report on the Further and Higher Education (Scotland) Bill
# Enterprise and Culture Committee

## 12th Report, 2004 (Session 2)

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Remit and membership

Remit:

To consider and report on matters relating to the Scottish economy, business and industry, energy, training, further and higher education, lifelong learning and such other matters as fall within the responsibility of the Minister for Enterprise and Lifelong Learning; and matters relating to tourism, culture and sport and such other matters as fall within the responsibility of the Minister for Tourism, Culture and Sport.

Membership:

Alex Neil (Convener)
Mr Richard Baker
Chris Ballance
Susan Deacon
Murdo Fraser
Mr Michael Matheson
Christine May
Mr Jamie Stone
Mike Watson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Stephen Imrie

Senior Assistant Clerk
Judith Evans

Assistant Clerk
Seán Wixted
Enterprise and Culture Committee

12th Report, 2004 (Session 2)

Stage 1 Report on the Further and Higher Education (Scotland) Bill

The Committee reports to the Parliament as follows—

EXECUTIVE SUMMARY

1. We are pleased that the Scottish Executive has taken our recommendations on board and has now brought forward the necessary legislation.

2. We consider that the pre-legislative consultation undertaken by the Scottish Executive has been adequate. Moreover, we commend the Scottish Executive for its willingness to respond to the concerns raised and to alter the draft Bill accordingly, although we consider that the draft Bill for consultation might have been drafted more sensitively. We consider this to be a good example of the principle behind pre-legislative consultation and we welcome the Minister’s flexibility in this matter.

3. We recommend that the Minister should consider amending the Bill at Stage 2 to provide information on the criteria that would be used by Ministers when deciding on whether and by how much to vary fees on a particular course or programme.

4. We also recommend that the Executive introduce amendments at Stage 2 such that all orders under section 8(6) should be subject to affirmative resolution.

5. We recommend that the Minister provides clarification as to whether any Scots-domiciled students would pay higher fees were the powers in the draft Bill to be enacted and utilised.

6. We recommend that the Minister, during the debate on our report and perhaps again at Stage 2, is explicit as to his intent now or in the future with regards to the possibility of varying fees on any course or programme other than medicine.

7. We recommend that the Scottish Executive brings forward such amendments as are necessary to ensure parity of treatment in relation to
academic freedom between higher education and further education institutions and the individuals employed therein.

8. We recommend that Ministers consider whether the Bill requires further amendments to make divisions of competences between Ministers, the Funding Councils and others more clear.

9. We recommend that the Scottish Executive provides us with additional information on the implications that a change in terminology from “person with learning difficulties” to “person with additional support needs” would have.

10. We recommend that the Scottish Executive resolves the situation and introduces an order that would enable local authority councillors to be considered as the Chair of the governing boards of further education colleges.

11. We consider that the Policy Memorandum is adequate.

12. We recommend that Parliament should be content with the Financial Memorandum as provided by the Scottish Executive.

13. We agree with the Subordinate Legislation Committee that as Section 5(7) creates a power to modify primary legislation, it should be subject to affirmative procedure.

14. We agree with the Subordinate Legislation Committee that as Section 7(1) creates a power to modify primary legislation, it should be subject to affirmative procedure.

15. Taking into account the issues that require further consideration and where the Bill needs amendment, the Committee recommends that the general principles of the Bill should be agreed to.
INTRODUCTION AND BACKGROUND

Introduction

16. The Further and Higher Education (Scotland) Bill (SP Bill 26) was introduced on 30 September 2004 by the Deputy First Minister and Minister for Enterprise and Lifelong Learning, Rt. Hon Jim Wallace QC MSP. The Parliamentary Bureau agreed that the Enterprise and Lifelong Learning Committee should be the lead Committee.

17. Under Rule 9.6 of the Standing Orders, the lead committee has the responsibility to report to the Parliament on the general principles of the Bill. This report summarises the views of the Enterprise and Culture Committee on the general principles of the Bill and completes our work at Stage 1 of the Bill.

18. The Finance Committee took evidence on matters relating to the Financial Memorandum accompanying the Bill. Information relating to the Finance Committee’s scrutiny is attached at Annex A to this report.

19. The provisions of the Bill that confer powers to make subordinate legislation were referred to the Subordinate Legislation Committee under Rule 9.6.2. The Subordinate Legislation Committee’s report is attached at Annex B to this report.

Purpose of the Bill

20. The main purpose of the Further and Higher Education (Scotland) Bill is the merger of the two funding councils - Scottish Higher Education Funding Council (SHEFC) and the Scottish Further Education Funding Council (SFEFC) - to create the Scottish Further and Higher Education Funding Council (SFHEFC). The Bill intends to create a single body that will have a duty to provide ‘coherent strategic decision making’ at a National level covering both sectors.

21. The idea of merging these funding councils was one of the central conclusions in our predecessor committee’s report into lifelong learning. As such we welcome the fact that our idea has now emerged as the purpose of this Bill. We believe this shows how parliamentary committees and their inquiries can be influential in shaping the Scottish Executive’s legislative agenda. We are pleased that the Scottish Executive has taken our recommendations on board and has now brought forward the necessary legislation.

22. The main provisions in the Bill can be summarised as follows:

• It sets out the general duties of both Scottish Ministers and of the new Funding Council, with Ministers having high level responsibilities for the policy context.

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2 “Further and Higher Education (Scotland) Bill” (04/73), SPICE briefing (Fiona Mullen), The Scottish Parliament, 28 October 2004
• It explains the specific responsibilities of the new Funding Council in terms of allocation and administration of funding to the ‘funded bodies’.

• The Bill establishes a number of criteria and conditions in place for bodies to comply with in order to achieve and maintain ‘funded body’ status, and that it will be the duty of the Council to monitor this.

• It seeks to extend and standardise the level of autonomy across both the further and higher education sectors, and preserve the distinctive roles of both sectors.

• As a regulatory measure, a new power is included for the Council to be able to attend and address any governing body meeting of a ‘funded body’ that relates to the issue of financial support.

• The Bill also proposes to place a duty on the Council to work with and share information with certain key bodies, as well as placing a duty on these bodies to provide information as reasonably required by the Council.

• Provisions have been included to allow changes in the way that funding is allocated to the Council.

• A new provision on fees (section 8) is also included to allow for possible fee changes by Ministers i.e. a maximum fee level set, and different fee levels for different courses. It allows Ministers to use the conditions of grant to control tuition fees.

• The Bill intends to create a power for Ministers to enable the Executive to channel additional funds to the new Funding Council for specific purposes (set out in the bill) and areas of importance, for example the support of collaboration.

• The remit of the Scottish Public Services Ombudsman will also be extended to include the actions of the further and higher education bodies (currently including the Scottish Agricultural College, but excluding the Open University as it is under UK wide procedures).

23. We return to some of these provisions in subsequent sections of this report.

Adequacy of the Consultation

24. Part of the Committee’s role at Stage 1 is to consider whether the Executive has consulted appropriately at the pre-legislative stage.

25. Prior to formal consultation, the Scottish Executive we heard that the Executive had worked closely with a number of stakeholders in determining the main focus of the Bill. We note that, when draft Bill for consultation was published, there was a good deal of adverse comment from several key stakeholders, largely related to the terminology used in the draft Bill, for example ‘tertiary’ and ‘Scottish Tertiary Education Providers.’ Given the good practice demonstrated in this close
working, we were somewhat surprised to find that the draft Bill for consultation attracted so much criticism.

26. The Scottish Executive began its formal consultation with interested parties in April 2004\(^3\). Written responses were required during July 2004. In addition, the Scottish Executive held five open meetings in Aberdeen, Dundee, Edinburgh, Glasgow and Inverness and held another round of one-to-one meetings with key stakeholders to discuss the Bill and the proposals in greater depth.

27. The Scottish Executive received seventy eight written responses during the consultation. According to the Scottish Executive, of these, “only one of which opposed the merger of the Funding Councils”\(^4\).

28. The Executive reported also that, “There was minimal comment in relation to the fundamental proposals for the powers and duties of the new Council. However, comment was made in relation to the powers of Ministers and as a result of these and other written responses, and follow up discussions with stakeholders, a variety of changes have been made to the draft Bill”.\(^5\)

29. We consider that the pre-legislative consultation undertaken by the Scottish Executive has been adequate. Moreover, we commend the Scottish Executive for its willingness to respond to the concerns raised and to alter the draft Bill accordingly, although we consider that the draft Bill for consultation might have been drafted more sensitively. We consider this to be a good example of the principle behind pre-legislative consultation and we welcome the Minister’s flexibility in this matter.

30. However, we express concerns that certain aspects of the consultations, such as those on alternative proposals to tackle cross-border flows of students, are still ongoing and are unlikely to be completed before Parliament completes Stage 1 of the Bill. This creates difficulties and uncertainties in terms of knowing how the Bill might best be shaped at Stage 2. We recognise, however, that this situation is a result of ongoing deliberations in England and Wales and, as such, is outwith the control of Scottish Ministers.

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\(^5\) Ibid.
KEY ISSUES

Fees

31. Section 8 of the Bill introduces a new provision on fees to allow for possible fee changes by Scottish Ministers. **This would enable the Scottish Executive both to set maximum fee levels and to set different fee levels for different courses.** It allows Ministers to use the conditions of grant to control tuition fees. It would be fair to say that this provision is the single most contentious objective in an otherwise broadly-welcomed Bill.

32. According to the Scottish Executive in its Explanatory Notes accompanying the Bill:6

   “This section [section 8] will allow Ministers, as part of the terms and conditions on the Council, to require the Council to secure that a set fee is paid by specified persons to fundable bodies if attending specified courses or programmes. Ministers will set the fee level by subordinate legislation, which is subject to the affirmative procedure.”

33. When giving evidence to the Committee, the Deputy First Minister and Minister for Enterprise and Lifelong Learning, Jim Wallace MSP, told us that7:

   “I have been aware, since the publication of the bill, of concerns about the provision on fees. Some have interpreted that provision as the introduction of top-up fees. I repeat what I have said in other forums: categorically, this provision will not permit top-up fees.

   As the committee knows, top-up fees will be introduced in England and Wales. That is a reality that we have to face. Our phase 3 higher education review tried to take into account what would happen as a result. The broad consensus among stakeholders and in the Parliament was that we needed to do something to respond to the real challenges that are thrown up by Westminster decisions, not least with regard to the cross-border flow of students. Committee members will recall that I set out to the Parliament in June the measures that we proposed to take. Those decisions have not been easy, but I remain convinced that doing nothing was not an option.”

34. In effect, if passed, the provisions in the Bill would give Ministers the power, if approved by Parliament, to (i) set a maximum fee level for all courses or programmes in Scotland and also, (ii) set a different level of fee for different courses. According to the Scottish Executive, the former is required to address excessive cross-border flows of students into Scottish HE and FE institutions in general. The latter is needed to resolve the particular problem of ensuring that a sufficient number of Scottish students emerge from Scotland’s medical schools and are recruited by NHS Scotland. It is believed by the Executive that Scots

students are more likely than non-Scots to remain in Scotland after graduation and are therefore available to NHS Scotland.

35. This was a view shared by Universities Scotland who told us that: 

“Our Scottish medical schools train enough people to meet Scotland’s needs, broadly speaking. However, a significant proportion of the intake comes from south of the border and there is a tendency for those people to return south of the border after they qualify. It is reasonable that the Scottish Executive should seek to ensure that Scotland gets good value for money for its investment in medical education. We would not want there to be a large increase in the proportion of medical places taken up by English medical students because the cost of studying medicine was much lower in Scotland than in England. Scotland should get value for money.”

36. We questioned the Minister on the extent of his current powers in this regard and the reasoning behind his proposals to extend these through the provisions in this Bill. When asked if currently - before the Bill is passed – he had the power to vary the fees that universities charge he told us that:

“In general terms, yes, but not the power to have a different level of fee for different courses, which is why we want to take the powers to do so through primary legislation. You might recall that, when I made my statement to Parliament back in June about the impact on cross-border flows, I indicated that we would look to set a higher fee level, which of course would be met by the Executive for Scotland-domiciled students, who would not pay. We could do that with existing powers but, because of the possibility that we might want to set a different fee for medicine, for example—I do not want to nit-pick, but medicine is not specified in the bill; it is mentioned in the accompanying documents, although it is, basically, what we have been discussing and, again, I emphasise that the position will be no different for Scotland-domiciled students who are studying medicine, who will continue to have their fees met—we want to take powers under primary legislation to have a different fee level for a different subject”

37. Having recourse to this provision in the Bill is a relatively simple procedure. In evidence to the Committee, the minister told us that:

“Section 8(6) is the one that obliges all universities and institutions to charge the same fee. The instrument to determine the programme of learning or course would be subject to negative resolution, but the fee level would be subject to affirmative resolution. It is a two-part process, and one is not worth the paper it is written on without the other. The committee might wish to consider whether it thinks that all orders under section 8(6) should be subject to affirmative resolution”

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8 Official Report, Enterprise and Culture Committee, Tuesday 2 November 2004, Column 1257
38. Despite the broad welcome given by all organisations that we consulted during the course of our Stage 1 inquiry, views on the provisions contained with section 8 were decidedly mixed.

39. The most vocal opponents of the general principle of allowing the Scottish Executive to set a different level of fee for different courses were the bodies representing HE and FE students. In evidence to the Committee, the National Union of Students (Scotland) told us that:10

“Our policy on the issue is clear: we have a clear stance against any form of differential or top-up fees, whether the fees vary by institution or by course. There is a great deal of evidence to suggest that if variable fees exist, students—primarily those from low-income backgrounds—are more likely to select their courses based on price than on what they have the ability and talent to study. If there was a system in which medicine was more expensive to study than any other course, we would expect that to act as a financial disincentive for significant groups of students.”

40. This view was supported, albeit with less prominence in their submissions, by bodies such as the Association of University Teachers who told us that:11

“We share the concerns of the Executive that English students coming to Scotland for purely financial reasons may result in loss of places for Scottish students. However, we are concerned that proposals in section 8 of the Bill could be interpreted as giving power to introduce variable fees. We remain implacably opposed to variable fees in Scotland”

41. However, other bodies such as the Association of Scottish Colleges and Universities Scotland were less concerned over the provisions in section 8. In their joint submission, they stated:

“With regard to the issue of variable fees (section 8) our view is that the provisions in the Bill simply permit Ministers to specify a different fixed fee for certain subjects (such as medicine). We are content with this power so long as it is only used where there is a clearly established case for doing so and that the financial implications for Scottish domiciled HE students are neutral. We are fully supportive of the Scottish Executive’s policy of funding institutions properly without resorting to charging Scottish domiciled students a tuition fee.”

42. On the particular issue of fees for medicine, the British Medical Association (Scotland) told us that:12

“" The BMA is very uncomfortable with any plans to increase tuition fees in Scotland, particularly the prospect of a separate higher fee for

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10 Official Report, Enterprise and Culture Committee, Tuesday 9 November 2004, Column 1207
11 Written submission provided to the Committee
12 British Medical Association Scotland, written submission provided to the Committee
medicine as it shifts the burden of educational costs further onto students.’

Our concerns

43. The BMA sought confirmation from the Scottish Executive that the ‘class of person’ referred to in the legislation would be non-Scottish domiciled UK students. The BMA also sought further details on the level of fees. The BMS submission stated that:

“in conclusion, we would urge the committee to consider the consequences of higher fee levels for medical courses and recommend that more detail be provided on this aspect of the Bill should it progress to Stage 2.”13

44. We have five concerns in relation to the provisions of the Bill in section 8. These are addressed below.

45. Our first concern is that of ministerial intent. In the accompanying documents to the Bill, the Scottish ministers are explicit in their view regarding the circumstances when they would choose to have regard to the provision to vary fees. The Executive’s Policy Memorandum states:14

“On 24 June 2004, the Deputy First Minister made a statement to Parliament, outlining the Executive’s policy to increase fee levels in order to control demand for places in the Scottish HE system from English/Welsh/Northern Irish students once variable fees are introduced in England and Wales. This plan also raises the possibility that in specific areas such as medicine, where demand is especially high, fees could be raised to a higher level again.

[…] It is important to be clear that this power if used, is only intended to be used sparingly. Its purpose is to allow Ministers the flexibility to act in situations where Scottish students may be disadvantaged in specific subject areas by an increasing flow of students from elsewhere in the UK. At the moment, the only area this might apply to is medicine. Ministers believe it is essential that any further differentiation is carefully focussed and has the approval of Parliament.”

46. However, the provisions in the Bill itself do not refer explicitly to the study of medicine nor do they exclude the possibility of Ministers setting an additional fee on other courses. In evidence to the Committee, the National Union of Students (Scotland) outlined its fears in this respect15:

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13 Ibid
14 “Further and Higher Education (Scotland) Bill, Policy Memorandum”, paragraph 35 ff, SP Bill 26–PM
15 Official Report, Enterprise and Culture Committee, Tuesday 9 November 2004, Column 1216
“We are concerned that a differential fee for non-Scottish medical students would be, in some respects, the thin end of the wedge. For example, we know that more non-Scottish students in Scotland study veterinary medicine than study medicine. If a fee were introduced first for doctors, what would prevent it from being extended to other courses? We fear that that would be the start of a system that could be extended to non-Scottish students on other courses. As the minister has powers over SAAS and student funding, funding could be withdrawn.

In a relatively short time, we could have a system of differential fees throughout Scotland. That would not be the same as the system in England, but it would nevertheless be a system of differential fees.”

47. In his evidence to the Committee, the Minister did not suggest that he was minded to vary fees on any course other than medicine. Whilst we welcome the Executive’s candour that it has no plans in this respect, it is important to note that this can be no guarantee in the future, when other administrations may be in place.

48. The points made by Chris Ballance MSP and Fiona Hyslop MSP were, however, confirmed by officials from the Scottish Executive in their evidence. Thus, regardless of whether the Executive’s intention is not to introduce variable fees or to open up the Bill for other uses, it is what Parliament decides and what Parliament passes that makes the difference. Statements made by the Executive in accompanying documents are only an insight into ministerial intent.

49. Our second concern with regards to section 8 is the lack of clarity on the criteria that may be used by the Executive when considering whether to have recourse to the provisions in this section on variable fees. The Bill itself is silent on the method by which the Executive would assess whether to vary fees for a particular course or programme.

50. Our third concern is that of parliamentary process. In evidence to the Committee, the Minister has told us that the decision to alter fees for a particular course or programme was a two-step process:

“Section 8(6) is the one that obliges all universities and institutions to charge the same fee. The instrument to determine the programme of learning or course would be subject to negative resolution, but the fee level would be subject to affirmative resolution. It is a two-part process, and one is not worth the paper it is written on without the other. The committee might wish to consider whether it thinks that all orders under section 8(6) should be subject to affirmative resolution”

51. Our fourth concern is whether fees are the most appropriate mechanism to address wider concerns about the recruitment and retention of medical
undergraduates in Scotland. NUS Scotland provided us with five alternative proposals which would address these concerns. These are:

- Financial incentives could be offered to all students, whether from Scotland or the rest of the UK, to study medicine in Scotland, provided that they practice in Scotland for a defined period of time at the conclusion of their training.

- Financial incentives could be offered to students domiciled in Scotland only, in order to maximise recruitment of medical students from within Scotland relative to applicants from the rest of the UK.

- Institutions should be encouraged to relax the overly stringent academic entry requirements for medical courses, and consider alternative entry criteria, in order to maximise applications from Scottish students. Alternatively, an “access to medicine” foundation course could be provided for those students who obtained excellent Highers, but not entirely at S5.

- Special attention should be paid to potential medical students as part of existing schemes for widening participation, especially active mentoring of talented students from disadvantaged backgrounds.

- The Scottish Executive should take steps to provide incentives for medical practitioners to remain in practice within NHS Scotland.

52. Our fifth concern is clarity on whether no Scots-domiciled students will ever pay higher tuition fees. Initially it was our understanding that this would be the case, and this was supported by the Minister when he told us:

“Any change in fee levels will have no financial impact on Scotland-domiciled students, but students who are not eligible for fee support from the Scottish Executive will pay more.”

53. Subsequently however we received evidence from the BMA Scotland and from the University of Strathclyde Students’ Association which seems to contradict this view. BMA Scotland state that:

“Currently, Scottish domiciled students studying medicine in Scotland as a second degree are not entitled for the graduate endowment scheme, but instead are required to pay fees at a comparable rate to those from England studying in Scotland. We would seek reassurance that this group will not be affected by measures aimed at controlling demand from students elsewhere in the UK.”

54. Similarly, the University of Strathclyde Students’ Association (USSA) told us that:

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18 Official Report, 16 November 2004, col 1262  
19 BMA Scotland, written submission
“Any rise in tuition fees for certain courses will not only affect non-Scottish students, it will also, in its present format, affect Scottish domiciled students who are not in receipt of SAAS funding for all, or some, of their undergraduate higher education course.”

55. USSA listed those students likely to be affected by this as follows:

- those who have had to repeat years of study;
- those who have progressed from an HND into a degree course at Level 1/2 (this may particularly affect those progressing from an HN course into medicine at some ancient universities);
- those who have changed course during their course of study;
- those who for various reasons do not meet the residency requirements; and
- those who are studying their second or subsequent degree - perhaps as a result of having dropped out of an initial course.

56. Whilst we welcome the Minister's views on his ability to vary fees and his plans to perhaps do so in the case of medicine, we cannot disregard the legal principle that it is the Bill as passed by Parliament that is critical here and not statements of ministerial intent. The Bill as drafted does not restrict variable fees only to medicine.

57. Consequently, it is our view that the Minister should consider amending the Bill at Stage 2 to provide information on the criteria that would be used by Ministers when deciding on whether and by how much to vary fees on a particular course or programme.

58. We would also wish to take up the Minister's suggestion that the Executive introduce amendments at Stage 2 such that all orders under section 8(6) should be subject to affirmative resolution.

59. We think it would be helpful if the Minister could publish, prior to Stage 2, an analysis of the alternative options presented by NUS Scotland in comparison with the route chosen in the Bill as introduced.

60. We seek clarification from the Minister as to whether any Scots-domiciled students would pay higher fees were the powers in the draft Bill to be enacted and utilised.

61. Finally, we would encourage the Minister during the debate on our report and perhaps again at Stage 2 to be explicit as to his intent now or in the future with regards to the possibility of varying fees on any course or programme other than medicine.

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20 University of Strathclyde Students' Association, written submission
21 Ibid
Protecting academic freedom

62. Section 8 of the Bill also makes reference to the principle of “academic freedom”. In particular, the explanatory memorandum states that, “Subsection (12) follows the similar terms of section 42(3) of the 1992 Act in regard to Scottish Higher Education Funding Council, and extends this element of academic freedom from higher education institutions to all fundable bodies”.

The reason why there are differences between the position of the pre-1992 universities and that of the others is that the academic freedom that allows staff the freedom to challenge perceived wisdom and express controversial or unpopular opinions without fear for their jobs came in under the Education Reform Act 1988 and therefore, by definition, pre-dated the 1992 legislation. The issue was not picked up in the drafting because the bill is very much focused on the institutions’ funding arrangements rather than on their internal organisation. I know that the AUT raised the issue in its evidence. I have asked whether the long title of the bill will allow us to address the issue and I am hopeful that it will.

63. In their evidence to the Committee, the Association of University Teachers makes a very valid point:

“While we welcome the assurance given by 8 (12) that funding decisions by Scottish Ministers will not be tied to conditions affecting particular programmes of learning or courses of education and research, it should be noted that this protects institutional academic autonomy. It does not protect academic freedom properly understood.”

64. This is a view shared by the Educational Institute of Scotland, which states in its written evidence that:

“We welcome the proposal to extend academic freedom to FECs [further education colleges]. However, we would need assurance that the academic freedom enjoyed by higher education academic staff is also extended to further education lecturers.”

65. We consider these to be valid points. We welcome the extension of institutional academic freedom from pre-1992 universities to both post-1992 universities and to the further education sector. However, we also wish to see parity of treatment in relation to individual academic freedom.

66. We encourage the Scottish Executive to bring forward such amendments as are necessary to ensure parity of treatment in relation to academic freedom between HE and FE institutions and the individuals employed therein.

22 Official Report, Enterprise and Culture Committee, Tuesday 16 November 2004, Column 1275
23 Written submission to the Committee
24 Written submission to the Committee
Amending the list of fundable bodies

67. Section 7 of the Bill sets out outlines the criteria that the Council must have regard to the desirability of ensuring are met, before the Council recommends or approves that a new body is added to, or removed from, the list of fundable bodies in schedule 2. The issue for the Committee was extent to which the decision to amend Schedule 2 was a matter for the Council or for the Scottish Executive.

68. In our deliberations on this matter, we have considered whether it is appropriate that the new Council should take decisions on amending Schedule 2 or whether it would be more appropriate for the Council to make recommendations to the Minister and for the Minister to do it.

69. In evidence to the Committee, Chris Masters of the Scottish Higher Education Funding Council told us that in his view:

“I hope that the minister would take advice from the council, as it would be the expert body. Making modifications to the list is certainly a matter for ministers”

70. In his statement to the Committee, the Minister told us that:

“Section 7 indicates that the decision to add or remove fundable bodies would ultimately be one for ministers, because that would have to be done by way of an order. However, it is important—I recollect that this issue came up during the consultation—that any such decision should be based on an objective analysis.

[…] The criteria are set out in section 7. If the funding council believes that an institution meets all the criteria, or fails to meet them, it can make the appropriate recommendation to the minister to add or remove the body, and ministers can then make the decision. When ministers take the initiative and feel that a body should be added or removed, the safeguard is that the funding council would make the appropriate checks before action was taken. Although the council would be required to approve such a proposal, that would not be the final approval. It would be more in the nature of an endorsement, because ministers would have to lay an order.”

71. We welcome this clarification and believe that this is the appropriate course to follow.

72. Related to this is the issue of the decisions on the actual funding of a fundable body. It is clear from the Bill and from evidence that the final decision to
alter the list of fundable bodies rests with Ministers after advice from the funding Council. However, as confirmed by the Executive:27

“The designation of a body as a fundable body does not carry with it an obligation on the funding council to fund it.”

73. This is an important distinction. We welcome the clarification provided by the Executive that a decision to include an institution in the list of fundable bodies does not guarantee that it is funded and that any decision to do so is a matter for Ministers.

Scottish Credit and Qualifications Framework

74. A related issue to that of fundable bodies is that of the Scottish credit and qualification framework (SCQF). Our concern in respect to the SCQF was that the drafting of the Bill in relation to the division of responsibility between Ministers and the new Council might require clarification and definition and may be better expressed in different terms.

75. In evidence to the Committee, the Association of Scottish Colleges and Universities Scotland told us that28:

“This sounds like a technical point, but what we were driving at in our point on the qualifications framework is that the funding body is just that—a funding body. It is not an educational body or an awarding body. The decision on what is an appropriate qualifications framework really ought to be taken by the universities, as the degree-awarding bodies, and by the awarding bodies that we use—in particular, the Scottish Qualifications Authority—under the directional co-ordination of ministers. There is a simple oddity in the wording of the bill and we feel that it can easily be tidied up.

[...]

It is important that advice on the qualifications framework should largely come from the sector, which works at the sharp end of the issue. We would expect the funding council to be in the middle of those conversations, from where it can transmit views to ministers and receive, one hopes, approvals for proposals. The sector should participate in shaping what comes out of the qualifications frameworks so that people can understand where they are. We seek clarification, rather than any fundamental change”

76. The Bill as introduced states that, "The Council is to promote such credit and qualification framework as it may adopt" (section 14(1)). In evidence to the Committee, the Minister said that:29

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27 Official Report, Enterprise and Culture Committee, Tuesday 16 November 2004, Column 1265
28 Official Report, Enterprise and Culture Committee, Tuesday 2 November 2004, Column 1159ff
29 Official Report, Enterprise and Culture Committee, Tuesday 16 November 2004, Column 1264
“The funding council has the necessary expertise, working in collaboration with the colleges and universities, to determine which framework should be adopted but, clearly, if ministers were to disagree with that, there would still be the option of a ministerial direction, which would be subject to a parliamentary debate. I think that I am right in saying that ministers can give a direction on that.

Promoting the SCQF is not an exclusive responsibility of the funding council. We as ministers, and the sector itself, would wish to do that as well. Bringing the SCQF within the ambit of legislation has been widely recognised and acknowledged. We have struck the right balance, but if the committee feels that tweaking is needed I will have regard to what it says, provided that the general thrust is observed.”

77. We welcome the Bill’s reference to “a framework” rather than “the framework” as it may be that in due course changes need to be made. In making these changes it is right that the Council should determine the nature of the credit and qualification framework that should be adopted but that the final decision rests with Scottish Ministers. Finally, we believe that decisions on such matters should not be funding driven.

78. Ministers may wish to introduce amendments at Stage 2 which clarify the division of labour between the funding Council and themselves in relation to the credit and qualifications framework.

Encouraging the Funding Council to collaborate with others

79. Section 22 of the Bill, and specifically section 22(1)(b) seems to place a statutory duty on the funding Council to "seek to secure the collaboration" of a range of persons, including Scottish Enterprise, Highlands and Islands Enterprise, Scottish Qualifications Agency, Local Enterprise Companies etc.

80. Esther Roberton of the Scottish Further Education Funding Council outlined her concerns with regards to this duty when she gave evidence to us. She told us that:

“... when my council considered the bill, we were very uneasy about the notion that a duty to secure collaboration should be placed on us, because although we will do all that we can from our side of the table, it is very difficult to force the issue if there are players who do not want to play; we are not saying that there are such players. The duty should require us to act collaboratively or, if it is a duty to secure collaboration, it should be placed on all the players.”

81. Whilst we welcome the provisions in the Bill to encourage collaboration between the funding Council and others, we consider that the Council—and other organisations—should have a statutory duty to collaborate, but that the duty to secure collaboration should be ministerial. In essence, a statutory duty to collaborate is different from a statutory duty to secure collaboration.

30 Official Report, Enterprise and Culture Committee, Tuesday 16 November 2004, Column 1259
82. **We would encourage the Executive to consider whether the provisions in the Bill regarding collaboration could be better expressed and bring forward amendments where necessary.**

**Equal opportunities**

83. In evidence provided to the Committee, Skill Scotland, the Disability Rights Commission and others raised a series of issues in relation to disabled people and the provisions in the Bill. The first issue relates to the ability of disabled students to access discretionary funding from local authorities to attend course or programmes outwith Scotland. In Skill Scotland’s opinion:

“At the moment, if a disabled person chooses to go to a college south of the border—which may be because there is a specialist college there—the funding comes via local authorities. Local authorities have only the discretion to fund; they do not have a duty to do so. Our concern is that that funding is on quite a different footing from the rest of student funding, which, as you know, is all nationalised, through the Student Awards Agency for Scotland or through the funding councils. Students can choose to go to university south of the border. Although disabled people make up a small group, that small group has real difficulties getting funding. We have had quite a lot of inquiries to our information service about it. I do not know whether the committee can do anything to affect the bill, but it is an opportunity that might be missed to get that sorted out.”

84. **We consider it an important principle that students with disabilities should receive parity of treatment irrespective of which local authority area in Scotland they live in. We would want to see some consistency of approach adopted to enable a disabled person to go to a college south of the border, perhaps because there is a specialist college or course there. We recognise that this would have implications for local authority funding and would encourage the Scottish Executive and CoSLA to work out a mutually agreeable solution, which may require additional resources to be provided by central government. We recognise that the funding Council may not be the most appropriate body to administer any new scheme of this type.**

85. The second issue is one of definition. In evidence to the Committee, Skills Scotland notes that section 12 of the Bill states that the funding Council must have regard to “persons with learning difficulties”. In their opinion, this terminology is no longer appropriate, nor does it place a sufficient duty on the funding Councils to ensure that all students can fully participate in learning. Skill Scotland urged us to amend the Bill so that the Council should have regard to persons with “additional support needs”.

86. **We agree in principle that the use of “additional support needs” is a more appropriate term and is consistent with other legislation. We encourage the Scottish Executive to provide additional information to us on the implications that such a change in terminology would have.**

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31 Written evidence submitted to the Committee
87. We are still unclear as to the implications that a change in terminology from “persons with learning difficulties” to “additional support needs” would have. We would seek to work with the Minister and others during Stage 2 to see what, if any improvements can be made to the Bill in this regard. We would seek the Minister's assurance that he would work collaboratively on this point.

Governance

88. In relation to governance within the HE and FE sector, we have two issues. First, although we do not see that there is a need to amend the Bill in any way, we would like to encourage the new funding Council to pay particular attention to the promotion of best practice in terms of employment issues and procedures. In recent months, there have been occasions when such practices and procedures have been substantially below that which should be expected in an institution of this type. We would not want to see such practices and procedures becoming commonplace or being persistent.

89. Second, we encourage the Scottish Executive to review the situation that prevents local authority councillors from chairing the governing boards of FE colleges. This is a consequence of the Further and Higher Education (Scotland) Act 1992. This states at Schedule 2, paragraph 12(1) (d) to the Act that “the board shall appoint one of their members, not being a person who is a member (whether elected or appointed) or an employee of a local authority……to be chairman”. As matters currently stand, local authority employees and councillors are caught by this restriction even if they are employed by, or elected to serve, a different Council area to that in which the college is located. This is an issue on which the Scottish Executive has consulted but not yet finalised its views.

90. In evidence to the Committee, the Minister indicated that this situation was under review but that it there was a desire to, “change it, the change could be made by way of an order and would not require to be incorporated into the bill”.

91. We encourage the Scottish Executive to resolve the situation and introduce just such an order that would enable local authority councillors to be considered as the Chair of the governing boards of further education colleges.

Composition of the Funding Council

92. In evidence to the Committee, Chris Masters of the Scottish Higher Education Funding Council suggested that in relation to the composition of the Council:

“...it is important that the funding council should continue to include people from both the public sector and the private sector who have the appropriate range of skills and experience. It is also important that,
where possible and appropriate, we should look to attract people from outwith Scotland to participate on the council.”

93. **We consider it important that the Council’s composition is varied and not limited to representatives of Scottish organisations. To achieve this aim, we do not consider it necessary to amend the Bill. We would like, however, to encourage those taking decisions on the composition of new funding Council to take the benefits of attracting members from outwith Scotland into account.**

94. **We do not consider it appropriate that the new funding Council is made up of representatives of various sectoral interests on those grounds alone. We would like to see a Council comprising of people with the necessary skills, which would include those with experience of the issues faced by students and staff.**

**Other issues**

95. **In relation to the calls for a specific “skills committee” to complement the provisions for a research committee, we do not consider that the Bill should be amended to allow for a statutory “skills committee”. We would encourage the Council when properly constituted and operational to consider the need for a “skills committee” as an early priority.**

96. **The Bill as introduced gives students, however funded, and other aggrieved persons the right to refer complaints about colleges or universities to the ombudsman when institutional mechanisms fail them. This is a provision that has been universally welcomed. We add our approval to the views expressed by others and make no further suggestions with regards to the ombudsman.**

97. **Finally, in relation to section 20(1) of the Bill, which covers the Council’s exercise of its functions, we welcome the non-hierarchical listing of the three criteria, namely that within its work that Council would have regard to (a) skills needs in Scotland, (b) issues affecting the economy of Scotland and (c) the social and cultural issues in Scotland.**
POLICY MEMORANDUM

98. Under Rule 9.6.3 the Committee is required at Stage 1 to consider and report on the Policy Memorandum. The Scottish Executive has prepared a Policy Memorandum, which accompanied the Bill when introduced.

99. We consider that the Policy Memorandum is adequate.
FINANCIAL MEMORANDUM

100. In the Financial Memorandum accompanying the Bill, the Scottish Executive states that the Bill does not:34

“… give rise to any new costs or savings, since it simply reorganises the structures through which money is paid to fundable bodies. That is, the Bill does not in itself alter the number of fundable bodies or do anything else which will alter the amount of money paid to the tertiary education sector.”

101. It does note, however, that:35

“There are, however, likely to be one-off set-up costs associated with creating the new body. These are not expected to be significant, and can be met from existing Departmental resources.”

102. In the longer term, the Executive considers that:36

There are likely to be savings resulting from the merger of the actual Councils in terms of board membership. Currently there are fourteen members on each Council, including the Chair. These positions attract a salary and expenses. However, these minor savings may be offset by the establishment of additional Committees within the new body, reflecting the broadened range of activity.

103. Finally, in relation to the additional work that can be expected of the Ombudsman’s office, the Executive states that:37

“We have, in consultation with the Ombudsman, sought information from educational establishments to estimate the impact on the Ombudsman’s workload. The returns suggest that the Ombudsman could expect around 30 complaints a year from both sectors, though we need to factor in the possibility that extending the remit of the Ombudsman may cause more complaints to be put to the Ombudsman. Initially the Ombudsman will have to devote effort to awareness raising and education about the role of the Ombudsman – that was the Ombudsman’s experience with the Enterprise networks which were brought within the Ombudsman’s jurisdiction. The Ombudsman’s office has calculated the likely cost implications for 2005/06 to be in the order of £50,000-£60,000. This can be met from within existing Departmental budgets.”

104. As part of its work, the Finance Committee considered the Financial Memorandum at its meeting of the 26 October 2004. The Finance Committee agreed, as per its new procedures, that the Financial Memorandum should be scrutinised at “level 1” of its working procedures.

34 “Further and Higher Education (Scotland) Bill, Explanatory Notes”, paragraph 55, SP-Bill 26
35 Ibid. paragraph 62.
36 Ibid. paragraph 61.
37 Ibid. paragraph 63.
105. Level 1 scrutiny requires the Finance Committee to circulate a questionnaire to all stakeholders and interested parties, seeking views on the Financial Memorandum.

106. Four responses were received, from the two existing funding councils, the Scottish Public Sector Ombudsman and Universities Scotland. These are attached as Annex A. No substantive concerns were raised by those consulted.

107. We recommend, therefore, that Parliament should be content with the Financial Memorandum as provided by the Scottish Executive.
SUBORDINATE LEGISLATION

108. The provisions of the Bill that confer powers to make subordinate legislation were referred to the Subordinate Legislation Committee under Rule 9.6.2. The Subordinate Legislation Committee examined these provisions in detail at its meetings on 7 and 14 December 2004 and discussed a number of issues with the Scottish Executive. That Committee’s report is reproduced in full at Annex B.

Proposed amendments

109. We welcome the Executive’s undertaking in correspondence to bring forward an amendment to provide that the powers under section 8(6) will be subject to affirmative procedure.

110. We also welcome the Executive’s undertaking to consult and to bring forward an amendment to this effect at stage 2. We share the Subordinate Legislation Committee’s view that the wording of any amendment to require consultation should include a provision that Ministers should take full cognisance of the response received to any such consultation.

111. Section 22(4)(j) provides a power for Ministers to add to, but not to amend, a list of persons and bodies with which the new Council must consult and collaborate. We welcome the Executive’s undertaking to bring forward an amendment at stage 2 to provide for Ministers to amend and add to the list of persons and bodies with which the new Council must consult and collaborate.

Outstanding issues

112. A number of substantive issues arise from the Subordinate Legislation Committee’s report, as follows.

Section 5(7) Fundable further and higher education

113. Section 5(7) defines provision that is fundable as further and higher education. The Subordinate Legislation Committee was of the view that this was an appropriate issue for subordinate legislation. However, the Committee noted that the power to “modify” subsections (1) to (6) creates wide powers for future subordinate legislation, which it considered should be subject to affirmative rather than negative procedure, particularly given that it is additionally a Henry VIII power.

114. We agree with the Subordinate Legislation Committee that as Section 5(7) creates a power to modify primary legislation, it should be subject to affirmative procedure.

Section 7(1) Fundable bodies: further provision

115. This Section sets out the procedure by which Ministers can amend the list of fundable bodies. Again, the Subordinate Legislation Committee considered that, as this power modifies primary legislation, it should be subject to affirmative procedure.
116. We agree with the Subordinate Legislation Committee that as Section 7(1) creates a power to modify primary legislation, it should be subject to affirmative procedure.
CONCLUSIONS AND RECOMMENDATIONS

Introduction

117. The Further and Higher Education (Scotland) Bill (SP Bill 26) was introduced on 30 September 2004 by the Deputy First Minister and Minister for Enterprise and Lifelong Learning, Rt. Hon Jim Wallace QC MSP. We were appointed by the Parliamentary Bureau as the lead committee.

118. Under Rule 9.6 of the Standing Orders, the lead committee has the responsibility to report to the Parliament on the general principles of the Bill. This report summarises the views of the Enterprise and Culture Committee on the general principles of the Bill and completes our work at Stage 1 of the Bill.

Purpose of the Bill

119. The main purpose of the Further and Higher Education (Scotland) Bill is the merger of the two current funding councils - Scottish Higher Education Funding Council (SHEFC) and the Scottish Further Education Funding Council (SFEFC) - to create the Scottish Further and Higher Education Funding Council (SFHEFC). The Bill intends to create a single body that will have a duty to provide coherent strategic decision making at a National level covering both sectors.

120. The idea of merging these funding councils was one of the central conclusions in our predecessor committee’s report into lifelong learning. As such we welcome the fact that our idea has now emerged as the purpose of this Bill. We believe this shows how parliamentary committees and their inquiries can be influential in shaping the Scottish Executive’s legislative agenda. We are pleased that the Scottish Executive has taken our recommendations on board and has now brought forward the necessary legislation.

121. We are also pleased that the Scottish Executive responded so positively to the views it received during its pre-legislative consultation. Substantial amendments were made to the draft Bill before it was introduced. We believe this demonstrates the worth of the legislative procedures in the Scottish Parliament and Ministers should be commended for being responsive to the opinions they received.

Our issues

Fees

122. The introduction of variable fees is the single most controversial aspect of the Bill. The provisions in the Bill, if passed, would enable Ministers to both set a maximum fee for all courses and programmes in Scotland and set an additional fee for specific courses. It is suggested that these provisions are necessary to tackle cross-border flows of students attending Scottish higher and further Education institutions, and to tackle the lack of Scotland-domiciled students entering and graduating from medical schools in particular.

123. Whilst we welcome the Minister’s views on his ability to vary fees and his plans to perhaps do so in the case of medicine, we cannot disregard the legal
principle that it is the Bill as passed by Parliament that is critical here and not any statements of ministerial intent. The Bill as drafted does not restrict the use of variable fees only to medicine.

124. Consequently, we recommend that the Minister should consider amending the Bill at Stage 2 to provide information on the criteria that would be used by Ministers when deciding on whether and by how much to vary fees on a particular course or programme.

125. We also recommend that the Executive introduce amendments at Stage 2 such that all orders under section 8(6) should be subject to affirmative resolution.

126. We recommend that the Minister provides clarification as to whether any Scots-domiciled students would pay higher fees were the powers in the draft Bill to be enacted and utilised.

127. Finally, we recommend that the Minister, during the debate on our report and perhaps again at Stage 2, is explicit as to his intent now or in the future with regards to the possibility of varying fees on any course or programme other than medicine.

Academic Freedom
128. We welcome the extension of institutional academic freedom from pre-1992 universities to both post-1992 universities and to the further education sector. However, we also wish to see parity of treatment in relation to individual academic freedom.

129. We recommend that the Scottish Executive brings forward such amendments as are necessary to ensure parity of treatment in relation to academic freedom between higher education and further education institutions and the individuals employed therein.

Role of the Funding Council and the role of Scottish Ministers
130. Certain parts of the Bill require greater clarity in terms of the relative role of the new Funding Council and that of Scottish Ministers. These include the process of amending the list of fundable bodies and decisions on which would receive funds, the development of a Scottish Credit and Qualifications Framework and the means of securing collaboration between the funding Council and other statutory bodies, such as the enterprise agencies.

131. We welcome the clarification that although the Funding Council has a substantial role in the process, it is Ministers that will take final decisions on both the list of fundable bodies and any amendments, and decisions on whether to fund a fundable body. This is the appropriate course to follow.

132. We also welcome the clarification that that the Funding Council should determine the nature of the credit and qualification framework that should be adopted but that the final decision rests with Scottish Ministers.
133. Finally, whilst we welcome the provisions in the Bill to encourage collaboration between the Funding Council and others, we consider that the Council—and other organisations—should have a statutory duty to collaborate, but that the duty to secure collaboration should be ministerial.

134. **We recommend that Ministers consider whether the Bill requires further amendments to make divisions of competences between Ministers, the Funding Councils and others more clear.**

**Equal opportunities**

135. We consider it an important principle that students with disabilities should receive parity of treatment irrespective of which local authority area in Scotland they live in. We would want to see some consistency of approach adopted to enable a disabled person to go to a college south of the border, perhaps because there is a specialist college or course there. We recognise that this would have implications for local authority funding and we would encourage the Scottish Executive and CoSLA to work out a mutually agreeable solution (which may require additional resources to be provided by central government). We recognise that the funding Council may not be the most appropriate body to administer any new scheme of this type.

136. We agree in principle that the use of “additional support needs” is a more appropriate term for this Bill than “person with learning difficulties”. It is also consistent with other legislation on the statute book. **We recommend that the Scottish Executive provides us with additional information on the implications that a change in terminology from “person with learning difficulties” to “person with additional support needs” would have.**

**Governance**

137. In relation to governance within the higher and further education sectors, we have two issues. First, although we do not see that there is a need to amend the Bill in any way, we would like to encourage the new Funding Council to pay particular attention to the promotion of best practice in terms of employment issues and procedures. In recent months, there have been occasions when such practices and procedures have been substantially below that which should be expected in an institution of this type. We would not want to see such practices and procedures becoming commonplace or being persistent.

138. Second, we encourage the Scottish Executive to review the situation that prevents local authority councillors from chairing the governing boards of further education colleges. **We recommend that the Scottish Executive resolves the situation and introduces an order that would enable local authority councillors to be considered as the Chair of the governing boards of further education colleges.**

**Composition of the Funding Council**

139. We consider it important that the Funding Council’s membership is varied and not limited to representatives of Scottish organisations. To achieve this aim, we do not consider it necessary to amend the Bill. We would like, however, to encourage those taking decisions on the composition of new Funding Council to take the benefits of attracting members from outwith Scotland into account, as well
as ensuring that it comprises of people with the necessary skills, which would include those with experience of the issues faced by students and staff.

**General Principles**

140. The Committee shares the desire of the Minister to create a single Funding Council that will have a duty to provide coherent strategic decision making at a National level covering both the higher and further education sectors. In the preceding sections, the Committee has drawn attention to some of the main areas in which the Bill could be improved. Additionally, a number of issues have been identified on which the Committee requests further information from the Minister. The Committee urges the Minister to respond to it in writing on all these requests for further information or recommendations for further consideration. The Committee urges him to do so as soon as possible, and in good time before the start of Stage 2 proceedings.

141. **Taking into account the issues that require further consideration and where the Bill needs amendment, the Committee recommends that the general principles of the Bill should be agreed to.**
ANNEX A

REPORT FROM FINANCE COMMITTEE

The Finance Committee agreed on 26 October 2004 to subject the Financial Memorandum attached to the Bill to ‘level 1 scrutiny.’ The Finance Committee has not taken any direct oral evidence and has not produced a report. Instead it circulated a questionnaire, which is set out at A below, to key stakeholders. The responses to this questionnaire are also reproduced below, at B, C, D and E.

A FINANCE COMMITTEE QUESTIONNAIRE

Dear [name]

the Further and Higher Education (Scotland) Bill – FINANCIAL MEMORANDUM

At its meeting of 26 October, the Finance Committee considered the Financial Memorandum produced to accompany the Further and Higher Education (Scotland) Bill.

Standing Orders of the Scottish Parliament state that when the Scottish Executive introduces a bill to the Scottish Parliament, it must be accompanied by a Financial Memorandum:

“…which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates. The Financial Memorandum must distinguish separately such costs as would fall upon-

(a) the Scottish Administration;
(b) local authorities; and
(c) other bodies, individuals and businesses.”

When a lead committee of the Parliament considers the general principles of a Bill, it must consider the Financial Memorandum and must take account of any views submitted to it by the Finance Committee.

In order to assist the Finance Committee, we would be extremely grateful if you could complete the attached questionnaire. The feedback we receive will then be forwarded to the Enterprise and Culture Committee, which is the lead committee on the Bill.

A copy of the Bill and its accompanying documents can be found on the Scottish Parliament’s website at: http://www.scottish.parliament.uk/business/bills/billsInProgress/furtherEd.htm. Please note that the Financial Memorandum is contained within the Explanatory Notes.

Questionnaire

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Further and Higher Education (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation
Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Did you have sufficient time to contribute to the consultation exercise?

Costs
If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Wider Issues
If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

B SCOTTISH PUBLIC SECTOR OMBUDSMAN RESPONSE

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Further and Higher Education (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation
Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes. We noted that the option of extending the Ombudsman’s remit to include consideration of complaints about further and higher education would have a resource implication for this office. We welcomed the commitment from the Scottish Executive to work with us to seek information from educational establishments at a pre-legislation stage, in order to estimate the workload impact. The result of this work is explained in paragraph 63 of the Financial Memorandum.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes.

Did you have sufficient time to contribute to the consultation exercise?

Yes.

Costs
If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes. Our calculation of the likely cost implications for this office, based on currently available information, is a figure of the order of £50,000-£60,000 per year from 2005/06 (see paragraph 63 of the Financial Memorandum).

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The costs would be additional to those for which we have currently budgeted. Paragraph 64 of the Financial Memorandum notes that resources will be made available from the Department for this purpose.
Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes, although as noted in answer 4, the estimates are necessarily based on currently available information and actual costs could be affected by a number of factors, such as the number of complaints coming to this office.

Wider Issues
If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

C SCOTTISH FUNDING COUNCILS FOR FURTHER AND HIGHER EDUCATION RESPONSE

Consultation
1 Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, the Councils were invited formally to respond to the Scottish Executive’s consultation on the draft Bill published in April 2004. We did not comment on the financial assumptions. We have however advised the Scottish Executive of the likely one-off early set-up costs associated with establishing the new Council.

2 Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Our comments on the one-off costs associated with establishing the new Council have been reflected in the Financial Memorandum.

3 Did you have sufficient time to contribute to the consultation exercise?

Yes, the Councils were consulted formally about the draft Bill and informally through our normal channels of communication with the Scottish Executive.

Costs
4 If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

We do not anticipate that there will be any new major financial obligations on the Council which cannot be accommodated through existing resources or the normal spending review mechanisms.

5 Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

We anticipate that additional financial costs can be accommodated through existing resources or the normal spending review mechanisms.

6 Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The Financial Memorandum indicates that the Bill should not give rise to any major new costs.

Wider issues
7 If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
The Bill arose from a wider Scottish Executive policy initiative to develop Scotland’s system of lifelong learning. We are not aware of any associated costs that should have been included in the Financial Memorandum.

8 Do you believe that there may be future costs associated with the Bill, for example, through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The Bill could give rise to future costs but we believe that these should be met through existing resources of either the Council or the Scottish Executive, or through the normal spending review mechanisms.

D UNIVERSITY SCOTLAND RESPONSE

1. Universities Scotland did take part in the consultation on the draft Bill. We did not comment on the financial assumptions except to note that the consultation paper stated that no significant savings were anticipated. We observed that “a smaller bureaucracy would have a clearer strategic focus, and be less tempted to be drawn into planning and management which is much more effectively undertaken at institutional level.”

2. We think that the Financial Memorandum simply reflects the view taken in the consultation paper.

3. We had sufficient time to respond to the consultation exercise.

4. There are no direct financial implications for Universities Scotland, though since the legislation is largely concerned with establishing new arrangements for funding higher and further education, the potential financial implications for these sectors are highly significant.

5. This question is not applicable to our organisation.

6. We believe that the Financial Memorandum does accurately reflect margins of uncertainty and timescales.

7. We consider that all costs, both direct and associated, are accurately reflected in the Financial Memorandum.

8. It appears certain that some subordinate legislation will be required. We are not in a position to estimate the costs associated with that, but we have no reason to believe that such costs need be substantial.

E ASSOCIATION OF SCOTTISH COLLEGES RESPONSE

Consultation

Q1 Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Answer: ASC responded to the consultation in a joint response with Universities Scotland on 13 July and an addition, supplementary response of its own of 15 July. Both of these submissions addressed issues of resources and costs for Colleges of Further Education in Scotland.

Q2 Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Answer: No.
The Financial memorandum addresses questions of the administration costs of a single Funding Council on a “no change” assumption. ASC and Universities Scotland argued that the new funding body should be smaller, smarter, (and) more strategic, and “certainly much smaller than the sum of the existing councils and their executive”.

ASC in its own submission also suggested that there should be an examination of the “scope for reductions in staffing, administrative burdens, and running costs of the funding body itself in the Policy and Financial Management Review of SFEFC”. (This review is currently being conducted by the Scottish Executive as an in-house exercise.)

Q3 Did you have sufficient time to contribute to the consultation exercise?
Answer: Yes.

Costs
Q4 If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
Answer: ASC was surprised that the Financial Memorandum does not state or estimate the costs of having a funding body for colleges and universities.

Details of the administration costs expected for SEFC and SHEFC have been given by the Scottish Executive in the draft Budget for 2005-06 as £6.5 million in 2003-04 rising to £8.0 million in the current year and £8.3 million in 2005-06 and the following 2 financial years. This implies a significant increase in real terms in the current year, a slight increase in 2005-06 (presumably to cover costs of setting up the new body) but level funding – and therefore reductions in real terms – in 2006-07 and 2007-08.

The indirect – compliance- costs for colleges to obtain, and account for, recurrent and capital grants are substantial. There are also additional compliance costs for colleges arising from interventions, data collection, and “top sliced” finding by a Funding Council. ASC’s view is that the Bill is an opportunity to reduce such compliance costs.

There are also likely to be compliance costs in cases investigated by the Scottish Public Services Ombudsman (SPSO). Whenever an investigation is undertaken, there will be administrative and other costs for the college at least equivalent to – and more probably greatly more than – those of SPSO. These are not stated or estimated in the Financial Memorandum.

Q5 Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
Answer: ASC has not had the opportunity to consider whether administrative costs of the Funding Council and consequent compliance costs for colleges could be reduced. We agree that there should be some savings in administrative costs as a consequence of having a single Council rather than two (because of reductions in frequency of meetings and cost of allowances or remuneration for the members). We do not know on what assumptions the standstill in running costs for the period 2006-2007 has been planned.

Q6 Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
Answer: ASC’s main concern is the scope of costs addressed by the Financial Memorandum. There are no established estimates for compliance costs. We do not have access to the assumptions on which administration costs of the present Funding Council are made or apportioned.
Wider Issues

Q7 If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Answer:
ASC believes that the new funding body should reflect the assumptions of Efficient Scotland. Administrative costs of the funding body, and compliance costs for the intuitions it funds, represent “back-room” functions rather than front-line delivery of service. To the extent that these costs can be reduced, more of the available resources could be used for delivery of teaching and research.

There is no easy way to estimate the likely case load which may arise for SPSO and the additional administrative and compliance costs this would generate. ASC’s working assumption is that colleges will seek to improve their own complaints procedures to the point where numbers of cases and complexity of investigation is much reduced for SPSO than might otherwise be the case. It is difficult to dispute, however, that availability of a new avenue of complaint may lead to an increase of cases.

ASC believes that the estimates included in the Financial Memorandum are at the low end of likely outcomes for costs of SPSO. On some unfavourable assumptions, the administrative costs for SPSO – and related compliance costs for colleges – could be considerably, even several times, in excess of those indicated.

Q8 Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Answer:
As previous answers have indicated, ASC believes that there is an opportunity to ensure restraint and achieve reductions in administrative costs of the funding body and compliance costs for the institutions.

This is ongoing work which will require determined efforts by the Scottish executive and the new funding body. This can – and should be – supported by appropriate guidance from the Scottish Executive and more effective mechanisms to identify and monitor both categories of cost.

ASC Executive
12 November 2004
Subordinate Legislation Committee

Further and Higher Education (Scotland) Bill at Stage 1

The Committee reports to the lead Committee as follows—

Introduction

1. At its meetings on 30 November and 14 December 2004, the Subordinate Legislation Committee considered the delegated powers provisions in the Further and Higher Education (Scotland) Bill. The Committee submits this report to the Enterprise and Culture Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Committee with a memorandum on the delegated powers provisions in the Bill, which is reproduced at Appendix 1.

3. The Executive’s response to points which the Committee raised during its consideration is reproduced at Appendix 2.

Delegated Powers

3. The Committee considered each of the provisions detailed in the subordinate legislation memorandum and makes recommendation on the following powers—

Section 5(7) Fundable further and higher education

1. The Committee noted that this power gives the Scottish Ministers power to alter the definitions of fundable further education and fundable higher education in the Bill. The Committee accepted the Executive’s view that, in order to allow the definitions to reflect changes that may occur over time, this section is an appropriate matter for subordinate legislation. However, the Committee was of the view that the provision to “modify” subsections (1) to (6) creates wide powers for future subordinate legislation, which it considered should be subject to affirmative rather than negative procedure, particularly given that it is additionally a Henry VIIIth power.
2. The Committee also noted that this provision covers a range of matters and was not particularly content that the two provisions at 5(1)(b) and 5(5) should be drawn together this way in legislation.

3. The Executive explained the background to this provision, setting out their consideration that the modification of the descriptions of programmes of learning falling within these definitions is a matter for negative procedure. The Executive also outlined the requirement to consult the Council at section 5(8) before making any order.

4. The Subordinate Legislation Committee, however, did not consider that the Executive’s position supported a departure from the Committee’s normal recommendations in relation to powers of this kind. The Committee therefore reached the view that as this is a power to amend primary legislation it should be subject to affirmative procedure.

Section 7(1) Fundable bodies: further provision

5. This power gives Ministers the power to amend schedule 2, which contains the list of fundable bodies. Similarly to the point raised in relation to 5(7), the Committee was concerned that this provision has wide powers and it considered that it should be subject to affirmative rather than negative procedure.

6. The Executive appreciated the Committee’s concerns in relation to this provision but also pointed out the limitations to the power provided at section 7(1) and (2), where Ministers are required to consult the Council. However, should the Subordinate Legislation Committee remain of the view that affirmative procedure should be adopted, the Executive stated that it would be willing to instruct an amendment to that effect.

7. The Committee reached the view that this, similarly to 5(7), is a power to allow the amendment of primary legislation by secondary legislation, and as such, should attract affirmative procedure in order to provide sufficient safeguards.

Section 7(4) Fundable bodies: further provision

8. This power allows Ministers to alter the various provisions, procedures and arrangements that the Council must have regard to, as specified in section 7(2)(a) to (h). The Committee considered that there is considerable overlap between this power and that contained in 7(2)(i) and sought clarification from the Executive on the drafting of this section. The Executive in response did not consider that there is necessarily any overlap in the powers contained in these sections and pointed to the distinction between the purposes of these provisions.

9. The Committee is content with the clarification provided by the Executive on the point raised in relation to this provision.
Section 7(5)  Power to issue guidance

10. The Committee noted the power at section 7(5) for the Scottish Ministers to issue guidance in relation to the objectives set out at subsection 2. The Committee sought clarification on the use of this power, with a view to reaching a judgement as to whether it may be appropriate for such guidance to be laid before the Parliament.

11. The Executive provided clarification on the type of instance where guidance may be issued and, although the Committee noted that there is no explicit requirement for the council to have regard to the guidance, it reached the view that it was content with the response and the power as it stands.

Section 8(6)  Funding of the Council

12. Section 8 provides for the funding of the Council by grants made by the Scottish Ministers and imposes terms and conditions to which such grants are to be subject. The Committee had some concerns in relation to the width of the powers that this provision grants to Ministers. The Committee accepted that this provision may be used to make modest changes but, given the scope of how it may be used, recommended that the Executive adopts affirmative rather than negative procedure.

13. The Committee welcomes the Executive’s undertaking in correspondence to bring forward an amendment to provide that the power under section 8(6) will be subject to affirmative procedure.

14. The Committee also welcomes the Executive’s undertaking to include on the face of the bill a provision requiring consultation prior to the making of an instrument under this provision and to bring forward an amendment to this effect at stage 2. The Committee was of the view that the wording of any amendment to require consultation should include a provision that Ministers should take full cognisance of the response received to any such consultation.

Section 8(7)  Funding of the Council

15. This subsection gives Ministers the power to specify fee levels to be applied for the purposes of section 8(6). The Committee considered that this provision, as read with subsection (6), again gave very wide powers to Ministers, in relation to the setting of fees for further and higher education courses. The Committee noted that affirmative procedure has been set out in the bill for this provision but, given the level of detail to be set out in any delegated legislation, recommended a more rigorous form of scrutiny. The Committee therefore requested that the Executive considered a super-affirmative procedure, whereby proposals in draft are laid before the Parliament to allow it to suggest amendments before the draft order itself is laid.
16. The Executive, however, was content that a sufficient degree of scrutiny will be in place for both 8(6) and 8(7) should affirmative procedure be adopted and should a requirement to consult be included at section 8(6).

17. The Committee accepted the points made by the Executive in relation to the provision but agreed that it should take forward further consideration of super-affirmative powers as part of its inquiry into the regulatory framework in Scotland.

Section 22(4)(j) Consultation and collaboration

18. The power in paragraph (j) allows for bodies and persons to be added to the list of those that the Council must consult with in the exercise of its function. However, the Committee noted that the provision did not allow for the amendment of the list and sought clarification from the Executive on the intention of this provision.

19. The Executive outlined that the intention of this provision is to add to and amend the list and accepted the Committee's point in relation to this issue.

20. The Committee welcomes the Executive's undertaking to bring forward an amendment to this effect at Stage 2.

Section 31 and section 34(2)

21. The Committee noted the inconsistency between the procedural provisions in these two sections and asked for clarification from the Executive.

22. The Committee simply wished to note the point in this instance, given the full response from the Executive. The Committee agreed, however, that this area of drafting practice will also be a matter that it will consider as part of its regulatory framework inquiry.
APPENDIX 1

Memorandum to Subordinate Legislation Committee by the
Scottish Executive

Further and Higher Education (Scotland) Bill

Purpose

1. This Memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of provisions in the Further and Higher Education (Scotland) Bill conferring powers to make subordinate legislation. It describes the purpose of each such provision and explains why the matter is to be left to subordinate legislation.

Outline and Scope of the Bill

2. The Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”), set up the Scottish Higher Education Funding Council (SHEFC), and made provision for the Scottish Further Education Funding Council (SFEFC) which came into being in 1999. The main purpose of this Bill is to dissolve the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council, and create a new body, to be called the Scottish Further and Higher Education Funding Council (“the Council”). In addition to creating this new body, the Bill sets out powers and duties on Ministers and the Council with regard to further and higher education in Scotland. The Bill also makes provision to bring the listed colleges and higher education institutions (all the fundable bodies as detailed in the Bill, with the exception of the Open University), and the Scottish Agricultural College, within the remit of the Scottish Public Services Ombudsman.

3. In general terms, the Bill amends the 1992 Act, and contains new provisions to achieve the purposes above. Many provisions are drawn from those in the 1992 Act, which apply to either or both the further education sector (colleges) and the higher education sector (higher education institutions). The provisions of this Bill, however, apply equally to both sectors. Whereas the Scottish Further Education Funding Council operated in relation to the funding of colleges, and the Scottish Higher Education Funding Council operated in relation to higher education institutions, the Council will operate to fund both sectors, and the Bill specifies its funding functions, and additional functions.

4. An outline of the Bill is as follows:

- Part 1
  - Creates the new Scottish Further and Higher Education Funding Council and allows for the dissolution of the current Scottish Further Education Funding Council and Scottish Higher Education Funding Council (Sections 1 and 2);
• Sets out duties on Ministers and the Council with regard to further and higher education in Scotland (Sections 3 to 7);

• Sets out further powers of Ministers and the Council in relation to funding (Sections 8 to 12);

• Sets out the functions of the Council (sections 13 to 23);

• Sets out the powers of Ministers in relation to the functions of the Council (sections 24 to 25);

• Miscellaneous provisions (sections 26 to 29).

• Part 2 – makes miscellaneous and general provisions, including amending enactments, ancillary provision, regulation and order making powers and interpretation (sections 30 to 34).

• Schedule 1 – contains further provisions detailing the status, membership, structure and proceedings of the Council. It also provides for the terms on which the chief executive of the Council is appointed, and for staff, property and liabilities to be transferred to the new Council.

• Schedule 2 – lists the institutions which are fundable bodies for the purposes of the Bill. There is provision for variation of this list in section 7.

• Schedule 3 – contains amendments of enactments in consequence of the Bill.

Delegated Powers

5. The Bill contains sections which provide for orders, and one section which provides for regulations. These may be categorised as follows:

• Sections 2 and 34(2) contain provisions for setting the date or dates for the dissolution of the existing Councils and the general commencement of the Bill’s provisions.

• Sections 26(1)(b) and Schedule 3 paragraph 6(1)(c) amend existing legislation.

• Sections 5(7), 7(1), 8(6), 22(4)(j), and 24(1) contain provisions for the making by the Scottish Ministers of orders under negative procedures.

• Sections 7(2)(i) and 7(4) allow Ministers to amend or alter the criteria which the Council require to have regard to, in relation to fundable body status. These will require affirmative procedures.

• Section 8(7) gives Ministers the power to set fee levels for fundable bodies, within terms and conditions of grants imposed on the Council, by affirmative order.
• Section 31 enables ancillary provisions to be made by order under negative procedure, except that affirmative procedure is required where an ancillary provision amends an Act.

6. The statutory instruments permitted under sections 7(2)(i), 7(4), 8(7) and 31 (where an order under section 31 amends an Act) will require to be approved by a resolution of the Scottish Parliament. This will ensure that the Scottish Parliament has an opportunity to scrutinise any proposed revision of the criteria for fundable body status which the Council must have regard to, the specification of fee levels within grant terms and conditions imposed on the Council and fundable bodies, and any consequential changes to primary legislation. It has been considered that the other provisions for orders or regulations made under the Bill should be subject to negative procedure.

Section 2: Dissolution of other funding bodies

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

7. This order will set the date to dissolve the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council. It is considered that this is an appropriate matter for subordinate legislation, by negative procedure. The formal date of dissolution of these bodies will depend on various procedural and administrative arrangements, which shall take place in future, and the precise date of dissolution cannot presently be identified. The date of formal dissolution of the existing Councils may not be the same date as for the formal establishment of the new Council.

Section 5(7): Fundable further and higher education

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

8. This will give Scottish Ministers power to alter the definitions of “fundable further education” and “fundable higher education” in the Bill. It is considered that this would be an appropriate matter for subordinate legislation, to allow the definitions to reflect changes which may occur over time, in the types of programmes and courses specified within these definitions. By section 5(8), Ministers will require to consult the Council before making the order.

Section 7(1): Fundable Bodies: further provision

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

9. This gives Ministers the power to amend Schedule 2, which contains the list of fundable bodies. As fundable bodies are subject to mergers, closures or changes
of name, or new bodies are established, or bodies are added as eligible for funding, or removed, the content of the Schedule should be updated. Accordingly, listing in the Schedule will mean that the body is eligible for funding by the Council. Ministers may only make such an order if the Council has proposed or approved the making of the modification. In doing so, the Council must have regard to the matters specified in section 7(2).

**Section 7(2)(i): Fundable Bodies: further provision**

Power conferred on: The Scottish Ministers.
Power exercisable by: Regulations.

10. Section 7 of the Bill outlines various provisions, procedures and arrangements that the Council must have regard to the desirability of ensuring are met, before the Council proposes or approves that a new body is added to, or removed from, the list of fundable bodies in schedule 2. Section 7(2)(i) gives Ministers the power to specify additional provisions, procedures or arrangements in future. This will allow Ministers to ensure that if additional requirements emerge in future, or changes of circumstances or other legal requirements necessitate future additions to the list of provisions, procedures or arrangements, then Ministers are able to incorporate these. It is considered that these would be sufficiently material changes, as they may affect whether a body is included in the list of fundable bodies, that Parliamentary scrutiny through the affirmative procedure would be appropriate.

**Section 7(4): Fundable Bodies: further provision**

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

11. This allows Ministers to alter the various provisions, procedures and arrangements that the Council must have regard to the desirability of ensuring are met, as specified in section 7(2)(a) to (h). In a similar way to section 7(2)(i), this will allow Ministers to ensure that if changed requirements emerge in future, in relation to the specified provisions, procedures and arrangements, then Ministers are able to incorporate these. Again, for the reasons stated above, it is considered that these would be sufficiently material changes that Parliamentary scrutiny through the affirmative procedure would be appropriate.

**Section 8(6): Funding of the Council**

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.
Parliamentary procedure: Negative resolution of the Scottish Parliament.

12. Section 8(6) deals with the ability of Ministers to specify requirements in relation to fees payable to fundable bodies, as part of the terms and conditions
imposed on the Council for grant funding. The Council can be obliged, as a condition of its grant from Ministers, to place conditions on a fundable body which obtains grant from the Council, in relation to the level of fees paid to that fundable body. Section 8(6)(a) provides that Ministers may by order specify the classes of persons for whom the fundable body is to secure that fees paid to the body will be equal to the fee levels as provided for in section 8(7). Section 8(6)(b) provides that Ministers may by order specify (i) the programmes of learning or (ii) courses of education in respect of which the fundable body is to secure that fees paid to the body will be equal to the fee levels as provided for in section 8(7).

13. This provision for specification of fees levels as part of the terms and conditions of grant to the Council will only apply to such classes of persons, programmes of learning or courses of education, as Ministers specify by order. It is considered appropriate that this is dealt with by way of order by negative procedure, to enable Ministers to specify in future the details of which persons, courses or programmes the power would apply to. It is not possible to specify fee levels, or which persons should pay these fees, at this point in time, as the determination of initial fee levels, and to which persons or courses this shall apply, is dependant on future external factors.

14. The provision is different from, but has analogies with, the existing provision in section 42(3B) of the Further and Higher Education (Scotland) Act 1992. This provides (in relation to the Scottish Higher Education Funding Council (SHEFC)), that terms and conditions of grant to SHEFC can require the recipient of a grant, loan or other payment to higher education institutions to secure that fees payable by any class of persons prescribed by regulations in connection with the attendance of courses, as prescribed by the regulations, are equal to such maximum allowance amounts that Ministers may determine under section 73D(2) of the Education (Scotland) Act 1980. Section 42(3B) is repealed by the Bill.

Section 8(7): Funding of the Council

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

15. This gives Ministers the power to specify fee levels to be applied for the purposes of section 8(6). It is not possible to set fee levels in the Bill itself as Ministers are considering their options on this issue in consultation with stakeholders. In particular, Ministers are exploring the possibility of setting a different fee level for medicine. The setting of fees in higher education is a particularly sensitive area and this new power in the Bill will allow Minister to differentiate fee levels for certain subjects. This is only intended to be used in exceptional circumstances, but is viewed by some stakeholders as controversial. As such, it is considered that the affirmative resolution procedure would be appropriate to ensure that a suitable level of Parliamentary scrutiny is given to any such proposals.

16. If Ministers determine that it is appropriate for this power to be used, this power would be used to set fee levels. The Explanatory Notes and Policy
Memorandum which accompany the Bill make it clear that if used, this power would only be used sparingly. At the moment, medicine is the only area being considered for this. A similar approach in other areas would only be considered in future where there is strong evidence that not doing so would disadvantage Scottish students.

17. Fee levels for particular academic years will also depend on future external factors. Provision by order allows for the specification of fees by reference to a particular academic year, or to authorise Ministers to determine fees for subsequent academic years. For subsequent years, Ministers may be authorised to determine fees that are, in each case, no higher than the initial specified year, or which, in any subsequent year, may be higher than the fees in the initial year, provided that the increase is no greater than required to maintain the value in real terms of the fees (having regard to any retail price index). Clearly, as time goes by, the real terms value of fee levels will fluctuate. It is therefore necessary to give Ministers a power to allow for changing circumstances in future, and for inflation.

Section 22(4)(j): Consultation and collaboration

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

18. Section 22(4) lists the bodies and persons that the Council must consult with in the exercise of its functions, so far as it considers appropriate. An order will allow Ministers to specify additional persons to be added to the list, to cover changes of circumstances, or changes in the nature or status of the specified bodies. It is considered that the power to make such amendments to the list is appropriate to be exercised through negative resolution procedure.

Section 24(1): Requirements as to Council’s functions

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

19. This section allows Scottish Ministers to impose requirements of a general or specific nature on the Council, as regards the exercise of its functions. The requirements cannot relate to the functions of the Council in having regard to the criteria specified for fundable bodies in section 7, or to information, advice or assistance provided by the Council in terms of section 17, nor can they relate to a particular fundable body. It is considered appropriate that an order by negative resolution here will allow Ministers, if required, the ability to specify general or specific requirements, or to make different provisions for different cases that may be necessary as a result of future circumstances. An important factor justifying Scottish Ministers’ powers to potentially impose requirements on the Council is the high level of funding received by the Council from the Scottish Ministers.
Section 26(1)(b): Application of the Scottish Public Services Ombudsman Act 2002

Power conferred on: Her Majesty.
Power exercisable by: Order in Council.

20. Section 26 amends the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”) to extend the remit of the Ombudsman to include those bodies which are fundable bodies under schedule 2 of the Bill, (with the exception of the Open University) and the Scottish Agricultural College (SAC). The section does this by adding a new Part 3 of Schedule 2 of the 2002 Act, listing the fundable bodies (except the Open University), and the SAC. By a new subsection (7) of section 3 of the 2002 Act, Her Majesty may by Order in Council amend Part 3, by modifying or removing entries, or adding entries relating to persons or classes of persons providing fundable further education or fundable higher education under the Bill.

21. This is appropriate because as the nature and functions of bodies change over time, it may be necessary to remove or add them to the remit of the Ombudsman. The same ability to amend the list (by Order in Council) applies for the authorities listed in Part 2 of Schedule 2 of the 2002 Act which are under the remit of the Ombudsman. Accordingly, the procedures are consistent between Parts 2 and 3 of Schedule 2. It is considered that the amendment of the list of persons or classes of persons within the new Part 3 of Schedule 2 of the 2002 Act is a sufficiently important matter that affirmative procedure is appropriate for approval of the draft Order in Council.

Section 31: Ancillary provision

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.
Parliamentary procedure: Negative Resolution of the Scottish Parliament, except that any Order under section 31 that amends an Act is subject to Affirmative Resolution.

22. This gives Ministers the powers to make incidental, supplemental, consequential, transitional, transitory or saving provisions for the purposes of or in consequence of the Bill. The primary purpose of this provision is to allow consequential amendments to be made to legislation, if required. Section 32(4) specifically provides that an order under section 31 which amends an Act will require to be subject to affirmative procedure. Schedule 3 of the Bill provides for consequential amendment of enactments that have been identified, but it may be that further provisions are required in future. Further consequential, incidental or transitional provisions may be required later, for example, in relation to the detailed arrangements for the establishment of the new Council, or the dissolution of the existing Councils. It may also be that Schedule 1 of the Bill does not in future cover all the legal and administrative arrangements that may be required at the time the new Council is established, in which event this power will be of use.
Section 34(2): Commencement

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

23. This is a commencement provision and there is no parliamentary procedure.

Schedule 3, paragraph 6(1)(c) (amending section 44 (designation of institutions) of the 1992 Act)

Power conferred on: The Scottish Ministers.
Power exercisable by: Order.

24. This provision is a consequential amendment of the 1992 Act. Section 44(1) of the 1992 Act provides for Ministers to be able by order to designate any higher education institution as an institution eligible to receive funding from the Scottish Higher Education Funding Council. This amends this provision so that Ministers may, by order, still designate such institutions for the purposes of those parts of Part II of the 1992 Act that remain in force. Particularly, this relates to the provisions in section 45 of the 1992 Act enabling the Privy Council to exercise powers in relation to such designated institutions.

ELLD: FAED & HESD
October 2004
APPENDIX 2

On 30 November 2004, the Committee asked the Executive for further explanation of the following matters:

Section 5(7)  Fundable further and higher education

“The Committee accepts the Executive’s view that, in order to allow the definitions to reflect changes which may occur over time, this is an appropriate matter for subordinate legislation. However, the Committee is of the view that the provision to “modify” subsections (1) to (6) creates wide powers for future subordinate legislation, which it considers should be subject to affirmative rather than negative procedure, particularly given that it is additionally a Henry VIIIth power. The Committee also notes that this provision covers a range of matters and is not particularly content that the two provisions at 5(1)(b) and 5(5) should be drawn together this way in legislation. The Executive is requested to provide comment on this matter.”

Section 7(1)  Fundable bodies: further provision

“Similarly to the point raised in relation to 5(7), the Committee was concerned that this provision has considerably wide powers and it considers that it should be subject to affirmative rather than negative procedure. The Executive is therefore requested to provide comment.”

Section 7(4)  Fundable bodies: further provision

“The Committee notes that there is considerable overlap between this power and that contained in 7(2)(i) and seeks clarification from the Executive on the drafting of this section.”

Section 7(5)  Power to issue guidance

“The Committee notes the power at section 7(5) for the Scottish Ministers to issue guidance in relation to the objectives set out at subsection 2. The Committee seeks clarification on the use of this power, with a view to reaching a judgement as to whether it may be appropriate for such guidance to be laid before the Parliament.”

Section 8(6)  Funding of the Council

“The Committee has some concerns in relation to the width of the powers that this provision grants to Ministers. The Committee accepts that this provision may be used to make modest changes but, given the scope of how it may be used, recommends that the Executive adopts affirmative rather than negative procedure. The Executive is requested to comment on this issue.”

Section 8(7)  Funding of the Council
“The Committee considers that this provision, as read with subsection (6), again gives very wide powers to Ministers, in relation to the setting of fees for further and higher education courses. The Committee noted that affirmative procedure has been set out in the bill for this provision but, given the level of detail to be set out in any delegated legislation, would recommend a more rigorous form of scrutiny. The Committee therefore requests that the Executive considers a super-affirmative procedure, whereby proposals in draft are laid before the Parliament to allow it to suggest amendments before the draft order itself laid. The Executive is requested to comment on this issue.

The Committee notes the concerns of the lead Committee in relation to both section 8(6) and 8(7) and asks that the Executive further outlines the intention of these powers in order to inform this Committee’s consideration of the balance between primary and secondary legislation in this bill.”

Section 22(4)(j) Consultation and collaboration

“The Committee notes that the power in paragraph (j) allows for bodies and persons to be added to the list but not for the amendment of the list and seeks clarification from the Executive on the intention of this provision.”

Section 31 and section 34(2)

“The Committee noted the inconsistency between the procedural provisions in these two sections and asks for clarification from the Executive.”

The Scottish Executive responds as follows:

Section 5(7) Fundable further and higher education

The Executive acknowledges that section 5(7) of the Bill contains provision that Ministers may by order under negative procedure modify subsections (1) to (6). However, the sole purpose of these subsections is to define the various programmes of learning which comprise “fundable further education” and “fundable higher education”, and which are referred to in various sections of the Bill. Accordingly, the power to modify in subsection (7) could only be used to modify the descriptions of the various programmes of learning that fall within the definitions of “fundable further education” and “fundable higher education.” It would be difficult for an order to distort this purpose of the section.

The Executive has considered that the modification of the descriptions of programmes of learning falling within the definitions of “fundable further education” and “fundable higher education” is a suitable matter for negative procedure. This is considered sufficient to allow the definitions to reflect changes that may occur over time, in the types of programmes and courses specified in the definitions. By section 5(8), Ministers are also required to consult the Council before making any order.
It may also assist the Committee to explain that the definitions of “fundable further education” and “fundable higher education” update for the purposes of the Bill, the definitions of “further education” and “higher education” contained within sections 6 and 38 of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”). These definitions will remain in force in relation to legislation which refers to these definitions in the 1992 Act. The provisions in section 5 of the Bill are drawn from these provisions to that extent. By sections 6(2) and 38(5) of the 1992 Act, Ministers may also by order, under negative procedure, modify entries relating to programmes of learning or courses within the definitions of “further education” and “higher education.”

The Committee indicates concern at the way in which the provisions in section 5(1)(b) and 5(5) are drawn together. Section 5(1)(b) provides that a programme of learning which prepares a person for (i) a qualification awarded by the Scottish Qualifications Authority (SQA) or (ii) a General Certificate of Education qualification of England and Wales or Northern Ireland, falls within the definition of “fundable further education” for the purposes of the Bill. Section 5(5) provides that, for the purposes of defining courses at higher level that fall within the definition of “fundable higher education”, a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses in preparation for the examinations that are specified in section 5(5)(a) to (d). The Department does not consider that there is any inconsistency between these provisions.

It may also assist the Committee to point out that these provisions in section 5(1)(b) and 5(5) update, for the purposes of the definitions of “fundable further education” and “fundable higher education” in the Bill, the corresponding provisions that define programmes of learning for the purposes of “further education” and “higher education”, as defined by sections 6(1)(b) and 38(3) of the 1992 Act.

**Section 7(1) Fundable bodies: further provision**

Section 7(1) of the Bill makes provision that Ministers may by order modify schedule 2, by adding, removing or varying entries relating to the “fundable bodies” that are specified in that schedule. The Executive has considered that the power to so amend schedule 2 by order is appropriate to be exercised under the negative procedure. This is considered appropriate to deal with the variety of situations where bodies may be subject to mergers, closure, changes of name, or new bodies are established, or bodies are added as eligible for funding, or removed.

It is acknowledged that, if there were no further restrictions on the exercise of the power, a power of Ministers to amend the list of fundable bodies may be a wide power, in respect that it may have serious effects upon a fundable body affected. However, section 7 contains further restrictions before the power can be exercised. By section 7(1), Ministers may only make the order where the Council has either proposed, or has approved, the making of a modification. By section 7(2), in so proposing or approving, the Council must have regard to the desirability of ensuring that all entries in the schedule relate to bodies for which the Council considers suitable provisions, procedures and arrangements are in place. The
various required provisions, procedures and arrangements are set out in section 7(2)(a) to (i). Accordingly, these limitations on the power will operate in any situation where Ministers propose by order that a body is either to be added or removed from the list in schedule 2.

If, however, upon consideration of this further explanation and information, the Committee remains of the view that affirmative procedure should be adopted here, then the Executive would be willing to instruct an amendment to that effect, and would discuss this further with Solicitors and Parliamentary Counsel.

Section 7(4)  Fundable bodies: further provision

The Executive does not consider that there is necessarily any overlap in the powers contained in section 7(2)(i) and 7(4). There is a distinction between the purposes of these provisions. The power by order in section 7(4), under negative procedure, would operate to enable the updating of the details of the various provisions, procedures and arrangements that are specified in section 7(2)(a) to (h) if that were required over time. The power in section 7(2)(i) is a further power by regulations, under affirmative procedure, to specify the details of additional provisions, procedures and arrangements that fundable bodies may be required to put in place over time. In accordance with paragraph 10 of the Memorandum to the Committee, it is considered that these would be sufficiently material changes that Parliamentary scrutiny through affirmative procedure would be appropriate.

Section 7(5)  Power to issue guidance

The Executive intend that the guidance referred to in section 7(5) would be guidance that would further clarify, for fundable bodies and the Council, the procedures, provisions and arrangements that bodies require to put in place for the purposes of section 7(2). This would also assist the Council in its responsibilities in terms of the section. Ultimately, under section 7(1), the Council would require to propose or approve the making of a modification. Thereafter, any modification of schedule 2 would require to be made by order.

Section 8(6)  Funding of the Council

This is a matter which has already been discussed further within the Executive, and which was addressed within the Deputy First Minister’s evidence to the Lead Committee on 16th November. The Executive intends to bring forward an amendment which would provide, as the Committee suggests, that the power under section 8(6) will be subject to affirmative procedure.

Further, we would be agreeable that this proposed amendment would include provision that consultation would be required with specified persons or bodies, prior to exercising the order making function under both 8(6) and 8(7). It is proposed that consultation would be required with (a) such persons or bodies that Ministers determine are representative of the students of fundable bodies as defined by the Bill, (b) the governing bodies of all fundable bodies as defined by the Bill, (c) the new Council, and (d) such other persons or bodies as Ministers
may determine from time to time. The precise wording of such a planned amendment will be discussed further with Solicitors and Parliamentary Counsel.

**Section 8(7)  Funding of the Council**

The Committee has suggested that a “super-affirmative procedure” be adopted for the power to set fee levels within the terms and conditions of grant funding to the Council. The Executive notes that such procedure has been adopted in certain exceptional cases, for example, for designation orders under section 6 and 7 of the National Parks (Scotland) Act 2000, or remedial orders under sections 12-14 of the Convention Rights Compliance (S) Act 2001. We have considered, however, that a sufficient degree of Parliamentary scrutiny of proposals to make any order under both section 8(6) and 8(7) will be in place, if affirmative procedure is adopted for both these subsections, and if there is a proposed amendment to put in place a statutory requirement for consultation, before any order is made, (as above).

In proposing this, we have also had regard to our policy intentions in relation to these powers, on which the Committee requests further details in its second paragraph. Initially, we would refer the Committee to paragraph 37 of our Policy Memorandum to the Bill:

“It is important to be clear that this power if used, is only intended to be used sparingly. Its purpose is to allow Ministers the flexibility to act in situations where Scottish students may be disadvantaged in specific subject areas by an increasing flow of students from elsewhere in the UK. At the moment, the only area this might apply to is medicine. Ministers believe it is essential that any further differentiation is carefully focussed and has the approval of Parliament.”

We would also draw to the Committee’s attention that this power to specify maximum fee levels within grant conditions to the Council shall replace the power that is already contained in section 42(3B) of the 1992 Act. This enables the specification of maximum fee levels within grant conditions to the Scottish Higher Education Funding Council. This existing power is to secure that maximum fee levels are set for any class of persons and for courses, as prescribed by regulations, to be equal to the maximum amount of allowances as determined by Ministers under section 73D(2) of the Education (Scotland) Act 1980. By section 60 of the 1992 Act, this power can be exercised under negative procedure.

**Section 22(4)(j)  Consultation and collaboration**

The intention of the Executive in this provision is to enable Ministers to specify (by order) additional persons with whom the Council must consult and collaborate with in accordance with section 22(1), beyond those listed in 22(4). This will enable a degree of flexibility if further suitable persons emerge in the future.

However, on further consideration of your comments, we believe that your point is correct and that it would be useful to have the ability to amend the list of persons, for example to cover any changes of legal status. We shall discuss the precise
wording of a proposed amendment further with Solicitors and Parliamentary Counsel.

**Section 31 and section 34(2)**

It is not considered that there is a procedural inconsistency between section 31 (ancillary provision), and 34(2) (commencement orders). Commencement orders are usually not subject to procedure. Section 31 may be used and is in force independently of a commencement order. It is considered appropriate to specify affirmative procedure, in accordance with section 32(4)(c), in respect of any ancillary orders under section 31 that amend an Act. If the Committee wish to elaborate further concerns on procedural inconsistency of these provisions, of course we shall consider that further.
ANNEX C

ANNEX C: EXTRACTS OF MINUTES FROM MEETINGS

ENTERPRISE AND CULTURE COMMITTEE

MINUTES

21ST MEETING, 2004 (SESSION 2)

TUESDAY 5 OCTOBER 2004

Present:
Mr Richard Baker
Susan Deacon
Christine May
Mr Jamie Stone
Mr Jamie Stone

Chris Ballance
Michael Matheson
Alex Neil (Convener)
Mike Watson (Deputy Convener)

Apologies were received from Murdo Fraser

The meeting opened at 2.00 pm

3. Further and Higher Education (Scotland) Bill: the Committee took evidence from:

Mark Batho; Head of Group; Lifelong Learning; Scottish Executive Enterprise, Transport and Lifelong Learning Department;

Gill Troup, Head of Division, Higher Education and Science, Scottish Executive Enterprise, Transport and Lifelong Learning Department; and

Gavin Gray, General (Higher Education), Scottish Executive Enterprise, Transport and Lifelong Learning Department;

on the Further and Higher Education (Scotland) Bill.

The Scottish Executive agreed to write to the Committee on the following issues:

- to clarify the position on the legal effect of the intention set out in paragraphs 17 and 18 of the Explanatory Note to the Bill as regards Scottish Ministers’ ability to set differential fees for different types of courses;
- to clarify the legal position as regards the accountability relationship between accountable officers for further education colleges and higher education institutes in accordance with the provisions of the Public Finance and Accountability (Scotland) Act 2000;
- to provide the Committee with a briefing paper on the arrangements for streamlining the quality assessments, and their effectiveness, in further education.
Present:
Mr Richard Baker Chris Ballance
Susan Deacon Murdo Fraser
Michael Matheson Christine May
Alex Neil (Convener) Mr Jamie Stone
Mike Watson (Deputy Convener)

Also present: Fiona Hyslop

The meeting opened at 2.04 pm

1. **Further and Higher Education (Scotland) Bill**: Fiona Hyslop declared an interest relevant to this item in that her husband is a lecturer at Glasgow Caledonian University and also works with the University of Glasgow on wider access issues.

   The Committee took evidence from:
   - Tom Kelly, Chief Executive, Association of Scottish Colleges;
   - Professor John Little, Principal and Chief Executive, Inverness College;
   - David Caldwell, Director, Universities Scotland;
   - Professor John Archer, Principal, Heriot Watt University and Convener, Universities Scotland;

   on the Further and Higher Education (Scotland) Bill.

   Universities Scotland and the Association of Scottish Colleges undertook to provide the Committee with:
   - a Universities Scotland report on accountability for public funding in higher education;
   - written comments on the Scottish Further Education Funding Council’s submission on audit arrangements in the further education sector.
Present:
Mr Richard Baker                               Chris Ballance
Michael Matheson                                Christine May
Alex Neil (Convener)                            Mr Jamie Stone
Mike Watson (Deputy Convener)

Also present: Fiona Hyslop

Apologies were received from Murdo Fraser

The meeting opened at 2.01 pm

1. **Further and Higher Education (Scotland) Bill**: the Committee took evidence on the Further and Higher Education (Scotland) Bill from the following:

Panel 1
Melanie Ward, President, National Union of Students Scotland;
Keith Robson, Director, National Union of Students Scotland;

The NUS agreed to circulate to the Committee:

- its submission to the Executive's Bill consultation;
- proposals for alternatives to the use of fees as an incentive for Scottish students to study and practice medicine in Scotland;
- further detail on its concerns about the wording of Section 12 of the Bill (Persons with Learning Difficulties).

Panel 2
John Andrew Murray, President, Glasgow University Students' Representative Council;
Brian Ferrick, Vice President, Elmwood College Students' Association;

Panel 3
Dr Alastair Hunter, President, Association of University Teachers Scotland;
Dr Tony Axon, Research Officer, Association of University Teachers Scotland;
Ms Andy Thomson, President, Higher Education National Executive, Educational Institute of Scotland;
Mr Howard Wollman, Honorary Treasurer, Higher Education National Executive, Educational Institute of Scotland;

The Association of University Teachers Scotland (AUT(S)) and the Educational Institute of Scotland (EIS) undertook to provide the Committee with the following information:
views from both the EIS and the AUT(S) on academic freedom for individuals in relation to the provisions in the Bill;
views from both the EIS and the AUT(S) on the potential for longer-term convergence of funding methods in further and higher education institutions;
views from the EIS on progress on implementing existing FE governance guidelines, and on current prohibitions relating to elected councillors as chairs of governing bodies;
clarification on the AUT(S) view that Scottish Ministers should have the power to give direction to the new funding Council on the division of resources between further and higher education;
clarification on EIS comments regarding adherence to Nolan principles in appointments to boards of managers and/or governors in further and higher education.
Present:
Mr Richard Baker
Murdo Fraser
Christine May
Mike Watson (Deputy Convener)

Also present: Fiona Hyslop and Jeremy Purvis

Apologies were received from Susan Deacon and Jamie Stone

The meeting opened at 2.02 pm

1. **Item in private**: the Committee agreed to take agenda item 4 in public and agenda item 5 in private.

2. **Further and Higher Education (Scotland) Bill**: the Committee took evidence from:

   - Chris Masters, Chair, Scottish Higher Education Funding Council;
   - Esther Roberton; Chair, Scottish Further Education Funding Council; and
   - Roger McClure, Chief Executive, Scottish Funding Councils for Further and Higher Education;

   on the Further and Higher Education (Scotland) Bill.

3. **Further and Higher Education (Scotland) Bill**: the Committee took evidence from:

   - Jim Wallace MSP, Deputy First Minister and Minister for Enterprise and Lifelong Learning;
   - Audrey Robertson, Head of Sponsorship of Funding Councils, Enterprise, Transport and Lifelong Learning Department;
   - Gill Troup, Head of Higher Education and Science Division, Enterprise, Transport and Lifelong Learning Department;
   - Gavin Gray, Higher Education and Science Division, Enterprise, Transport and Lifelong Learning Department; and
   - Colin Gilchrist, Legal and Parliamentary Services, Office of the Solicitor to the Scottish Executive;

   on the Further and Higher Education (Scotland) Bill.

5. **Further and Higher Education (Scotland) Bill (in private)**: the Committee discussed issues for inclusion in its draft report on the Further and Higher Education (Scotland) Bill. The Committee will consider a revised report on 7 December 2004.
ENTERPRISE AND CULTURE COMMITTEE

MINUTES

28TH MEETING, 2004 (SESSION 2)

TUESDAY 7 DECEMBER 2004

Present:
Mr Richard Baker  
Susan Deacon  
Murdo Fraser  
Christine May  
Alex Neil (Convener)  
Mr Jamie Stone  
Mike Watson (Deputy Convener)

Apologies were received from Chris Ballance and Michael Matheson

The meeting opened at 2.01 pm

4. Further and Higher Education (Scotland) Bill (in private): the Committee considered a Stage 1 draft report and agreed to consider a revised Stage 1 draft report at its next meeting.
ENTERPRISE AND CULTURE COMMITTEE

MINUTES

29th Meeting, 2004 (Session 2)

Tuesday 14 December 2004

Present:
Mr Richard Baker
Susan Deacon
Michael Matheson
Alex Neil (Convener)
Mike Watson (Deputy Convener)

Chris Ballance
Murdo Fraser
Christine May
Mr Jamie Stone

The meeting opened at 2.02 pm

8. **Further and Higher Education (Scotland) Bill (in private):** the Committee considered and agreed a revised Stage 1 draft report.
ANNEX D

ANNEX D: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

5 October 2004 (21st Meeting, 2004 (Session 2)), Written evidence

WRITTEN EVIDENCE FROM THE SCOTTISH EXECUTIVE

OVERVIEW OF CHANGES TO BILL FROM CONSULTATION

This sets out the changes which have been made to the draft Bill in light of the consultation responses. The changes are listed below in the order of the sections in the new version of the Bill, with reference back to the ordering and sections in the consultation draft.

Summary

- Tertiary is dropped in favour of reference to Further and Higher Education. This makes clear that we recognise the distinctiveness of both sectors. The purpose of the Bill is to merge the Councils to increase the interface between both sectors. Not to merge them. This is also reflected in the name of the new Council.

- The Bill has also been re-ordered so that the merger of the Councils is the first section.

- It was never our intention that the new Council should have a greater planning role. However, some stakeholders clearly believed this was the case. In order to make our intention clearer we have removed the duty on Ministers to secure adequate and efficient tertiary education. This has been replaced by separate duties on Ministers and the Council which more accurately reflect the roles and relationships. That is:
  - Ministers provide support (through funding and other means) and high level policy guidance
  - The Council allocates funds and takes a strategic overview of this investment to ensure policy is delivered
  - Institutions remain fully autonomous and responsible for planning at a local level.

- The Specified Tertiary Education Provider (STEP) designation has been replaced by ‘fundable bodies’.

- Controversial sections on Mergers, Development Plans and the Duty to Provide Tertiary Education have been removed and reflected in other sections of the Bill in a way which will allow us to meet our policy goals, without increasing burdens on institutions.

- The section on skills needs has been extended to reflect the wider social, cultural and economic remits of institutions. This section now gives the Council a duty to have regard to the needs of learners.

- Section 8 on the allocation of funds has been amended to allow the possibility of increasing fees for certain subjects, such as medicine, subject to Parliamentary approval. This will facilitate any decisions that may be made in line with the Executive’s policy on monitoring effects of variable fees in England on cross-border flows of students.

- New sections have been added in relation to:
  - Credit and Qualifications Framework
  - Administration of student support
  - Functions Regarding Certain Property
  - Application of the Scottish Public Services Ombudsman Act 2002
FURTHER AND HIGHER EDUCATION (SCOTLAND) BILL

Title and Terminology

One of the most apparent changes to the Bill is the new title and the decision to drop the use of the term ‘tertiary education’. From the consultation responses it was clear that the HE sector was opposed to this in the strongest terms. The FE sector was more accepting as they supported a signal of greater convergence between the two sectors, but some reservations about the term itself were expressed. NUS has indicated its strong support for the tertiary concept.

As a result, in the title and throughout the Bill, we now refer to Further and Higher Education. This change will send a strong message that we are not intending to merge the FE and HE sectors.

Ordering

In the consultation, it was clear that many concerns were coming from the way in which the Bill was being read. To address this we have considered the ordering of many sections. As a result, the Bill looks very different in some parts.

Section 1 – Scottish Further and Higher Education Funding Council
Section 2 – Dissolution of other funding bodies
Sections 9 and 10 in consultation draft

These clauses create the new Council and dissolve the existing bodies. These have been brought to the front of the Bill to make it clear that the main purpose is to merge the existing Councils and create a new body.

Section 3 – The Council: general duty
Section 4 – Scottish Ministers: general duty
Section 1 in consultation draft

Section one of the consultation draft gave Ministers a duty to secure adequate and efficient provision of tertiary education. This duty was to be delegated to the Council. Adequate and efficient was read by many to be a move to increase the ability of the Executive and the Council to plan provision, especially in the HE sector. This was never the policy intention and the decision was taken to split this section and create new separate, and more accurate, duties on Ministers and the Council.

Section 3 gives the Council a duty to secure coherent and high quality FE, HE and support the undertaking of research. Section 4 puts a duty on Ministers to support FE, HE and research by providing support, as they determine, through grants, or any other means.

Subsection (2) of the consultation draft which gave Ministers a power to do anything necessary or expedient in exercising this duty has also been removed.

Section 5 – Fundable further and higher education
Section 2 in consultation draft

In light of the comments above on the title, the definition of tertiary education was removed and is replaced here, and throughout the Bill, by reference to fundable further education and fundable higher education.

The term fundable has been introduced here to be clear that the new Council should not have a duty to support all provision at these levels but what is determined to be appropriate by Ministers. This is in keeping with the use of the phrase fundable bodies below. It also separates this from the definitions of further and higher education set out in the 1992 Act which will remain in force as many other pieces of legislation still refer to them.
Section 6 – Fundable bodies

Section 21 in consultation draft

One of the most controversial aspects of the initial draft Bill was the term ‘Specified Tertiary Education Providers’. This term has been dropped in favour of ‘fundable bodies’ which stakeholders feel is more acceptable. Fundable bodies are listed in Schedule 2.

Section 7 - Fundable bodies: further provision

Section 22 in consultation draft

This section sets out the basic conditions which institutions must meet to become fundable bodies and then maintain fundable body status. Subsection (2) sets out the high level issues which the Council must have regard to on these matters, for example in relation to governance and management or procedures for resolving grievances. This list has been expanded since the consultation draft to include:

- Procedures for meeting the needs of learners
- Procedures for strategic planning
- Use of the credit and qualifications framework promoted by the Council

In the consultation draft it was suggested that Ministers would expand on requirements in these areas through an order. It has now been decided that the Council should decide on the detail of the requirements and that any addition or removal from the list should be based on the recommendation of the Council. Ministers will have the power to add to or change any of these high level conditions by order.

Section 8 – Funding of the Council

Section 4 in consultation draft

This section outlines the terms and conditions which Ministers may impose on grants it makes to the Council. Importantly, subsection (12) here gives the protection for academic freedom, which prevents Ministers from directing funds to particular institutions or courses of study. This was formerly a provision for HE which now extends to all fundable bodies.

Due to a new policy position which developed during the consultation period, this section has now changed the basis on which fee levels can be set as a condition of grant. The provision in the 1992 Act, which was replicated in the consultation draft, stipulates that fee level must be less than the maximum allowance available to students under the Education (Scotland) Act 1980. This power had never been used, and has now been removed.

In the new provision, Ministers will use an affirmative order to stipulate a maximum fee level. It will also be possible to set different fee levels for different subjects, such as medicine. This is in line with the emerging policy to increase tuition fee levels and will allow the possibility of setting a higher fee for medicine, to address the concerns about cross-border flows with the introduction of variable tuition fees in England.

Section 9 – Funding of the Council: additional grants

Section 5 in consultation draft. Now also incorporating section 26

This is the section which will allow Ministers to direct additional, marginal grants to the Council for specific purposes. This has been extended to allow the distribution of funds to support restructuring, collaboration or innovation in provision. These provisions replace section 26 of the consultation draft which looked at merger evaluation. During consultation there was a clear message that this would be a more effective way of achieving our goals in this area. This will allow Ministers to direct funds in some circumstances to support sector-driven initiatives for collaboration or merger.
Section 10 – Administration of funds
  Section 11 in consultation draft

A new subsection (1) has been added to bring this clause into line with the new duty on the Council at section 3 above. Otherwise this clause is unchanged from the consultation.

Section 11 – Funding of fundable bodies
  Section 12 in consultation draft

Unchanged from consultation.

Section 12 – Person with learning difficulties
  Section 3 in consultation draft

Since the consultation, this has been changed from a duty on Ministers to a duty on the Council. This reflects the changes to the initial duties at sections 3 and 4. The duty has been changed to remove the 'over school age' restriction.

Section 13 – Quality of fundable further and higher education
  Section 15 in consultation draft

Unchanged from consultation.

Section 14 – Credit and qualification framework
  New provision – not in consultation draft

From the consultation, there was a clear message that more support should be give to developments with the Scottish Credit and Qualifications Framework (SCQF). Therefore, this new section gives the Council a duty to promote a credit and qualifications framework. This also links with the new provision in section 7 which will look for all fundable bodies to use a framework promoted by the Council.

Section 15 – Efficiency studies.
  Section 14 in consultation draft

Unchanged from consultation.

Section 16 – Council’s right to address meetings
  Section 13 in consultation draft

This was another of the more controversial clauses which the HE sector felt would infringe on the autonomy of governing bodies. After discussions with Universities Scotland we have softened terms of this provision in a way which should be more acceptable to them. We believe that this power remains essential in giving the Council a direct link to the governing body should other lines of communication break down.

Section 17 – Advisory functions
  Section 15 in consultation draft

Unchanged from consultation.

Section 18 – Functions regarding certain property
  New provision – not in consultation draft

On a final review of the 1992 Act it was realised that this section had to be brought forward. It was originally part of a larger section (43 - in the HE part) which was being repealed. This will now cover all fundable bodies.
Section 19 – Administration of certain support

The Scottish Further Education Funding Council currently allocates money to colleges for them to allocate to students as student support. This section amends the Education (Scotland) Act 1980 to permit the Scottish Ministers to direct the Council or any other body or person to administer forms of student support, where such support is granted under the 1980 Act.

These provisions will apply only in so far as relating to support for students undertaking or who have undertaken courses of education at fundable bodies as such bodies are defined in the Bill. The purpose of this provision is to allow, through direction or delegation, the administration of forms of student support on behalf of the Scottish Ministers by the Council or other bodies or persons.

Section 20 – Council to have regard to particular matters

Section 17 in consultation draft. Now also incorporating section 23

In the consultation draft, this section focused purely on skills needs (as set out in the partnership agreement). During the consultation there was a strong message that this may have an adverse effect in skewing the way the Council allocates its funding. It was felt that this section should also recognise the wider role of fundable bodies and recognise that many of them also operate in areas outside Scotland. The re-draft reflects this.

Subsection (3) here is also new and makes explicit reference to meeting the needs of learners. This in part replaces the provisions that were in section 23 (Duty to provide tertiary education) of the consultation draft as this duty on institutions has now been removed.

Section 21 – Equal opportunities

Section 19 in consultation draft

Unchanged from consultation.

Section 22 – Consultation and collaboration

Section 18 in consultation draft.

This is largely unchanged from the consultation draft. However, it does include one new subsection (6) which gives the Council a duty to promote collaboration among fundable bodies in HE and FE.

Section 23 – General powers

Section 20 in consultation draft

Unchanged from consultation.

Section 24 – Requirements as to Council’s functions

Section 6 in consultation draft

In the consultation draft, this section gave Ministers the power to issues directions to Council. The HE sector felt that these powers should only be exercised by order to offer some protection from misuse. These have now be framed as requirements, rather than directions, as a result of using an order.

Section 25 – Directions where financial mismanagement

Section 7 in consultation draft

Again, as suggested by the HE sector, this was strengthened so that directions could only be issued after consultation with the Council and the fundable body in question.
Section 26 – Application of the Scottish Public Services Ombudsman Act 2002

New provision – not in consultation draft

This was not in the consultation draft as it was being consulted on separately. This new provision will bring all fundable bodies (other than the Open University) and the Scottish Agricultural College into the remit of the SPSO.

Universities have also voiced some concerns about this, but we believe that we can answer all of the concerns raised in their consultation response. Signals from Universities Scotland are that they do not see this as a priority now as they wish to focus on other parts of the Bill.

Section 27 – Inspection of Accounts

Section 25 in consultation draft

Unchanged from consultation.

Section 28 – Change of name by certain bodies

Section 27 in consultation draft

Unchanged from consultation.

Section 29 – Information about recorded children

Section 28 in consultation draft

Unchanged from consultation.

Section 30 – Amendment of enactments
Section 31 – Ancillary provisions
Section 32 – Orders and regulations
Section 33 – Interpretation
Section 34 – Short title and commencement

Sections 29-33 in consultation draft

Have all been updated as required

Schedule 1 – The Scottish Further and Higher Education Funding Council

Some changes have been made to this schedule. The Chief Executive of the new body will be a member of the Council, and provision has been made to ensure that some members of the Council have suitable experience of research. One of the Council members will be appointed chair of the research committee.

Schedule 2 – Fundable bodies

The four categories will be reduced to two, taking on board feedback from consultation. The two new categories will be bodies formerly fundable by the Scottish Further Education Funding Council and bodies formerly fundable by the Scottish Higher Education Funding Council.

Schedule 3 – Amendment of enactments

One addition has been made to the list of consequential amendments (Education Reform Act 1988) and some changes have been made to the amendments to the 1992 Act.
### Key to draft Bill provisions

**EC/S2/04/21/2 Annex B**

**Part 1 - Provision of tertiary education etc**

<table>
<thead>
<tr>
<th>Consultation draft</th>
<th>1992 Act</th>
<th>Draft Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section</strong></td>
<td><strong>Title</strong></td>
<td><strong>Comment</strong></td>
</tr>
<tr>
<td>1</td>
<td>Duty to secure provision of tertiary education and research</td>
<td>This provision currently exists in the 1992 Act for FE only. This extends the duty to all tertiary education and research</td>
</tr>
<tr>
<td>2</td>
<td>Tertiary Education</td>
<td>Provides definition of Tertiary Education based on amalgamating the current definitions from the 1992 Act. The definition will be used for the purposes of this Act only, the 1992 definitions will remain intact. The definition also refers to ‘over school age’ and ‘not in school’. This is currently the subject of the School/College review and may change.</td>
</tr>
<tr>
<td>3</td>
<td>Persons with Learning Difficulties</td>
<td>This provision currently exists in the 1992 Act for FE only. This extends it to all tertiary education.</td>
</tr>
<tr>
<td>4</td>
<td>Funding of the Council</td>
<td>This section relates to the funding Scottish Ministers can make to the new body. It largely replicates section 42 of the existing Act. Subsection 13, which protects academic freedom, previously existed for HE, and has now been extended to colleges</td>
</tr>
<tr>
<td>Consultation draft</td>
<td>1992 Act</td>
<td>Draft Bill</td>
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<tr>
<td><strong>Section</strong></td>
<td><strong>Title</strong></td>
<td><strong>Comment</strong></td>
</tr>
<tr>
<td>5</td>
<td>Funding of the Council – additional grants</td>
<td>This section has been added to regularise the current position where additional grants are made for specific purpose, for example additional money for training health professionals.</td>
</tr>
<tr>
<td>6</td>
<td>Directions to Council</td>
<td>This allows Scottish Ministers to issue directions of a general or specific nature to the new body. These directions cannot relate to an individual STEP</td>
</tr>
<tr>
<td>7</td>
<td>Directions where financial mismanagement</td>
<td>This extends a provision from the 1992 Act to all STEPs</td>
</tr>
<tr>
<td>8</td>
<td>Delegation of functions under section 1(1)</td>
<td>Delegates the adequate and efficient duty to the new body. Gives the new body rights – from the 1992 Act</td>
</tr>
</tbody>
</table>
**PART 2**

**FUNDING OF TERTIARY EDUCATION ETC.**

Scottish Tertiary Education Funding Council

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Comment</th>
<th>1992 Act</th>
<th>Draft Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Scottish Tertiary Education Funding Council</td>
<td>Creates the new body. At this stage the name Scottish Tertiary Education Funding Council is being used</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>10</td>
<td>Dissolution of other funding bodies</td>
<td>Dissolves SFEFC, SHEFC and the joint body – Scottish Funding Councils for Further and Higher Education</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>11</td>
<td>Administration of funds</td>
<td>Sections 11 and 12 are adapted from section 40 of the 1992 Act and set out how the Council can allocate its funds</td>
<td>40</td>
<td>10</td>
</tr>
<tr>
<td>12</td>
<td>Funding of specified tertiary education providers (STEPs)</td>
<td>As Above</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>13</td>
<td>Funding: requirement to hold meeting</td>
<td>This is a new section which will give the Council a power to require the holding of an extraordinary meeting of a STEP’s governing body to discuss matters relating to the financial support it may receive.</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>14</td>
<td>Efficiency studies</td>
<td>Adapted from section 51 of the ’92 Act which give Council the power to carry out or commission efficiency studies.</td>
<td>51</td>
<td>15</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Comment</td>
<td>1992 Act</td>
<td></td>
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<tr>
<td>---------</td>
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<td>-------------------------------------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>15</td>
<td>Quality of tertiary education</td>
<td>Extends existing duty to assess quality in HEIs to cover colleges as well. This duty will also now encompass enhancement.</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Advisory functions of the Council</td>
<td>Duty on Council to provide advice to Ministers as they require. Adapted from existing provisions in sections 8 and 43 of the 1992 Act.</td>
<td>8, 43</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Skills needs</td>
<td>New section, reflecting the Partnership Agreement commitment, which tasks the Council to have regard for the future skills needs of Scotland.</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Consultation and collaboration</td>
<td>Sets out the key bodies which the Council must work and share information with. It also puts a duty on these bodies to provide information to the Council. Expands on what is contained in section 50 of the 1992 Act.</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Equal opportunities</td>
<td>New section which makes explicit reference to equal opportunities legislation.</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultation draft</td>
<td>1992 Act</td>
<td>Draft Bill</td>
<td></td>
<td></td>
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<tr>
<td>Section</td>
<td>Title</td>
<td>Comment</td>
<td>Section</td>
<td>Comment</td>
</tr>
<tr>
<td>20</td>
<td>General powers</td>
<td>This section outlines other powers given to the Council in relation to property, contracts borrowing money etc. This is adapted from what is in schedules 1 and 7 of the 1992 Act.</td>
<td>S1, S7</td>
<td>23</td>
</tr>
</tbody>
</table>

Specified tertiary education providers

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Comment</th>
<th>Section</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Specified tertiary education providers</td>
<td>Reference to Schedule 1 in the new Act which outlines the institutions who will become STEPs</td>
<td>6</td>
<td>Reference to STEPs replaced by fundable bodies</td>
</tr>
</tbody>
</table>
| 22 | Specified tertiary education providers: further provision | New section. Provides an outline of the kind of conditions an institution must meet to become a STEP and to retain STEP status. | 7 | List has been expanded since the consultation draft to include:  
  - Procedures for meeting the needs of learners  
  - Procedures for strategic planning  
  - Use of the credit and qualifications framework promoted by the Council  
  In the consultation draft Ministers would expand on requirements in these areas through an order. It has now been decided that the Council should set out the detail of the requirements and that any addition or removal from the list should be based on the recommendation of the Council. Ministers will have the power to change any of these high level conditions by order. |
<p>| 23 | Duty to provide tertiary education | New section. Duty on the governing body of any STEP to provide a suitable range of efficient provision having regards to local | 12 | Removed – included in section 7 of final draft Bill (section 22 in consultation draft) |</p>
<table>
<thead>
<tr>
<th>Part 3 - General</th>
<th>1992 Act</th>
<th>Draft Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultation draft</td>
<td>Comment</td>
<td>Section Title</td>
</tr>
<tr>
<td>29</td>
<td>Amendment of enactments</td>
<td>Ref to schedule 3</td>
</tr>
<tr>
<td>30</td>
<td>Ancillary provision</td>
<td>Gives Ministers powers to amend this Act in future if required.</td>
</tr>
<tr>
<td>31</td>
<td>Orders and regulations</td>
<td>Give Ministers the power to make orders or regulations under the Act.</td>
</tr>
<tr>
<td>32</td>
<td>Interpretation</td>
<td>Sets out definitions etc. as used in the Act.</td>
</tr>
</tbody>
</table>
### New Sections in draft Bill

**Section 14  Credit and qualification framework**

Places a duty on the Council to promote a credit and qualification framework for use by the fundable bodies. This section is linked to the provision made in section 7(2)(f) which will require all fundable bodies to make use of whichever framework the Council promotes.

**Section 18  Functions regarding certain property**

Extends existing provisions for the Scottish Higher Education Funding Council from section 43 of the 1992 Act, to all fundable bodies. This allows Ministers to delegate their functions in respect of rights which Ministers may have in land and property that is used or held for the purposes of a fundable body, to the Council.
Section 19  Administration of certain support

The Scottish Further Education Funding Council currently allocates money to colleges for them to allocate to students as student support. This section makes further provision as to the powers under which Ministers and the Council are able to do this.

Section 26  Application of the Scottish Public Services Ombudsman Act 2002

This extends the remit of the Ombudsman to include those bodies which are fundable bodies under schedule 2 of the Bill, (with the exception of the Open University) and the Scottish Agricultural College (which is currently funded directly by Scottish Ministers and not through either of the existing Councils). The remit of the Ombudsman, however, does not apply to matters concerning academic judgement. This was subject to separate consultation.
### Sections of the 1992 Act left in force

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Duty of Secretary of State to secure provision of further education. Some parts of section 1 have been repealed – subsections (1), (2) and (4)-(6).</td>
</tr>
<tr>
<td>2</td>
<td>Function of education authorities.</td>
</tr>
<tr>
<td>3</td>
<td>Powers of secretary of state. This section remains in an amended form.</td>
</tr>
<tr>
<td>5</td>
<td>Requirement of Secretary of State to consult.</td>
</tr>
<tr>
<td>6</td>
<td>Further education to which section 1 applies.</td>
</tr>
<tr>
<td>11-21</td>
<td>Sections on Colleges of Further Education – Management, Staff, Property and educational endowments. Section 12 remains in an amended form.</td>
</tr>
<tr>
<td>24-36</td>
<td>Miscellaneous provisions on colleges and Transitory and Transitional Provisions.</td>
</tr>
<tr>
<td>38</td>
<td>Meaning of higher education.</td>
</tr>
<tr>
<td>44-49</td>
<td>Provisions relating to designated higher education institutions. Section 44 remains in an amended form.</td>
</tr>
<tr>
<td>52</td>
<td>Exercise of powers of Privy Council.</td>
</tr>
<tr>
<td>55-62</td>
<td>General and Miscellaneous provisions relating to HE. Section 59A is being repealed.</td>
</tr>
<tr>
<td>Schedules 2-6</td>
<td>Various constitutional issues concerning colleges.</td>
</tr>
<tr>
<td>Schedules 8-10</td>
<td>Transitional provisions, miscellaneous and consequential amendments. Two sections from Schedule 9 – 4(3) and 5(3) – have been repealed.</td>
</tr>
</tbody>
</table>
Further and Higher Education (Scotland) Bill

14:50

The Convener: We move to item 3. While the Scottish Executive officials take their seats, I will say a few things about the Further and Higher Education (Scotland) Bill. First, I remind committee members that the bill resulted from a recommendation of the Enterprise and Lifelong Learning Committee, of which I was a member. One of the many recommendations arising from our lifelong learning inquiry was that the two funding bodies should be merged.

Secondly, this is the fourth round of consultation on the issue since the first consultation was conducted by the Enterprise and Lifelong Learning Committee two years ago. We have to keep an open mind, but I think that there is general acceptance of the need for the merger. It would be particularly helpful if the committee focused on the practicalities and the detail of the bill, about which there has been a degree of controversy.

Thirdly, I remind everybody about the differences between the draft bill and the bill, because some of the concerns that were expressed by outside bodies have been addressed in the bill that is before us.

Having given a preamble to give them time to get into their seats, I welcome Mark Batho, who is head of the lifelong learning group in the Scottish Executive Enterprise, Transport and Lifelong Learning Department; Gill Troup, who is head of the higher education and science division in that department, and Gavin Grey, who is also from the higher education and science division.

I also welcome Fiona Mullen from the Scottish Parliament information centre, who has prepared an extremely helpful paper showing the differences between the previous draft bill and the existing bill. I have asked Fiona to come to the table so that if we have any points that we feel we need to refer to her, we can do so.

I remind the politicians that these witnesses are officials, so they are not able or willing to answer political questions. They are here to answer technical questions about the bill. Would you like to say a word or two of introduction, before I go round the table for questions?

Mark Batho (Scottish Executive Enterprise, Transport and Lifelong Learning Department): I am afraid that I cannot offer a theatrical performance this afternoon, but we will do our best.
The purpose of the bill is to create a single funding council for FE and HE. It has to be seen in the context of the wider lifelong learning strategy, of which the bill is one part, to create the best possible opportunities for people to learn and to create the best match between learning opportunities and Scotland’s societal and economic needs. The background, as you said, convener, lies with this committee’s predecessor committee, the Enterprise and Lifelong Learning Committee, which examined lifelong learning and found that, while there was significant joining up across different aspects of learning, things could be improved. The bill is one attempt to create a greater joining up between further and higher education.

The draft bill was put out in April, along with a consultation paper, to which there was a fairly lively response. It was followed by a period of intensive engagement between Executive officials and representatives of the different stakeholders, particularly higher education stakeholders, who had the greatest concerns.

The main concerns that emerged were about the need to recognise the distinctive roles of higher education institutions and colleges. There were concerns that the Executive or the new funding council should not take on more powers in relation to the planning of provision at the expense of the valued independence of institutions and colleges. There was also the late-emerging concern of the National Union of Students about the power to allow differential fees to be charged for different courses of study.

As the SPICe paper indicates, the bill has changed significantly from the consultation draft. The main change is that the term “tertiary education” has been dropped to alleviate concerns about the distinctiveness of the further and higher education sectors. The bill has been significantly reordered and there has been some redrafting of provision to make clear the distinctive roles of the Government, the funding council and the institutions and colleges—in effect to say that the Government deals with matters of strategy and the funding council for FE and HE. It has to be seen in the context of the wider lifelong learning strategy, of which the bill is one part, to create the best match between learning opportunities and Scotland’s societal and economic needs. However, in practice, there is no difference between the intention of the consultative bill that was issued in April, which referred to tertiary education, and the present one.

Richard Baker (North East Scotland) (Lab): The bill is much better and it is good that the sectors’ concerns have been taken on board. That bodes well for the draft bill process. Many of the concerns have been addressed already, but there are still two areas that I wish to ask about.

First, why was the proposed name of the council changed from the Scottish tertiary education funding council to the Scottish further and higher education funding council? Presumably the change in title is a matter of emphasis and has no material impact on policy or the drive towards greater articulation between the two sectors.

Mark Batho: That is correct. The higher education sector in particular was concerned that its brand might be compromised internationally by a misunderstanding of the fact that the tertiary sector contained the higher education and further education sectors. However, in practice, there is no difference between the intention of the consultative bill that was issued in April, which referred to tertiary education, and the present one.

Richard Baker: I welcome those comments. My second question is on fees. The NUS and others have raised the issue of ministers being able to vary the overall level of fees. I understand that that
part of the bill is new and that the provisions were not included in the draft bill.

15:00

Mark Batho: No, those provisions post-date the consultation and were not in the draft bill. They were included in the Deputy First Minister’s announcement of 24 June.

Richard Baker: I seek assurance that the intention behind section 8 is purely to give ministers the ability to vary fee levels in order to address cross-border flows. I know that ministers are concerned in particular about the Scottish medical schools. I understand that the provisions are intended to prevent English students in particular from coming to Scotland to take up a cheap medical course and, in so doing, crowding out Scottish students. I want to be sure that that is the reason why ministers are seeking the ability to raise fee levels by way of the bill.

Although the Executive’s position is made clear in the explanatory notes, perhaps you could advise the committee what weight the explanatory notes carry in ensuring that the provisions can be used only for that purpose.

Mark Batho: On the first point, the member is exactly right: the provisions specifically address cross-border flows. As things sit today, the Quigley agreement means that the costs of studying in Scotland are broadly the same as those in England. The introduction of variable fees south of the border alters the balance. As the member rightly said, it creates the potential that more English students will be attracted to Scottish universities. Medicine is the course that has been specifically identified in that respect.

The provisions are intended purely as a market mechanism that would operate against the background of Scotland-domiciled students not paying fees. The limit of the intention is to reflect the situation that is likely to happen in England. Fees could not be varied by the institutions; the provisions would be applied across the institutions.

I am not a lawyer, but I am assured that the legal effect of the explanatory notes is taken into account in any interpretation of the law. Without my legal friends beside me, I cannot offer anything more than that. The notes have weight—

Richard Baker: They have legal weight—

Mark Batho: Yes, in determining the purpose of the provision when it was introduced.

Richard Baker: Some people have described the provision as fees by the back door. However, you are saying that there is no way in which the bill could allow Scottish institutions to charge their own levels of fees in line with those in England.

Mark Batho: They could not do it.

The Convener: It might be useful if you could ask the Executive’s lawyers to confirm your response to the point that Richard Baker raised and, again for the record, to confirm that any changes in fees under the bill would have to be made by statutory instrument.

Mark Batho: Indeed.

The Convener: The statutory instrument would come to this committee for approval.

Mark Batho: It would come under the affirmative procedure.

Mike Watson: It is fair to say that we have been round the block a few times on this issue both in this Parliament and in another place. I cannot remember any draft bill having so many changes before it is finally introduced. The changes are so many that the bill has had to have a special section on them.

The Convener: What about the Scotland Act 1978?

Mike Watson: I do not remember that one. I am such a sad person—I read all through the policy memorandum. Paragraph 54 nearly took my breath away. It says:

“The Enterprise, Transport and Lifelong Learning Department has undertaken a comprehensive programme of consultation on these proposals.”

I thought that the reference was to the published proposals, but the paragraph went on to say:

“In November and December 2003 the Department held individual meetings with key stakeholders”.

Given that the proposals were published in April of this year, what went so wrong between when you had the outcome of the consultations and when you published the proposals? Did the proposals have to be changed because of subsequent discussions with stakeholders? Why did those issues not emerge in the initial consultations? If they had, the draft bill might have looked a bit more like the final bill.

Mark Batho: The answer is probably that, in substance, the bill is significantly as was originally discussed with the stakeholders last year. The bill attempts to give greater uniformity between the existing provisions for further and higher education, but the way in which that was presented caused people significant concerns about how it might be interpreted in future. There has been a significant amount of drafting, rather than change of policy, in order properly to reflect
the concerns that stakeholders had about how the provisions might be interpreted.

For example, we were originally going to include a duty to make “adequate and efficient” provision. Such a duty already applied to further education and the firm intention was that it was a duty requiring ministers to take care of further and higher education. However, there was a concern that the new application of that term to higher education might be interpreted as being a planning power for ministers, so that they could look across the piece and say, “It isn’t adequate,” or, “It isn’t efficient.” There was concern that the wording that was intended to put a duty on ministers was not actually doing that. The reordering of the bill as you now see it, particularly in sections 1, 2 and 3, teases that out to deliver what was the policy intention to begin with.

**Mike Watson:** I can understand that, and I can understand the renumbering of some of the sections, but it seems to me that the most controversial issues—I notice that the word “controversial” is used on a number of occasions in your submission on the changes—are such things as the use of specified tertiary education providers, or STEPs, and tertiary education fundable bodies. When I spoke to academics, the concern raised most often was the business about academic freedom, restricting the ability of ministers to indicate the type and nature of provision by individual institutions. I know from colleagues in the FE sector that that provision has been well received.

I shall ask Gavin Gray to expand on some of the aspects where there will be a difference in further education in relation to governance. There is a difference in the FE sector boards’ relationship with the Parliament under the public finance legislation. That is one area in which we have not been able to apply to the FE sector the provisions that apply in relation to higher education.

**Mike Watson:** Are you referring to the Public Finance and Accountability (Scotland) Act 2000, which was passed in the early days of the Scottish Parliament?

**Gill Troup:** Yes, I am talking about the accountable officer relationship of the individual college board under the Public Finance and Accountability (Scotland) Act 2000.

**The Convener:** Can you explain in more detail what the difference is, please?

**Gavin Gray (Scottish Executive Enterprise, Transport and Lifelong Learning Department):** When the Public Finance and Accountability (Scotland) Act 2000 was passed, HEIs were exempt from that act but FE colleges were included. That has not been changed, so it is one area in which there will still be some differences between the two sectors.

**The Convener:** What does that mean in practical terms?

**Gill Troup:** It means that audit of colleges is undertaken by the Auditor General for Scotland. That is not the case for universities.

**Christine May:** Perhaps the committee could get a letter clarifying that.

**The Convener:** Yes, it would be helpful if we could get more clarification on that.

**Mike Watson:** I have two further points to raise. In section 20 of the draft bill, the council was told that it had to have regard just to skills, but that provision has been expanded to include economic, social and cultural issues. Can you say a bit about where that change came from? What was the driver for that?
Mark Batho: It was the concern of the higher education sector especially, but of others as well, that our higher and further education institutions are not just about skilling up our work force but have a wider contribution to make. It was felt that reference to social, cultural and economic issues encapsulated that wider role beyond simply the provision of a training ground for the work force. The bill was redrafted to try to capture that idea.

Mike Watson: I am interested to hear that the idea came from the higher education sector. I would have thought that it might have come from the further education sector.

Mark Batho: It was principally the higher education sector that made that point.

Mike Watson: Wherever the idea came from, I am pleased to see it included in the bill.

My second point relates to the Scottish public services ombudsman. The financial memorandum states:

“The Ombudsman’s office has calculated the likely cost implications for 2005/06 to be in the order of £50,000-£60,000. This can be met from within existing Departmental budgets.”

Is that the start-up cost to enable the ombudsman to get up to speed with the additional work that is likely to be generated, or is it likely to be a recurring expenditure uprated on an annual basis?

Gill Troup: That is the estimate of the recurring costs for the ombudsman’s office. We have compared that with the estimate for the Office of the Independent Adjudicator for Higher Education, south of the border, and found that the estimates are consistent with each other.

Mike Watson: In the same paragraph, the financial memorandum states that the Executive has,

“in consultation with the Ombudsman, sought information”

about likely complaints. Thirty complaints a year are expected. I understand that the ombudsman’s experience as a professor at the University of Edinburgh would inform her about the detail of that sort of issue; however, there has never been anything like that before. I wonder what that figure is based on. Are you able to tell us, or is that a question that we should put to the ombudsman?

Gill Troup: That would be a question for the ombudsman. However, I understand that it was based on evidence that the ombudsman’s office sought directly from the institutions about the number of complaints that go beyond the internal level at the moment.

The Convener: Should we write to the ombudsman, asking for more written information on that?

Mike Watson: That would be useful. Thank you.

The Convener: Is that agreed?

Members indicated agreement.

Christine May: We could also ask for more information on the funding of the ombudsman’s office.

The Convener: Absolutely. The ombudsman part of the bill arose from a recommendation in the Enterprise and Lifelong Learning Committee’s report. It is good to see that the Executive is listening to the wisdom of the committees.

Christine May: I would like to pick up on the ombudsman provision. One of the concerns that was raised was a fear that the ombudsman might have something to do with academic quality decisions. That, allied to a concern about the powers that it was perceived that ministers were giving themselves to intervene in the policy direction of the individual institutions, seems to have been dealt with. Would you like to comment on what was done in that respect?

Mark Batho: Quite simply, the bill now states that the ombudsman will not deal with matters of academic complaint.

Gill Troup: May I make a clarification about matters concerning academic judgment? There may be complaints about the administration of academic procedures, which will be covered by the ombudsman.

Christine May: But to confirm, there is provision in the bill for some sort of quality assurance of academic standards.

Mark Batho: Yes, through the Quality Assurance Agency for Higher Education, as now.

15:15

Christine May: On collaboration between fundable bodies, I presume that the provisions are designed to allow any new merged institutions to be included by statutory instrument. Is it envisaged that we may have more degree-level courses being validated by higher education institutions but being delivered elsewhere?

Mark Batho: Ministers would be happy to see that happen. They are not forcing merger or collaboration, but projects such as the UHI Millennium Institute, the Crichton campus and other collaboration arrangements between the further and higher education sectors are all welcome.

Christine May: That brings me to my final question, which is about the anomaly that degrees that are validated by higher education institutions but which are delivered in FE colleges attract a
lower rate of financial support. Will that be changed to make the situation equitable?

Mark Batho: I will not say yes at the moment, but I will say that an internal review of funding for learners has just been published, and it addresses issues across the HE and FE boundaries. It is simply a review to identify issues that need to be addressed in the short, medium and long term. The matter is quite far down the track, not least because of the significant funding issues that are involved.

Christine May: Committee members might want to keep that issue at the back of their minds.

The Convener: Absolutely. The committee might want to address funding for learners in its work programme later in the year, once we have seen the results of the Executive’s work.

I have two questions. First, on quality, one of the recommendations from the lifelong learning inquiry was that quality control should be better co-ordinated between higher and further education. There was a particular problem in further education, in that some colleges were subject to 28 separate quality assessment regimes, mainly because of their involvement in Scottish Enterprise programmes. That does not come under the auspices of the bill.

However, a substantial proportion of higher education is now provided in further education colleges. I can understand why the provisions in the primary legislation are as wide as they are, but is it intended—either by statutory instrument or by some other means—to address issues to do with better co-ordination on quality and taking a more equal approach to quality for the two different types of institution, given that the colleges are inspected by Her Majesty’s Inspectorate of Education and the universities are inspected by the QAA?

Gill Troup: We have discussed that from the point of view of policy. As you rightly said, the position in the bill on quality is that the funding council has an obligation to assure and enhance quality—the reference to “enhancing” is new. Ministers took the view that there is now considerable evidence of collaboration between the various quality bodies that are in and out of our institutions. For example, HMIE is co-operating with Scottish Enterprise on the mutual recognition of quality systems. Similarly, I note that the QAA in Scotland is in discussions with HMIE about its approach to the UHI Millennium Institute, which sits on both sides of the issue.

The feedback from the institutions is that they are pleased to see the developments happening and the Executive does not have a policy view that any intervention would be needed at the moment. However, a piece of work that we commissioned has been completed recently on the overall approach to quality throughout Scotland, which fulfilled a commitment in the lifelong learning strategy. We hope that the report will be published shortly as a contribution to the debate about greater harmonisation throughout our quality assurance systems.

The Convener: It would be useful to get a report on how well the streamlining exercise is going, in measurable terms, particularly on the colleges and Scottish Enterprise side. I know that that does not relate directly to the bill, but it is a major issue and was a major cost factor for colleges too—it clearly became a nonsense. Most of the 28 regimes were publicly funded from the same sources.

Mark Batho: Would it be helpful if we produced a short paper on that?

The Convener: That would be extremely helpful.

The other general point that I want to make is on section 16, in relation to the watered-down right of the new merged council to attend meetings of the governing body of any of the institutions. Is there an intention to qualify that by statutory instrument after the bill is enacted? If so, what are your thoughts? For example, does there have to be mutual agreement as to the date, time and place of meetings? Does funding have to be on the agenda of the meeting? Roger McClure could turn up at any board meeting of any of the institutions and the chief executive, principal or whoever could decide that funding was not on the agenda.

We have already seen the situation at Central College of Commerce in Glasgow where the board has ignored the ruling of an employment tribunal. I do not want to get into that issue, but it is an example of where it will be important to define properly the relationship between the funding council and the governing bodies. We have a fairly general provision, which again is an improvement on the draft bill and probably much more acceptable to the institutions concerned. Is there an intention to further qualify it by statutory instrument?

Mark Batho: I think that my colleagues will back me up when I say no. That is the power that has been discussed with the different sectors, including the chairs of universities, who had a significant say and had concerns about the constitutional right of the funding council to demand a meeting. The view that has come across is that the provision will work because it is a sensible way to go about things and people would not want it to be particularly qualified and restricted. If experience dictated that things were going wrong and the provision was being misused in any way, there would be opportunities to revisit it.
5 October 2004 (21st Meeting, 2004 (Session 2)), Supplementary Written Evidence

SUPPLEMENTARY WRITTEN EVIDENCE FROM THE SCOTTISH EXECUTIVE

At the meeting of the Enterprise and Culture Committee on 5 October 2004, during the evidence session on the Further and Higher Education (Scotland) Bill, you asked for further information on three areas:

- To clarify the position on the legal effect of the intention set out in paragraphs 17 and 18 of the Explanatory Note to the Bill as regards Scottish Ministers' ability to set differential fees for different types of courses;
- To clarify the legal position as regards the accountability relationship between accountable officers for further education colleges and higher education institutes in accordance with the provisions of the Public Finance and Accountability (Scotland) Act 2000;
- To provide the Committee with a briefing paper on the arrangements for streamlining the quality assessments, and their effectiveness, in further education.

Please find three annexes attached to this letter, which contain responses to each of these points.

ANNEX A

To clarify the position on the legal effect of the intention set out in paragraphs 17 and 18 of the Explanatory Note to the Bill as regards Scottish Ministers' ability to set differential fees for different types of courses

1. It is the view of the Executive that courts will have regard to accompanying documents in interpreting legislation and consider them as being authoritative as regards the executive's view of its effect. But, the Executive believes that the courts do not consider the documents to be in any way authoritative as to Parliament's views and do not therefore feel obliged to interpret legislation in accordance with statements made in them. This in recognition of the fact that the documents are not endorsed by the Parliament.

2. The case of Westminster City Council v National Asylum Support Service [2002] UKHL 38 examined the legal status of accompanying documents. Lord Steyn, in obiter remarks analysing the status of Explanatory Notes which accompanied the Immigration and Asylum Act 1999, makes clear that the courts do not need to establish an ambiguity before taking into account any material which casts light on the objective setting or contextual scene of a statute. The Lords of Appeal, after considering the Explanatory Notes, did not however place any reliance on them in reaching their judgments, but Lord Steyn did go on to assert that—

"if exceptionally there is found in Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a court. This reflects the actual decision in Pepper v Hart [1993] AC 593. What is impermissible is to treat the wishes and desires of the Government about the scope of the statutory language as reflecting the will of Parliament. The aims of the Government in respect of the meaning of clauses as revealed in Explanatory Notes cannot be attributed to Parliament. The object is to see what is the intention expressed by the words enacted."

3. Although this represents the Executive’s view on the legal effect of accompanying documents, in the context of the Bill, ultimately a court could decide definitively to what extent it would take accompanying documents into account in any particular situation.

ANNEX B
To clarify the legal position as regards the accountability relationship between accountable officers for further education colleges and higher education institutes in accordance with the provisions of the Public Finance and Accountability (Scotland) Act 2000.

1. Colleges of further education are covered by the accounting and audit provisions of the Public Finance and Accountability (Scotland) Act 2000 (the PFA Act). Their accounts are therefore audited by the Auditor General for Scotland (AGS) and must be laid before the Scottish Parliament. Higher education institutions (HEIs), for the reasons set out below, are not currently subject to the requirements of the PFA Act. They therefore appoint their own auditors and there is no statutory requirement for their accounts to be laid before the Parliament.

2. The following extract from the Policy Memorandum of the PFA explains the rationale for excluding HEIs from the requirements of the PFA Act:

   • "FLAG [the Financial Issues Advisory Group] also considered the possibility of bringing other organisations such as local enterprise companies and higher education institutions into line with public audit principles. It did not reach a firm view, as the Group recognised that to make any changes on the myriad of constitutional arrangements affecting these organisations within the time available was unlikely to be practicable. It did however agree that the Auditor General for Scotland and the auditors appointed by him should be granted a right of access to the records of those organisations that depend to a significant extent on money from the Scottish Consolidated Fund. The Bill provides this in section 22.

   • "The Executive agrees with FLAG's conclusion that to apply the principles of public audit at this stage to higher education institutions etc would be extremely difficult within the timescales required of the Bill. The Bill does not therefore address this issue but the Executive may consider it in due course."

3. Under the terms of the PFA Act the Permanent Secretary of the Scottish Executive, in his/her role as the Principal Accountable Officer (PAO) for the Scottish Administration may designate as accountable officer, on a statutory basis, a member of staff of any body the accounts of which are subject to audit by the AGS.

4. However, as local public spending bodies, further education colleges are subject to less control than for example, non-departmental public bodies. The accountability mechanisms reflect the different legal status of the colleges, and make it more appropriate for SFEFC (which has a statutory accountable officer) to require the designation of “accountable officers” by individual colleges.

5. The Accountable Officer of the Councils require both colleges and HEIs to appoint an “accountable officer” for the funds they receive from the Councils, this is a condition within the financial memorandum with each institution. The Councils are currently working to completely revise their financial memoranda with institutions in a move which will see the same basic template being used for all institutions. Although not a direct result of this Bill, this is another example of how the Councils are attempting to create a parity of esteem across both sectors by treating HEIs and colleges in a similar way where it is possible and practical to do so.
The following briefing paper, provided by the Scottish Further Education Funding Council, describes the work being taken forward to streamline the quality assessment process in the further education sector.

CONVERGENCE OF QUALITY ASSESSMENT IN FE

Background

It has long been recognised that FE colleges are subject to multiple processes of quality assurance and audit. In 1999, the newly created Scottish Further Education Funding Council (SFEFC) ran a consultation exercise on quality, and the issue of audit burden was a key feature in colleges’ responses. As a result, SFEFC, in partnership with the FE sector and relevant agencies, has taken a number of steps to reduce this burden through rationalisation of audit methodology and convergence of quality systems.

Colleges are subject to audit, assessment and monitoring by a range of bodies, each of which is answerable to its own stakeholders and hence has good reason to ensure that its standards and processes are being adhered to. We have drawn a distinction in practice between processes which are ‘compulsory’ for colleges in the course of their normal business and those which are ‘optional’ in which colleges voluntarily participate.

The main ‘compulsory’ processes are:

- Review by Her Majesty’s Inspectorate of Education (HMIE), under contract to SFEFC, which is a condition of grant for SFEFC funding.

- Audit by SQMS (Scottish Quality Management System framework) which is conducted by Babcock Engineering under contract to the Enterprise Networks and overseen by the SQMS Council; this is a condition of contract for all training providers receiving LEC funding for training.

- Institutional accreditation, programme validation and ongoing moderation processes operated by the Scottish Qualifications Authority, as a condition for colleges providing SQA awards.

- Many colleges also participate in additional audit processes, the main ones being:

  - Investors in People Accreditation, validation and moderation by other awarding bodies, the most common being City & Guilds but there are at least 30 other awarding bodies with courses available in one or more Scottish colleges; Other quality systems such as Chartermark and European Foundation for Quality Management.

In addition to formal audit processes, all colleges are subject to other monitoring processes operated by SFEFC, including scrutiny of annual planning documents, analysis of financial statements, and surveys of college provision in specific areas such as ICT and staff development.

Actions taken to reduce the audit burden

Convergence steering group

In 2000, SFEFC set up a Convergence Steering Group (SCG) including representation from HMIE, SQA, Scottish Enterprise, Highlands & Islands Enterprise and SQMS Scotland to consider various approaches to reducing the audit burden. This group has taken an overview of the specific actions outlined below.

Common documentation
Between 2000 and 2002 SFEFC supported work by HMIE, SQMS and SQA to consider the documentation required by each audit body. Colleges had reported that different auditors required similar data but presented in distinctive ways. This created a burden for colleges which was hard to justify. As a result of this exercise, the national agencies agreed clearer protocols for required documentation which allowed colleges to make more use of a single set. SFEFC funded groups of colleges to develop and present good practice in this area.

Common audits

The CSG partners piloted two approaches to combined audits. In one model, two or more audits were timetabled to take place simultaneously in volunteer colleges. In practice, this did not lead to reduced burden and proved to be quite stressful. It was also not easy to scale up this model since each agency was working to an existing 3 or 4 year timetable. In the second model, a single team of auditors, including members trained in more than one approach, conducted a combined audit which generated multiple audit reports from a single process. This approach had mixed results; it was highly dependent on the skill set of particular team members and in some cases led to confusion and tension. Nor was it scalable since the skill sets required by each agency were quite different; in particular, few SQMS auditors had the special professional experience associated with HMIE inspectors. We therefore abandoned this approach after the pilots.

Mapping of quality frameworks and credit transfer

SFEFC supported work by HMIE, SQMS and SQA to map the various quality frameworks used by each agency. This identified significant areas of overlap, particularly between HMIE review and the SQMS standards. SQMS already had a process for requesting credit transfer where there was independent evidence that one or more standards had been met. The first result of this was an agreement in the spring of 2002 that colleges which successfully completed an HMIE review could receive credit transfer for 3 out of the 10 SQMS standards.

This approach was further developed throughout 2002. SFEFC commissioned the Scottish Further Education Unit to conduct a detailed analysis of the HMIE and SQMS quality frameworks, which identified a potential for credit transfer for a further 4 SQMS standards. To achieve this, HMIE agreed to modify their review methodology in order to broaden the evidence base. In particular, they included LEC-funded provision within their sample of teaching observations. As a result, successful colleges could then receive credit transfer for 7 SQMS standards.

In 2003, SFEFC made a third application to the SQMS Council. This took account of the wider range of audit and monitoring processes carried out by SFEFC, in addition to HMIE review. As a result, colleges can now receive credit transfer for 9 out of 10 SQMS standards; the exception is Health and Safety, which is not systematically addressed by HMIE or SFEFC; the CSG took the view that monitoring of this standard by SQMS was therefore appropriate.

In parallel with this process, the Enterprise Networks have conducted a review of SQMS and have introduced broader measures to reduce the burden across all training providers, notably by no longer requiring providers to meet the financial costs of audit.

SFEFC conducted a further consultation on quality in 2003, and HMIE are now introducing a revised methodology of review. In the new model, the scope and range of HMIE review is determined by the level of confidence which HMIE have in colleges’ ability to manage quality. Although all colleges will still be subject to systematic and rigorous review, we expect that in many cases this will involve not only less time spent by HMIE in each college, but a shift in focus from quality assurance to the identification and dissemination of good practice. The first reviews under the new method begin in January 2005. We plan to take a paper to the November meeting of the SQMS Council to ensure that this new approach will retain the existing wide range of credit transfer.

Next steps

The CSG next meets in November 2004 and will consider further steps in convergence of quality systems. We expect that the next priority will be to investigate possible overlaps between SQA and
HMIE processes, particularly in the area of how colleges safeguard the academic standards of awards. In its revised model, SFEFC is giving greater priority to quality enhancement, and we think there is also scope for collaborative activity between SQA, HMIE and SFEFC on the development of good practice in areas such as moderation, the design of assessments, and student feedback. These ideas will be developed over the next few months.
2 November 2004 (23rd Meeting, 2004 (Session 2)), Written evidence

WRITTEN EVIDENCE FROM THE ASSOCIATION OF SCOTTISH COLLEGES AND UNIVERSITIES SCOTLAND

OPPORTUNITY, EXCELLENCE AND ENTERPRISE:
Our Vision for Further and Higher Education in Scotland

1. Introduction
1.1 The Association of Scottish Colleges (ASC) is the policy and representative voice of Scotland’s Colleges of Further and Higher Education.

1.2 Universities Scotland is the representative body of Scotland’s Universities and Higher Education Institutions.

1.3 On the majority of the main issues we have a shared view, and more importantly a shared vision for the future of further and higher education. The purpose of this paper is to highlight how the Further and Higher Education (Scotland) Bill as introduced will help achieve that vision.

2. What the Bill and a single funding body should achieve
2.1 Both ASC and Universities Scotland have supported the principle of merging the funding councils. A single funding body for colleges and universities has the potential to lead to greater coherence and better provision of lifelong learning and research in Scotland.

2.2 The best way to achieve that will be to ensure that the Bill establishes the right relationship between the Scottish Executive, the new funding body and institutions. The needs of teaching and research will best be met by a variety of diverse institutions each with a distinctive and well-focused mission for students and employers. The creation of an undifferentiated sector or type of institution would be unhelpful.

2.3 Responsibility and accountability need to go hand in hand. As autonomous institutions, universities and colleges have direct responsibilities which they must be seen to regulate and account for by themselves. Any “re-regulation” through the new funding body of statutory and other legal responsibilities of colleges and universities is unnecessary and inappropriate. The focus of the new funding body should be on the use of public funds in accordance with Ministerial priorities and the financial security of institutions.

2.4 The funding body is situated between government and institutions. Its role should be to facilitate communication in both directions. The funding body funds capacity of colleges and universities to deliver teaching and research. It is not – and must not be seen as – either a purchaser-provider or an all-purpose regulator. It should act strategically and avoid becoming involved in or duplicating levels of planning and management which are more efficiently undertaken at the institutional level.

3. Key principles and concerns about the draft legislation
3.1 During the public consultation period we indicated that we had some limited but serious concerns about features of the draft Bill. ASC and Universities Scotland jointly established a series of underlying principles which we felt should guide the development of the Bill and the relationship between the institutions and the new funding body. This was formally submitted to the Scottish Executive in July 2004 and included:

- The proposed changes must demonstrate that they will achieve greater coherence between the sectors.
Any new funding body must be lean and efficient.

The new body must not become involved in planning or micro-managing universities and colleges or the further and higher education sectors.

The changes must not result in more red tape and administrative burdens for universities and colleges.

There should be no undue political or funding council interference in matters which are the responsibility of the governing bodies of institutions.

The draft Bill itself should be slimmed down and the guiding principle should be to legislate only where there is a clear need to do so.

3.2 The draft Bill as consulted on was not felt by ASC and Universities Scotland to follow these principles. Among our particular concerns were that the draft Bill:

- appeared to increase the planning and intervention role of the new funding council;
- involved unnecessary and unhelpful bureaucracy and restructuring, such as changes in the definitions (i.e. Tertiary) and designation of institutions (i.e. STEPs) within the further and higher education sectors;
- failed to recognise and utilise the diversity within and between the further and higher education sectors;
- failed to build on and strengthen the existing collaboration that exists between colleges and universities, in particular with regard to progression and articulation routes already open to students.

4. The revised legislation

4.1 Both ASC and Universities Scotland have now had an opportunity to look at the Further and Higher Education (Scotland) Bill in some detail. This Bill has been substantially revised and indicates significant progress from the draft Bill that was consulted on earlier in 2004. This is to be welcomed and indicates that the consultation process was meaningful and that the Scottish Executive responded positively to the points made by key stakeholders.

4.2 We thank Scottish Ministers for listening to the views of the further and higher education sectors and in particular for the following key changes:

- In our view the Bill reduces unnecessary and unwarranted provisions that might encroach on institutional responsibility.
- The Bill also clarifies that a single funding council will support both sectors to develop increasingly effective collaboration and coordination while recognising the diversity and coherence of the two sectors.
- The revised Bill now makes it much clearer that the new body will be a funding body and not a planning body. The merged funding council will have a clear strategic role in supporting institutions to deliver excellent learning and teaching that meets student demand and expectations, employer requirements and society’s needs.

4.3 There are a few remaining issues where there is a need for further clarification. These include:

1. The power of the new funding council (rather than Scottish Ministers) to propose and approve the addition of new fundable bodies prior to Scottish Ministers modifying Schedule 2 (section 7).
2. The power for the new funding council (rather than Scottish Ministers) to decide on the adoption of a credit and qualifications framework (section 14).

4.4 There is also a need for more discussion on how best to develop further:

3. the role of the new funding body in meeting the skills needs of Scotland through the provision of coherent lifelong learning and research (section 20); and

4. the scope of the remit of the Scottish Public Service Ombudsman (section 26).

4.5 With regard to the issue of variable fees (section 8) our view is that the provisions in the Bill simply permit Ministers to specify a different fixed fee for certain subjects (such as medicine). We are content with this power so long as it is only used where there is a clearly established case for doing so and that the financial implications for Scottish domiciled HE students are neutral. We are fully supportive of the Scottish Executive’s policy of funding institutions properly without resorting to charging Scottish domiciled students a tuition fee.

5. Conclusion

5.1 Both ASC and Universities Scotland are very grateful for the open and transparent manner in which the Scottish Executive carried out its consultation process. It is an indicator of the effectiveness of that process that while neither ASC nor Universities Scotland felt able to fully support the draft Bill, we are now able to endorse the Further and Higher Education (Scotland) Bill as published.

5.2 This does not mean that there are no outstanding issues which will need to be resolved, but in our collective view these are relatively minor and largely technical and can be dealt with as the Bill makes its passage through Parliament. We firmly believe that the Bill now achieves its aims successfully without unnecessary disruption or the risk of damaging unintended consequences. In doing so it should be of benefit to colleges and universities and, above all, the students, employers and communities for whom they serve.
14:05

The Convener: Item 1 on our agenda concerns the Further and Higher Education (Scotland) Bill. I welcome four very distinguished gentlemen to the committee: David Caldwell, the director of Universities Scotland; Professor John Archer, the chair of Universities Scotland; Tom Kelly, the chief executive of the Association of Scottish Colleges; and Professor John Little, who is also here on behalf of the Association of Scottish Colleges.

Professor John Archer (Universities Scotland): On behalf of Universities Scotland and the Association of Scottish Colleges, I would like to say that we have been grateful for the open and transparent manner in which the Scottish Executive has carried out its consultation on the bill. We feel that we are in a strong position to be able to endorse the bill as published. We are happy to answer any questions that you might have.

Tom Kelly (Association of Scottish Colleges): Our position is the same as that of Universities Scotland. The bill is much better than it was in its first draft. It is a good basis for future work.

The Convener: I thank you for your joint submission, which was extremely helpful and clarified a number of issues.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I thank our guests for their ringing endorsement of the bill.

The National Union of Students has made its views clear to members of this committee and to other members of the Parliament apropos health, and however you term fees for people across the border. What views do each of you have on this issue?

Professor Archer: Are you asking about the fees issue?

The Convener: NUS Scotland has made it clear that it still has concerns about that section of the bill that gives ministers the power to vary fees. Jamie Stone is asking you to comment on that.

Mr Stone: Thank you for that clarification, convener.

The Convener: It is a pleasure.

Professor Archer: We anticipate that the power of fee variation will be used extremely sparingly. We fully accept the fact that ministers do not wish to have variable top-up fees in Scotland. We support that position. As evidenced by issues
around medical tuition fees, there might be some opportunity to change that, but we understand that that exercise would be undertaken sparingly.

David Caldwell (Universities Scotland): It is important to say that our interpretation of the bill is that it does not permit the introduction of variable top-up fees in Scotland and that, instead, it means the possible reintroduction of banded fixed-level fees that might be different for various courses. It is only a few years since we had band 1 fees and band 2 fees that were different for various courses of study.

We understand that the specific circumstances in which the Executive is considering that move relate to medical education. Our Scottish medical schools train enough people to meet Scotland’s needs, broadly speaking. However, a significant proportion of the intake comes from south of the border and there is a tendency for those people to return south of the border after they qualify. It is reasonable that the Scottish Executive should seek to ensure that Scotland gets good value for money for its investment in medical education. We would not want there to be a large increase in the proportion of medical places taken up by English medical students because the cost of studying medicine was much lower in Scotland than in England. Scotland should get value for money. However, it is important to reassure the NUS that the provisions in the bill do not amount to the reintroduction of top-up or variable fees. The bill addresses a very different matter.

Tom Kelly: I understand why the NUS might have been alarmed, because the power that the bill confers is wide. However, the power does not cause us great concern, because we are used to a regime under which tuition is paid for by a combination of fee and grant and the amount of the fee can be different. For example, currently in colleges the fee for advanced or higher education courses is different from the fee for non-advanced and further education courses. As David Caldwell said, we read the bill as preserving the power that ministers have always had under the existing arrangements to stipulate a fee as part of the overall funding for tuition. It is obviously important that ministers have a handle on that, because they must also consider the other side of the matter, by which I mean the student’s contribution to tuition as against other forms of support for the student such as maintenance and other expenses.

Mr Stone: The NUS made the point to me, almost in passing, that whatever the rights and wrongs of the matter, we are not tackling the problem of the bright potential science or medical student who comes from a disadvantaged background and does not want to go into medicine because the course is longer. Do you agree that there remains a built-in problem because potential medical professionals from less wealthy backgrounds choose shorter science degrees rather than medicine?

David Caldwell: It is important to make the point that that scenario would not apply to Scotland-domiciled students. The fees of Scotland-domiciled students studying medicine would be paid by the Student Awards Agency for Scotland on the students’ behalf, as is currently the case. There would be no disincentive to such students, whatever their social class, to study medicine.

We are considering students who come from other parts of the United Kingdom to study medicine, the majority of whom tend to return to the areas that they came from—I stress the word “tend” because such students do not all leave Scotland after graduation. It is a legitimate concern that Scotland should receive value for money in terms of doctors to provide health services in Scotland for its public investment in medical education.

The Convener: Are you happy with that answer, Mr Stone?

Mr Stone: Yes, thank you.

Christine May (Central Fife) (Lab): First, I pick up on the point that Tom Kelly made about the differential in funding for students following HE courses in FE institutions. Will the witnesses comment further on that?

Secondly, paragraph 4.3 of the joint submission from the Association of Scottish Colleges and Universities Scotland says that there is a need for clarification on, first, “The power of the new funding council (rather than Scottish Ministers) to propose and approve the addition of new fundable bodies”, and secondly, “The power for the new funding council … to decide on the adoption of a credit and qualifications framework”.

What amendment or clarification do the witnesses seek?

14:15

Tom Kelly: The key to the stable funding of colleges is the unit of resource, on which we focus in the spending reviews. Over the years there has been a gradual reduction in the unit of resource, but that has now levelled off and, to be fair, we expect the unit of resource to increase somewhat in the spending review for the period up to 2007. The unit of resource had been an area of great difficulty for us. The Executive makes plans for funds to be allocated to the funding council, and the funding council then allocates those funds. Those are two separate stages and we are
concerned about both. We believe that the bill does not have to address how ministers decide the quantum of resources available for all the purposes that the funding council has to address. It is for the funding council to work out, with the institutions, how best to allocate funds. We are concerned that the unit of resource for our sector has been squeezed sharply. That is an inhibition—especially on pay and reward for staff.

On new fundable bodies, we are concerned that, if ministers want to broaden the scope of what the new funding council is to fund, they should provide the resources and the means to allow that. Those who join the club, as it were, should meet the same standards and fulfil the same expectations as those who are already members. The existing arrangements have not prevented additions. Under the previous arrangements, only incorporated colleges were funded; today, of course, Sabhal Mòr Ostaig, Newbattle Abbey College and others have been added. We would have expected that to continue, but the question arises of the criteria that must be met.

The Convener: I would like you to clarify a point that, I think, lies behind Christine May's question. Are you suggesting that sections 7 and 14 have got things the wrong way round? Do you think that ministers should approve a body before the issue goes to the new funding council, as opposed to a decision of the new funding council going to ministers? That is what you are hinting.

Christine May: Alternatively, the new funding council would propose to ministers, who would then formally approve—

The Convener: That is what is in the bill at present.

Christine May: Well, no, because paragraph 4.3 talks about

"The power of the new funding council (rather than Scottish Ministers) to propose and approve".

The Convener: Yes, but the bill says that the funding council proposes.

Christine May: And approves. The question is whether the minister should have the final approval.

Tom Kelly: We feel that the decision ought to be a political one taken by ministers—because it is ministers who decide the quantum of resources available to the funding body.

The Convener: That applies both to funding bodies, in section 7, and to the qualifications framework, in section 14.

Tom Kelly: This sounds like a technical point, but what we were driving at in our point on the qualifications framework is that the funding body is just that—a funding body. It is not an educational body or an awarding body. The decision on what is an appropriate qualifications framework really ought to be taken by the universities, as the degree-awarding bodies, and by the awarding bodies that we use—in particular, the Scottish Qualifications Authority—under the directional co-ordination of ministers. There is a simple oddity in the wording of the bill and we feel that it can easily be tidied up.

Professor Archer: Paragraph 4.3 of our submission is more about a desire for clarification than about a deep-seated worry. We wanted to understand better what lay behind the wording in the bill, but we did not start with the view that there was a problem. We would expect any new fundable body—whether it is a university, college or whatever—to meet criteria that are understood in that sector.

I am sure that members are aware that the situation on the adoption of a credit and qualifications framework is dynamic. The framework influences how we do things in Scotland—which many regard as being ahead of the game in the European and international context. We want to ensure that what happens here lines up nicely with what happens in Europe so that students can understand the situation and can flow backwards and forwards.

It is important that advice on the qualifications framework should largely come from the sector, which works at the sharp end of the issue. We would expect the funding council to be in the middle of those conversations, from where it can transmit views to ministers and receive, one hopes, approvals for proposals. The sector should participate in shaping what comes out of the qualifications frameworks so that people can understand where they are. We seek clarification, rather than any fundamental change.

Christine May: Would I put it too crudely if, in reference to the first point in paragraph 4.3, I were to say that the university sector is considerably more relaxed about the proposed powers to add new fundable bodies than the colleges are, given that the colleges might have concern about the greater stretching of resources that might result?

Professor Archer: I guess that we were not making the assumption that resources would not be available to accommodate any increases in numbers. One would not imagine that this was being done in order to prejudice units of resource. That does not sound like a very good way to do it.

Murdo Fraser (Mid Scotland and Fife) (Con): It is encouraging that the ASC and Universities Scotland have provided a joint submission. I am sure that all members welcome that. It is clear that the two organisations share common ground on the major issues in the bill.
Section 20 will require the funding council to have regard to skills needs. Paragraph 4.4 of the joint submission states:

“There is also a need for more discussion on how best to develop further ... the role of the new funding body in meeting the skills needs of Scotland”.

Will you elaborate a little on that? How should that be fleshed out? Is there any difference of opinion between Universities Scotland and the ASC on how that might be done?

Tom Kelly: The colleges serve the needs predominantly—in fact, overwhelmingly—of people who live and who will probably work in Scotland. We address needs of a particular kind. Our concern is about the wide span that the single funding body will cover, which will range from high-level research to the part-time vocational and even pre-vocational education that is characteristic of the colleges. The funding body should be appropriately equipped to deal with both ends of that task.

As members will know, “skills” is a shorthand word that covers many things, from practical competencies to specific requirements for licences to practise a range of things. The word “skills” is just a shorthand way of saying that the funding body will have regard to skills needs. Paragraph 4.4 of the joint submission states:

“The role of the new funding body in meeting the skills needs of Scotland”.

Will you elaborate a little on that? How should that be fleshed out? Is there any difference of opinion between Universities Scotland and the ASC on how that might be done?

Tom Kelly: The colleges serve the needs predominantly—in fact, overwhelmingly—of people who live and who will probably work in Scotland. We address needs of a particular kind. Our concern is about the wide span that the single funding body will cover, which will range from high-level research to the part-time vocational and even pre-vocational education that is characteristic of the colleges. The funding body should be appropriately equipped to deal with both ends of that task.

As members will know, “skills” is a shorthand word that covers many things, from practical competencies to specific requirements for licences to practise a range of things. The word “skills” is just a shorthand way of saying that the funding council should have a good balance. However, it should have the capacity to address those areas.

David Caldwell: There is no fundamental difference of opinion between the universities and the further education sector on the issue. We regard skills needs as very important, but we also think that those needs are quite diverse. Skills needs range from those that the further education sector meets, as Tom Kelly described, to the high-level creative and enterprise skills that are developed by the higher education sector. Those skills are perhaps slightly less specific but they are absolutely vital to the country’s future economic success. Neither of us is highlighting a problem with section 20 of the bill; we are simply drawing attention to the fact that those are complex issues that will need to be worked through. The new funding council will have to give close attention to those issues when it comes into existence.

Murdo Fraser: Given what you have said, is there a need for ministerial guidance on skills needs, or are you happy to leave the matter to the funding council?

David Caldwell: On whether guidance from ministers is required, my broad view, on this as on many other issues, is that it is absolutely right that ministers should issue guidance to the funding body on policy priorities. That should not exclude guidance on meeting the skills needs of Scotland. It strikes me that, since devolution, we have worked out a pretty good system whereby ministers identify the policy priorities, which they indicate in an annual letter of guidance to the funding council, and which the funding council then seeks to operationalise by encouraging behaviours in institutions that help to meet the policy priorities that have been identified. It is entirely appropriate that the skills needs should be treated in that way. It is absolutely right that politicians and ministers should have a role in specifying what the priorities are, and expecting the funding council to play its part in assisting to deliver them.

Professor John Little (Association of Scottish Colleges): We wondered whether an opportunity had been missed in drafting the bill, in terms of recognising the importance of delivering on the agenda of “A Smart, Successful Scotland”, and in terms of achieving all that we hope that the bill will achieve with regard to parity of esteem once the funding councils are merged—or at least parity of perception of esteem. Given that there is already a statutory requirement for a research committee, which it is proposed will continue, perhaps there should be a complementary skills committee with a parallel position and agenda, to provide and connect people with skills, and to provide businesses with ideas. Such a committee is not proposed at the moment, but Inverness College suggested one in its submission. The ASC response also mentioned it.

The Convener: We also have to bear in mind the responsibilities of Scottish Enterprise, Highlands and Islands Enterprise, and now the Sector Skills Development Agency and the sector skills councils. You are flagging up that there needs to be an overarching discussion and agreement among the various bodies on what the skills strategy is. Perhaps the committee should consider that further.

Professor Little: I am pleased to note that the project board of the SSDA, which is just being established, has the funding council represented on it as one of four stakeholder groups.

Mike Watson (Glasgow Cathcart) (Lab): I will focus on three areas. The first is section 20, on the broader remit of the exercise of functions of the council. We have just talked about skills. Economic, social and cultural issues were added to the draft bill. When we spoke to the civil servants about that, I asked them where those issues had come from, and they stated that they came primarily from the university sector. I suppose that my questions are aimed at Professor Archer or Mr Caldwell. Could you expand on what you see those issues relating to, particularly the social and cultural aspects? Do you see them extending as far as influencing admissions policy?

Professor Archer: Universities have a role to play in delivering on a number of fronts within the scope of the higher education with which they are
involved. We look at our contributions in terms of the economic, social and cultural agendas. The things that happen in universities have an impact on educational provision and on the delivery of all those agendas, and they all add to the richness of life in Scotland.

It is about remembering that in addition to the hugely important area of economic development, social and cultural engagement are equally important within higher education. We recognise that delivering that in relationship with the Parliament and ministers can happen in a variety of ways. It does not mean that they come entirely through one particular relationship. It is a cross-sector area.

David Caldwell: I have little to add. We simply wanted to make the point—and this goes for further as well as higher education—that the contribution of post-compulsory education, while of crucial importance to the economy, is not limited to the economy. There are huge social benefits in terms of all sorts of indicators. The population that has experienced post-compulsory education has better health, much lower levels of criminality and longer life expectancy. A whole variety of indicators are favourable in social terms.

There is a huge role for cultural transmission, as well as there being an economic benefit. We thought that it was important to draw attention to those factors. How the bill puts it—that the funding council should “have regard to” such factors—strikes the right balance. It is not suggested that those are the dominant considerations; rather, they should be borne in mind alongside the economic value of post-compulsory education.

14:30

Tom Kelly: There are always two views on such declaratory provisions. On the one hand, we might say, “It is obvious that that is what you are seeking to do, so why put it in the legislation?” From the point of view of colleges and, judging from what has been said, of universities, those are the things that we try to address. It is not just about the immediate employer requirement; it is about lifelong learning in the fullest sense.

Colleges already seek to do what the bill requires. The question is how appropriate it is, first, to declare that the funding council should take those factors into the reckoning, and second, to declare in what respects and to what extent it is to do so. At one level, it is helpful to have that included in the bill. That recognises that we do a broad range of things. Many colleges have a range of provision, not all of which addresses the traditions of technical skills and the like; it has stretched into other areas.

Mike Watson: It is about reacting to structural changes in the economy, which the funding council will take into account in any case. That was a helpful answer.

Another area that I touched on during our evidence-taking session with the civil servants concerned the Scottish public services ombudsman. There was no proposal for accountability to the Scottish public services ombudsman in the draft bill, but it appeared in the bill as introduced. I was struck by a comment in an explanatory document that the Executive provided to us on that occasion, in which it was stated that “universities have also voiced some concerns” about the introduction of accountability to the Scottish public services ombudsman. Universities were not hitherto within her ambit, although colleges were. I wonder if either Professor Archer or Mr Caldwell could say something about the universities’ concerns in light of the civil servants’ comments.

David Caldwell: Our concerns are fairly modest. Although the provision was not in the draft bill, we always expected it to be in the bill as introduced. The Executive had flagged up to us some time in advance that it was considering such a measure; I think that it was referred to in the partnership agreement. The measure was therefore not a surprise to us—it was not sprung on us in any sense.

I make one small correction: as I understand it, the powers of the Scottish public services ombudsman do not presently apply to either HE or FE. The bill would bring both sectors within the ambit of the ombudsman for the first time.

Our modest reservations are to do with the fact that we think that the independent system of review is more comprehensive in some ways than the system that will be available under the ombudsman. Let me explain. For just over two years now, we have had a system of independent review, which is available to complainants who are still dissatisfied after they have been through a higher education institution’s full internal process. That independent review system is available to all students with respect to all services provided by higher education institutions in Scotland. We understand from the limits that are placed on the Scottish public services ombudsman’s powers of the Scottish public services ombudsman do not presently apply to either HE or FE. The bill would bring both sectors within the ambit of the ombudsman for the first time.

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particular problem. However, it would cause a diminution of opportunities for potential complainants.

Mike Watson: I have a question about that before we come on to the colleges. You mentioned a diminution of the existing, self-regulatory regime. Do you intend to continue with the existing provision for the gaps that you identified and which are likely to be left by the ombudsman's arrival on the scene?

David Caldwell: That is a decision for institutions within the sector. Clearly, there are many pros and cons. One of the disadvantages of continuing with the existing system is the unhelpful confusion that would be caused by having two separate systems, because it would often be unclear to potential complainants which system applied to them. However, although complex issues must be addressed, there is no fundamental problem. I am sure that there are solutions.

The most important point is to ensure that there is a good, robust internal process so that there will be few cases in which people still feel aggrieved and want to take a complaint further at the end of that process. An indication of the robustness of the internal process in our sector is that the total number of cases that were referred to the independent reviewer in the first year of operation was five. We are dealing with relatively small-scale problems that can be resolved satisfactorily. Our written submission simply states that some points need further clarification so that we can have a system that meets everybody's needs satisfactorily.

Mike Watson: I understand that. The point about referring only five cases is interesting. I questioned civil servants a month ago about the basis of the financial memorandum and the cost of the bill's implementation. They said that, based on a notional 30 cases a year, the cost would be about £50,000. I was told that the figure of 30 cases had come from the institutions. I do not know whether that refers to 30 across both sectors, but there is certainly a difference between that figure and five cases. However, I accept that the ombudsman would be a last resort after all internal processes had been dispensed with.

Tom Kelly: The extension of the ombudsman's remit to include the colleges was discussed for some time on the separate track of the Government's accountability review. You may recall that the Audit Committee instigated that. For us, the bill is just a convenient legislative vehicle for ministers to deal with something that has been settled policy for the colleges for a while.

As David Caldwell said, the key point is that not only first-instance processes but review processes within colleges should be sound enough to deal with the majority of cases. We are working in that direction and our plan is to ensure that our complaints machinery accords with what the ombudsman expects to be in place. In fairness, we have a bit further to travel on that than the universities do. The present arrangement, in which the funding council acts informally on behalf of the department to review complaints, is not satisfactory. Therefore, we welcome the bill's provision in that area.

Mike Watson: The public services ombudsman, who comes from the higher education sector, is well qualified to deal with that remit.

My final point, which may explain why I was confused about what the ombudsman covers, concerns the question of the financial accountability of the institutions. We have heard that regulations under the Public Finance and Accountability (Scotland) Act 2000 relate to the further education sector but do not relate to the higher education sector and are not designed to do so. Would the university representatives like to comment on that? The bill and the accompanying documents in particular leave the door open for such provision to be made at a later date. Further education colleges are subject to the Auditor General's scrutiny and lay their accounts before Parliament, but universities are not bound to do so. Do you envisage a situation in which the universities would feel that they were perfectly willing, even if not legally liable, to do that?

David Caldwell: The legal liability is already quite strong. The bill makes it clear that Audit Scotland has the right to access the financial records of all higher education institutions. We have prepared a report, which we would be happy to make available to the committee, setting out the various rigorous and comprehensive forms of accountability to which the universities and other higher education institutions are subject. That process includes financial accountability. A range of methods are employed to ensure accountability in the use of public funds, including, as I said, the opportunity for Audit Scotland to review the financial records of any higher education institution in Scotland.

It is true that financial accountability is handled in a different way for higher education institutions through the appointment of external auditors, but it is no less rigorous than the method that applies to further education colleges. I reiterate that it might be helpful to the committee if we make available to it the detailed report that we have prepared on the various ways in which accountability works in our sector.

Mike Watson: That is fine. I was not suggesting that your system was not sufficiently rigorous. I was simply saying that whereas college accounts
are laid before Parliament, university accounts are not. I am aware that sufficient systems are in place. My question was about the two sectors having the same regime; in many ways, that is what the bill is about, but this is one area in which there are different regimes.

The Convener: On that point, a response from the Scottish Executive to our query has been circulated. Paragraph 5 of annex B to the Scottish Executive’s letter mentions that the two existing “Councils are currently working to completely revise their financial memoranda with institutions in a move which will see the same basic template being used for all institutions.”

Mike Watson: I accept that, but I understand that the Public Finance and Accountability (Scotland) Act 2000 would have to be amended before universities would come within its ambit. There is a slight difference, but I take the point.

Tom Kelly: The position is straightforward. A college’s audit is conducted by Audit Scotland or by an auditor it appoints. That has led to some complexities in the relationship with the funding council, which has to oversee the financial health of the sector. The policy of establishing and maintaining financial security that we are currently pursuing shows that that relationship can be made to work. That is the key to the issue. It is not possible to legislate on every detail for the various interested parties. There must be a willingness to make the relationship work and I hope that we are now achieving that.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): Your remarks lead neatly to the issue that I want to explore more fully, which is about how you ensure that the maximum benefits arise from the changes. What can be provided for in legislation and what requires to be dealt with in other ways? The joint ASC and US submission states that the single funding body “has the potential to lead to greater coherence and better provision of lifelong learning and research in Scotland.” That is the overarching objective that we would all like to see achieved. Can you say a little more about how you think that potential can be fulfilled?

I also ask you to explore a little further the point that you touched on about relationships. The subsequent paragraph of the submission states: “The best way to achieve that will be to ensure that the Bill establishes the right relationship between the Scottish Executive, the new funding body and institutions.”

Can you unpick that and explore the extent to which you are talking about structural relationships and the extent to which your statement relates to some of the softer issues involved in the relationships between those different entities? In asking that question, I make reference to the history of the bill. I am sure that we are all delighted that people are once again round the table and singing from the same proverbial hymn sheet as they were at the beginning of the process. However, there was a period when that could not be said, and many of us are still trying to get our heads round why, when people agreed broadly on certain objectives, we ended up in a situation that, as far as some of our institutions were concerned, one would have thought was the end of the world as we knew it. The Scottish public were told, through certain media outlets, that it was the end of some of our institutions as we knew them.

I ask those questions in a genuine bid to tease out how we can ensure that, in a devolved Scotland, we use the structures and regulatory and legislative solutions that we are putting in place as effectively as possible to come together to work towards shared objectives. This is a tremendous opportunity for us to do that and I am sure that you will agree that the legislation should be a means to that end rather than an end in itself. Can you take us through that a little, please?

14:45

Tom Kelly: We see the bill as the start of a process. We talked about a smaller, smarter, more strategic body, but we were perhaps talking about better relationships. That seems right to me.

It is a combination of structures and softer issues. In terms of formal accountability, it is quite right that the Parliament should insist that it is clear who is responsible for what and to whom they are accountable. That is perfectly understandable. The funding body is an intermediary and does not deliver services; colleges and universities do that, and therefore we have to keep those responsibilities distinct. Engagement with employers, students and communities is, frankly, the job of the institutions. The job of the funding body is to see that the provision that Parliament and ministers make is put to best use.

We do not have a fundamental difficulty with the megastructure. You will see from the detail of the bill that we have gained in some respects, as some of the established lines in the sand to protect the autonomy of universities are being extended to us. That is good, as it is an acceptance of the fact that colleges are mature institutions and can be trusted to do more. There are things that colleges do and ways in which they do them that we want to continue, and we accept that they will be distinct from the way in which universities work. The centres of gravity of colleges and universities are recognisably different. We do not envisage the distinctness of universities and colleges being lost; what we were
concerned about in some of the language of the bill was the fact that concepts were being introduced that suggested a requirement to join together things that were actually rather different. We were, therefore, glad that the term “tertiary” was dropped, for example.

Ordinary Scots are well aware of what universities and colleges are. They will not know about everything that they do or what potential they have for the future, but that is why we want to work with the grain of public perception. The bill as introduced does that better than the draft bill did and is a step towards better relationships for the longer term.

**Professor Archer:** It is important to recognise the fact that, within the overall delivery of educational, research and other opportunities, it has been the role of the colleges and the universities to deliver things in rather distinct ways. However, there has also been an enormous amount of overlap because of the way in which we work together. That has not been a problem before the bill and it will not be a problem after the bill. Quite a lot of the world has been beating a path to Scotland to see how we have been doing that kind of work. The bill ensures that clarity remains regarding the things that the colleges and universities are trying to do to deliver the totality of education with choice and diversity.

Susan Deacon asked whether anything went wrong. In a funny kind of way, the robustness of the consultation process has allowed us to have conversations to correct and amend language, content and such things along the way. Having a very open conversation to produce a bill that we believe is good and can take us forward has been a strength of the process. I would not regard what has happened as a problem.

**The Convener:** Do you want to say anything else, Susan?

**Susan Deacon:** I thought that others were itching to comment, so I was listening intently.

**David Caldwell:** Perhaps I may add a little. I agree with John Archer that having a robust dialogue sometimes helps. As a consequence of that dialogue, we have ended up with a very good bill. I admit that I would prefer to do things differently if the same thing happened again. Things did not quite work out as I would ideally have liked them to. In particular, the initial publicity on the publication of the draft bill was not helpful. I sought to make it clear in a piece that I published a few days afterwards that our concern about the bill had nothing to do with worries about ministerial intentions, which we accepted were entirely benevolent, but that there was a question about the possible unintended consequences of the draft bill as it was then worded. We did not think that ministers intended those consequences, but there could have been such consequences nonetheless. Therefore, we had a robust dialogue. We ended up putting together a joint submission with our colleagues in the Association of Scottish Colleges in which we largely agreed about the things that we thought needed to be corrected.

The process has been an absolute model of a consultation exercise. It is inevitable that not everything that we asked for has been incorporated in the bill as introduced, but there has been intelligent listening and the sincere points that we made have been taken on board. A bill is now before members that still achieves exactly the objectives that were desired in bringing together the funding councils. One of the things that I think that the bill will achieve is greater coherence without any of the risks of the unintended consequences that might have arisen if some things in the draft bill had survived.

I would like to make a final brief point about greater coherence, which I believe is valuable. We already have greater coherence in further and higher education in Scotland than exists in other parts of the UK or in most other parts of Europe and the world, but we always want to work together better. One of the real gains from a merged funding council is that it will be able to facilitate working together a bit more effectively than two separate councils.

**Susan Deacon:** It is helpful for us, particularly in the relatively early days of the Parliament, to unpick experiences a little so that we can weave that into our learning process and practices for the future. Therefore, I am grateful for those replies and for the analysis that has been given.

I want to pick up from where David Caldwell left off and look more to the future. Are there any other opportunities that can be exploited through the creation of a single funding body? In particular, I am interested in what the differences will be—or at least, what they ought to be—for the Parliament. As Tom Kelly, for example, will know, the Parliament’s Audit Committee, of which I am a member, has been involved in quite an in-depth piece of work with the Scottish Further Education Funding Council, and it had a number of concerns about a range of issues. I am trying to get a sense of the meaningful difference that we can expect to see, feel and touch in how we do business in Scotland once we have a single body in place. I would like to hear from Tom Kelly in particular, given that he is familiar with the exercise in which I was involved. What discernible improvements should we seek in the future that the bill might facilitate?

**Tom Kelly:** To be blunt, the degree of scrutiny to which the colleges were subjected by the Audit Committee was a relatively new experience,
although the practice has now been in place for some time. We talk about learning experiences, but I think that the colleges learned considerable lessons from that experience that will be applied. From the colleges’ perspective, the most important thing was that our message did not get through to the Audit Committee strongly enough about the seriousness with which we took comparability of performance measures, such as performance indicators and so on. That was one reason why we felt that a single funding council with a different philosophy would be a gain both for us and, if I may say so, for the Parliament.

We want the Parliament to understand what things it is appropriate to ask the funding body to account for and what things it is perfectly entitled to ask the colleges to account for. Quality of service is what colleges are about, so we are happy to account for that directly and in our own terms. We believe that having a more streamlined funding body that has a different sort of interaction with the institutions will be all gain.

The Convener: I will let Fiona Hyslop ask her questions after I have asked a couple of my own.

Like its central proposal on the merger of the two funding councils, many of the bill’s proposals, such as that the fundable bodies should be brought within the remit of the Scottish public services ombudsman, came from the recommendations of our lifelong learning inquiry, which was undertaken by our committee in its previous life as the Enterprise and Lifelong Learning Committee. Another committee recommendation was that quality assurance should be streamlined, given that some colleges were being quality assured on the same programmes up to 28 times. However, the bill does not address that issue. In the view of the Association of Scottish Colleges, should that omission be addressed or can such streamlining be achieved without legislation?

Professor Little: That alludes to the previous question on how we achieve coherence when the two funding councils are merged. You have drawn attention to the considerable audit burden that is currently placed on individual colleges and universities. As you will know, as part of the UHI Millennium Institute our college is trying to deliver a different type of higher and further education. We have tried to draw some coherence out of the two quite different funding and quality assurance systems that operate under the Scottish Higher Education Funding Council and the Scottish Further Education Funding Council.

Let me first deal with the quality audit burden. Within my college, I call 2003 the year of the audit. In that year, we underwent the college-wide quinquennial institutional review that Her Majesty’s Inspectorate of Education carries out on different subjects. Also in that year, the UHI arm of our activity was subjected to a very rigorous institutional audit by the Quality Assurance Agency for Higher Education. However, 2004 is no different and 2005 will be the same again. To achieve that coherence, we can and should try to streamline the way in which we conduct audits, whether those be for quality assurance or the financial accountability that was discussed earlier.

At the moment, the FE sector is quality assured through HMIE, which deals with the primary and secondary education sectors. I take issue with what Tom Kelly said about the use of the term “tertiary”. Given that everything post-secondary is quality assured by the QAA, it seems to me that there is an opportunity to provide for the primary and secondary sectors to be quality assured and audited by HMIE and for the tertiary sector—that is, everything that is post-secondary, which means both HE and FE—to be audited through the QAA.

Tom Kelly: I am not sure that the principle of intelligent regulation can be legislated for, but if I were asked what that means, I would say that it implies that a new body of evidence should not be required where evidence from previous regulatory or inspection activity can be used. That is fundamental. Those who are in the regulation business should schedule their activities so that not everybody arrives on the doorstep at the same time, and machinery should exist—we now have it—to allow those who are engaged in the activity to talk to one another to resolve and reduce differences. We are some way towards that. We were looking not for a specific provision in the bill, but for a philosophy and an approach that would generate those benefits.

15:00

The Convener: In response to questions that we previously asked the Scottish Executive about the matter, we received a memorandum from the Scottish Further Education Funding Council. I would welcome your comments in writing about the progress that has or has not been made. It is about two years since the recommendation was made and progress seems to have been very slow. The subject was a major concern for several colleges—particularly those that do a lot of work for the enterprise networks, which imposed much of the quality audit, much of which was duplicated and overlapping.

Tom Kelly: We would be happy to supply a note on that.

Professor Archer: The document to which David Caldwell referred and which we would like to give you concerns the various forms of accountability in the university sector and contains a section about the QAA and development beyond
quality assurance. The theme at the moment is quality enhancement, on which Scotland has taken a lead that is influencing other places around the world to examine how we are doing. With quality enhancement, we are moving on and ensuring that we deliver the best education environment. The committee will see in the document that we have moved on from assurance to enhancement.

The Convener: I would welcome your comments on what the funding council said and on whether progress needs to be a bit faster.

Professor Archer: Sure.

The Convener: My next question is primarily for Universities Scotland. What should be the division of labour between the proposed research committee and the Scottish Science Advisory Committee? Should the research committee incorporate the advisory committee's functions, or do we still need two bodies?

Professor Archer: The committees are different beasts. In the funding council, the understanding of the research element and the way in which QR—that is quality research, to use the jargon—funding is distributed needs to involve a transparent process. A great deal of understanding is required of Scotland's competitive position in basic research as well as in applied research and the knowledge transfer elements. Delivering that rather specialised understanding to guide the allocation of funding is important in the funding council.

I make a distinction. The committee that is thinking about long-term future directions for Scotland and where Scotland's research strengths—are delivered by a variety of processes—lie is complementary to but not the same as thinking about how resources will be divvied up.

The Convener: A primary job of the Scottish Science Advisory Committee is to develop for Scotland the science strategy—

Professor Archer: Priorities.

The Convener: We are dividing the responsibility for strategy and priorities from that for funding. Is that wise?

Professor Archer: If one element can inform the other, I suspect that that is helpful. In the funding council, it is important that those who are involved in the decisions that influence how higher and further education and suchlike are delivered understand Scotland’s important strategic role in its research. I am sure that the funding council will be helped by understanding the deliberations of other committees that consider Scotland’s strategic priorities.

The Convener: I am not sure that I entirely agree with you, but that is helpful.

Professor Archer: I make that distinction.

Fiona Hyslop: I gather that the witnesses have concerns about the administration of the new funding council and about policy making. The general duties would be quite light from a ministerial point of view but quite specific from the funding council’s perspective. David Caldwell gave a diplomatic response to Susan Deacon when he outlined how the bill had been transformed during the consultation process. STEP—specified tertiary education provider—must be one of the shortest-lived acronyms in the history of public policy making. Everyone recognises that progress has been made and that good changes have been made to the bill.

How would the bill provide for policy making to ensure that the higher and further education sectors are fit for purpose for a European market in future, with reference in particular to the witnesses’ concerns in relation to the Scottish credit and qualifications framework? From the strategic and policy-making perspectives, there must surely be an important role for the bill in that context. How should the bill be amended to ensure that policy making is for the minister, rather than for the funding council, as the witnesses imply? David Caldwell said that the bill does not include everything that he asked for. What is missing?

David Caldwell: I am not sure that I can readily come up with many specific points. We would certainly have drafted provisions about the ombudsman in a slightly different way if we had had such an opportunity. There are a number of other, detailed points that we would have approached differently.

You ask a fundamental question about policy making, which is always a more complex process than we might expect. I have the greatest respect for Scottish Executive ministers, but I do not think that they could have devised the Scottish credit and qualifications framework; the sector was needed to do that. The only reason why we have such a framework in Scotland at all is because the sectors worked together to devise it, which was possible only because the higher education sector had done the prior work to establish the Scottish credit accumulation and transfer—SCOTCAT—system. Without that concept, we could not have made the leap to the credit and qualifications framework. On one hand, it is terribly important that ministers and senior officials should attend high-level European meetings to pursue interests in developing the framework; on the other hand, we are involved in a partnership and ministers are able to pursue that policy because of the work that went on in the sectors.

There will be occasions on which the initiative comes from ministers. That is entirely proper. As I said, the letter of guidance that is sent annually to
the funding council is a tremendously powerful tool that is taken extremely seriously by the council. That is evident from the circular letters that the funding council sends us in the months following the receipt of the letter of guidance, which reflect the fact that the council is taking ministerial guidance on board.

I am not sure to what extent legislation can help policy making. The bill facilitates or inhibits policy making no more than any other piece of legislation does; it merely presents a framework. The making of policy stands aside from the legislation and depends on the political will and impetus—I am pretty positive about that. Tom Kelly alluded to the fact that since devolution we have witnessed an enormous increase in the interest that parliamentarians take in higher and further education. To be candid, that did not happen before devolution. We were a minuscule area of interest as far as the Westminster Parliament was concerned. One of the positive features of devolution is the great attention that higher and further education and other aspects of life in Scotland have received from parliamentarians. On the whole, there is a much better environment for the development of policy than there used to be.

**Tom Kelly:** On Fiona Hyslop’s point about fitness for purpose for what could be an emerging European standard, the credit and qualifications framework has been built up from the bottom, and the processes would make whatever adjustments were needed in the future.

I pay tribute to the Scottish Qualifications Authority, which has got itself sorted out. Without the SQA, we could not achieve an SCQF for all the college provision that is now included within it, and we could not build it without the considerable efforts of staff. We need to keep making the point that staff in colleges have risen to every challenge that they have been faced with to adapt courses, structures and provision to modern needs. We are grateful that the Executive is putting substantial effort to keep the fees. The process is intended to be cost neutral. Any additional fee that is gained from an English student coming in, for example, is deducted from the block grant that is given by the funding council, such that there is no economic incentive for the university to admit an English student rather than any other kind of student. The money that is collected and kept by the funding council gets recycled to support the overall funding of education.

**David Caldwell:** I accept that the question is very difficult indeed, but we are faced with a new situation. The position now is that an English student studying medicine pays exactly the same fee as an English student coming in, for example, is deducted from the block grant that is given by the funding council, such that there is no economic incentive for the university to admit an English student rather than any other kind of student. The money that is collected and kept by the funding council gets recycled to support the overall funding of education.

**Tom Kelly:** I cannot envisage a European framework that is not based on units and levels, because units and levels just make sense. My analogy is Lego. If you want to see how Lego works, you have got to use it. Throw the bricks on the floor and children will show you that Lego works. It is actually quite difficult to prove that units and levels work, except by using them. We have done that and we are able to make a convincing case.

**Fiona Hyslop:** That is the point. Will the legislation work as a framework to inhibit or to encourage and facilitate? I hope that we will come back to that point.

I take your comments on fees, but section 8(10) refers to fees and excludes the training of teachers. That seems strange in a bill that you say will be used in a benevolent and non-destructive way. Why do you think that that provision is in the bill?

Secondly, on general principles, is it right that there should be a principle of deterrence, even if it is just for English medical students coming to Scotland? Is that the right policy position to take? It seems counter to some of the previous comments of Universities Scotland in particular about the use of fees to deter fee refugees from England. Is that not counter to the fresh talent initiative? In principle, is it not questionable?

**Professor Archer:** The point, as you are probably aware, is that the universities do not get to keep the fees. The process is intended to be cost neutral. Any additional fee that is gained from an English student coming in, for example, is deducted from the block grant that is given by the funding council, such that there is no economic incentive for the university to admit an English student rather than any other kind of student. The money that is collected and kept by the funding council gets recycled to support the overall funding of education.
controlled. The Executive is also concerned about the increased likelihood that the number of doctors qualifying from Scottish medical schools who choose to remain in Scotland would decline.

15:15

However, that is not the only factor. In our response to the Executive, we made the point that the most compelling way of persuading doctors to remain in Scotland is to make a medical career in Scotland as attractive as possible. That would mean that, regardless of wherever medical students were previously domiciled, many of them would choose to remain in Scotland. Nonetheless, in fairness, one has to accept that there is a tendency for those who come from England to study medicine in Scotland to return to England. When the level of fees in England rises, we will be dealing with a different situation.

Although we recognise the dilemma, we think that there is a legitimate case for the Executive to answer. It has to try to ensure that it gets the best value for money for the investment that it makes in medical education in Scotland.

The Convener: That completes our questions to the panel. I thank both organisations for their submissions and for the oral evidence that they gave today. The evidence was extremely helpful.
2 November 2004 (23rd Meeting, 2004 (Session 2)), Supplementary Written Evidence

SUPPLEMENTARY WRITTEN EVIDENCE FROM THE ASSOCIATION OF SCOTTISH COLLEGES

Audit Arrangements and Quality Assurance in Further Education Sector

Introduction

Colleges are subject to a wide range of audit processes for both their finances and quality of provision. Accountability and high standards are expected of colleges and delivered by them. There are issues, however, of duplication, complexity and excess of burdens which have been addressed in part but need further progress.

1. Audit and monitoring of college finances

All colleges have high standards and good systems of financial record keeping, and monitoring, and audit. This includes:

- External audit of colleges’ annual financial accounts by the Auditor General for Scotland (AGS) who lays the audited accounts before the Scottish Parliament under the terms of the Public and Finance Accountability Act 2000 (the PFA Act).
- Application of the Accounts Direction and a Financial Memorandum with the Scottish Further Education Funding Council; and
- Application of national accounting standards appropriate or applied to the colleges

Current concerns about these arrangements include:

- The possibility that colleges may be required to produce alternative annual financial statements for the new Scottish Charities Commissioner;
- Introduction of new requirements for disclosure, presentation of financial information, or scope of accounts by external auditors after the financial year has ended; and
- Rapidly increasing charges for external audit out of line with inflation and colleges’ administrative costs

2. Quality of teaching and learning

The external review of the quality of college teaching and learning is undertaken by Her Majesty’s Inspectorate of Education (HMIE), under contract to SFEFC. This review cycle is undertaken every 4 years and involves HMIE undertaking in every college a college (institutional level) review and subject (course level) review that ensures that college provision of teaching and learning is of an acceptable standard.

These reports are then published openly and made available for scrutiny by interested observers and the general public. The recent cycle of HMIE reports, over the last four years, has demonstrated the high standards of colleges’ provision. The new review cycle that will run from 2004-08 does introduce a ‘lighter touch’ and reduced audit burden on the basis of track record of quality assurance and enhancement.

ASC accepts the need for the teaching and learning provision of colleges to be externally reviewed and validated. The recent cycle of HMIE reports has demonstrated the progress that colleges have made over the last 4 years. ASC supports the key objective of quality enhancement and reliance on sound, established, self-evaluation within colleges. It is the quality “culture” within colleges that is the main safeguard.
In addition colleges are subject to many other quality regimes with regard to the non-SFEFC work that they undertake. This includes:

- Audit by SQMS (Scottish Quality Management System) which is undertaken on behalf of the Enterprise networks as a condition of contracts for all LEC funded training delivered by colleges;
- Institutional accreditation, programme validation and moderation of assessment by the Scottish Qualifications Authority;
- Specialist technical or professional requirements of other awarding bodies; and
- Established standards for staff development such as Investors in People.

Each of the many external assurance and accreditation processes may involve:

- Requests for additional documentation or records; and
- Inspection of facilities and sometimes teaching

Since 1997 ASC has sought simplification and reduction of these substantial burdens – and their associated costs for colleges – by convergence of requirements. The key principles are that:

- Records, evidence and accreditation for one purpose and regulator should be accepted and used by others;
- Site visits and inspections should be synchronised to avoid unnecessary repetition or inspection overload at any point in time; and
- Regulation should become progressively "lighter touch" as colleges’ own processes of self-evaluation and quality enhancement develop further

Some progress has been made. For example, the Convergence Steering Group of SFEFC (set up in 2000) has established credit transfer from HMIE inspection for all but one of the 10 components of SQMS accreditation. Health and Safety is now the only element of SQMS which requires separate auditing.

There is further work to be done. The Convergence Steering Group is currently looking at the overlap between SQA and HMIE to see if their respective assurance arrangements can be rationalised. ASC supports this work and hopes to see much wider acceptance of “accredited centre” status as evidence of effective, robust quality assurance.

Merger Bill

ASC welcomes the proposal in the Bill for a “duty to secure that provision s made for assessing and enhancing the quality of fundable further education and higher education”. This extends to colleges the statutory requirement of the 1992 legislation previously applicable only to universities and other HEIs.

There is some overlap in respect of elements of courses which count both toward SQA awards and as credits for degree courses overseen by degree awarding institutions and Quality Assurance Agency (QAA).

ASC wishes to see increasing convergence between the sectors in respect of:

- Institutional autonomy and responsibility in academic matters
- Streamlining of requirements for data, records, and inspection
- Increasing priority for quality enhancement once regular, robust quality assurance is proven

This work will also contribute to meeting the priorities of the “Efficient Government” initiative in reducing backroom costs, and concentrating more of available resources on front end delivery.
Conclusion

There has been some progress in streamlining the many overlapping requirements on colleges. Further work is needed, however, to achieve greater cost-effectiveness and clearer evidence for users and the wider public.

SUPPLEMENTARY WRITTEN EVIDENCE FROM UNIVERSITIES SCOTLAND

Held to Account - Seventeen ways in which Higher Education institutions are accountable for the use of public money

Introduction

The Scottish higher education sector is responsible for the use of over £1 billion of public money. All of the universities and colleges which make up the higher education sector are very conscious of the responsibility to account for the appropriate, effective and efficient use of that money. This paper outlines the layers of accountability which apply to the sector. It is divided into three sections.

The first section deals with how the sector is held accountable for the processes through which it carries out its work – conditions for achieving higher education status, financial accountability, internal audit, external audit, value for money and financial appraisal. This section will demonstrate that universities and colleges of higher education are rigorously scrutinised for the ways in which they use their resources.

The second section deals with quality and standards checking – quality assurance, institutional review, subject benchmarking, programme specification, code of practice, external examiners, accreditation, qualifications framework and student complaints review. It will demonstrate that universities and colleges are carefully monitored for the service and standards provided with public money.

The third section deals with performance monitoring – the Research Assessment Exercise and performance indicators. It will demonstrate that universities and colleges have their core outputs closely measured.

Section 1: Technical Process

Eligibility to apply for university college or university status

The Further and Higher Education (Scotland) Act 1992, gave the Privy Council responsibility for deciding which institutions should be granted degree awarding powers. The Privy Council acts on the advice of Government and consults Scottish Ministers on applications from Scottish institutions. However, Ministers from all four UK countries have agreed with the Privy Council on the criteria for degree awarding powers and university title, and the agreed criteria apply on UK wide basis. Only designated institutions may apply for degree awarding powers and university status. The Privy Council, Quality Assurance Agency and the applicant institution’s validating partner all play a role in the applications process.

To secure taught degree awarding powers an applicant has to satisfy a number of criteria in relation to institutional governance and management, quality assurance, academic staffing and administrative infrastructure. To secure specialist research degree awarding powers a further set of criteria relating to the institutional research environment need to be satisfied. To achieve University title a series of criteria relating to institutional governance and management, quality assurance, academic staffing, administrative infrastructure and the institutional research environment need to be satisfied.

According to guidelines from the Quality Assurance Agency, institutions seeking university status and/or the power to award degrees should be:
Enterprise and Culture Committee, 12th Report, 2004 (Session 2)- ANNEX D

- acknowledged as being worthy of university title or degree awarding powers by their peer community
- well founded, cohesive, self critical
- have their own mission statement
- contribute to diversity within the system
- maintain the quality of degrees

In addition, over the five years preceding an application the institution must demonstrate that none of its provision has been found to be unsatisfactory by the relevant quality assurance agency, and serious weaknesses of academic management have been identified in academic audits or institutional review reports.

Financial accountability

As recipients of significant amounts of public funding, higher education institutions are subject to specific requirements in relation to the safeguarding and use of these funds. The chain of accountability involves the Scottish Parliament, Scottish Executive Enterprise and Lifelong Learning Department Office Education and Industry Department, SHEFC and the institutions themselves.

The accounting officer of the Scottish Executive Enterprise and Lifelong Learning Department (SEELLD) Office Education and Industry Department is accountable to Parliament for the funds which are issued to SHEFC. The accounting officer is responsible for ensuring that the financial management and other controls applied by SEELLD and SHEFC are sufficient to safeguard public funds and satisfy the requirements of propriety. Audit is a key element of these controls and SHEFC is required by the department to have an audit service and to operate appropriate and effective monitoring systems. SEELLD is required to satisfy itself that SHEFC has in place effective internal audit arrangements.

SHEFC’s chief executive acts as accounting officer for funds received from the Executive and is accountable to the Scottish Parliament for those funds. Among other things, he must be satisfied that institutions are making proper arrangements to ensure that public funds are being used for the purposes for which they were given, comply with the conditions attached to them and are adequately safeguarded. In order to help obtain this assurance, SHEFC’s Governance and Management Appraisal and Policy (GMAP) directorate will periodically monitor compliance with the code of audit practice and assess the adequacy of internal management controls of institutions. The most efficient way of GMAP performing this task is to rely on the work of institutions’ internal and external auditors, where appropriate, and so avoid duplicating audit investigations.

Within an institution, the governing body is the supreme decision-making body and funds provided by SHEFC are in effect provided to the governing body. In formal terms the governing body of an institution is responsible for ensuring that funds from SHEFC are used only in accordance with the 1992 Act, the institution’s financial memorandum with the council, and any other conditions which SHEFC may prescribe. At the detailed level the governing body is responsible for ensuring the establishment and maintenance of effective arrangements to:

- ensure that the institution has in place effective internal control systems to safeguard the assets of the institution and to prevent and detect fraud;
- ensure that the financial, planning and other management controls, applied by the institution are appropriate and sufficient to safeguard public funds and funds from other sources, and to ensure that the funds are only used in accordance with the conditions under which they were made available (conditions of grant);
- secure the economical, efficient and effective management of the institution’s resources including capital assets, equipment and personnel so that the benefits that should be derived from the application of funds by SHEFC are not put at risk; and
- ensure sound corporate governance and the proper conduct of the institution’s operations.

To assist the governing body with meeting these responsibilities, the financial memorandum requires that the governing body must establish an audit committee. The governing body is
required to designate a principal officer, referred to as the designated officer, who is responsible for ensuring the proper and effective operation of controls. An institution is required to keep proper accounting records and to provide, in respect of each financial accounting period, financial statements prepared in accordance with the Statement of Recommended Practice (SORP): Accounting in Higher Education Institutions and, where appropriate, the Companies Acts. The governing body is required to appoint an external auditor to audit the financial statements in accordance with relevant auditing standards and guidelines and the code of audit practice published by SHEFC.

**Internal audit**

In accordance with the institution's financial memorandum with SHEFC, the governing body is required to secure the provision of an effective internal audit service (IAS). The operation and conduct of the IAS must conform to the standards for internal audit which are laid down in "Guidance for Internal Auditors" issued by the Auditing Practices Committee in June 1990, as updated and amended. Internal auditors must also have regard to relevant advice provided by professional auditing and accountancy bodies and any additional guidance which may be issued by SHEFC from time to time.

The prime responsibility of the internal audit is to provide the governing body, the designated officer and other senior management of the institution, with an objective assessment of the adequacy and effectiveness of management's internal control systems. Internal audit is an independent appraisal function, and for the most part, the institution contracts people outside of the institution to undertake this audit on its behalf. This independence enables internal auditors to appraise the internal control system in the impartial and unbiased manner essential to the proper conduct of audits. Although there is no specific time frame covering internal audits, they are generally undertaken within a five year cycle, and in this time every system within the institution is scrutinised. The internal audit examines, evaluates and reports on the adequacy of internal control. Internal audit is a key control mechanism, with a scope covering all the activities of the institution including those not funded by SHEFC. Coverage includes all the institutions' operations, resources, staff, services and responsibilities to other bodies although does not extend to the academic process.

The reporting arrangements for internal audit are determined by the institution after consideration by its audit committee. It is important that the reporting arrangements adopted do not compromise the independence or objectivity of the internal audit service. As a minimum, the internal audit report will include:

- the internal audit opinion on the adequacy and effectiveness of the institution's internal control system, having taken into account findings and conclusions from the systems that have been audited during the year, as well as in previous years and any known significant changes to the institution's risk profile that are likely to impact on future audit coverage;
- the internal audit opinion on whether proper arrangements are in place to promote and secure value for money;
- an analysis of common or significant weaknesses arising;
- an executive summary of each IAS report;
- a comparison of the internal audit's achieved performance during the year with that planned, placed in the context of the internal audit needs assessment and incorporating information regarding re-prioritisation of work during the year;
- details of any major audit findings where management action appears to be desirable but has not been taken, including that identified in previous years' IAS reports, and which needs to be brought to the governing body's attention;
- the extent of achievement of any objectives (including targeted performance indicators) which may have been agreed for the internal audit service;
- an analysis of agreed performance indicators; and
- the operational plan for the year following the year in which the report is written, including narrative explanation of variances from strategic plan.
After consideration and approval by the audit committee, a copy of the internal audit annual report, together with the audit committee's comments thereon, is provided by the institution to SHEFC.

External audit

The primary role of external audit is to report on the financial statements of institutions and to carry out examination of the statements, underlying records and control systems. However, the audit of public funds extends further than that of the commercial sector since auditors must also be concerned with the requirements of SHEFC and other funding bodies. Such requirements stem from the need for institutions to be publicly accountable for the public funds which they receive. The external auditor's report must, therefore, also cover whether there has been compliance with all the terms and conditions attached to the funds provided to institutions. Unless valid circumstances dictate otherwise, an institution's external auditor should also be appointed to perform the statutory audit of an institution's subsidiary companies.

Institutions must ensure that their auditors are eligible for appointment as external auditors within the requirements of the Companies Acts. Furthermore, under the Universities (Scotland) Act 1966, no person qualified to be appointed as an external auditor who is, or any member of whose firm is, a member of the university court or a member of the staff of the university. Also, to enable the objective review of internal audit by external audit, the same accountancy firm can not provide both internal and external audit services to the same institution. The governing body, as advised by its audit committee, is responsible for appointing and re-appointing the institution's external auditors.

The external auditors report details whether:

- the financial statements give a true and fair view of the state of the institution's affairs and of its income and expenditure and its cash flows for the year, taking into account relevant statutory and other mandatory disclosure and accounting requirements, including the Statement of Recommended Practice: Accounting in Higher Education Institutions, and any additional requirements of SHEFC;
- funds, from whatever source, administered by the institution for specific purposes have, in all material respects, been properly applied to those purposes and managed in accordance with any other terms and conditions attached to them; and
- income has, in all material respects, been applied in accordance with relevant legislation and with the institution's financial memorandum with SHEFC.

The external auditors may report privately to the governing body, through the audit committee, on the results of their work or they may make reference to this review in the financial statements either in their audit opinion or through a separate report. The external auditor is entitled to attend the meeting of the governing body or other appropriate bodies to which the institution's annual report and financial statements are presented. Institutions must send a copy of external audit's final Management Letter and management's responses thereon to SHEFC. However, in the case of serious control weaknesses, significant frauds or irregularities or any major accounting breakdown to the designated officer, the external auditors must report in writing to the chairman of the governing body, the chairman of the audit committee and the chief executive of SHEFC.

Value for money

Higher education institutions are required by SHEFC to establish arrangements to secure the economic, efficient and effective management of the institution's resources. To meet this responsibility, the governing body must ensure that there are in place sound controls for planning, appraisal, authorisation and control of the use of resources.

The term “value for money” is used to describe the combination of economy, efficiency and effectiveness:

- economy means minimising the cost of resources acquired or used, bearing in mind the quality, i.e. spending less;
efficiency covers the relationship between the output of goods or services and the resources used to produce them, i.e. spending well; and

effectiveness covers the relationship between the intended and actual results of projects and programmes, i.e. spending wisely.

Institutions must have a strategy for reviewing management's arrangements for securing value for money, and this is usually defined by senior management in consultation with the audit committee and the governing body. The audit committee, the head of the internal audit service and the external auditor play a role in advising the governing body on potential topics for inclusion in the programme of value for money studies. The audit committee is responsible for monitoring the effectiveness of the institution's arrangements to secure economy, efficiency and effectiveness which are put in place by management. The role of the internal audit service in relation to value for money auditing is twofold - as an integral part of its responsibility to evaluate the internal control system, internal audit must examine and evaluate the controls established by management to secure economy, efficiency and effectiveness; and internal auditors may conduct or participate in specific value for money studies. Over the complete audit cycle internal audit must provide a comprehensive appraisal of management's arrangements for achieving value for money.

In view of their independence and professional expertise in review, analysis and investigative work, internal auditors are often regarded as particularly suitable for conducting or assisting with specific value for money studies. However, institutions themselves will consider the extent to which it is appropriate to engage internal audit staff to lead and/or participate in each specific study. In some instances other institutional staff with appropriate expertise or independent specialists may be engaged either to manage or participate in such studies.

**Governance and Management Appraisal and Policy (GMAP)**

The financial memorandum between SEELLD and SHEFC requires the establishment of an audit function by the council. This audit function is discharged by SHEFC’s Governance and Management Appraisal and Policy directorate, which has taken over the remit of the Financial Appraisal and Monitoring Service (FAMS). The GMAP directorate is responsible for providing a comprehensive range of services to SHEFC with regard to monitoring the financial health of higher education institutions throughout Scotland.

The monitoring function of GMAP includes the following:

- analysis of financial forecasts, mid-year financial information and annual financial statements;
- assessment of institutions' financial control and audit arrangements;
- participating in UK wide value for money studies and other such projects aimed at developing and improving financial management in the sector; and
- developing and disseminating good practice guidance in relation to governance and management.

In this regard, GMAP is responsible for evaluating the council's control arrangements, and for providing assurance to SHEFC’s chief executive, as accounting officer, and the council's audit committee on the effectiveness of those control arrangements. A key responsibility of GMAP is to establish and develop a process for monitoring the effectiveness of institution's financial and management control and audit arrangements. GMAP has no executive role within institutions, nor does it have any responsibility for the development, implementation or operation of their systems. Nonetheless, it may provide advice and guidance to institutions on control and related matters, subject to the need to maintain objectivity. All institutions receiving funding from SHEFC fall within the scope of GMAP’s review.

In carrying out its responsibilities for monitoring the effectiveness of institutions control arrangements, GMAP undertakes a cycle of visits to each institution to review financial and management controls in operation across a range of activities, in particular, finance and audit. The overall objectives of the reviews are to assess the effectiveness of the operation of the institutions' key arrangement controls, and to assess the institutions compliance with good practice and related guidance.
In order to do this GMAP will:

- meet with members of the institution’s senior executive;
- review the activities of the internal audit function including audit planning and reporting arrangements; and meet with the internal auditor;
- review the external audit arrangements, including all relevant documentation and meet with the external auditor;
- review the activities of the audit committee through an examination of its minutes and its annual report to governing body; and meet with the chair of the audit committee;
- review the activities of the finance committee;
- review the budget setting process and financial reporting arrangements and meet with the finance officer; and
- review the activities of the governing body through an examination of its minutes.
- GMAP may also, after appropriate liaison, carry out ad hoc investigations at an institution on perceived areas of high risk.

Before concluding the visit GMAP discusses key findings with the institution and agrees these as factually accurate. The GMAP report gives an opinion on the area reviewed and makes recommendations to the institution’s management, where appropriate. The report includes an agreed action plan for improvement and material recommendations are followed up by GMAP. All reports are copied to the chief executive of SHEFC, and GMAP will communicate to the institution’s external and internal auditors any significant problems detected as a result of its review.

GMAP also maintains the internal audit service within SHEFC to ensure that adequate controls are in place.

Section 2: Quality and Standards

Academic quality refers to how the learning opportunities available to students help them to achieve their award. It is about making sure that appropriate and effective teaching, support, assessment and learning opportunities are provided for them. Academic standards, on the other hand, refer to the level of achievement that a student has to reach to gain an academic award.

SHEFC has a statutory duty to ensure the quality assessment of provision in the higher education sector. SHEFC, like SFEFC in the further education sector, has the power to withdraw funding, although this would be seen as the last option.

It is a condition of grant that higher education institutions, taking account of their own particular circumstances and contexts, devise and implement strategies which address effectively the Scottish Executive’s priorities for:

- equality of opportunity and widening participation;
- continuous improvement of learning and teaching;
- research and knowledge transfer; and
- human resources policies and management.

SHEFC contracts with the Quality Assurance Agency for Higher Education (QAA) to carry out reviews on its behalf.

Quality Assurance Agency for Higher Education (QAA)

The QAA is an UK-wide independent body which was established in 1997 to provide an integrated quality assurance service for UK higher education. It is funded by subscription from the higher education institutions and through funds from the higher education funding councils. The QAA’s responsibility is to safeguard the public interest in sound standards of higher education qualifications, and to encourage continuous improvement in the management of the quality of higher education.
It is the responsibility of each institution to offer a good quality education and to ensure that appropriate standards are achieved. It is the QAA’s role to provide public assurance that standards and quality within higher education are being safeguarded and enhanced. It does this mainly through a peer review process of audits and reviews. These are conducted by teams of auditors and reviewers, most of whom are academics but with some members drawn, where appropriate, from industry and the professions. QAA reports on most of its review activities, and this information helps prospective students and their advisers when applications are made to universities and colleges. It may be used also by graduate recruiters and professional, statutory and regulatory bodies that recognise higher education awards that count towards their qualifications.

Over the past decade the higher education sector in Scotland has participated in a range of initiatives in the external assurance of quality and standards. These initiatives have included a complete round of teaching assessments at the subject level; 75 academic reviews at the subject level; a complete round of audits of institutional management of quality; thirteen second round continuation audits. The outcomes of these activities have demonstrated that, in general, Scottish higher education institutions had in place effective quality management systems relating to the experience of students and the standards of their awards, and that the subject provision experienced by students was highly satisfactory or better.

Building on these foundations, national and institutional activities relating to managing quality and standards have been changing to focus more explicitly on the enhancement of the learning experience of students.

The Enhancement Led Institutional Review

Over the period of 2001-03, SHEFC, Universities Scotland, the Quality Assurance Agency, and representatives of the student body have worked closely together on the development of a new approach to quality, the Enhancement Led Institutional Review (ELIR). The new approach was fully implemented for the 2003-04 academic year, and as the process is based on a four year cycle all institutions will have completed the ELIR by 2007.

The five interrelated elements of the approach are:

- a comprehensive programme of reviews at subject level, operated internally by the institutions themselves;
- the Enhancement Led Institutional Review process, which will involve all Scottish higher education institutions over a four year cycle;
- improved forms of public information about quality made available by the institutions, based on addressing the needs of a range of stakeholders including students and employers;
- the effective involvement of students in institutional quality management, supported by a new national development service;
- a national programme of enhancement themes, aimed at developing and sharing good practice in learning and teaching in higher education;

In order to meet the agreed requirements of SHEFC, Universities Scotland and the student bodies, the design of the institutional review methodology has embraced a focus on the strategic management of enhancement; a focus on the effectiveness of student learning; the use of a range of reference points including the Scottish Credit and Qualifications Framework, the QAA’s code of practice and subject benchmark information; appropriate reference to employer and international perspectives; the inclusion of a student or representative within the audit team; and a published report which includes commentary on a range of quality issues. There is no summative judgement in the report, but it does include a judgement on the effectiveness of the institution’s systems for maintaining quality and standards at an acceptable level. The judgement provides comparability with other audit and review methods operating in UK. The published report is the complete, formal and public record of the ELIR process, including the evidence-based commentaries and conclusions of the review team.

The agencies involved in developing this strategy believe that the collaborative approach to quality is unique in many respects - in its balance between quality assurance and enhancement; in the
emphasis which it places on the student experience; in its focus on learning and not solely on teaching; and in the spirit of cooperation and partnership which has underpinned all these developments. Consequently, this new approach places Scotland at the forefront of international good practice in this area.

**Subject benchmarking, programme specifications and code of practice**

There are a number of further QAA measures to ensure quality and standards in higher education, including subject benchmarking, programme specifications and a code of practice. Subject benchmark statements set out expectations about standards of degrees in a range of subject areas. They describe the conceptual framework that gives a discipline its coherence and identity, and define what can be expected of a graduate in terms of the techniques and skills needed to develop understanding in the subject. They also identify the level of intellectual demand and challenge represented by an honours degree in subject areas, and help higher education institutions when they design and approve programmes.

Programme specifications are the sets of information that each institution provides about its programmes. Each specification clarifies what knowledge, understanding, skills and other attributes a student will have developed on successfully completing a specific programme. It also provides details of teaching and learning methods, assessment and subsequent career opportunities, and sets out how the programme relates to the qualifications framework. This information allows prospective students to make comparisons and informed choices about the programmes they wish to study and provides useful guidance for recruiters of graduates.

The code of practice sets out guidelines on good practice relating to the management of academic standards and quality. Each section of the code of practice has precepts or principles that institutions should satisfy, with guidance on how they might meet these precepts. The Code has 10 sections:

- postgraduate research programmes;
- collaborative provision;
- students with disabilities;
- external examining;
- academic appeals and student complaints on academic matters;
- assessment of students;
- programme approval, monitoring and review;
- career education, information and guidance;
- placement learning;
- recruitment and admissions.
External examiners

Each higher education institution appoints external examiners who report to the head of the institution. External examiners are independent academic experts drawn from other institutions or from areas of relevant professional practice. Institutions require external examiners, in their expert judgement, to report on:

- Whether standards set are appropriate for the awards or award elements, by referring to benchmark statements, the frameworks for higher education qualifications, institutional programme specifications, and other relevant matters;
- The standards of student performance and the comparability of the standards with those following similar programmes in other UK higher education institutions;
- The extent to which the processes for assessment, examination and the determination of awards are sound and have been fairly conducted.

Section 4 of the Quality Assurance Agency’s Code of Practice outlines principles for institutions to consider with regard to external examiners. The QAA suggests that full and serious consideration should be given by the institution to comments and recommendations contained within external examiners’ reports, and the outcomes of the consideration, including actions taken, should be formally recorded.

Accreditation by professional, regulatory and statutory bodies

Some programmes of study in higher education may lead also to a professional or vocational qualification, for example, in engineering, law, accountancy or medicine. Such programmes are subject to accreditation by the relevant professional or statutory body. This form of accreditation recognises that a programme provides some or all of the competencies needed for professional practice, and can be viewed as a means of accountability for standards within the relevant programme.

The Law Society of Scotland for example, under the Solicitors (Scotland) Act 1980, is responsible for regulating the qualification of persons for entry to the solicitors’ profession. The society encourages law schools to adopt best practice in the field of legal education and training, and take as their core education concept the benchmark of competence in legal practice. Applications for accreditation from the Law Society of Scotland must be made to the Director of Education at the society, who will then consider the performance of the law school over a wide reaching range of standards including teaching resources, staff development, staff student ratio, IT facilities, library standards, entrance qualifications, reports of the external examiner, and randomly selected examples of student work.

The Society recognises universities as accredited for the provision of qualifying degrees if the following requirements, among others, are met:

- The course of study leading to the qualifying degree will be one which satisfies external examiners approved for the purpose by the Society that, in addition to the areas of performance set out in the benchmark standards of the QAA or as set out by any equivalent or successor body, students of that course of study should have acquired the knowledge and general transferable skills set out by the Society.
- The course of study for the qualifying degree in law includes the study of legal subjects for the equivalent of not less than two years so that for example, under the SCOTCAT system, a student gains not less than 240 credits in the study of legal subjects in a degree programme or in a combination of degree programmes containing either 360 or 480 credits.
- The syllabus and reading list of the qualifying degree includes material equivalent to the Examination Syllabus as issued by the Society. Not less than 180 credits in the qualifying degree should be devoted to the material equivalent to the Society’s Examination Syllabus, and students taking the qualifying degree must pass all final assessments of the subjects equivalent to the Society’s Examination syllabus.
In addition, the Law Society sets out objectives of the qualifying degree under the headings of subject specific abilities, general transferable intellectual skills, and key personal skills. These performance objectives are comprehensive and cover learning outcomes from communication and literacy, to critical judgement and evaluation, and legal and ethical values.

**The Scottish Credit and Qualifications Framework**

The Scottish Credit and Qualifications Framework (SCQF) promotes clearer understanding of the achievements and attributes represented by attaining school, further education and higher education qualifications. The introduction of the Framework has encouraged the use of learning outcomes in Scotland’s higher education institutions, and has been a further impetus for looking at quality and standards across Scottish qualifications. The Framework describes qualifications in terms of credit and level – credit is awarded at a specific level and is thereby linked to learning outcomes. There are twelve levels, with level 1 representing outcomes designed for learners with profound learning difficulties, and level 12 representing outcomes associated with doctoral studies. Generic level descriptors for each level give an indication of the level of demand on the learner and give descriptions of learning outcomes which are characteristic of qualifications at that level.

By setting out the attributes and abilities that can be expected of the holder of a qualification, the framework helps students and employers understand the meaning and level of qualifications and provides public assurance that qualifications bearing similar titles represent similar levels of achievement. Furthermore, the SCQF identifies the achievements of learning and support the concept that learning is a lifetime activity.

**Scheme for the Independent Review of Student Complaints**

Universities Scotland introduced a new voluntary scheme for the Independent Review of Student Complaints system in academic session 2002-03. The scheme allows cases to be referred for independent review in those instances where internal processes have been completed; and the complainant is dissatisfied with the outcome, and wants the case to be referred for independent review. The Independent Reviewer is a member of the Faculty of Advocates, an appointment made by the Dean of the Faculty of Advocates and is independent of the higher education sector. Neither Universities Scotland nor the higher education sector was involved in selecting the reviewer. Students who have exhausted their institution’s internal complaints procedures and remain dissatisfied can appeal to the Independent Reviewer. Individual institutions will advise the student of the procedure for doing so at the conclusion of internal processes. At that point the student is given the contact details of the Independent Reviewer. The scheme does not cover complaints by members of staff or matters of academic judgement, including marking or examinations, except in procedural matters.

**Section 3: Performance Monitoring**

**The Research Assessment Exercise**

The Research Assessment Exercise (RAE) evaluates the quality of research in higher education institutions. Its main purpose is to distribute public funds for research selectively on the basis of quality. The outcomes grade the unit responsible for research, usually a university department but sometimes a faculty or perhaps a smaller team, on a scale of 1 to 5, five being the highest quality. Two of these grades have a subdivision which differentiates performances which are not significant enough to merit a separate band. These are band 3 (which is divided into 3a and 3b) and 5 (where there is also a 5* which denotes a higher volume of international excellence.

All higher education institutions are invited to put forward members of staff from departments whose research quality is assessed by panels of their peers, international experts and consumers of research from out-with academia, such as industrialists. Every higher education institution may make a submission to as many of the units of assessment as they choose. Such submissions consist of information about the academic unit being assessed, with details of up to four publications and other research outputs for each member of research-active staff. Institution’s submissions also contain information such as the number of research students and the research
income generated. According to the number of staff rated at different level, the department will be rated in one of the five bands.

The most recent RAE was undertaken in 2001, and its results show:

- There has been a major improvement in the quality of research in Scotland. 50 per cent of research staff work in departments rated as internationally excellent.
- Scotland has overtaken the UK average rating and has matched that of England. In the last five years Scottish research has improved by an average of 18 per cent, compared to a 15 per cent improvement in England.
- The amount of research carried out in Scotland is impressive, with 12.1 per cent of RAE submissions with only 8.6 per cent of the UK population. There is 40 per cent more research per capita in Scotland than the UK average.

In key areas for the Scottish economy, the average quality of research outstrips the rest of the UK. This includes biological science, electrical and electronic engineering, hospital-based clinical subjects and computer science. The key messages for Scotland are that Scotland is now as highly regarded as any other UK country in terms of research quality. In areas of key importance to the economy we are delivering some of the best research in the UK. And importantly, we are doing an enormous amount of research given the size of the country. The positive results of the 2001 RAE are due in part to SHEFC having focused more funding on developing the research base. It has also encouraged collaborations which have been very effective. Scotland has also pulled in more than its per capita share of research council pots of money from UK-wide competitive bidding. All of this has enabled greater efficiency and enhancement of research quality in Scotland. Because the average level of quality has increased, if the unit of funding is to be maintained, new money must be put in. Clearly, you cannot divide the same pot among a larger number of successful departments and keep the unit of funding the same.

The next Research Assessment Exercise (RAE) is planned for 2008 and will use quality profiles to provide a fuller and fairer assessment of research carried out in higher education institutions in the UK. The results of the exercise will be expressed as quality profiles of research in each department submitted to the RAE. They will determine the annual distribution of funds for research in UK higher education institutions over a six-year period from 2009. The quality profiles measure the different proportions of work in a submission that reach each of four defined levels of quality. They will replace the overall judgement of research for each department based on a seven point grading scale used in the previous exercises.

**Performance indicators in higher education**

The need to establish a common system for measuring aspects of the performance of higher education institutions has been recognised for some time. The Performance Indicators Steering Group led the work of developing performance indicators, bearing in mind institutions’ diversity and the needs of different stakeholders. Its members are drawn from the UK higher education funding councils, government departments, the Higher Education Statistics Agency (HESA) and the higher education institutions through their representative bodies. The set of performance indicators published in September 2004 is the sixth in the series and details performance of aspects of higher education institutions in academic year 2002-2003.

Performance indicators are a range of statistical indicators intended to offer an objective measure of how a higher education institution is performing. There are indicators for all 168 publicly funded higher education institutions in the UK, however they do not represent “league tables”, and do not attempt to compare all higher education institutions against each other. The purpose of performance indicators is to provide reliable information on the nature and performance of the UK higher education sector; enable institutions to benchmark their own performance; inform policy developments; and contribute to the public accountability of higher education.

They currently cover:

- access to higher education from state schools, socio-economic class, low participation neighbourhoods, and amongst people with disabilities
non-continuation rates for young and mature students
projected outcomes for students at individual institutions
indicators of research output

Performance indicators are of interest to a wide range of bodies, including government, universities and colleges, and the UK higher education funding bodies, as well as schools, prospective students and employers. The 2004 performance indicators report, which covers 2002-2003, shows that:

- the proportion of young entrants to higher education in Scotland from state schools continues to rise. The proportion has risen steadily from 81% to 87.5% between 1997 and 2002;
- only 16% of students in Scotland starting a first degree course are not expected to obtain a qualification, this rate is high compared to other countries in the world;
- the proportion of full-time and part-time students in receipt of the disabled students allowance, although small, is continuing to rise steadily;
- the percentage of young full-time undergraduate entrants in Scotland from low participation neighbourhoods at 18.6% continues to hold its position ahead of the UK average of 13.3%; and
- although the population of Scotland is under 9% of the UK population, Scottish institutions attract some 11% of external research grants and contracts, indicating a disproportionate contribution to the knowledge economy.

UNIVERSITIES SCOTLAND RESPONSE TO QUALITY ASSURANCE

The partners involved in quality assurance in the Scottish higher education sector have developed a system with which all stakeholders are satisfied and which has widespread confidence. We are keen that this system is maintained and supported. We are not as familiar with quality assurance arrangements in the further education sector. However, from a brief look at the summary of arrangements for quality assurance in the further education sector and taking into account our own past experience with this, there seems to be a strong case for looking at rationalising and simplifying the process.
9 November 2004 (24th Meeting, 2004 (Session 2)) Written Evidence

WRITTEN EVIDENCE FROM THE ASSOCIATION OF UNIVERSITY TEACHERS

Preamble

The Association of University Teachers Scotland (AUTS) has over 6,500 academic and academic related members in Scottish higher education institutions (HEIs). We are the Union that represents lecturers, researchers and academic related staff, which includes senior administrative, computing and library staff. We welcome the opportunity to submit evidence to the Enterprise and Culture Committee on the Scottish Further and Higher Education (Scotland) Bill.

Although the consultation is about a merger of the funding councils, as an exclusively higher education union we will mainly confine our comments to the higher education sector.

The merger has already undergone two consultation stages and the draft bill and proposals altered significantly after the public consultation. Nearly all of our comments on the consultation were incorporated into the published bill in stark contrast to the pre-consultative stage.

Introduction

We support the proposed merger of the funding councils and this Bill meets many of the concerns of the sector in forming a council for further and higher education. We believe that higher education (HE) is vital for the future of Scotland and Ministers often cite Scotland’s world-class universities as central to a Smart Successful Scotland. However, we believe the Bill could express that greater vision for a higher education that is essential for a successful future in Scotland. The Bill should help Scotland’s world class universities continue to maintain their position in Europe and the world whilst contributing to a Scotland that is smart, successful, sustainable and inclusive.

Vision for higher education

A vision for higher education should recognise the many roles it plays in developing economic and cultural aspects of the individual and society, thus developing civic Scotland, including the sciences. The aims and objectives of the recent Scottish Funding Council’s joint corporate plan placed too much emphasis on the economic aspects. In the Executive Summary of A Framework for Higher Education in Scotland it states:

We look to our higher education institutions to serve learners: helping people develop throughout their lives so that they play the fullest part they can in society and the economy. We also look to higher education to serve society: making a significant contribution to the health, wealth and culture of a thriving and creative Scotland.

The new body should reflect this broad steer rather than solely concentrating on the economic aspect of the purpose of higher education.

By supporting higher education the funding council will continue to contribute to the priorities of the Executive. Higher education is a crucial element for these priorities, as it provides the knowledge and experts that are required for all the professions.
We recommend that:

a. academic staff should be relieved of the burden of bureaucracy
b. the undermining of academic freedom should be reversed
c. the use of fixed-term contracts reduced
d. outreach into communities, including industry, should be rewarded.

This will allow academic staff to concentrate on their main roles of teaching, research and scholarship for the greater good of Scotland.

Course provision and articulation

We fully support the concept of greater collaboration and increased articulation through the use of the Scottish Credit and Qualifications Framework and in particular of increasing access to university for students from all walks of life. The merger of the councils will allow for joint funding for articulation initiatives across the sectors.

Fundable bodies will have a legislative requirement to have provision for the planning and development of their activities but the Council has not been given the power to monitor these plans or ensure that Ministerial guidance is carried out. We believe the new body should have an overview of HE subject provision within Scotland even though the Bill states that the decisions on courses are for individual institutions. It should ensure that subjects are not lost to Scotland as a whole due to higher education institutions (HEIs) closing down courses. This is particularly important if Scots will be financially penalised by taking courses outwith Scotland. By ensuring HE subject provision in all areas the new body will be able to address future skills holistically but predicting specific future skills needs is fraught with difficulties and dangers.

Many students, especially from non-traditional backgrounds, want to attend courses that do not attract credit, but which may act as a ‘taster’ for further learning. Often such students are deterred by accreditation, which has connotations of examinations. There is no reason why all courses within higher education need to attract credit, especially if such accreditation acts to deter participation by non-traditional students. We strongly believe that any funding method should not discourage the teaching of non-accredited courses, as this is an essential element of the adult learning provision provided by institutions.

We recommend:

a. the re-introduction of funding for non-accredited courses
b. encouragement of wider participation via such courses.

Funding

We believe that the distribution of funds between the two sectors is a political decision and not one to be decided in a formulaic manner. Hence the Scottish Executive and Parliament should have the ultimate say through the Scotland budget, as is presently the case. The need for the Enterprise and Culture Committee and the Scottish Executive to review specific HE funding in the light of university and student funding proposals in England amply demonstrates this point.

The main challenge of the merger is how to maintain within a single structure the distinctive roles of further and higher education. In attempting to cover both sectors, the objectives of the Council could become either disparate or basic, and we are deeply concerned that, in the long term, the distinctive role of institutions will be diminished. Whilst there may be a general consensus for the merger of the funding councils, it should not be allowed to result in the improvement of the position of the FE sector to the detriment of the international standing of Scotland’s universities. The distinctive role of Scotland’s universities must be recognised, protected, maintained and enhanced by the merged funding body.
Higher education institutions, as recipients of substantial public funding from the Scottish Parliament's budget, should be broadly accountable for the use of these funds in accordance with Scotland's needs for higher education and research. However, as higher education institutions are autonomous bodies, it is not possible to specifically direct their funding. But we now have a democratic mechanism whereby universities are accountable, through SHEFC, to a Scottish Parliament with significant and distinctive roles for the Minister and the Enterprise and Culture Committee. The Ministerial guidance presently steers the funding of SHEFC whereas the Committee has an audit role for both the Minister and SHEFC.

We are concerned, though, that institutions have not adequately enacted Ministerial guidance and we would wish to see increased powers for the council in ensuring that public money is used in accordance with the wishes of Ministers. Presently the only recourse for SHEFC is to cease funding for institutions that do not meet their obligations under the condition of grant. This is a punitive measure, which would result in HEIs losing funding for those activities that the council is promoting.

One appropriate method to address the balance between autonomy and accountability is by the use of a rigorous condition of grant as recently developed by SHEFC. This should be combined with an increased capacity for the council to warn HEIs that they are not meeting their conditions of grant and face financial penalties in the future. Financial penalties should then include the withholding of grants or even funding claw backs until the institution proves that it is attempting to meet its obligations.

We believe that institutions should be required to show how they will respond to government policies in their strategic plans whilst maintaining their distinctive institutional mission and fully involving internal stakeholders – notably staff and students. However the new funding council will need to develop capacity and methodology for monitoring the implementation (as well as the adequacy) of institutions' strategic plans and in making recommendations on the plans to Ministers and the parliament.

Particular examples where we believe that institutions are not meeting their obligations despite repeated assertions in the ministerial guidance are those relating to staffing issues including the reduction in fixed-term contracts and meeting equal opportunities in terms of closing the pay gap between women and men and for staff of ethnic origin.

We recommend that:

a. Ministers direct the overall diversion of funds between the two sectors
b. the Council be given increased powers to ensure that public money is used in accordance with the wishes of Parliament
c. the use of a rigorous condition of grant as the most appropriate method to address the balance between autonomy and accountability
d. financial penalties include the withholding or claw back of funding.

Governance, organisation and management

Most HEIs have adequate procedures on governance at present but we are concerned to maintain the principle of HEIs having democratically elected staff representatives on the governing bodies.

We believe the powers relating to governance are presently appropriate for the higher education sector but we welcome the need to demonstrate good corporate governance, involving staff and students.

Merger Consultation

We welcome the fact that Ministers can no longer initiate consultations on mergers but recognise that the Scottish Parliament has a role in promoting collaboration which increases productivity and
the value of research and teaching, including greater opportunities for the redeployment of contract research staff. In consideration of mergers we believe students and staff have a vital role in determining the mechanics of the merger but they are not included in section 22(4) of the Bill.

**We recommend** that staff and students be considered as stakeholders in consultations over merger proposals.

**Academic freedom**

While we welcome the assurance given by 8 (12) that funding decisions by Scottish Ministers will not be tied to conditions affecting particular programmes of learning or courses of education and research, it should be noted that this protects institutional academic autonomy. It does not protect academic freedom properly understood. Academic freedom is most authoritatively defined in the Education Reform Act 1988 (which in this respect applies only to institutions which, at that time, were already Universities). Academic freedom is about freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without the staff concerned placing themselves in jeopardy of losing their jobs or privileges. This legislative endorsement and protection of individual academic freedom should be extended also, using the opportunity presented by the current Bill, to the post 1992 universities in Scotland and (whilst this is not a matter of direct concern to AUT Scotland) in principle we see no reason why this should not also apply in further education.

**We recommend** that individual academic freedom be extended to the whole of further and higher education in Scotland.

**Fee levels**

We share the concerns of the Executive that English students coming to Scotland for purely financial reasons may result in loss of places for Scottish students. However, we are concerned that proposals in section 8 of the Bill could be interpreted as giving power to introduce variable fees. We remain implacably opposed to variable fees in Scotland.

**Conclusion**

In general we support the Bill and we hope we can work with the committee to refine the detail during the passage of the Bill through the Parliament.
INTRODUCTION

The Educational Institute of Scotland is the largest lecturers’ union in Scotland, with close to 9,000 academic members in both the further and higher education sectors. The EIS is the sole representative body for further education lecturers in Scotland. The Institute welcomes the opportunity to influence the eventual structure of a single funding council for Scottish tertiary education and the terms of the Tertiary Education (Funding etc.) (Scotland) Bill.

LEGISLATING FOR MERGER

The Institute welcomes the news that in seeking to legislate for the merger of the two funding councils it is intended to keep change to a minimum. However, if the new body is to play a role in realising the people centred aims of the Scottish Executive Lifelong Learning Strategy as set out in “Life through Learning: Learning through Life” and “A Framework for Higher Education in Scotland” we believe it will have to be an enabling body, one which has a developing, planning and funding role.

The new body should promote and assist collaboration between further and higher education establishments and other local and national agencies, ensuring duplication is kept to a minimum while encouraging partnership working which provides value to Scotland’s growing knowledge economy. The new body should ensure representatives of staff in both sectors are involved in any planning and delivery processes.

The EIS believes the further education sector has established itself as the lead provider of HNC/HND education in Scotland and promoted the 2+2 route to a degree as the preferred option of many students. However, while this is the preferred option for many we realise that a four year honours degree will still be the preferred route for the majority of school leavers, we would therefore not wish to see any new legislative framework seek to promote one route over another, nor would we wish to see disparity in funding arrangements and would encourage the new body to fund according to level as set out in the Scottish Credit Qualifications Framework.

When framing the new legislation the Institute would wish the Executive to note that FE lecturers also deliver degree level programmes for many HEIs in locations best suited to the student’s circumstances. Despite this exceptional contribution to HE delivery in Scotland, FE lecturing staff do not enjoy “parity of esteem” with their HE colleagues, particularly when it comes to matters of pay. The Institute believes now is the time for Ministers to seek to establish a forum to review the current disparities in pay and conditions across the FE sector and recommend looking at the long term benefits of assimilating FE college staff to the newly established higher education pay and grading framework.

Diversity

The Institute supports the proposal to create an environment where the Council has the same powers and duties over all institutions. However, we also believe that not enough attention has been paid to recognising the diversity of the further and higher education sectors and that categorisation contained throughout this consultation document and proposed Bill seek to devalue the very diversity that is central to what the Executive seeks to achieve. The Institute is comfortable with the concept of a tertiary education sector for Scotland but is totally opposed to the STEP categorisation contained in the consultation and would question why it was necessary to sub-divide higher education throughout the document. We suggest greater clarification of the diversity of Scotland’s tertiary sector is needed in the final Bill to ensure no negative impact is experienced by any one institution following legislative change.
THE CHANGING LANDSCAPE

The Institute cannot see any case for extending the range of learning providers eligible for funding from the new body as we believe Scotland is well served by its publicly funded FECs and HEIs. The Institute would, however, suggest additional funding is needed to assist cross sector collaboration, maximising use of resources and minimising duplication. If workplace education and training is to be beneficial to the needs of the Scottish economy we believe it must be delivered by dedicated, qualified professional lecturing staff who understand the priorities of Ministers and the Council, from our further and higher education institutions thereby ensuring quality and best value.

However, should such a proposal find itself into the final Bill, the Institute believes greater clarity is needed to show that being specified as a tertiary education provider does not automatically mean funding is provided from the public purse, causing a redistribution of scarce resources. Should eligibility ever lead to funding the Institute would want to be assured that Ministers were satisfied that it was only in exceptional circumstances and a consequence of the provision not being available from any FEC or HEI.

The Institute is pleased to note that the SCQF is currently establishing itself as a world leader in bringing clarity and understanding to entry and exit points and routes for progression within and across post compulsory education and training in Scotland. The Institute supports the work of the SCQF and looks forward to it providing a national vocabulary for describing learning opportunities and making the relationship between qualifications clearer and more easily understood by employers, learners, parents and the general public.

We welcome the proposal to extend academic freedom to FECs. However, we would need assurance that the academic freedom enjoyed by higher education academic staff is also extended to further education lecturers.

We note the review of teacher qualifications in FE and the potential that lecturing staff would be required to gain an appropriate teaching or professional qualification within a prescribed period of time. The Institute would welcome such a proposal for FE lecturing staff.

Finally, we note the proposal to add a power in the new legislation which would allow Ministers to “invest additional funds – beyond grants” for a specific purpose. The Institute is opposed to top slicing in both further and higher education and would need assurances that these “additional funds” were indeed new money not just money top-sliced from annual grant-in-aid allocations.

ROLE OF THE NEW BODY

Responsiveness and relevance of learning provision

The Institute, as indicated above, believes that the new body should have a planning and funding role and therefore accepts that it will have some involvement in ensuring that FE and HE institutions respond to addressing the skills needs of the Scottish economy. As it is likely that the Scottish economy will continue to move away from manufacturing and towards commercial and service based employment and also self-employment, we believe this is a strong pointer towards the need for broad courses including a large element of general education. If institutions are to be able to adapt quickly to changes in national and local economies and to set up new courses as required they will require to be well resourced. The Institute would like to see the Council provide funding for the development and piloting of new provision in rapidly evolving areas. We share the vision of collaborative working in many of the Stakeholder Platforms and ask that the new Council provide for partnership arrangements between FE and HE institutions; relevant employer stakeholders; trade unions and the Executive to encourage a proactive, informed approach to such developments.
Quality of learning provision and research

The Institute has no difficulty with the provisions outlined here, however, we would not wish to see any additional quality audit burden placed on FECs or HEIs by the new Council, rather we would welcome a review of current audit requirements and a light touch approach being introduced, underpinned by robust self-evaluation.

The Institute would like to see the new body take a lead role in ensuring FECs are able to avail of research opportunities and that they are provided with opportunities to learn from HEIs how best to incorporate research considerations to current activities. We would like to see twinning and mentoring opportunities for institutions and staff being promoted.

Coherence of provision and collaboration between providers

The Institute would like the Council to adopt a Collaboration, Communication, Co-operation approach, promoting joint programme delivery and research both within and across sectors. It should be proactive in encouraging and supporting collaborative initiatives, highlighting and commending good practice. It is true that collaboration is currently more common place between HE institutions and between FE colleges but not at all clear that collaboration and partnership across both sectors is as good as it could be. The Institute believes collaboration between sectors is a clear means of ensuring “parity of esteem” is established across both FECs and HEIs and suggests that the additional resources will be required initially for FECs to rise to the challenges of collaborating with well established synergies in HEIs. Seamless articulation from FE to HE should be another priority for the new Council.

UHIMI and Crichton Campus: new approaches

The Institute supports the development of the UHI Millennium Institute and the value that such a development brings to the Islands and Highlands of Scotland. We are, however, concerned that this “university” is developed on a par with other universities in Scotland which is currently not the case as courses presently offered by the UHI Institute are developed by FE academic staff, taught by FE academic staff, student support dealt with by FE academic staff, without any common approach to quality, conditions of employment or rates of pay. The Institute suggests the new Council cannot continue the “poor relation” approach to the development and provision of degree courses for the UHI Institute and expects a funding mechanism to be established that allows the current disparities to be overcome.

Mergers and new institutions

The Institute would wish decisions on institutional closures, start-ups or mergers to reside with Ministers. However, we would suggest that the Council be given authority to monitor the implementation of merger decisions in order to ensure the provisions of merger are adhered with and the interests of staff maintained. The Institute has not had very good experience of mergers in the HE sector and would suggest that some mergers had an element of asset stripping at their core while others seek to intimidate and threaten academic staff to transfer from TUPE protected contracts to alternative contracts by denying them future pay awards. The new body should also have authority to advise Ministers to reverse the decision should staff and student interests not be upheld.

On the FE front the Institute has been appalled at the amount of public funds utilised to investigate the potential for merger between colleges, without one single positive outcome. We believe the Council has a role to play in initiating and encouraging institutions to consider closer working, including merger, however, it should also have the authority to recommend positive change where that change is supported by the majority of the relevant stakeholders.
Progression through learning (including articulation)

The Institute believes the new Council should, perhaps using a condition of grant, ensure all HEIs to have articulation agreements in place with further education colleges in order to maximise the number of students progressing seamlessly from FE to HE study. We would also suggest that the new body ensure that where these advancing students are those from socio economic groups not previously involved in or attracted to higher education that resources follow the student to ensure that expectations are realised and drop out rates among “non traditional” learners reduced. We believe that it is only with specific additional financial support that HE institutions can offer the advice and guidance necessary to help these students become graduates.

FUNDING

The Institute supports the single tertiary allocation to the Council proposed in the Bill but would caution against any destabilising of the further or higher education sector during the transition phase. The Institute would need to be assured that once Ministers had agreed the allocations to FE and HE no further scrutiny of specific allocations was required. The Institute supports the proposal to fund provision by level and recommends using the SCQF levels for such purposes.

The Institute would suggest that the new Council also be given responsibility for the funding of nurses and midwives and that the requirement to bid to the Scottish Health Board on a five year basis be ended.

We support the proposal that the new body produce an annual report, to lay before Parliament, which we believe should also include a brief overview of the benefits or failures of the conditions set when funding specific areas of Ministerial priorities. In bringing together planning and funding responsibility the new body will need to ensure best practice is upheld and value for money delivered by both sectors.

POWERS AND DUTIES OF THE NEW BODY

The Institute shares the concern of some HEIs that a requirement for “adequate and efficient” provision may lead to them having to duplicate provision already offered by FECs. The Institute would welcome clarification on this matter and suggest the Council should focus on ensuring that the needs of learners are met within a geographical area rather than funding duplication of provision as a consequence of this provision in the Bill.

RESEARCH AND KNOWLEDGE TRANSFER

The Institute welcomes the requirement that the new Council will require to establish a Research Committee and would suggest that such a Committee be made up of research expertise from across Scotland. We do, however, remain concerned at the very large gap between the amount of research conducted in long established universities and that conducted in the post 1992 sector institutions. If there is to be more equality of status among higher education institutions generally then some means of building up the research portfolio of the new universities will need to be found. The Institute believes it is crucial that the post 1992 sector institutions are supported if the new and applied areas of research such as nursing, tourism, media, creative industries and financial services, all important to the success of the Scottish economy, are to develop and flourish.

The new body should have additional resources at its disposal to provide discrete resources to FE institutions in order for them to engage in individual or collaborative ventures which will over time lead to increased commercialisation and knowledge transfer.
GOVERNANCE, ORGANISATION AND MANAGEMENT

The Institute welcomes the proposal that the Chief Executive of the new body will have the right to request attendance at a special meeting of the Board of Governors. We would expect that any such attendance would result in recommendations being reported to Ministers for further consideration and appropriate action.

We believe it is unacceptable that the new body does not have powers to ensure that all publicly funded colleges and higher education institutions have regard to staff governance issues and a means of penalising those that do not, particularly those that do not comply with the Nolan principles when appointing Board members.

The Institute is disappointed to note that the proposals for Governance and Accountability changes being proposed for FECs are not intended to cover HEIs. We are also disappointed that Ministerial powers are not to be enhanced to cover appointment of Chairs of College Boards of Governance and University Governing Bodies.

The Institute suggests the Bill needs to take account of the value of including staff on Boards of Governors and would suggest enhanced representation rights for staff in both sectors.

OTHER MATTERS

Name

The Institute has no problem with the name The Scottish Tertiary Education Funding Council.

TERTIARY EDUCATION (FUNDING etc.) (SCOTLAND) BILL

We have not commented specifically on the draft Bill but would expect all the comments above to be reflected in the Bill at the appropriate sections.

However, we do have one concern regarding the provision set out in section 22 of the Bill. We are concerned that section 22 (2) and 22 (4) allows Ministers to arbitrarily specify conditions which could have a negative and/or punitive impact on institutions named in schedule 2. We would need assurances that such arbitrary power is limited and that all conditions which Ministers would wish to set by means of regulation are transparent and agreed by Parliament.
WRITTEN EVIDENCE FROM ELMWOOD COLLEGE STUDENTS ASSOCIATION

Shared Funding

This Bill seems to present many opportunities for students in FE and on the whole, students included in the research for this paper, felt that they would welcome the changes this Bill could bring. It would appear to suggest the possibility of parity of funding levels between FE institutions and HE institutions. At the moment there is a clear divide between the quality of resources provided at individual establishments, with the Higher Education sector traditionally being better funded.

The change in funding to a shared Council for both HE and FE would seem to hold the key to making the Lifelong Learning philosophy a practical possibility for many local communities. Those in rural areas such as Elmwood College and equally those in socially deprived areas can have very basic access problems due to poor local transport and limited incomes. Education becomes more difficult to access for a variety of societal issues and funding for FE at the moment allows colleges no leeway to help with these problems.

Many students who apply to further education colleges are mature applicants who have been out of an educational environment for some time. They may also have had negative experiences in an educational setting in the past. It is important that this group of people are able to reach their full potential and be able to carry on to degree level courses if they want to, although they may not have the confidence or qualifications to go directly into a higher education setting. This is where the accessibility and local availability of Further Education colleges become a vital first step in the lifelong learning process. Further Education Colleges are not just concerned with the progression of educationally ambitious students but are of great value to local communities and businesses communities who can gain new skills and brush up on old skills through the short courses on offer.

It would seem that the people making decisions regarding the funding and quality standards would be the same for both HE and FE, giving parity of esteem within the post 16 sector as a whole. This could also bring the opportunity of Scottish FE qualification being held in higher regard internationally and widening employment prospects for Scottish students.

The promise of coherent provision for both Further and Higher Education implies that the needs of each area will be adequately met and will lead to barrier free links for progression while still ensuring the identity and the specialist vocational areas in FE are not lost. The main worry amongst students was that the important role that FE plays may be overshadowed by the larger HE institutions. Many FE colleges are small and provide very specialist courses. These courses must be fully resourced in order that students get the best from their educational experience. Merging colleges may seem sensible for funding purposes but does not fit into the Life Long Learning philosophy where accessibility plays an enormous part in people realising their potential.

The bill will promote collaborative working between universities and colleges. This in turn will promote greater understanding of the work of each institution and of the provision made for students. The more staff of these two sectors work together, the more likely they are to value each others’ role. The transition students make from one sector to the other can only be made easier through this greater understanding.

Concerns regarding the outcome of the merger

Student Voice

By merging the new funding councils will further education students have more of a voice or less of a voice? The structure of higher education institutions means that naturally their students will have greater means to express themselves and protect their interests. This is due to factors which include the duration of time spent at university (average 3-4 years) when students associations have a chance to train up new members and ensure consistency. This also means that there will be fluidity to their approach. Many universities also have the financial position to enable them to
fund paid students association posts in order that office bearers may devote their full attention to issues affecting their student population.

On the other hand due to the nature of Further Education courses, which may only last for 1 year, the student councils often lack consistency and experience to make their voice heard at a national level.

While this situation is nothing new it does raise key questions about how the voice of further education students will stand its ground going head to head with higher education students. Care must be taken to guarantee that the joint Funding Council is aware of these differences and ensures that both parties are heard.

Recent developments such as SPARQS are reassuring however and further education students are aware of this national resource to raise awareness of their needs.

Funding

As regards funding, the bill will hopefully be of benefit to Further Education colleges and students. Currently there is inconsistency in levels of funding between universities providing degree programmes and colleges providing HNCs and HNDs. The merger of the funding councils, coupled with the introduction of the Scottish Credit and Qualifications Framework will enable this to be evened out. From now on the funding council will be in a position to award funding to institutions on the basis of the level of qualification, regardless of its title.

Employer Links

Another key factor for the further education sector is its link to employers. As previously mentioned, FE has strong links via its vocational courses. To be effective in the development of relevant courses for industry, they must retain close links with the employment market. The question is what will the relationship be between the new funding council and Scottish Enterprise and their duty to provide training for employment. Further more, what input will employers have to ensure that courses are responsive to the needs of the current labour market?

Access to Higher Education

As a student currently studying at a further education college, one of the hopes I would have for this Bill is that it would make the transition between Further and Higher education easier.

At the moment there appears to be a tendency for universities to favour qualifications gained in the direct transition from school to university in the form of Highers and advanced Highers, with little understanding or acknowledgement of the further education route. There is scarce acknowledgement of the FE qualifications and the level of independent study and thought which is required to meet the pass criteria of such a qualifications.

It is my hope that this new Bill will assist Further Education students by making the NC/NQ/HNC level qualifications more widely recognised for entry level to universities and also solidify the HNC/D articulation routes into higher education institutions at 2\textsuperscript{nd} or 3\textsuperscript{rd} year. As previously stated, it will also help universities in their plans to widen access by allowing them to learn from their colleagues in FE.

Conclusion

In summary, the Student’s Association at Elmwood College welcome the introduction of this bill. The advantages which are anticipated are the improvement of funding for Further Education; the widening of access to all areas of the community by providing a greater range of opportunities for all students; student support in Higher Education should improve as Higher Education /Further Education institutions work together and learn from each other and finally that this should have the additional advantage of ensuring a smoother transition from Further Education on to Higher Education.
We do however raise concerns regarding student voice at Further Education level and retaining strong employer input which we think would benefit from a proactive approach to ensure these issues do not create problems further down the line.
WRITTEN EVIDENCE FROM GLASGOW UNIVERSITY STUDENTS’ REPRESENTATIVE COUNCIL

Preamble

Glasgow University Students’ Representative Council (GUSRC) is the statutory representative body for over 20,000 students at the University of Glasgow. We provide representation at University and national level, welfare and academic advice, and support for a wide range of student activities.

Introduction

GUSRC welcomes the chance to respond to the Executive’s proposals and hopes that the Executive takes on board the comments made below. We do, however, have concerns about the manner of this consultation that limits the degree of stakeholder input. These concerns are outlined later in the paper and we would wish the Executive to reconsider its approach to consultation on this and other issues. In this response we seek to make our principled opinion known on how the Executive’s proposal may affect students and also make suggestions as to what other areas may be more usefully examined as part of a more holistic approach to the issues raised. We believe a broader and more informed consultation should be considered to allow a more constructive input from all areas, which may negate the perceived need to consider fee increases.

Key principles

GUSRC has consistently opposed the existence of tuition fees and the existence of variability within any tuition fees regime. GUSRC reaffirms its belief that finance should not be a barrier to entry to Higher Education nor a determinant of a student’s academic choices. Higher Education should not be a marketable commodity but a public good open to all and benefiting all regardless of finance or background. No student or graduate should have to suffer burdensome debt which provides both a deterrent to entry and a tax on ambition.

Further, GUSRC maintains as a key principle that tuition fees and student hardship should not be used as a tool to further the Executive’s wider social, political or economic ends.

It is for these reasons that GUSRC strongly opposed the Higher Education Act and the introduction of variable tuition fees in England, which have serious and broadly negative implications for students both in England and in Scotland. GUSRC would oppose vigorously the extension of variable fees to Scotland and views the very discussion of this issue as just one negative implication of the Higher Education Act in England.

Whilst we oppose the existence of fees, burdensome debt and variability, we also wholeheartedly support the goal of widening participation in Higher Education as a key tool of social justice and equality. This is a valid consideration for any policy and improving access to the medical profession for under-represented groups is equally important.

GUSRC is also sympathetic to the needs of Scotland’s health service and NHS recruitment, but must primarily represent student needs and opinion. Again, fees and student hardship should not be used as mechanisms which the Executive should use to further their wider goals.

Principles in relation to the proposal to increase fees for medical students

GUSRC recognises that there are some difficulties in reconciling the above principles in a post-top-up fees context but rejects the proposal that fee variability be considered to pursue any aim. It is deeply regrettable that a situation exists where fee variability can be suggested as a way of protecting access to Higher Education, yet GUSRC believes the Executive need not go down this route.
GUSRC believes that to accept the logic of a differential fee in one instance is to open the door to similar appeals from other areas using the same rationale. We are concerned that ‘special pleading’ in one area would lead to similar pleas from others. The development of a segmented and differentiated market for students in Scotland may not be the intention of this proposal but will undoubtedly be the unwelcome result. GUSRC does not believe that medicine will universally be accepted as a ‘special case’ but instead believes claims from other areas would quickly be forthcoming.

GUSRC welcomes the expressed intentions of the Executive to maintain their opposition to up-front fees and fee variability for Scottish-domiciled students in Scotland, yet would not like to see the same disadvantages of England’s top-up fee system extended to students in Scotland originally domiciled elsewhere in the UK. GUSRC would further like the Executive to clarify its proposals with regards to Welsh and Northern Irish students, whose future tuition fee regimes are not clear. If either or both decide not to introduce top-up fees then the fears of much higher numbers of these students coming north would disappear and the logic of creating a higher fee for Welsh and Northern Irish students would be diminished.

GUSRC would like the Executive to clarify their position in relation to Welsh and Northern Irish students in relation to their potentially different fee regimes.

GUSRC does not believe a conflict between enhancing NHS recruitment, protecting access to medical places for Scottish-domiciled students and maintaining a fees system free of variability is necessary. GUSRC urges the Executive to consider the issues more comprehensively and innovatively and propose other options and potential solutions for consultation that do not involve the use of variable tuition fees. In fact, GUSRC welcomes many of the recommendations of the Calman Report as positive ways that might be built on in order to avoid the perceived need for fees.

Consideration of premises and unknowns

A key problem with the proposition to increase fees for non-Scottish-domiciled medical students is that it is based on speculative premises and without serious consideration of potential alternatives. For example, whilst domicile may at present be an influencing factor in recruitment and retention, it can hardly provide a full picture, and GUSRC believes a more holistic and imaginative approach must be taken. Other key factors affecting recruitment and retention may relate to living and working conditions, location of medical school in relation to the need for health workers, and any other factor that may make working in Scotland appear a less favourable alternative to working elsewhere in the UK.

The Calman Report does highlight a number of these issues but does not give particular recommendations in this area, which would be helpful. It does, for example, highlight issues such as ‘the St Andrews Question’ (s60-74) but lacks any major initiatives to incentivise domicile after graduation or improvements in working conditions.

GUSRC would like the Executive to provide information and impact assessments on all other options, no matter how ambitious, to boost NHS recruitment and retention of all UK-domiciled graduates, and clarify the legal, financial and other implications of each.

Further, it is not clear what effect the introduction of top-up fees will have on cross-border applications and current thinking is speculative. It may be reasonable to plan for the eventuality of a higher demand for Scottish Higher Education, but it would also be prudent to avoid rushing in to implementing proposals detrimental to students when the problem may not be as severe as sometimes imagined.

Further still, whilst factors affecting recruitment and retention other than domicile need consideration, so do factors affecting application and admissions to medical courses. The Calman Report does rightly highlight a number of these issues and GUSRC believes the Executive should provide more concrete proposals as to how steps might be taken to improve transition from Highers to medicine, how school outreach may increase applications from Scottish-domiciled students, or how admissions procedures might be tailored to protect places for Scottish-domiciled students.
once applications are received. GUSRC welcomes the recommendation that Scottish medical schools need to give more attention to the realities of secondary schools in Scotland (s46) and welcomes also the consideration of the ‘4 means of widening access’ (s48).

The Calman report is one of a number of Higher Education documents that notes the major current challenge to widen participation in medicine is in fostering “aspiration, achievement and application” (HEFC 2003) in under-represented groups, implying a key role to ever more active recruitment and reform at school level. Yet if the fear is that greatly increased applications from well-qualified English applicants post-2006 will cancel out any gains made in this respect, ambitious reform of admissions procedures should be considered as an alternative to fee increases.

The Calman Report’s recommendation to ‘ring-fence’ the newly created medical places for schemes that increase the diversity of Scottish medical courses and for those most likely to be committed in the long-term to NHS Scotland is welcomed. GUSRC would be interested to know the extent to which mechanisms such as these could negate the perceived need for fee increases.

Schemes such as the ‘Pathways to the Professions’, foundation year courses and ring-fenced access places are positive schemes that, if expanded, might provide other ways of achieving the Executive’s aims. Admissions procedures tailored to Scottish-domiciled applicants do exist (at Edinburgh the number of Scottish-domiciled applicants accepted is disproportionately high compared to application rates because of this) and might also be another avenue to be examined. If the Executive could be bold and imaginative in providing alternatives for consideration, such as greater use of ring-fenced places, then this might negate the perceived need for fee increases and provide a more positive, constructive and ultimately more preferable approach.

GUSRC would like the Executive to provide information and impact assessments on all other options, no matter how ambitious, could exist to boost recruitment and retention in University admissions and clarify the legal, financial and other implications for each.

GUSRC is not at this stage advocating use of any of the above methods, merely that they must be deliberated over and consulted on. GUSRC believes there is a wider picture to be considered and the Executive must deal with these areas before considering the use of tuition fees.

Aside from the recommendation to ‘take special account’ of the position of medical funding (s81), the Calman Report has a number of very promising and constructive recommendations. GUSRC believes some of the recommendations made, as well as many of those omitted, could be used to build an approach that negates the perceived need for a fee increase and would like to see these, and the assessment of their impact, progressed before consideration of funding changes.

GUSRC reiterates that tuition fees cannot be used as ‘an easy option’ in pursuit of the Executive’s goals.

Other Options and poverty of consultation

GUSRC takes issue with the manner in which this consultation has been conducted. Proposing to introduce differential fees into Scottish Higher Education is a hugely significant act and deserves a more thorough consultation than that offered. The Scottish Executive prides itself in the its consultation with stakeholders yet has fallen short on this issue in a way that undermines the scope of stakeholder input.

GUSRC notes that the consultation falls foul of a number of benchmarks of good practice highlighted in the Scottish Executive’s ‘Consultation Good Practice Guidance’ (June 2004). The guidance states, amongst other things, that consultation must be held over a minimum of 12 weeks, should include broad discussion of the issues involved and options available, provide relevant views and information, as well as an assessment of impact on different groups. With an 8 week consultation open to only a few stakeholders, providing only one external report (the Calman Report), only one option (the proposed fee raise) and only one opinion (that of the Scottish Executive based on the Calman Report) and without any assessment of impact, the consultation process is skewed heavily towards the Executive’s ambitions.
As information and opinion that may assist those with opposing views is not provided, the consultation process is neither informed nor balanced.

Given the importance of this issue, a more formal process along the lines of other consultations undertaken by the Executive should be progressed. Options and alternatives should be suggested with sufficient information to provide stakeholders the chance to input more constructively. Although organisations other than GUSRC are better placed to deal with other aspects of NHS recruitment and retention, we would like to see the consultation relaunched, looking holistically at some of the following issues:

- The inventive use of admissions procedures and ring-fenced places to protect and promote access to medical places for Scottish-domiciled students.
- The extension of recruitment and outreach programmes to encourage medical applications from Scottish-domiciled students.
- The issues surrounding the transition from Highers to medical schools.
- The living and working conditions for medical workers in Scotland in comparison to elsewhere in the UK.
- Possible incentive packages and recruitment efforts for all medical students, regardless of domicile, to remain domicile in Scotland.
- Possible incentive packages and recruitment efforts for all medical students, regardless of domicile, to come to Scotland from elsewhere in the UK.
- Ways of improving links between the cities with medical schools and areas where there is a shortage of health workers.

GUSRC is not necessarily endorsing actions based on any of the above, but believe they would all be appropriate items for consideration in a wider and more informed consultation. Other appropriate bodies with far more expertise on these issues may have other suggestions also.

**GUSRC would like the Executive to reconsider the whole approach and launch a much broader consultation process with more information, options and impact assessments, including some of the suggestions above.**

**GUSRC would like such a consultation to find a solution that negates the perceived need for increased medical fees.**

**Considerations if proposals were progressed**

GUSRC reaffirms its opposition to the introduction of increased medical fees for non-Scottish-domiciled students but believes it prudent to comment on the practicalities of any such increase and what the Executive must do if it were to implement such an increase.

Firstly, if the Executive were to ignore the views of the student body and impose such a fee increase, GUSRC believes that a firm public commitment should be made stating that no other 'special cases' would be considered and differential fees would go no further.

Secondly, if the Executive were to ignore the views of the student body and impose such a fee increase, GUSRC believes it should set the fee at the minimum level possible. When deciding a fee level it should consider not just the relative price of tuition fees in England, but also the level of bursaries that accompany those fees. If the same fee level as England were set but without the accompanying benefit that students in England would receive, the real-terms cost of fees where would be significantly higher.

Thirdly, if the Executive were to ignore the views of the student body and impose such a fee increase, GUSRC believes that any revenue raised from the fee increase should be reinvested into widening participation. The revenue could provide access bursaries and other means of financial support for students from 'non-traditional' backgrounds seeking to enter medicine, as well as ring-fenced places for Scottish-domiciled students. If extra revenue was to be raised, this would be one positive way of using it.
GUSRC believes that if student opinion was ignored and fees were imposed, the Executive should rule out further fee increases in other areas, should set the fee level at a minimal level with consideration of the bursary as well as fee levels in England, and should reinvest revenue into bursaries and places for Scottish-domiciled access students.

Finally, GUSRC believes that the powers provided in Section 8 in the Further and Higher Education (Scotland) Bill be removed. A change such as the proposal discussed requires fuller consultation and scrutiny than that provided by the Bill. Ministers should not be free to raise fee levels without proper parliamentary scrutiny and public consultation, and the use of Secondary Statutory Instruments provides no assurance of this process. GUSRC rejects the proposed increase in fees for medical students on principled and practical grounds, but further rejects any provision that allows major changes in fees or funding to be taken without the proper scrutiny provided by genuine consultation and primary legislation. Further, GUSRC is deeply concerned that Section 8 appears to give ministers the power to introduce differential fees for any course, level, domicile or institution, which appears to provide the legislative room for the introduction of top-up fees in the future.

Whilst we welcome the Executive’s expressed commitment to oppose top-up fees in Scotland, as well the claim that section 8 is to be used for medical fees only, the question must be asked why such legislative powers are necessary if there is no intention to use them. Even If the Executive has no intention of using such powers, they remain open to future governments to do so without proper scrutiny and should be removed.

GUSRC recommends that section 8 of the Further and Higher Education (Scotland) Bill be removed and any decisions be given full and specific parliamentary scrutiny.

Summary

Although GUSRC is sympathetic to the needs of protecting places for Scottish-domiciled medical students and to the need to improve recruitment for Scotland’s health service, it does not believe that introducing a variable tuition fee for non-Scottish-domiciled medical students is an appropriate mechanism to achieve these ends. Increasing tuition fees should not be a mechanism by which government can further economic, political or social goals and other options must be explored and a more holistic approach taken. GUSRC believes other measures must be considered and maintains its stance against fees and against variability.

GUSRC is grateful of the chance to respond to this proposal but is disappointed with the manner of consultation and would like to see a broader and more informed consultation that sought more imaginative responses to the Executive’s twin aims of protecting places for Scottish-domiciled students and improving NHS recruitment and retention. The introduction of a differential fee into Scotland is too important an act to be taken as the ‘easy option’ in pursuing these aims and all other measures from improving working conditions and incentive packages, to ring-fencing places and tailoring University recruitment and admissions procedures should be considered as factors more appropriate to influence.

GUSRC has provided suggestions for the Executive in case they are to pursue the proposal discussed, including safeguards for the future and suggested use of revenue. Ultimately, however, GUSRC believes Scotland must remain free of differential fees and opposes any move to threaten that.
Introduction

NUS Scotland would like to thank the Enterprise and Culture Committee for the invitation to submit evidence on the Further and Higher Education (Scotland) Bill.

NUS Scotland has long supported a merger of the further and higher education sectors, for wide ranging social, educational and economic reasons. Primarily for this reason we welcome this Bill; it is clear that the legislation represents real progress in developing our educational structure, and we hope and expect this can be built upon in the near future. We firmly believe, however, that this positive work must be regarded as only part of a journey towards an even more holistic attitude and approach to further and higher education, that we believe can only be brought about by the adoption of a single tertiary education sector. We are, however, extremely disappointed by the inclusion of differential fee setting powers in the final Bill - and we look forward to rectifying this during the passage of the Bill through Parliament, especially through our work with the Enterprise and Culture Committee.

Towards a single tertiary education sector

NUS Scotland believes that Scottish further education is the primary gateway to opportunity for the Scottish people. Equally, NUS Scotland believes that Scottish higher education is of a high international standard. We believe that both sectors must continue to develop along the core values of accessibility, quality and fairness, with policies that are learner-focused. NUS Scotland has campaigned for over a decade for these sectors to be treated as a holistic tertiary education sector. A truly holistic sector will signal to learners that their learning is valued whether it is delivered in a college, school or university and whether it is vocational, full-time, part-time higher or further. That is not to say that we do not value diversity of approach and delivery, nor do we believe that each institution should be identical and have the same mission. We believe that Scotland should aspire to an education system that can provide any opportunity to every person who possesses desire and ability.

Key Areas of Interest

NUS Scotland has identified several key components of this Bill upon which we would wish to comment, and to discuss further with the Committee. These are:

1. The proposed merger of the Funding Councils
2. The proposed role and duties of the unitary Council
3. The proposed power of Ministers to impose differential fees
4. The proposed remit of the Scottish Public Services Ombudsman within Further and Higher Education

The proposed merger of the Funding Councils

NUS Scotland views the proposed merger of the Funding Councils as an important step on the road to our vision for Scottish education. We agree with the Scottish Executive’s belief that the creation of a single body for funding further and higher education “provides a much stronger guarantee that there will be coherent strategic decision making at national level in relation to further and higher education in the decades ahead”. We believe that there is now much greater parity of methods and standards between FE and HE than there has been in the past, and that this must be made to give rise to parity of esteem between all those teaching and learning in each sector. Furthermore, that this justifies the creation of a unitary body for the funding and supervision of all further and higher education institutions cannot be doubted.

(Section 1)

NUS Scotland supports the adoption of the term “fundable body”, although we preferred the originally proposed term “Statutory Tertiary Education Provider (STEP)” since this would better
recognise the decreasing separation between the FE and HE sectors. Nevertheless, we believe the new terminology appropriately recognises the equal contribution made by each of the eligible institutions to the success of Scottish education and thus their benefit to Scottish society. We particularly welcome the fact that the final Bill refers to just two categories of institution, those "previously funded by SFEFC" and those "previously funded by SHEFC", as opposed to reinforcing needless distinctions between categories of institution that refer to the past, not the future.

(Section 6 and Schedule 2)

The proposed role and duties of the unitary Council

NUS Scotland supports the proposal within the Bill that it should be the Council, rather than Ministers, having the statutory duty to secure coherent provision of further and higher education, by supervising and making grants to fundable bodies. Ministers will have a duty to provide support for these activities by making grants of public funds to the Council. We see this as an entirely appropriate distinction of duty that reflects the both the strategic role of the Council and the broad obligations of Ministers in relation to Parliament and the public.

(Sections 3, 4)

NUS Scotland especially supports the fact that the Bill sets out specific matters to which the Council must have regard when carrying out its functions. The duty to consider not just 'skills needs', but also the contribution that institutions (and students) can make economically, socially and culturally is in our view essential for the Council to fully and properly perform its function. We are also pleased with the explicit duties required in relation to promoting and observing equal opportunities legislation, supporting persons with learning disabilities, and the requirement to take into account the needs of learners, and potential learners, whether educational or otherwise. We are concerned, however, that the definition of a person with learning difficulties is not fully appropriate for its purpose, and we would look to work with the Committee throughout this process in order to improve this.

(Sections 12, 20, 21)

NUS Scotland welcomes with the duties upon the Council to ensure appropriate assessment and, in particular, enhancement of quality in the activities it funds. The duty to promote the enhancement of quality across both further and higher education is a new duty, which we welcome. We also welcome the duty upon the Council to put in place a unitary credit and qualification framework across further and higher education, and to promote it appropriately.

(Sections 13, 14)

The proposed power of Ministers to impose differential fees

NUS Scotland is surprised and disappointed by the inclusion in this Bill of measures that will allow Ministers to introduce tuition fees for particular courses. There can be no question that, even if not intended to provide a new funding stream, this represents a stark risk to the integrity of the Scottish funding model. A commitment has been given to the public that the Executive would "not support the introduction of top-up tuition fees". The Executive seeks to reassure us by stating that "this power if used, is only intended to be used sparingly", that "at the moment, the only area this might apply is medicine", and that "any further differentiation is carefully focused and has the approval of Parliament". These comments are simply not reassuring when read in the context of both the original commitment of the Executive to defend Scotland from top-up fees, and the apparent lack of imagination that has been brought to bear on devising the measure itself. NUS Scotland believes that the Executive would be unwise to attempt a reversal of an ongoing recruitment problem within the Scottish NHS by introducing deterrent measures at the point of training for medical practice.

We have made alternative proposals to the Executive with an emphasis on providing incentives for medical students, both from Scotland and the rest of the UK, to practice medicine in Scotland after their graduation.

(Section 8)

We have a number of specific reservations about both the content and process by which this measure has arisen. Firstly, consultations from the Executive on this issue are still not completed, and might yet give rise to alternative solutions to the underlying proposals; we have certainly made positive suggestions in our response. Furthermore we are concerned that such a controversial
power, that has the potential to introduce a market in Scottish education, should be deferred to the status of a statutory instrument, with the commensurate increase in the power of Ministers. Our questions are simple. What are Ministers’ intentions in regard of courses other than medicine? Are Ministers’ aware that this new power would potentially allow the future introduction of differential fees for further education courses? Why have the Executive not looked for real solutions to recruitment problems in the NHS, rather than hoping that changes in the student funding system will affect the number of doctors who wish to practice in Scotland?

(Section 8)

We are concerned that this power could be used not sparingly, but as the de facto ‘quick fix’ for any cross border flow issue that may arise, in relation to almost any discipline, without proper consideration of alternative approaches or solutions. We believe that the measure will ultimately permit differentiation of fees to become the acceptable norm in the provision of education, which can only damage the otherwise excellent progress made by this Bill in applying equal social value to all further and higher study and training.

(Section 8)

The proposed remit of the Scottish Public Services Ombudsman within Further and Higher Education

NUS Scotland very much welcomes the provision in the Bill for the Scottish Public Services Ombudsman to investigate student complaints, or indeed complaints from any person who feels aggrieved by the decision of an institution. We are sympathetic with the position that the Ombudsman should not become involved in matters of academic judgement. We believe that this extension of the Ombudsman’s role can only serve to better protect students, whatever their level of study.

(Section 26)

Conclusion

With the exception of the clauses on differential fees, NUS Scotland welcomes this Bill, and the significant victories for students that it promises. We have long campaigned for the merger of the funding councils, and for the Public Services Ombudsman to have their remit extended to further and higher education; we welcome that both of these developments will now be brought about through this legislation. We welcome new duties to promote equality, to take into account the needs of learners, and specifically to protect the interests of students with disabilities. We welcome the focus in the Bill on reducing the disparity between further and higher education, and see this as a step towards a unified tertiary education sector, in which achievement at every level can be properly recognised and respected. That said, we are extremely disappointed by the inclusion of excessive new ministerial powers that would hold the door ajar for the differential fee, and look forward to the opportunity to working with the Enterprise and Culture Committee to achieve change on this issue.
The Convener: Item 2 is divided into three parts, the first of which is oral evidence from the National Union of Students Scotland. I welcome Melanie Ward, president of NUS Scotland, and Keith Robson, director of NUS Scotland. Melanie will say a few words by way of introduction, and then we will move to questions and answers.

Melanie Ward (National Union of Students Scotland): We are grateful for the opportunity to come before the committee to give oral evidence and, I hope, to answer members’ questions.

We welcome the Further and Higher Education (Scotland) Bill, which we see as being a significant step forward for Scottish students. The bill contains three main wins for students. The first is the merger of the Scottish Higher Education Funding Council and the Scottish Further Education Funding Council. We have campaigned for more than 10 years for the coming together of the further and higher education funding councils and sectors. We see the merger of the funding councils as being an important step towards that aim, and a progressive and significant step for Scottish students in terms of making the education system fairer and of funding their courses more fairly.

Secondly, the bill provides that institutions will have to have regard to the needs of students and potential students. I find it interesting that that has never been in legislation before, but we welcome its introduction into legislation.

Thirdly, for a number of years we have called for students in further and higher education to be able to access the Scottish public services ombudsman. We see that as being a vital step towards giving students access to a fair complaints procedure when all avenues within institutions have been exhausted.

Those are the three items in particular that represent big steps forward for students in Scotland in terms of making their educational experience fairer. However, we were surprised and disappointed by the inclusion of a section that will allow ministers to set differential fees for students who study in Scotland. We understand that the Executive plans initially to use the section to charge more for non-Scottish medical students to study in Scotland. We have a number of issues with that.

We also understand that developments down south with top-up fees might have a knock-on effect on cross-border flows; in other words, more...
students from the rest of the United Kingdom might come to study in Scotland. However, we do not think that those problems have materialised yet.

We believe that the root of the problem that the Executive is trying to solve is that there is a need to recruit and retain more doctors in the national health service in Scotland. However, we do not think that the student funding system should be a mechanism for fixing that problem, so we have a number of significant concerns about that section of the bill. We are especially worried about the open-ended nature of the powers that the bill seeks to give ministers and we are concerned that there are not significant checks and balances that will guard against extension of a system of differential fees throughout Scotland. We look forward to working with the committee and, more broadly, with MSPs to amend the bill and to achieve resolutions to our concerns in those areas.

Richard Baker (North East Scotland) (Lab): I welcome the NUS, which was one of the first organisations to propose a merged funding council, and which informed the position that the then Enterprise and Lifelong Learning Committee took in its report on lifelong learning. It is great that progress has been made on that.

My first question is on the proposed new role of the Scottish public services ombudsman. Although Universities Scotland was not too vexed about that, it felt that its current complaints procedure, which is administered by the universities themselves, might be preferable. Do you agree?

Keith Robson (National Union of Students Scotland): We disagree with that. We would like, and have long campaigned for, the ombudsman to have a role in relation to students. The present Universities Scotland system is an opt-in system, so not all institutions must participate in it. I believe that the University of Glasgow is one of the institutions that does not; I hope that I am not wrong in stating that. The proposed system involving the Scottish public services ombudsman would cover all institutions and would give all students the opportunity to make complaints. We are obviously not talking about complaints about matters of academic judgment, but about the services that institutions provide for their students.

Questions are raised about the involvement of the public services ombudsman. For example, would self-funding students have the same right as regards the ombudsman as students who receive funding to go to an institution? How far would the role of the ombudsman stretch to agreements between universities and private halls-of-residence providers? We argue that, as long as there is a service agreement, the money involved comes from public funding, so matters relating to such provision should fall within the ombudsman’s remit. There are details to be thrashed out but, in principle, we warmly support the role for the ombudsman that the bill proposes.

Melanie Ward: One of the most important aspects of the proposal is that the ombudsman is completely independent and has no links to any institutions or to bodies that have links with institutions. We feel that such a system will be fairer for, and more accessible to, students who want to take further complaints that have not been resolved.

Richard Baker: Both those answers are helpful; they raise interesting issues that we should pursue.

My next questions are on fees, an issue that features prominently in your submission. First, I seek information. In the sixth section of your submission, you say:

“We have made alternative proposals to the Executive with an emphasis on providing incentives for medical students ... to practice medicine in Scotland after their graduation.”

Do you have those alternative proposals with you? If not, will you supply them to the committee at a later date?

Melanie Ward: We have a copy of our alternative proposals with us. As I am sure the committee is aware, the Executive has carried out a separate consultation on the specific issue of charging higher fees for non-Scottish medical students. We made our alternative proposals in our submission to that consultation. They focus on the provision of incentives, whether financial or otherwise, for medical graduates to stay on to practise medicine in the NHS in Scotland rather than leave the country and go elsewhere. Measures to attract to the study of medicine in Scotland more Scottish students from low-income backgrounds and from other backgrounds that have traditionally had low participation rates could be investigated. We know that there is a bit of a gap as regards social background among students who currently study medicine in Scotland. Those are the areas on which our alternative proposals focus, but we would be happy to provide the committee with more detail.

Richard Baker: That would be helpful, because the charging of fees to medical students is a vexed issue. I am certainly of the opinion that there is no easy answer. You made the point that what is being proposed will introduce a higher fee for English students. That is a difficult issue, because what is proposed is the ability for ministers, not institutions, to vary fees for everyone who studies medicine in Scotland. Scottish students would be paid back through the Student Awards Agency for Scotland, but it will be up to English students’ local
authorities to pay them. It is important to note that the proposal is not discriminatory in that sense.

I want also to mention another point on which I am sure other members have questions. No organisation apart from student organisations has highlighted the issue in the same way. When we heard from the Association of Scottish Colleges and from Universities Scotland last week, David Caldwell said:

“It is important to reassure the NUS that the provisions in the bill do not amount to the reintroduction of top-up or variable fees.”—[Official Report, Enterprise and Culture Committee, Tuesday 2 November 2004; c 1157.]

He also said that it is only a few years since we had band 1 fees and band 2 fees, which were varied by ministers. You suggest that the bill somehow represents the introduction of a differential or variable fee system that is similar to what is being introduced in England when, in fact, the Executive is reacting specifically to cross-border flow issues, which must be addressed in some way. The vital point is that the fees will be varied not by institutions, but by ministers in specific circumstances by affirmative procedure in Parliament. The key point is that it is not a matter of different institutions charging different fees—the fees are for medicine at any institution in Scotland—so they are not really top-up fees in the sense that such fees exist down south. In fact, they are not differential fees at all in the sense that has been suggested.

Melanie Ward: Our policy on the issue is clear: we have a clear stance against any form of differential or top-up fees, whether the fees vary by institution or by course. There is a great deal of evidence to suggest that if variable fees exist, students—primarily those from low-income backgrounds—are more likely to select their courses based on price than on what they have the ability and talent to study. If there was a system in which medicine was more expensive to study than any other course, we would expect that to act as a financial disincentive for significant groups of students.

Richard Baker: The Scottish students would not be paying any more than they would previously have paid.

Melanie Ward: They would not at the moment, but we are the National Union of Students, so we would worry about that for any group of students, no matter where in the UK they came from.

The other point that you made was about ministers having the power to vary the fees and the fact that they would do so for all students, but the SAAS would pay the extra for Scottish students. However, ministers have the power to stop the SAAS doing that at any time, so if the bill were passed as drafted, ministers could completely change the student funding system by removing funding from the SAAS and by varying fees by course, perhaps starting with medicine because they are worried about the cross-border flow issue, but extending the variation to other courses.

We are particularly worried about the fact that the bill contains two exclusions: students on teacher-training courses and postgraduate students, who cannot be charged a higher variable fee. If the intention is to charge only medical students, why should the Executive make two specific exclusions? If the Executive's intention is to charge a higher fee to non-Scottish medical students only, why should the Executive not reflect that in the bill rather than draft an open-ended power for ministers to make use of?

On several occasions, the Executive has mentioned the explanatory notes and policy memorandum to us. It has suggested that if it were to change its policy on charging only non-Scottish medical students a higher fee and try to extend the higher fees, the accompanying documents might carry some weight in a legal challenge, because they state that the Executive's intention is to charge the fee to non-Scottish medical students. However, the Executive’s own legal advice suggests that there is no legal weight to the explanatory notes or policy memorandum and that that would not stand. The situation is that what it is suggested will be checks and balances would not be checks and balances in the eyes of the law and ministers would have wide-ranging powers to change the system.

Richard Baker: On the last issue, I agree to some extent. I understand that the Executive said that it could not be sure that the accompanying documents would be legally binding, but they have been in other cases.

The Convener: We will have the minister in front of us in two weeks, so perhaps we can clarify that point with him.

I have two points. First, we should take up Richard Baker's suggestion that we circulate the paper that the NUS submitted to the Executive consultation on the issue.

Secondly, I have a question for Melanie Ward. There are two concerns in relation to section 8, which will introduce the potential for differential fees. You have already referred in detail to one; you feel that the measure will be used to tackle the number of students who stay in Scotland after their graduation to practise medicine. The NUS proposal to deal with that is to use an incentive strategy with a completely different set of incentives. The other concern relates to the number of undergraduate medical students. Universities Scotland made the point that the
number of medical places in universities is more fixed than are the numbers for other disciplines. If it became attractive for medical students from south of the border to take their degrees north of the border, the net effect of the upper limit on the number of places for medical students in Scottish universities would be to destroy opportunities for people who are resident in Scotland to take up a medical course in Scotland. Would your proposals deal with that problem?

14:15

Melanie Ward: We would be extremely concerned if Scottish students were, in effect, squeezed out of places on any course, medicine or otherwise. The differential fees measure is supposedly intended to deal with the issue of cross-border flows. We were worried that the introduction of the top-up fees system in England would affect cross-border flows in a number of ways but, interestingly, this year the number of admissions to study in Scotland was up, while the number of applications to do so was not. That means that, in the first year of the new system, Scottish students were not squeezed out of places.

We have suggestions for how the Executive could deal with the issue. One is simply to continue to monitor the number of applications to study in Scotland and admissions from throughout the UK. At present, the Executive does that and has not found a problem with cross-border flows this year, which raises the question why the measure has been introduced in the bill. Another suggestion is to ensure that there is never a financial incentive for universities to recruit non-Scottish students in preference to Scottish students. That may be an issue if institutions are allowed to keep the extra money that they charge non-Scottish students to study there. We can circulate our suggestions on the matter, if that would be useful.

The Convener: That would be extremely helpful.

Christine May (Central Fife) (Lab): I want to talk about differential fees, which I discussed with Melanie Ward when she came to see me some time ago. Richard Baker accurately drew from her the essence of what we discussed at that meeting, but I want to put her on the spot by asking what provision on differential fees the NUS would like to be in the final legislation when it comes along.

Melanie Ward: Our ideal would be for the measure to be removed completely so that the minister would not have a power to set differential fees for any course. There are a number of issues. The provision was not in the draft bill, but it is in the bill as introduced, which was published before the end of two consultation processes that the Executive is carrying out on the issue, supposedly to decide what it will do about medical students in Scotland. One of those consultations closed on 31 October, but the bill was published on 1 October, which undermined the consultation process.

The Executive has also established an implementation advisory group to consider how it will react to the top-up fees system in England. It involves a number of stakeholders, including the NUS. The group will continue to meet into the new year and has not yet even discussed higher fees for medical students. The Executive appears to have subverted the consultation processes by including the differential fees provision in the bill. Because of our principled stance against any form of variable fees for students in Scotland, no matter where the students come from, our solution is to remove the provision from the bill.

Christine May: In the event that ministers were not minded to do that and Parliament supported them, would you seek clarification in the bill about the degree of variability or about the group to which such variability might apply?

Melanie Ward: That is a difficult question to answer. We have a clear policy on the matter. The question is this: If ministers and the Executive intended to charge only non-Scottish medical students who study in Scotland, why was that not reflected in the bill?

Christine May: You said that you would provide the committee with the note of the incentive ideas that you have given to ministers. Did that note take account of the very complex point that the career choice of many medical graduates, particularly women, is made seven or eight years down the line—which—because they go part-time, job share or whatever—effectively takes them out of the active profession for some of that time and therefore reduces the pool of available qualified folk? I realise that that is not necessarily a student issue, but it might become one. After all, it raises questions about the number of places that should be available initially if we are to have a larger pool later on.

Melanie Ward: That issue does not form part of our current proposals, but we could certainly consider it. Obviously, it is difficult for the NUS to get complex information about the in-depth workings of the national health service. That said, we have a general interest in gender choice and we are examining many issues that relate to the particular courses that women or men students choose. We have not yet considered the matter that you raise but, if the committee were interested, we could consider including it in our proposals.
Christine May: I was not trying to put you on the spot on the matter. I became aware only recently of how it complicates the issue of availability of qualified doctors to the NHS in Scotland.

Melanie Ward: Since we made our submission, we have become aware of other issues. For example, some Scottish universities send their medical students to placements in England, which is a rather interesting practice if they are trying to encourage people to stay in Scotland. We should also consider what goes on in other countries. I understand that Canada has an interesting system of scholarships and incentives to encourage people to study medicine.

Mike Watson (Glasgow Cathcart) (Lab): I have a couple of questions before I get on to the subject of variable fees. In your submission, you say that you

"believe that the extension of the Ombudsman’s role can only serve to better protect students, whatever their level of study".

How has the existing situation not helped students?

Keith Robson: At the moment, further and higher education students are not covered by the Scottish public sector ombudsman’s remit. As a result, such an extension would give further opportunity to address grievances. In my opening remarks, I said that we were considering not academic judgements but institutional grievances.

Obviously, different institutions have different arrangements and we have already had a short discussion on the Universities Scotland system that people can opt into or out of. We simply want to give students the same coverage that everyone else has. For example, I know from my working background that housing associations have access to the ombudsman. We do not want to increase the number of cases; indeed, we hope that any difficulties would be resolved swiftly at institutional level for the sake of the student and the staff. We recognise that it is a two-way process.

Mike Watson: I accept that. The ombudsman would obviously be a court of last resort to be used when internal procedures failed. Do you know of any past or recent cases in which students who wanted to take a matter further were frustrated simply because there was no measure in place or because they felt that their institution’s internal procedures were not dealing with things effectively?

Melanie Ward: Before the Universities Scotland system was introduced, students could take such cases only to the courts. Because that was extremely difficult, the average student was unlikely to take such an option. As Keith Robson said, we do not want a huge surge in the number of complaints; however, if the system were made easier and fairer, we would expect that a few more students would bring such cases.

Another problem with the current system is that it does not cover all institutions. The system falls down because it is an opt-in system that has strong links to Universities Scotland. There is evidence of huge problems with the current system. The introduction of a system that would be fairer to students, completely independent and in line with systems that serve other sections of society that receive significant public funding would obviously represent a fairer way forward. When the Scottish public services ombudsman was established, it made no sense to exclude further and higher education. The bill would bring the system into line with the system that is available for anyone else who accesses a publicly funded service.

Mike Watson: Most of what needs to be said about differential fees has been covered by previous questions. However, in paragraph 6 of your submission you say that that you are not reassured by the Executive’s comments on differential fees and you comment on

"the apparent lack of imagination that has been brought to bear on devising the measure itself".

Does that comment relate to your response to Christine May’s question? Are you referring to the top-up fees implementation group—I think that I am right in saying that the NUS is a member of that group—which has not yet completed its work, and the medical fees group, which has completed its work? I am interested to know in what context you think that there has been a lack of imagination.

Melanie Ward: We talk about a lack of imagination because ministers told us that they did not consider other solutions to issues about cross-border flows or in relation to incentivising people to stay in the NHS. Ministers did not consider other options and simply considered that the solution would be to introduce a market element in the form of a differential fee.

Mike Watson: I have a couple of further points. I compared the NUS submission with those of the Association of University Teachers Scotland and the Educational Institute of Scotland. This might be a bit unfair, but I will do it anyway. In a small paragraph at the end of the AUT submission the union states its opposition to variable fees but says little more than that. The EIS submission fails to mention the matter at all. However, the NUS submission stresses the matter and the submission from the University of Glasgow students representative council gives the matter almost as much prominence as the NUS does. I
will ask the unions about that in due course, but given that you swim in the same pool as they do, I will put the question to you. Why is the issue so important to your organisations but apparently of much less relevance to the higher education unions?

Melanie Ward: That would be an interesting question to put to the trade unions themselves. The NUS is the only national representative body for students, so student funding is of prime importance to us. The committee might be interested to hear that Scottish Trades Union Congress policy is to oppose differential and top-up fees in Scotland. I am sure that the education trade unions will reflect that in their stances when you question them.

The NUS and the education trade unions have consistently worked closely together in the struggle against top-up fees in England and in campaigning for a fairer system of funding in Scotland. We have taken part in a number of joint actions this year and have worked together on many different activities. I expect that to continue.

Mike Watson: I know that you act together in many aspects of higher education, which is why I asked the question.

I highlight another difference between the submissions. Your submission says:

“NUS Scotland has campaigned for over a decade for these sectors to be treated as a holistic tertiary education sector.”

However, the submissions from the AUT and the EIS make it clear that the education unions stress the distinctiveness of the two sectors. Why does the NUS think that the sectors should be fused, whereas the education unions apparently think the opposite?

Melanie Ward: Our organisations represent different groups of individuals. Staff in the institutions are entitled to take a different view from that of students about the future of further and higher education. We talk about wanting Scotland to have a tertiary education system because we have in the past 10 years or so observed a growing number of similarities between the two sectors. Similar quality systems have been adopted, the student funding systems have become more similar and many of the divisions between further and higher education in Scotland that existed 20 or 30 years ago have become blurred. The sectors have different missions and serve different purposes, but there are many more similarities than differences between them.

14:30

We also feel that the sectors can learn a great deal from each other. For example, the further education sector is good at widening access by providing child care facilities and developing links with communities, and higher education is good at providing a well-rounded and holistic student experience. We feel that the differences between the sectors have become less and less and that much of the distinction that remains today is arbitrary. That is why we think that the establishment of a tertiary education sector is the way forward.

Mike Watson: Is that also why the NUS preferred specified tertiary education providers to fundable bodies?

Chris Ballance (South of Scotland) (Green): Most of the points in your submission have been covered, but I would like to ask you about the paragraph that states:

“We are concerned, however, that the definition of a person with learning difficulties is not fully appropriate for its purpose, and we would like to work with the Committee throughout this process in order to improve this.”

Could you expand on that?

Keith Robson: We have had discussions with Skill, the national bureau for students with disabilities, and we would like there to be a broader term. The Education (Additional Support for Learning) (Scotland) Act 2004 uses the term “additional support need.” The term in the bill that we are discussing, however, is narrow and would make it difficult to argue for resources and support. The school-college review, which relates to 14 to 16-year-olds, has shown that, whether people like it or not, there is an opening up of opportunity for secondary pupils to go to college and, from there, to university. We would like there to be a coherent approach to that and we support the use of the broader definition that is implicit in the term “additional support need.”

Chris Ballance: What does that mean in terms of amendments to the bill?

Melanie Ward: The wording of the section that refers to students with learning difficulties would have to be changed to include those with additional support needs.

The Convener: It might be useful if you could give us a more detailed explanatory note in writing. I know that a number of people are concerned about the wording that is used in that part of the bill.

Fiona Hyslop (Lothians) (SNP): It might be helpful if the clerks of this committee could speak to the clerks of the Education Committee, because a great deal of issues were raised in the course of the Education (Additional Support for Learning)
The heart of the submission relates to differential fees. It is ironic that the NUS, which was one of the most enthusiastic about the bill, is now one of the most critical of it because of the fees element. Even if you were to accept the Executive’s proposal to introduce differential fees, do you think that this bill is the right means by which to do so at this time or do you think that it would be more appropriate to hold a debate on that proposal at another time?

Melanie Ward: We understood—along with everyone else—that the bill was supposed to be about merging the funding councils and addressing the structure of the further and higher education sectors in Scotland rather than about student funding. As I have outlined, we were particularly surprised that the Executive included the section on fees after the publication of the draft bill and before any of the consultation processes were officially finished. We do not think that this bill provides the right time or place for a debate on differential fees to take place.

Further, given that the proposal is an attempt by the Executive to react to a situation that has not arisen yet—that of cross-border flows—and that the Executive has not considered other options in relation to encouraging more doctors to stay in the Scottish national health service, we would have hoped that the Executive would deal with this issue at a point when such matters had been properly considered.

Fiona Hyslop: The Executive’s position is that a court case could be brought by a student or the NUS if ministers were to extend the differential fees proposal beyond non-Scottish medical students. Do you think that that is an adequate safeguard against the extension of the proposal?

The proposal cannot be two things at once: it cannot be a knee-jerk reaction to stop non-Scottish students coming to Scotland to get a degree and then leaving Scotland, as well as a back-door way of introducing differential fees across a range of subjects. Is that what the Executive is trying to do? Is it using the bill as a Trojan horse for differential fees for various subjects or is the proposal simply a knee-jerk reaction to a recruitment and retention problem in the health service?

Melanie Ward: We are not exactly sure what the Executive is trying to do. The Minister for Education and Young People has said that the proposal is specifically about non-Scottish medical students, but I have outlined our concerns arising from the fact that the minister would have quite wide-ranging powers. Why would he need such broad powers if the intention is to deal only with that problem?

We are concerned that a differential fee for non-Scottish medical students would be, in some respects, the thin end of the wedge. For example, we know that more non-Scottish students in Scotland study veterinary medicine than study medicine. If a fee were introduced first for doctors, what would prevent it from being extended to other courses? We fear that that would be the start of a system that could be extended to non-Scottish students on other courses. As the minister has powers over SAAS and student funding, funding could be withdrawn.

In a relatively short time, we could have a system of differential fees throughout Scotland. That would not be the same as the system in England, but it would nevertheless be a system of differential fees. The introduction of such a system would not require a debate in Parliament, because the bill would allow ministers to make an affirmative order. Such changes to the system in Scotland, even though they are huge and wide ranging, would not have to go through Parliament.

Fiona Hyslop mentioned a court case. The Executive’s advice is that the policy memorandum and explanatory notes on the bill do not carry legal weight and would not stand up in a court case. Even if such a case were to be brought—it would be difficult for one student to do that—the Executive’s advice is that the documents would not stand up in court as a guarantee that the Executive had promised not to introduce a system of differential fees. The Executive says that it plans fees only for non-Scottish medical students, but we worry that such fees could be extended in the future and that there would be nothing to back up the claim that has been made.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I have two questions, one of which is more hypothetical than the other. We have covered fees fully and you make your case well. We have talked about the matter previously. Last week, the committee pushed the professionals on the same issue. The general response was, “Problem? What problem?” You had told me privately that that could be the reaction. Will you surmise why that is the reaction? You articulate your case well, but when we spoke to Universities Scotland or whatever, it said that it was not as concerned as the NUS is. Why is that?

Melanie Ward: As I said, the different groups that have appeared before the committee represent different stakeholders. Initially, Universities Scotland was concerned about STEPs—which have been referred to—and about a tertiary education sector. The bill has changed significantly since that time. We took a different position on that subject.
It is normal for different groups of stakeholders in the system to take different views on elements of a bill and on any policy issue. Universities Scotland’s prime concerns with the bill have been addressed and it is satisfied with the bill. We, too, are satisfied with the bill, except the fees element.

We have worked in the past against top-up fees with Universities Scotland and with trade unions, as I said. The consensus among stakeholders on top-up fees is that a system of differential fees is not the way to proceed, but our submissions focus on different elements of the bill and on the elements that are of most importance and significance to our stakeholders.

Mr Stone: My second question returns to the funding council merger. I ask you merely to speculate. Will the merger pose questions about the structures of colleges and universities? When all money comes from one source, might that create the temptation to ask two institutions that are geographically close whether it is time to rationalise their operations? One thinks of administration, payroll and grounds maintenance.

Melanie Ward: The draft bill contained a power that would allow the minister to instruct institutions to consider merging. That has changed a little bit, but the minister can still ask institutions to have a look at merging.

There are a couple of current examples of mergers. Glasgow metropolitan college brings together Glasgow College of Building and Printing and Glasgow College of Food Technology. In that situation, three colleges are basically on the same street. From the students’ point of view, the merger has been successful. Students are happy with the changes, which they feel have delivered well for them. Another interesting example is that of Paisley University merging with Bell College. Again, an interesting process is happening there, but students are perhaps less satisfied with it.

We would have significant concerns if the Executive was trying to force institutions to merge when they really did not want to do so and if the governing bodies of those institutions had no wish to do so. We are not worried that the bill would allow ministers to do that and we are satisfied that the provisions in the bill would take account of students’ needs in such a process so that institutions would not be forced to merge if they had no desire to do so.

The Convener: In section 5 of your submission, you say:

“We also welcome the duty upon the Council to put in place a unitary credit and qualification framework across further and higher education”.

One of the points that was raised with Universities Scotland, which certainly struck a note with me, is that the funding council is really not the appropriate body to decide on a credit and qualification framework. Do you agree? You can see why, if there is such a framework, the funding council would have a duty to promote it, but surely the adoption of that framework should be done by a body that is not solely concerned with funding.

Melanie Ward: That question can be answered if you look at the overall duties of the new funding council in the bill. The council is to be charged with looking at Scotland’s skills needs and it is to have a strategic overview of the system of further and higher education in Scotland. I cannot think of another body that would be as appropriate or which would have the ability to take an overall strategic view of further and higher education and to look at a credit and qualification framework that it might wish to adopt and promote. We are quite happy with the provision in the bill regarding credit and qualification frameworks and with allowing the funding council, as the body charged with skills needs and as the body with a strategic overview, to be the body that would adopt and promote a credit and qualification framework.

The Convener: The funding council is not charged with skills needs, but it must refer to skills needs.

Melanie Ward: I am sorry. It must have regard to skills needs.

The Convener: Other bodies such as Scottish Enterprise and sector skills councils also have a responsibility in statute.

Melanie Ward: I am sorry. I should have clarified that that body is required to have regard to skills needs.

The Convener: Do you think that that is right? Do you think that the funding council should decide the credit and qualification framework?

Melanie Ward: We have to bear in mind that the funding council is a body that is made up of education experts from Scotland and from outwith Scotland. As the committee will be aware, there is a credit and qualification framework in Scotland that has been drawn up through a complex process of discussion and negotiation and with the support, I believe, of all stakeholders in Scottish further and higher education. If a new credit and qualification framework were suddenly to come along and be adopted, we might have concerns about that, but we are happy with the funding council being the body to adopt and promote such a framework.

The Convener: Okay. That covers all the questions. We look forward to receiving your additional papers within the next few days so that we have time to read them before we see the minister next week, when we can ask the tough questions that arise from them.
Melanie Ward: We shall certainly ensure that we send them. Thank you.

The Convener: Thank you very much for your written and oral evidence.

While we are rearranging the chairs, as it were, for the next group of witnesses, I welcome Stephen Imrie, our new clerk, to the committee. Stephen has spent five years as clerk to the European and External Relations Committee and has now been promoted to be the clerk of the Enterprise and Culture Committee. I pay tribute to the work done by Simon Watkins, who was the clerk to this committee for five years and who did a sterling job, ably backed up by the senior assistant and assistant clerks.

Our second panel of witnesses consists of non-NUS student organisations, if I may put it that way—I do not want to get involved in the internal politics of the student movement. I welcome John Andrew Murray, president of the University of Glasgow students representative council, and Bryan Ferrick, vice-president of Elmwood College students association. I believe that Bryan has an opening statement.

Bryan Ferrick (Elmwood College Students Association): Yes. I have a speech, if that is okay.

The Convener: Speeches are not allowed, but opening statements are, provided that they are no longer than three minutes.

14:45

Bryan Ferrick: First, on behalf of Elmwood College students association, I thank you for the opportunity to express our views on a matter that will clearly have an impact on our future education.

On the whole, we think that the merging of the two funding councils is positive for the future of lifelong learning. We hope that the bill will create equal opportunities for students at all further and higher education institutions. It should open avenues for institutions to share good practice and standardise the quality of service that they provide, but we hope that the identity of individual institutions will be retained and supported in the merger. That is important to us at Elmwood College, which is one of the smallest FE colleges in Scotland and offers not only many mainstream subjects for the local community but more specialised land-based courses.

Choice and quality are important issues for students today. There is a fear that local colleges might not be able to continue to offer the variety of courses that are now available if larger, centralised education centres are pursued through the joint funding council. Lifelong learning will work for much of the population only if learning is accessible. Many of the mature students at Elmwood and other colleges have family ties and responsibilities and, for them, accessibility translates into distance and affordability.

The ability to access education is important to students, but recognition of the worth of further education qualifications is equally important. One of the advantages that students anticipate in the merging of the funding councils is increased awareness by the general public of a more unified approach to further and higher education qualifications in Scotland. We hope that that joint approach, with parity of funding, will highlight parity of quality and thus increase the status of Scottish qualifications both nationally and internationally.

We hope that the joint funding council will seek to ensure easier progression from further education to higher education courses. Students at Elmwood want the progression opportunities between FE and HE to improve and become more standardised. We hope that, in that process, higher education establishments will recognise more readily the worth of further education qualifications.

We hope that the joint funding council will ensure that choice and accessibility remain and improve in further education colleges and that students in FE will have the same quality of educational experience as those in HE. We think that a more direct route between FE and HE can be achieved by the joint approach and that that should bring about a greater understanding of the key roles that both areas play in training and education in Scotland.

John Andrew Murray (University of Glasgow Students Representative Council): Thank you for inviting me to the committee on behalf of students at the University of Glasgow. You will note that our written submission concentrated on differential fees. One of the reasons for that is that I represent one of the best medical schools in the UK and I am particularly concerned about medicine. Like the NUS, I worry that the introduction of differential fees is the thin end of the wedge and that it will result in more fees, with the principle of top-up fees becoming extant in Scotland. We recognise that a problem exists with funding the Scottish NHS, but we would prefer alternatives to be used. The alternatives that I spelled out in our submission include the promotion of a culture in which it is possible for school pupils to take five highers in one sitting—at present many people are discouraged from doing so—and the encouragement of medical schools to be more lenient by accepting applications from those who have three or four highers that were taken in one sitting and others that were taken later.
The Government should support programmes such as Glasgow’s programme on widening access for health care professionals, to raise aspirations in schools. I have some sympathy with the idea of ring fencing places for Scotland-domiciled students, although I would like that to be discussed a lot more, and I believe that more incentives should be offered to medicine graduates to stay in Scotland, especially in areas outside the cities of Glasgow and Edinburgh. The Scottish Executive should consult universities, the British Medical Association and medical students before retaining the section of the bill on variable fees, although I would prefer it to be struck out altogether.

Bryan Ferrick touched on parity of esteem, which is a general theme that runs through the bill. As someone who went through a year and a half of further education, I sympathise with moves to act against the snobbery that damages people’s view of further education. Further education is important, but it has a different function from that of higher education—although the difference may not be as great now as it once was, with many post-1992 universities bridging the gap between education and training by offering a large number of vocational degrees.

We concede that further education needs more money, but we feel that that should not happen at the expense of higher education. Universities exist in a competitive international market, whereas further education colleges tend to serve only a local or Scottish market. Universities require income to attract top-flight academics to maintain and enhance their standing. I would rather that articulation agreements were encouraged at the level of the institutions—I believe that the University of Glasgow has many articulation agreements with institutions such as Anniesland College, Clydebank College and Langside College Glasgow, where I came from.

We welcome the extension of the powers of the public services ombudsman, but hope that emphasis is put on having a number of dedicated staff who are familiar with further and higher education. Many of the staff in the ombudsman’s office deal with a wide range of issues, but because of the complexity of the complaints about further and higher education, I would rather that the staff specialised.

Section 7 of the bill is entitled, “Fundable bodies: further provision”. We would not like fundable body status to be extended to private institutions; we believe firmly that education should remain in the public sector. If such institutions are created, they should be subject to the same stringent regulation of quality as the existing institutions and provision should be made for robust student representation within them.

Christine May: I had questions for both witnesses, but John Andrew Murray’s broad statement has probably answered the questions that I had for him. However, I want to comment on his comment about the role of the post-1992 universities. Very good articulation arrangements are in place with some of the older universities as well; I would cite, as an example, the University of St Andrews and its relationships with various FE colleges.

I thank Bryan Ferrick for his comments. As the MSP for Central Fife, I know Elmwood College well; many of my constituents attend the college. I have two questions. At the bottom of page 2 of your submission, you raise the issue of merging colleges. Jamie Stone asked a similar question of the previous panel of witnesses. Are your concerns to do with the loss of physical location in the event of a merger—in Elmwood’s case, such a merger might be with Glenrothes College or Fife College—or are they to do with the loss of courses?

Bryan Ferrick: It would be more to do with the loss of courses. As you know, Elmwood is more of an agricultural college, covering green-keeping and that sort of subject. We have some mainstream courses such as care-sector courses and hairdressing, and those subjects could be at risk if the college were to merge with other colleges.

Christine May: In the context of a more streamlined administration of further education, would you have a problem with integrated mechanisms for payroll, human resources and so forth?

Bryan Ferrick: I am sorry, but I cannot answer that question just now.

The Convener: Thank you. Your opening statement ranged a bit wider than your written evidence, but we will take them both together. We kicked off our evidence with Elmwood College from Fife, so we will kick off our questions with Christine May from Fife.

Christine May: I had questions for both witnesses, but John Andrew Murray’s broad statement has probably answered the questions that I had for him. However, I want to comment on his comment about the role of the post-1992 universities. Very good articulation arrangements are in place with some of the older universities as well; I would cite, as an example, the University of St Andrews and its relationships with various FE colleges.

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Bryan Ferrick: I am sorry, but I cannot answer that question just now.

The Convener: May I interrupt for a moment? The sun is right in Bryan’s face, which must be very disconcerting. If you would like to, you should move to your left—which I am sure is never a problem for a student. We have closed the blind, but the sun is still very bright.

Bryan Ferrick: Thank you—it is a bit better here. It is fine.

The Convener: Is that more comfortable?

Bryan Ferrick: Much better, yes.

Christine May: I am sorry, Bryan—I had not realised the problem.
I turn to page 4 of your submission and to the points on access to higher education. I presume that you are talking about the two plus two—two years of FE followed by two years at university. From your experience of Elmwood and the courses that it offers, do you feel that any discrimination is solely on the basis of the courses of study that are followed, or do you feel that it applies to the FE sector as a whole?

Bryan Ferrick: I feel that it applies to the FE sector as a whole. As I said, Elmwood is one of the smallest FE colleges in Scotland.

Christine May: There is an interesting point there about parity of esteem, particularly in relation to smaller colleges with more specialist courses.

The Convener: On mergers and so on, I should point out that one of the recommendations in the Enterprise and Lifelong Learning Committee’s report two years ago concerned the need for a national estates review that would look across both higher and further education. That was inspired to some extent by the estates review among the colleges in Glasgow. Perhaps the issue needs to be revisited at some point, although not in our discussions about the bill.

I think that Jamie Stone has a question.

Mr Stone: Christine May has just asked the question that I was going to ask.

Michael Matheson (Central Scotland) (SNP): I have a question for John Andrew Murray about his written evidence. In the second paragraph of the section that is entitled “Principles in relation to the proposal to increase fees for medical students”, there is a reference to the process of special pleading. The final sentence of the paragraph questions the assertion that medical courses “will universally be accepted as a ‘special case’” when differential fees are considered. Why do you question that assertion?

John Andrew Murray: In essence, because the floodgates would be opened. Medicine has a disproportionate—shall I say—number of non-Scotland-domiciled students compared with other courses. Other courses, such as veterinary medicine, possibly do not have as much value to the social economy, but if there is a shift in skills, I imagine that people in rural areas might say that there are not enough vets. We are talking about a dangerous thing to do.

Michael Matheson: So you believe that medicine in general will be accepted as a special case.

John Andrew Murray: I believe that, as things stand, medicine is the only special case.

Michael Matheson: Another course for which you think that there could be special pleading would be veterinary services.

John Andrew Murray: Yes. Veterinary medicine is the other obvious course that has a large number of non-Scotland-domiciled students.

Michael Matheson: Do you have evidence about any other courses that might be in that situation?

John Andrew Murray: Not so much. There is a large number of Scotland-domiciled students in Glasgow in particular. Three quarters of our students are Scottish, so we do not tend to have the same disproportion that there is in places such as Edinburgh and St Andrews.

Michael Matheson: That is helpful. Thanks.

Mike Watson: I have questions for Mr Murray.

Your submission is heavily skewed towards the issue of fees, although you added a bit to that in your opening remarks. What you are saying could not be clearer. The ground has largely been covered in the NUS evidence and the issues are perfectly clear.

However, I want to ask you about the second paragraph on page 5 of your submission, which is remarkable. There is excoriating criticism of the Executive and the way in which it is carrying out what you refer to as “this consultation”. Are you referring to the consultation on the merger of the funding councils or the consultation that has just been completed on charging medical students from England differential fees? What you have said is pretty much to the point, and other members and I will probably want to put your points to the Executive next week. Did your organisation contribute those views in a consultation response, either in the consultation on the bill on the funding councils or in the consultation on fees for English medical students?

John Andrew Murray: We are talking about fees; for us, that is the main issue in the bill. We accept the bulk of the bill, but that is the one outstanding issue that we would like to be scrapped.

Mike Watson: My second question is about a point that you made that I am particularly interested in. Christine May mentioned a college that is local to her—Elmwood College. Langside College is in my constituency, so I know it well. You said that you went there before you went to medical school.

John Andrew Murray: I went to university, not to medical school.

Mike Watson: I apologise—I thought that you were a medical student. As that is not the case, you might not be able to answer my question. To
what extent do people, when they reach the age of 17 or 18 and leave school, feel unable for whatever reason to study medicine, not necessarily because they do not have the ability or the qualifications? You seem to suggest that, in respect of articulation and so on, there is a lack of encouragement for some school students to move on to study medicine. Is there a role for colleges such as Langside College or any other FE college to bridge the gap between school and medical school?

**John Andrew Murray:** There may be a role in providing certain courses that would be a pathway into medicine. I do not accept that students must necessarily study for five highers in one sitting and get five As in that sitting—I concede that there are other pathways into medicine that could be provided by schools or FE colleges.

15:00

**Mike Watson:** That is an important point in the wider context of the issue of medical students.

In your submission, Mr Ferrick, you pose the question:

“By merging the new funding councils will further education students have more of a voice or less of a voice?”

You seem almost to be pitting FE students and their organisations against HE students. To what extent do you see the two groups as being in competition? You say:

“While this situation—the difficulties in FE—

“is nothing new it does raise key questions about how the voice of further education students will stand its ground going head to head with higher education students.”

That statement seems rather confrontational. I suspect that it is not quite as it sounds, but can you explain what you had in mind?

**Bryan Ferrick:** I am a further education student and we do not believe that we are heard as much as higher education students.

**Mike Watson:** Do you mean heard by the Scottish Executive?

**Bryan Ferrick:** Yes. Higher education students tend to be listened to more than FE students. I am not trying to create a confrontation.

**Mike Watson:** I understand what you mean. Thank you for that clarification.

You say that often students attend further education colleges only for a year and that they are rarely there for four years, as is usually the case with universities. For that reason, they do not have the opportunity to spend a long time in the role of student. FE colleges also do not fund full-time sabbatical posts, as universities typically do. I remember that from my time as a student 30 years ago. I understand why an organisation such as the University of Glasgow is not part of the NUS, which was the case even in my time. However, I should have thought that for a small FE college such as Elmwood College one way of getting round the problem of not being heard would be to be part of a bigger organisation that articulates a specific view for FE students as well as looking after higher education students. Why does Elmwood College not see it as beneficial to be part of the NUS?

**Bryan Ferrick:** I cannot answer that question. It is a matter for the college.

**Mike Watson:** Is it not for the students, rather than the college, to decide whether to affiliate to the NUS?

**Bryan Ferrick:** In a way, it is. However, it is also a matter for the college.

**Mike Watson:** I understand the points that you make. Smaller colleges play a vital role. That is especially true of Elmwood College, which operates in a particular area and offers a specific type of course. I want to ensure that there is a way for the voice of such colleges to be heard. Perhaps the Scottish Parliament is proving to be one way in which that can happen.

**Richard Baker:** John Andrew Murray said that we should consider the possibility of ring fencing places on medical courses for Scottish students. I am a little concerned about that suggestion, which seems to be blatantly discriminatory against students from other parts of the UK who come to Scotland. The Executive suggests that we address problems with cross-border flow by ministers setting a new fee across institutions’ medical courses. That means that English students would potentially pay the same to study in Scotland as they would to study in England and that Scottish students would not pay any more. As is normal, universities would decide on the basis of academic merit who received a place. Ring fencing a number of places would mean going beyond that. I want to flag up those questions with you.

**John Andrew Murray:** I am not in favour of ring fencing or quotas. I merely suggest ring fencing as an option, but it would be very much a last resort. I would rather have school education improve to the extent that there were enough people wanting a medical education.

**Richard Baker:** In some areas of medical education, the number of training places is set not by the Executive but by the professional bodies.

**John Andrew Murray:** I understand that the number of places available for medicine is controlled by organisations such as the BMA.
Those organisations could be put under pressure to be more lenient. The admissions process in medical schools can be overly strict.

Richard Baker: We would need a bit of luck there.

Fiona Hyslop: I thank John Andrew Murray for his submission and especially for the comments on differential fees for medical students. Recruitment and retention of doctors is the key issue in Scotland at the moment. You say that you do not want ring fencing and that it would be a last resort, but we have been presented with the first resort of fees. Is this the right time and place for the Parliament to discuss the future recruitment and retention of medical students or should that debate be removed from the bill and discussed in the context of separate legislation?

John Andrew Murray: It should be taken out of the bill and we should have more of a national debate about it. As you said, it is possibly one of the most pressing issues for the Scottish Executive at the moment. Lumping that issue into a bill that is to do with the funding councils is burying it where it does not belong. It must be debated separately and all the stakeholders need to be involved in a lengthy and extensive consultation.

Fiona Hyslop: The Parliament’s Health Committee is currently looking at the recruitment and retention of medical students and it could be argued that that committee should be looking at this part of the bill if it concerns medical students alone. In your submission, you list seven alternative proposals, many of which have come from the Calman report. The final area that you suggest should be considered is

“Ways of improving links between the cities with medical schools and areas where there is a shortage of health workers”.

My health board is currently looking at that in connection with Glasgow and Edinburgh and the 10 acute hospitals in between. Is that a way of addressing more proactively some of the recruitment and retention problems rather than hampering legislation with what you say is the thin end of the wedge?

John Andrew Murray: The five medical schools in Scotland could work closer together to cover the country on a geographical basis. Many students tend to go to their local university anyway—that is certainly the case in Glasgow. If medical schools become embedded in their local areas, we might see increasing retention.

The Convener: I thank both the witnesses for their written and oral evidence, which has been extremely helpful and covered all our questions.

We move to the third of today’s evidence-taking sessions on the Further and Higher Education (Scotland) Bill. I welcome from the Association of University Teachers Scotland Dr Alastair Hunter, who is this year’s president, and Dr Tony Axon, who is research officer to the AUT Scotland. I also welcome Mr Howard Wollman, the honorary treasurer, and Ms Andy Thomson, the president of the Educational Institute of Scotland. I point out for the record that Ms Thomson is a lecturer at the school of acute and continuing care nursing at Napier University and that Mr Wollman is the acting head of the school of psychology and sociology at Napier University.

I take it that there will be an opening statement from each organisation. Will Alastair Hunter of the AUT begin?

Dr Alastair Hunter (Association of University Teachers Scotland): We are grateful for the opportunity to contribute to the committee’s work. It has been helpful to be part of a wider consultation. We recognise the way in which the Scottish Executive and the Parliament’s committees respond to input from outside and we hope that that will continue creatively.

Our submission picks up on issues, some of which were touched on earlier, that reflect the concerns of the people we represent. Some of the issues that we want to raise in relation to the bill reflect our concern that the new funding council might require further powers than are envisaged at present. I do not mean legal powers, but, for example, it might take more of a planning role in the way in which subjects are provided for throughout Scotland. We are aware that the autonomy of individual institutions is important; however, in a country the size of Scotland, it is by no means unthinkable that some subject areas might disappear through choices made by individual institutions. It would be helpful if some planning provision could be included in what the funding council has to do.

I expect to hear some questions on HE and FE. Our particular concern is with HE, but we are well aware of the need for better articulation between the two sectors. Some of the apparent disagreements between us, the NUS and others arise through different people expressing in different ways the same ambition. Clearly, we have to say that we are concerned that the support and funding level for the specific mission of HE are preserved. For example, HE has an intense research role that is not typically the role of FE, although I do not rule out the possibility of there being such a role in FE in some circumstances. In that respect, we have expressed concern about the extent to which guidance will be given to the funding council as regards the division of the large block grant—I use the word “large”
advisedly—and whether ministers will give fairly detailed or only the most general guidance on how the funding may be divided between the sectors.

Although we have made only a small remark towards the end of our paper on the question of fees, we are aware that the whole issue of fees has a number of pitfalls that need to be addressed, some of which are not part of the bill that is presently under consideration. We share the concerns about the apparent opening of the door to variable and differential fees; however, I suspect that enough has been said by others on that subject. There are also problems for self-financing and part-time students, in relation to fees, which sometimes have a bearing on the setting of fee levels in Scotland.

The other issue that we thought was worth highlighting in this opening submission is the opportunity that the bill might offer to extend the principles of academic freedom: not just the freedom of institutions to pursue what they do, but the freedom of academics within institutions to pursue their proper remit of investigation, research, study and scholarship. Such academic freedom is written in for the pre-1992 HE sector, and it would be interesting to see whether it could be easily extended to the post-1992 and FE sectors.

Mr Howard Wollman (Educational Institute of Scotland): I thank the committee for giving us the opportunity to contribute to the work of the committee. We are pleased that many of the points that we and others made on the original draft bill have been used to improve the bill as introduced substantially. We think that that is a good example of that part of the consultation process at work. We strongly welcome the merger of SHEFC and SFEC and, more important, the aim of ensuring parity of esteem between the sectors. We have one or two concerns, as there are issues that might detract from that parity of esteem.

The first of those is that which my colleague Dr Hunter raised about academic freedom. We, too, think that there should be an extension of the academic freedom of institutions—which is explicitly mentioned in parts of the bill—to individuals in both post-1992 higher education institutions and further education institutions.

15:15

We are also concerned about parity of esteem, or the lack of it, when higher education courses are taught in the further education sector. Much support has been given for the development of the Crichton campus and the UHI Millennium Institute, but we are concerned that the work at those institutions to teach higher education courses— degree courses—is being performed at further education pay rates, which have, on the whole, been considerably lower than higher education pay rates. There are two variations within further education, but pay rates are considerably lower overall. Conditions of work, such as teaching hours, are also much less favourable. We are concerned because that situation is not only inequitable but counterproductive in relation to the experience that could be provided for students and in attracting the best staff.

I should have said that our paper mostly reflects the draft bill. The points that I will make are additional to those in our written submission.

We welcome the changes to section 20 to require the funding council to consider economic, social and cultural issues, as well as skills needs. That reflects more clearly the diverse roles of higher and further education. We also welcome inclusion of the UK and wider international contexts and recognition of the credit and qualifications framework, of which we are strong supporters.

The bill could contain a little more in one or two places. For example, the list of bodies that the council is required to consult under section 22 is somewhat narrow. We would like the provision to refer to staff organisations, trade unions and relevant student, professional and community bodies. They are not named at the moment.

We have expressed concerns about the governance of institutions. We would like further and higher education institutions to have governing bodies that represent fully the communities of which they are a part, to ensure diversity and to take full account of age, gender, ethnicity and disability. We would like measures to ensure that board appointment processes throughout the sector follow good practice and are open and accountable.

We acknowledge that some safeguards are in place on the designation of further fundable bodies, but we are concerned that such designation could be extended to private providers as part of, for example, a global liberalisation of the market in higher education, to the detriment of existing Scottish institutions. Adding to the current number of providers would not serve the best interests of Scottish higher and further education.

We share the concerns about fees that I gather have been debated this afternoon. Despite the assurance that it would be limited to highly specific circumstances, we are concerned that the power in the bill could be used to introduce differential fees, which we oppose strongly.

We are content with the powers for ministers to provide additional grants, provided that they are genuinely additional. We do not wish to see a
further round of top-slicing of existing grants to institutions.

We welcome the requirement to establish a research committee, but we are concerned about parity between pre-1992 and post-1992 higher education institutions in research funding and opportunities to undertake research. In a previous submission, we pointed out the significance of research that is undertaken predominantly in post-1992 institutions for important sectors such as nursing and the creative industries. We would welcome further specification in the bill of the committee’s membership, to ensure that it represents fully research that is conducted throughout the higher education sector and to encourage the further development of relevant research in further education.

We are content with and welcome the council’s rights to attend and address meetings of governing bodies, but we are uncertain about what happens next and where concerns would be taken following meetings. The bill is silent on that.

The Convener: Thank you. Mr Wollman, your opening statement raised a number of issues and I begin by asking you about three of them. First, on academic freedom, as I understand it, you are arguing that the existing rights of the pre-1992 institutions should be extended to the post-1992 institutions. I have a lot of sympathy with that argument, but are you also arguing for a further strengthening of overall academic freedom?

Mr Wollman: The EIS is fairly content with the definition in the Education Reform Act 1988.

The Convener: Do you just want it to apply to the post-1992 institutions?

Mr Wollman: We want it to apply throughout the sector and to further education.

Dr Hunter: The AUT Scotland agrees with that. Within the sector, there are support staff who are involved in teaching but who might not be covered by the Education Reform Act 1988. It might be timely to re-examine not the act and what it says about freedom, but the people to whom it applies within the sector overall.

The Convener: It would be helpful if the EIS and the AUT could provide some additional suggestions and information on that before stage 2, because it is the kind of issue that the committee might like to consider further at stage 2.

The second issue about which I will ask concerns governance, particularly college governance. Last year, the Scottish Executive published guidelines on that, which I hope are being implemented. However, a number of college principals and governors have raised with me the point that, under the legislation that set up the colleges as bodies autonomous of local authorities, local authority councillors were excluded from chairing the college boards. I have had representations that it is time to revisit that rule and that the bill might be—it might also not be—the right place to revisit it. Do you have any thoughts on that matter?

Mr Wollman: We welcome the outcome of the Executive’s review of governance and accountability in the FE sector, the full implementation of which would go a long way towards establishing college boards on a better and more equitable basis. The review encourages boards to achieve a more diverse and representative balance, but I do not know whether it can ensure that. Ms Thomson and I are from the higher education part of the EIS, so it is difficult for us to comment on the specific issue of local councillors being allowed to chair college boards, but I do not think that we would oppose that change.

The Convener: Would you give it further consideration together with your colleagues and write to us with your views? That would be extremely helpful. We would also welcome your views on the extent to which the new guidelines are working effectively and whether we need to do more in the bill to improve the governance of colleges.

My third point concerns parity of esteem. To some extent, the issue arose from recommendations that were made in the Enterprise and Lifelong Learning Committee’s report on lifelong learning two years ago. The question is how we implement parity of esteem. Howard Wollman made some points about the funding of HE in FE institutions, where HE is funded on an FE basis. I think that you argued that the funding of HE in FE institutions should be equal to the funding of HE in HE institutions, but what would the implications of that be for the rest of the college sector? If we decided to have one rate for HE and another for FE, would it not create anarchy and chaos in the pay and reward systems in the college sector if a lecturer were to be teaching HE in the morning—if I can put it crudely—and FE in the afternoon?

Mr Wollman: There is one simple answer to that: the strong pay differentials between FE and HE should not exist. At the moment, the colleges have different pay rates and there are considerable differences between them—at the top of lecturers’ pay scales, there is £4,000 or £5,000 between the best-paying and worst-paying FE colleges.

I do not want to go down the road of distinguishing the proportion of people’s work that is done as FE or as HE, as I do not think that that would be sensible. A lot of higher education is going on in further education colleges. There are
some very specific issues with UHI staff whose work is virtually exclusively in higher education inside colleges, as they are paid considerably less for that work.

The issue is not just about pay; it is also about time. There are people teaching higher education on degree courses in colleges who do not have the time for research, which we would normally expect to be a part of teaching in higher education, and for scholarly activity. We have to consider conditions as well as pay.

**The Convener:** It is complicated and difficult to achieve parity of esteem, not to mention the cost of doing so. We all pay lip service to the notion of parity of esteem, but should there not be a specific duty on the merged council to have regard over a period of time to achieving parity of esteem?

**Dr Hunter:** One of the problems with a phrase such as “parity of esteem” is that, at an emotional level, it represents how we think about one another. I take it that that is not the real issue because I have absolutely no problem with how I evaluate colleagues in FE. If, for example, we are talking about the level at which the resourcing of HE and FE is done from the students’ perspective, the question would be, “Is what I am getting—which is called higher education in further education—as good as what I would get at university?” There needs to be an examination of arrangements between institutions as opposed to a global solution, and good practice might emerge out of that, such as the sharing of library resources, which is a pretty obvious issue. Those who teach HE in FE have to be sure that they have the time to prepare the kind of courses that would be expected if they were to be called HE courses.

There is also the issue of the articulation of two plus two, which has been developed in some places and must have some future. However, again, it depends upon the fit between the types of courses that are taught in FE and those taught in HE. I suggest that the council might have a long-term remit to promote two plus two, but that will depend on significant work between institutions where articulation already exists or where it might be developed.

**The Convener:** That leads me to my final question to the AUT. You argue that ministers should direct the merged council to say how much of the money should go where. Assuming that that argument is accepted, there are two ways to do that. Are you recommending that ministers should say that this amount should go to universities and that amount should go to colleges or are you saying that the minister should allocate an amount to higher education and an amount to further education? The two types of allocation are different.

**Dr Hunter:** Indeed. My immediate answer is that we would have to think further about the question. There is a concern that if the council is left to make the strategic decisions over divisions, that could lead in some circumstances to unnecessary confusion or argument within the council. Ministers might give a less specific steer on pounds, shillings and pence and use a broader division, such as the requirement to maintain the undertaking that has been made for HE for the next few years. I think that we seek a general directive rather than a highly specific instruction. On whether the split should be between HE and FE or between universities and colleges, we might say that there is perhaps a need for a middle ground. As I pointed out a moment ago, HE and FE are developing, so there might almost be, if you like, a threefold division.

15:30

**The Convener:** That leaves me totally confused about what you are recommending. Perhaps after you have given the matter more thought, you can give us some paperwork on that.

**Dr Hunter:** We will.

**Dr Tony Axon (Association of University Teachers Scotland):** In part, our concern is about how the new funding council will provide funding to the system. When it starts off, there will surely need to be a breakdown at institutional level of the funding that it provides. However, the new funding council might change its funding streams. Our concern is partly about that.

**The Convener:** I am trying to get at what lies behind your recommendation, how you see the system working and what the implications are. I look forward to hearing more details about your suggestion of—if I may use the phrase—a middle way.

That is a nice cue for Jamie Stone to come in.

**Mr Stone:** I could take issue with that remark.

I have a tidying-up question on what the EIS submission says about UHI. On the fourth line of page 4, the submission mentions that courses at UHI are delivered by FE staff

"without any common approach to quality, conditions of employment or rates of pay."

I want to probe what that “quality” refers to. Does it refer to the quality of the teaching, the quality of the end-product or the quality of the educational attainment of the young person?

As someone who represents a Highland constituency, I found that that paragraph leapt out at me. Have you found the paragraph in your submission?
Ms Andy Thomson (Educational Institute of Scotland): Yes. We are just thinking how to answer the question.

Mr Stone: While you are thinking about that, perhaps I could ask my second question, which cuts to the chase.

Although I wholly accept the EIS’s point about parity of esteem, the fact is that a highly qualified lecturer in biochemistry at a higher education institution commands a higher level of remuneration than a qualified FE lecturer in some other subject. To get to the biochemistry level, the lecturer will probably have had to undergo more years of training. By definition, they probably need to have a PhD or something else as well. When you talk about parity of esteem, do you accept that remuneration will not always be the same, or is it your long-term goal to increase the cash reward that is paid to lecturers at UHI?

Ms Thomson: We have some concern about the disparities in salary that exist among further education college staff. We are also concerned about the disparities between the salaries of FE college lecturers who are at the top of their salary and those of university lecturers, given that lecturers in FE institutions can be expected to carry out jobs that are similar to those of university lecturers. They are also required to undertake some, if not all, of the teaching of degree students. There is a serious problem with salaries.

We do not have a simple answer to the problem—we certainly do not have one that we can give today—but there needs to be a review of the current situation. We should not expect people to deliver higher education on the cheap by providing the same quality of preparation for the education of students for a much lesser rate of remuneration. Also, FE lecturers often have much larger teaching demands. There is a serious problem with disparities in salary. There may be no simple answer and it may take some time to achieve a solution—that must be a long-term rather than short-term goal—but we should not put the issue to one side as if it was unimportant.

Mr Stone: While you are thinking about the quality question, let me ask a supplementary. As committee colleagues will have heard me say before, it is obvious from the back pages of the New Scientist that the remuneration for university teachers of science subjects is somewhat laughable in comparison to what those same individuals might receive if, after graduating or obtaining their PhD, they were to join a financial institution in Edinburgh. On both the FE and the HE fronts, are we not in danger of losing from academia, especially from the science faculties, some of our best brains?

Mr Wollman: I certainly would not disagree that the salary levels in higher education in general—to leave aside further education for a moment—are way out of line with the salaries in many professional areas. I am sure that there are people here who have more detailed information on that. That applies not just to jobs in science, but to jobs in many subject areas, such as accounting and law.

On your question about the difference between salaries in higher education and those in further education, it is not the case—certainly at lecturer and senior lecturer level—that someone teaching biochemistry would end up on a different salary level from someone teaching design. There could be some difference in their starting positions because of experience or qualifications, but their salaries would come to a similar ceiling level. It is at that ceiling level that salaries in higher and further education are very different. Institutions might have more scope at professorial level.

On the quality question, we were not trying to suggest that what was being delivered at UHI was not of high quality. The problem is that the costs of delivering that quality are falling with undue burden on individual members of staff who are getting insufficient reward.

Christine May: I have three questions. I want to step back from the specifics of what has just been debated. As I understand it, the basis of the problem is that FE institutions do not get the same monetary value per student for HE courses that are delivered in FE. Is there not an argument for suggesting that the merged funding council might want to consider that issue over a period of time in return for guarantees about what colleges would be able to do with the additional funding to ensure the quality of their degree courses? That is my first question, which each of the witnesses might want to consider if they are to give us further evidence; I do not expect them to be able to answer it straight off.

At the bottom of page 2, the AUT’s submission refers to non-accredited courses. As far as I recall, the bill does not mention non-accredited courses or their funding. You suggest that funding for such courses should be reintroduced. Why? From which budget should that funding come? Would it come from the same pot of resources that is available for accredited courses?

My third question is about the redistribution argument; I asked it last week, but it got evaded. There seems to be a fear that if any moneys are redistributed for new institutions, that might mean a reduction in the overall pot that is available for the existing institutions. Are you saying that if there is to be agreement to additional new institutions, the Executive should provide additional money to support them?
The Convener: We will hear from the AUT and then the EIS.

Dr Hunter: To some extent, I addressed your point about the enhancement of funding for HE in FE in an earlier reply, when I suggested that there might be scope for discussion in the longer term. To save time, I will let that answer stand.

In many ways, non-accredited courses have slipped off the agenda in recent years. In institutions such as mine, which is the University of Glasgow, where there is a strong adult and continuing education department, it is clear that there is a market for non-accredited work. Although such work sometimes goes no further than enhancing an individual’s own well-being, it sometimes leads people to recognise that something accredited and formal might be good for them. Given that the whole subject of funding is on the agenda, it might be an opportune moment to revisit this issue. Although having an earmarked budget would be good, I am as much a realist as MSPs about such matters. That said, such a move would be positive and in keeping with the different approach to education in Scotland. As far as your question on new institutions and new money is concerned, I am not sure whether you are referring to making UHI a full university, to giving the Crichton campus independent status or to some as yet unknown entity.

Christine May: A number of new institutions could well be created from, for example, mergers and, as you have said, the status of UHI and the Crichton campus might change in that respect. However, completely new institutions might also be created.

Dr Hunter: If we are talking about mergers and the continuing development of the Crichton campus and UHI, we hope that the Executive has such matters in mind when budgeting for the future. If we are talking about completely new institutions, I think that we would prefer such developments to be funded by new money.

Mr Wollman: I did not think that, by new institutions, you meant merged institutions. Although they might incur costs, they also involve some sort of consolidation. Moreover, I did not think that you meant existing initiatives such as UHI and the Crichton campus.

Over the years, the trend of discussion in higher education has moved away from creating new institutions beyond Crichton and UHI towards mergers or the idea of mergers. We seem to have quite a lot of higher education institutions already. We are not so much concerned about the creation of new public sector institutions, which is unlikely to happen, but we are finding it hard to anticipate the implications of, for example, the general agreement on trade in services and international liberalisation. All that might lead to what could be called a McDonald’s university, which might come into competition with existing further or higher education providers.

Mike Watson: You might have covered this point in response to one of the convener’s questions. In your paper, you recommend that “the undermining of academic freedom should be reversed”.

Does that simply reinforce the point that you make at the end of your submission that all academic staff in further and higher education should be brought within the provisions of the Education Reform Act 1988 or do you mean something else by the word “reversed”?

Dr Hunter: The main point is that the principle of academic freedom should be as widespread as possible. Behind that statement lies the sense that in areas where, for example, research is very closely tied to industrial and business needs conflict can arise between research freedom and the requirements of the people who are putting up the money. We simply felt that it was important to extend the principle.

Dr Axon: We are concerned that academic freedom in institutions has been somewhat eroded and does not have the same worth as it previously had. Now that tenure no longer exists—essentially it was replaced by the endorsement of academic freedom—we are concerned that people in institutions are still being pressed by heads of department not to pursue certain issues. It would be useful if the bill extended academic freedom not only to the institutions that are not covered at the moment but to the people who are not covered at the moment—such as researchers and people in universities who are in support roles and are involved in research and teaching. There has been an erosion of freedom for individuals and a reaffirmation of that freedom would be useful.

15:45

Mike Watson: Would coming within the ambit of the ombudsman not deal with the protection of staff?

Dr Axon: As far as I know, the ombudsman cannot deal with employment issues. Also, the academic issues in the bill are not to be part of the ombudsman’s role.

Mike Watson: Would any of the other witnesses like to comment on academic freedom?

Ms Thomson: We would certainly expect freedom to be extended to the post-1992 institutions and to further education. People should be free to voice their opinions. If they do a piece of research, they should be free to talk about it and not forced to hide or subvert any information that
they have discovered. It is important that academic freedom is maintained and that people are able to publish their research findings without feeling under pressure from anybody.

**Mike Watson:** By and large, members of the EIS will be in the universities that are not covered by academic freedom at the moment. Are your members being put under undue pressure as a result of not having that protection?

**Ms Thomson:** Without looking into the matter more carefully, I would not want to answer that point at the moment—although Howard Wollman may have an opinion. My feeling comes simply from talking to people; I have anecdotal evidence but no hard evidence that people feel under pressure not to release their findings.

**Mr Wollman:** We are not aware of specific live issues and problems, but the situation in higher education has become anomalous because the previous act was passed before the 1992 changes. We see no reason why the same protection should not be offered.

**Mike Watson:** It is a question of parity between the institutions, which is perfectly understandable. I do not want to labour the point on variable fees, but the AUT made only a brief statement and the EIS did not say anything. You have both now made it clear that you are opposed to any variable fees, but I wonder why you did not want to make the issue more prominent in your written submissions.

**Ms Thomson:** Originally, that was because we believed ministers when they said categorically that no top-up fees would be introduced in Scotland and therefore—

**Mike Watson:** I am not talking about top-up fees, but about variable fees.

**Ms Thomson:** And therefore we extended that to include variable fees as well. We are now aware of a specific concern over non-Scottish medical students and feel that there might be a gateway for the introduction of further variable fees in future if it was felt that there was a reason for introducing them. We feel that safeguards should be put in place so that the issue does not arise.

At the time, we also felt that the issue was more for the students than the staff and we expected the students to take it up enthusiastically—which they have done.

**Mike Watson:** With your support?

**Ms Thomson:** With our support, yes.

**Mike Watson:** Your submissions seem to be at odds with each other on one point. The AUT wants ministers to “direct the overall diversion of funds between the two sectors”—the submission says “diversion”, but I suspect that it should say “division”—whereas the EIS says the opposite. Will you justify your positions? I am especially unclear about what the AUT is saying about ministers being able to specify a certain amount of the funding that goes to each of the two sectors. What are your fears? As things stand, what you suggest might happen, will not happen.

**Dr Hunter:** I guess that my earlier answer left something to be desired, so let me try to be a little more explicit. The requirement on the university sector to fulfil the mission of carrying out front-line research, and of being not only British class but world class, is not a cheap requirement. That mission is very different from the mission of the FE sector as a whole. We are well aware that there is underfunding in FE that needs to be addressed. However, one of our fears is that, in an undifferentiated budget that is given to the funding council, the solution to one problem could be found at the expense of resources for the research mission of the higher education sector. That fear might be quite unfounded, but it was responsible of us to make it clear that we need to be confident that the merging of the funding councils will enable the university sector to carry out its remit, as the Executive clearly wishes it to do.

**Mike Watson:** I wonder whether Mr Wollman can clarify why the EIS favours a single allocation.

**Mr Wollman:** We are embarking on a combined funding council, and that must be a serious consideration. I do not think that there is much of a division between us. In our written submission, we caution against any destabilising of further or higher education funding during the transition phase. We agree that there are issues—we have raised some of them—about the funding of aspects of further education, and we would not want the situation to be improved at the expense of higher education. We do not believe that higher education is overfunded at present—quite the contrary. Although we may have come to different conclusions about the mechanisms, I do not think that we disagree fundamentally on the philosophy.

**Mike Watson:** Perhaps, to some extent, it is about the division between research and teaching rather than between the two sectors. I take that point.

My final question is in response to something that the EIS says in the penultimate paragraph on page 5 of its submission. It talks about governance and mentions “penalising those that do not ... comply with the Nolan principles when appointing Board members.”

Surely, that does not happen. The Nolan principles have to be observed in any appointments to any
public body. Is that something that you fear may happen in the future, or do you have evidence of that happening at the moment? I am not asking you to name institutions, but if it were happening, that would be quite a serious matter.

Mr Wollman: We might want to come back to you on that. One of the problems is that the information is not that easy to come by—that is one aspect of the whole issue of governance. What happens when appointments are made is not publicly well known. We will get back to you if we have any specific issues on that.

Mike Watson: I am not asking you to name a college or even an individual. My understanding is that people who put themselves forward for a public appointment go before a panel, as a whole, and then become eligible for various public appointments. That has to be done according to the Nolan principles. If that were not happening, especially in respect of further education colleges, that would be a—

The Convener: They are not, technically, public appointments. They are outwith the public appointments system.

Mr Wollman: Our general aim was to suggest that there is best practice incorporated in those principles and that we would like them to be applied to these bodies, which are not public bodies.

Mike Watson: The paragraph that I just quoted states that the EIS wants the new funding council to have powers

"to ensure that all publicly funded colleges and higher education institutions have regard to staff governance".

It then goes on to mention the Nolan principles. It is not clear to me what is being said there.

Mr Wollman: The point is that the Nolan principles are highlighted as good practice. The question is whether an equivalent level of good practice is applied across higher and further education institutions.

The Convener: The members of the funding councils go through the public appointments system, and we now have a Scottish commissioner for public appointments. Are you suggesting that, for the purpose of appointing people, each of the 67 institutions that will be funded through the merged funding council should be incorporated into the public appointments system?

Ms Thomson: Yes, I think so. Recommendations have been made on governance and accountability and we would want to see those recommendations being followed. There are transparent ways of interviewing and appointing, so that people can feel confident that

the best possible people are in the jobs that they are in and that there is no opaqueness about the way in which people are selected and appointed.

Mr Wollman: The issue is about applying the principles, and not necessarily every detail, in practice.

Mike Watson: I was certainly not questioning what you have said—indeed, I support it. I was trying to get at whether there is evidence that what I mentioned has not been happening and that things need to be turned around by using the legislation. However, you have clarified the position.

Fiona Hyslop: I have a brief question. The AUT talked about the need for more planning to be available to the new funding council. A quite defensive example was used that involved ensuring that certain subjects do not fall through the net. However, that implies a policy remit, which can be used aggressively as well as defensively. Is your plea more about what the minister should do in instructing the funding council, or will the bill need to be amended to strengthen the council's role in planning? Is your plea more of a general policy plea, or does it specifically relate to what you want to see changed in the bill? The EIS might also want to comment on the council's planning role.

Dr Hunter: We thought that there were two ways in which the funding council might have a wider remit in planning and in guidance of a more assertive kind—I do not want to use the word "aggressive". One way is to ensure that the funds that are directed in particular areas are directed appropriately. We thought that it would make sense for the council to have some powers to call institutions to account. That is one issue. We have made suggestions about how that might be done through warnings about the possibility of similar funding not being repeated.

I agree that general planning on the provision of subject areas throughout the country might raise a wider policy issue. I am not sure whether it would be entirely appropriate for the funding council to do that, but it seems to us to be missing in the overall provision. Given that there are subject areas that are taught in relatively few institutions and that they may well not be cost effective— Institutions are constantly considering whether they are getting value for money or best value from the subjects that they teach—it is not beyond the bounds of possibility that an entire discipline, albeit a minority discipline, might disappear with no possibility of anyone saying that that is a bad thing. As the disciplines are funded through the teaching grant in the funding councils and the research grant to some extent, we identified the funding council as a possible place for such issues to be discussed and for an overview to be taken. I
think that we would be content for the matter to be on the agenda, even if it turned out that the funding council was not the best place for such matters.

Fiona Hyslop: Again, we are talking about a difference between teaching and research as far as direction is concerned.

Mr Wollman: We would probably agree with what has been said. In the light of the size of the sector here, it is easier to envisage such a situation happening here than in England, where it would be less likely for a subject to be completely eliminated. Therefore, there is a potential for worry, although we do not have any active concerns.

There are planning issues that need to be further teased out. There is a fine line in what the existing council has been doing in higher education and research, for example in strongly encouraging collaboration in research. There has not exactly been planning, but things have been heading in that direction, and such developments have been generally welcomed. There is a fine line between the council encouraging collaboration, for example, and actively getting engaged in planning. I am not sure whether the line between the two is entirely clear.

16:00

Chris Ballance: I want to ask specifically about your comments on the funding councils’ recent joint corporate plan placing too much emphasis on economic aspects and not enough on health and cultural aspects, which you mention on page 1 of your submission. Arising from that is a wider question that I would like both sets of witnesses to respond to, which covers much of what we have been talking about this afternoon. The material is not in the bill, but it is obviously on your agendas—issues such as the priorities of the corporate plans, academic freedom and the different standards and remuneration for FE and HE. Are those issues on which you recommend that the committee should lodge amendments, or are they simply issues that you are saying will be at the top of your agenda as soon as the new funding council is set up? If you feel strongly that we ought to lodge amendments about those issues, what are your priorities?

Dr Axon: I will answer the question on the joint corporate plan. This is the first time that the funding councils have done a joint plan. We thought that it focused unecessarily on the economic issues and skills needs rather than the more diverse cultural aspects that higher education delivers and the ways in which it builds up civic Scotland and the individual person. That is why those comments appear in our submission.

Chris Ballance: If the comments are not about the bill specifically, why do you bring the issue to us?

Dr Axon: We are welcoming the fact that there is a section broadening the definition of things that the funding council should deal with. The bill requires the funding council to have regard to the cultural and civic aspects of higher education, and we welcome that.

Chris Ballance: What about your priorities?

Dr Hunter: We recognise that the papers that we have submitted are wish lists. Some of the issues belong to our general pattern of concerns, and you would expect us to raise them when we have the opportunity. We will want to make some specific suggestions in due course. For example, I imagine that the extension of the principles of academic freedom will be one, as it is at least indirectly referred to in reference to the freedom of institutions to go about their business and it would seem an easy modification to make. It is probable that the AUT will want to include something specific to give the funding council some teeth to ensure that the money is spent as it should be. If you want a further priority, the planning issue that we talked about a moment ago might well be one. If the proper mechanism is to submit amendments, we will be happy to do that.

Mr Wollman: Some priorities are easier to decide in the context of the bill. I agree with my colleague that the principle of academic freedom would be relatively straightforward to include in the bill. It is not at the top of our priority list, but it would be relatively easy to put into the current bill something to ensure that, in the setting up of the research committee, consideration is given to ensuring that it reflects the full range of institutions that might be carrying out research. The issue of parity of esteem is harder to address, but we could take it away and consider it. Like Dr Axon, I would be happy to submit amendments.

The Convener: I thank both organisations for their written and oral evidence, and I look forward to receiving the follow-up information that we have requested. We now move into private session for item 3 on the agenda.

16:04

Meeting continued in private until 16:09.
SUPPLEMENTARY WRITTEN EVIDENCE FROM THE ASSOCIATION OF UNIVERSITY TEACHERS

Enterprise and Culture Committee

Preamble
We welcome the opportunity to further comment on the Further and Higher Education (Scotland) Bill to clarify issues raised in our oral evidence to the Enterprise and Culture Committee.

Academic Freedom
Section 8 (12) prevents Scottish Ministers from framing terms and conditions in reference to programmes of learning or courses of education and research. This welcome provision recognises the advantages of maintaining and extending to FE colleges what may best be termed ‘institutional academic autonomy’.

The Policy Memorandum describes this as the ‘academic freedom’ of institutions.

However, for academic staff, a more important freedom is individual academic freedom. That is what allows new ideas to be researched, advocated and published against existing orthodoxies, however inconvenient for the academic hierarchy or for funders – such as industrial research sponsors whose commercial interests might be threatened by research findings or adverse academic argument. At the institutional level, academic autonomy might be used to suppress rather than promote individual academic freedom.

Academic freedom is defined (but only for the eight pre 1992 Universities in Scotland and for the Open University in Scotland) in the Education Reform Act 1988, Section 202 (2). Institutions that did not have university status in 1988 may in practice respect the individual academic freedom of their staff but this is not guaranteed or underpinned by legislation.

Borrowing the relevant wording from the Education Reform Act 1988, it would be feasible to extend the principle of academic freedom to embrace all universities and FE colleges, by adding to Section 7 (2) (c) a new subsection : ‘procedures to ensure that academic staff employed by the body have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at the body’

This might be numbered (i) with existing (i) renumbered (j).

How this would work in practice
The above approach avoids a more direct and bureaucratic intervention – such as the appointment of University Commissioners, who were tasked with the development of procedures under the Education Reform Act 1988. In line with the overall approach of the Bill, including Section 7 (2) (c), the above wording simply makes academic freedom one of a list of desirable features. The new funding council will then be obliged to have regard to the desirability of ensuring that there are suitable procedures and arrangements in every fundable body covering this list. The Council would have to take into account, inter alia, whether there are suitable procedures to ensure academic freedom, when considering whether or not to propose to Ministers that any new body is admitted to the list of fundable bodies- or to remove any body from the list.

In practice, therefore, this would work in the following way:

- Any body seeking admission to the list of fundable bodies would be expected to demonstrate to the Council that, inter alia, it has suitable procedures to ensure academic staff have individual academic freedom.

- Existing HEIs and FE colleges already listed as fundable bodies would need to be questioned by the Council to establish whether suitable procedures were already in
place and, if not, encouraged to introduce such procedures. The legislation would create an onus on the Council to ensure that there are suitable procedures in all fundable bodies. As to what constitutes ‘suitable’ procedures, the Council would of course be able to look at existing practice in pre 1992 Universities as a point of reference and would be able to consult stakeholders, both employers and trades unions representing the staff concerned.

Extent of staff coverage under ‘academic freedom’
This question may merit some debate. In the pre-1992 universities, each University has an internal definition of ‘academic staff’ and the coverage varies. For example, in some cases research staff and staff employed on academic related salary scales are defined as academic staff, in other cases only lecturers, senior lecturers and Professors. It would be much preferable to have the widest possible definition. Essentially, any and all staff who might engage, even incidentally, in any research, teaching or publishing activity, need to feel free to research, develop, teach and publish new and controversial ideas without fear of disciplinary or other sanctions. It is fairly obvious that research staff require academic freedom, as well as teaching staff. The extensive use of insecure fixed term contracts makes legislative protection of the right to research and publish free from fear of reprisals more rather than less necessary. However, in the university environment, with teamwork involving wider groups of professional staff, there are likely to be others – including, for example, administrators, library staff, technicians – who have some need of academic freedom protection.

It is at least worth considering whether the word ‘academic’ might be deleted, so that all staff in fundable bodies have academic freedom. It is understood that the main campus unions would be likely to support this.

The detail may of course be left to the Council, who ultimately will need to consider what procedures are ‘suitable’. However, if the statute says ‘staff’ as opposed to ‘academic staff’, the Council would be guided to expect wider coverage of any institutional procedures.

If it is not possible to include all ‘staff’, it would still be best to avoid use of the term ‘academic staff’ which implies that a definition of coverage under that heading would be required, possibly differing as at present in the pre 1992 universities- from place to place. It would be better for the wording of the Statute itself to be crystal clear, for example use of the phrase ‘procedures to ensure that staff employed by the body, any part of whose work includes teaching, research or publishing’ would extend academic freedom to all those who, in practice, most require it. [A further possible variant, taking into account that not all workers are employees and that employers may sometimes seek to use self-employed status as a mechanism for avoiding employment rights, would be to say ‘all persons who work for that body’ in place of ‘staff employed by the body’.]

Additional reference to academic freedom
It may also be helpful to include a free standing clause on academic freedom, by inserting a new clause 26A:

‘Any employee of a fundable body shall be entitled to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions.’

Other considerations to be distinguished
It is important to note that academic freedom is distinct from and an additional protection to that provided for public interest disclosures (‘whistleblowing’) which applies to all workers.

It is also important to understand that academic freedom does not allow unlawful activity under the guise of academic publication. The concept is freedom ‘within the law’.

Funding convergence
The current model of funding for HE has worked well for the vast majority of HEIs and students. It should not be changed drastically as a result of the merger or for the sake of individual institutions which do not fit into the overall pattern. Exceptional cases should instead be considered on an individual basis.
Although HN provision and the first two years of degree provision are notionally at the same level we believe there are fundamental differences in the provision. Firstly HN courses are an end in themselves whereas first years of degrees are preparing students for higher level study. Degrees are predominantly undertaken at universities where there is access to staff who undertake research and scholarship and hence have a deep understanding of their subject. Universities only undertake higher education provision whereas further education colleges undertake mixed provision and their main mission is further education provision. Universities tend to operate in a worldwide market while colleges tend to serve their local communities.

Although we do agree that the dividing lines between further and higher education are blurred, with a significant proportion of HE undertaken in further education colleges (FECs), we do not believe funding should be totally driven by level of course. Indeed if this were to be carried through to its logical conclusion, it would increase the funding of HEIs to the detriment of FECs as all higher level HE takes place in HEIs, whereas the HE provision in FECs is below degree level. Funding by level would inevitably cause mission drift as institutions attempted to maximise the more lucrative provision. Universities would completely reduce their Higher National provision and colleges would attempt to increase this provision at the expense of their main role of providing further education (FE). We believe the present system works well and in cases where an institution undertakes a majority of HE provision, it should apply for the HE designation that Bell College recently obtained.

Hence we believe the differences between colleges and universities and the provision they provide implies that a total convergence of funding by level may not be appropriate.

For the reasons stated above we also believe that the Ministerial guidance should divide funding by institution rather than course or level. However, we recognise that this would depend on the funding scheme developed by the new funding council.

**Recommend amendments**

We recommend that the following amendments should be made to the bill, the first two of which are relatively simple to incorporate.

1. **Academic freedom**
   We believe that it should be a simple matter to add individual academic freedom to this bill and that it falls within the remit of the long title of the bill as it is a concern for the provision relating to bodies which provide further and higher education or connected purposes.

2. **Consultations and collaboration**
   Staff and students should be considered as stakeholders in consultations over merger proposals. Hence the recognised unions and student bodies should be added to the list in section 22(4) of the Bill.

3. **Powers of the Council**
   We are concerned that institutions have not adequately enacted Ministerial guidance and we would wish to see increased powers for the council in ensuring that public money is used in accordance with the wishes of Ministers. This is explained in detail in section five of our written evidence to the Enterprise and Culture Committee. However, this maybe a complicated amendment to apply in practise and it is unclear if the Council will have the power to impose financial penalties in any case.

4. **Fee levels**
   We would prefer another method to alleviate cross border flows than a differential fee for some courses that attract a disproportionate number of other UK students. Hence we believe that the clauses in section 8 that refer to the setting of differential fees for certain subjects should be deleted.
The Enterprise and Culture Committee took evidence from the EIS at its meeting on Tuesday 9 November 2004 during which some additional information was requested. The following sets out the EIS position on the relevant areas:

1. **Views on academic freedom for individuals in relation to the provisions in the Bill.**

   The EIS believes there should be a general duty on the new Council to ensure all Scottish Higher Education Institutions and Further Education Colleges provide for the academic freedom of individuals as set out in the Education Reform Act of 1988. The EIS suggests the terms of the Education Reform Act of 1988 “academic staff have freedom within the law to question and test received wisdom and put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs” should have transferred to the Further & Higher Education (Scotland) Act 1992 in order for academics employed outwith the pre 1992 sector to benefit from the provision. The EIS would ask the Committee to seek an amendment to the Further and Higher Education (Scotland) Act 1992 which provides the protection of academic freedom as exists for staff in Scottish pre-1992 HEIs as set out in the Education Reform Act of 1988.

2. **Views on the potential for longer-term convergence of funding methods in further and higher education.**

   The EIS believes the new Council should fund provision by level which would ensure that higher education provision, irrespective of where it is delivered, is funded at the same rate. However, changing any funding methodology can be problematic and the EIS would look to the new Council to ensure that no sector was disadvantaged as a consequence of changes to funding methodology. Convergence of funding methods should be sensitively handled and phased in over a sensible time scale.

3. **Views on progress on implementing existing FE governance guidelines, and on current prohibitions relating to elected councillors as chairs of governing bodies.**

   The EIS was disappointed that the review of Governance and Accountability in the Further Education Sector did not lead to substantial change in the way the sector is managed. The EIS has long been of the view that the FE sector needs a joint negotiating committee for staff similar to that which exists for teachers and higher education lecturers. Parity of esteem for those working in further education will never be established if left to wishes of College Principals. The £4,000 discrepancy in pay that exists between the top of the FE lecturer scale and the top of the HE lecturer scale must be tackled if genuine parity of esteem is to be established and a tertiary model emerge in Scotland. The disparity of over £4,000 at the top of the FE lecturer scale in the highest and lowest paid colleges is a result of incorporation and the drive by independent colleges to drive down salary levels. If Scotland is to continue to expect high quality provision for those working in the FE sector, it is time to bring salary levels in line with those like professionals in schools and higher education. The EIS would look to the Committee to recommend the establishment of a national body with responsibility for reviewing and recommending on matters as salaries, staff recruitment and retention, course provision, collaborative initiatives, etc. as a means of ensuring the FE sector is delivering best practice and best value for public resources.

On the specific matter of college governance the EIS would expect the new Council to have a general duty to ensure the following recommendations of the review of governance are minimum requirements for each college and to introduce a means of monitoring same:

- Board membership restricted to a maximum of 8 years,
- Appointments processes followed by all college Boards are consistent and follow good practice in public appointments,
• Make greater use of powers to co-opt individuals with specialist skills and expertise;
• Better utilise the public spiritedness and expertise of Board applicants by looking at the scope to encourage unsuccessful applicants to offer their skills to another college,
• Encourage college Boards to achieve a more diverse and representative balance of membership, taking account of gender, race, age and disability,
• Introduce a national training programme,
• Examine training arrangements for Clerks to Boards, ensuring the role and responsibilities are defined,
• What role the Council should have in appointments of the college’s Accountable Officer,
• Compulsory training for Accountable Officers.

Finally, the EIS has never supported the restriction which prevents councillors and council employees being appointed to the Chair of an FE college board and totally supports its complete removal. The EIS believes the last period has shown the folly of reliance on private sector principles as the driving force for change within the FE sector and believes this must be replaced by the ethos of public service. It is vital for all board members, not just staff representative members, to understand the culture and ethos of further education and the requirements placed on colleges to follow ministerial guidance and respond to specific initiatives, particularly the educational and staffing resource implications of new curricular activity. The EIS believes that Councillors and council employees would bring an enhanced appreciation of public sector funding and local community understanding to college boards.

4. Clarification on comments regarding adherence to Nolan principles in appointments to boards of managers and/or governors in further and higher education.

Ideally the EIS would like to see the public appointments system extended to all HEIs and FECs in Scotland but realises that institutions would perhaps find this difficult to accept and inconsistent with their understanding of institutional autonomy. However, the EIS believes that as HEIs and FECs receive the majority of their funding from the public purse, it would not be unreasonable for Chairs of boards of managements and governing bodies to be appointed through the public appointments system.

In conclusion, the EIS recently responded to the Scottish Executive’s consultation “Implementation of Measures Resulting from the Review of Governance and Accountability in the FE Sector: Proposed Changes to FE College Boards of Management”, the full text is attached for consideration by the Committee.
The Educational Institute of Scotland – Further Education Lecturers’ Association (EIS-FELA)


1. Introduction

The Educational Institute of Scotland welcomes this consultation. The Executive will be aware that the EIS is the sole lecturers’ union in FE in Scotland, with over 95% of all lecturers in membership.

The EIS believes that the self-governance of FE Colleges provided for by the Further and Higher Education (Scotland) Act of 1992 has failed. One reason for this is that too many colleges now find themselves providing a vital public service while attempting to cope with extreme financial difficulties. The EIS believes that this poor financial situation stems from the funding basis of incorporation, which promoted deficit management as the norm and allowed deficits to grow. Without specific resources to eradicate those historical deficits, any attempts to regulate the sector are unlikely to be successful.

It is a matter of record that the Further Education sector has among the worst record of industrial relations and industrial unrest in the public sector in Scotland. While accepting that this situation relates in part to problems arising from historical funding deficits, the EIS believes it also clearly indicates poor personnel and financial management on the part of those Principals and Board members charged with these very important functions. The Executive will be familiar with the many critical situations which have developed during the past few years where two colleges have required direct intervention and many more have received specific cash injections to keep afloat. Many good lecturers up to and including Head of Department have been lost to the sector as colleges have sought the “quick fix” to funding difficulties through “restructuring” – a term which has become a euphemism among college staff for redundancy and early retirement. It is, therefore, the view of the EIS that the continued atomisation of the further education sector through individually managed colleges is not in the best interests of students, staff or the public purse. The Executive must give serious consideration to bringing the entire FE sector under the direct control of the Scottish Executive in order to ensure FE colleges are appropriately funded, managed and staffed to respond to the Executive’s widening participation agenda and the skills requirements of a growing economy. The EIS does acknowledge that the Scottish Executive has attempted to get to grips with the governance and accountability challenges in FE Colleges and while the package of measures announced following the 2002 review of Governance and Accountability in FE was disappointing, the measures do go some way to setting standards and criteria for appointments to College Boards for the future. However, the EIS believes there is one additional area requiring immediate guidance and that is a common sector wide procedure for replacing a staff board member who may for a variety of reasons, death, retirement or withdrawal leave the Board.

The EIS acknowledges the limited scope of this consultation and is happy to provide answers to the questions raised.

2. Against what criteria should applications for an extension to the 8 year rule be considered?

The EIS does not believe there should be any consideration of extending the 8 year rule for Board members of FE Colleges that are appointed to serve. However, the EIS believes elected staff representatives should continue to serve for as long as they enjoy the support of their colleagues and, of course, satisfy the necessary democratic election procedures. Colleges should be vibrant and stimulating places of learning, and must be able to attract board members genuinely representative of the local community which they serve. The EIS supports the Scottish Executive wish to see FE college boards of management achieve a
more diverse and representative balance of membership, taking account of gender, race, age and disability. The EIS does not share the view, usually expressed by current board members, that expertise could be lost to the sector if the 8 year rule is not relaxed. The EIS believes the relationship developed between SFEFC and the FE sector has led to a more secure planning regime and it is therefore unlikely that exceptional or unforeseen circumstances arise that would necessitate an extension to the 8 year rule of any member of the board of management. Past experience in the sector would also suggest that if such “exceptional” arrangements were provided for they would quickly become the norm in many colleges. The EIS believes the appointment and re-appointment procedures must be rigorously applied if confidence in the sectors ability to self-manage is to be maintained. The EIS also believes the powers to co-opt individuals with specialist skills and expertise are underutilised by the sector, making greater use of this provision should ensure any exceptional and unforeseen circumstances is adequately managed.

3. **Do you agree with the complete removal of the current restriction which prevents councillors and council employees being appointed to the Chair of an FE college board?**

The EIS has never supported the restriction which prevents councillors and council employees being appointed to the Chair of an FE college board and totally supports its complete removal. The EIS believes the last period has shown the folly of reliance on private sector principles as the driving force for change within the FE sector and believes this must be replaced by the ethos of public service. It is vital for all board members, not just staff representative members, to understand the culture and ethos of further education and the requirements placed on colleges to follow ministerial guidance and respond to specific initiatives, particularly the educational and staffing resource implications of new curricular activity. The EIS believes that Councillors and council employees would bring an enhanced appreciation of public sector funding and local community understanding to college boards.

4. **Conclusion**

Pay determination is the single most demanding and costly management undertaking each college must engage in annually. The EIS believes there is value in removing such an acrimonious element of local management decision-making to a national collective body, charged with the responsibility of setting pay levels and core conditions for all staff grades within FE colleges in Scotland. It is completely untenable for such a vital link in the educational chain in Scotland to be the only sector which does not benefit from a collective/partnership approach to pay and conditions determination. Staff in FE look with envy on their colleagues in schools and the Scottish Negotiating Committee for Teachers (SNCT) established to resolve salaries and related post-McCrone conditions, without recourse to industrial unrest. Similarly, colleagues in higher education are now two years into a new UK wide national partnership arrangement which determines pay and conditions for all staff in this sector as well as issuing joint guidance to the sector on a range of employment related issues, such as equal pay audits and dealing with the requirements of legislation on fixed-term contracts. The Joint Negotiating Committee for Higher Education Staff (JNCHES) is responsible for the introduction of a new national pay scale for all staff in the higher education sector, across the UK.

Similar arrangements for the FE sector in Scotland are long overdue. The EIS believes the Executive should seek to learn from the modernising arrangements in determining salaries and conditions of employment which have ensured industrial stability for both the school and higher education sectors, and begin to tackle the volatile, destabilising, unproductive and costly scenario in the FE sector. Unless and until pay determination for the FE sector is returned to some form of national determination, the EIS believes no amount of changes to the compilation of boards of management will provide the industrial stability the sector deserves.
SUPPLEMENTARY WRITTEN EVIDENCE FROM NATIONAL UNION OF STUDENTS SCOTLAND

I am pleased to enclose a copy of our recent submission to the Scottish Executive’s consultation on Medical Tuition Fees, which contains our alternative proposals for dealing with the issue of recruitment and retention of medical students.

Also enclosed is a one-page summary of our concerns regarding the definition of persons with learning difficulties within Section 12 of the Further and Higher Education (Scotland) Bill.

I would like to thank the Committee for the opportunity to give oral evidence and this subsequent follow up evidence from the session.

1. Précis

NUS Scotland welcomes the opportunity to participate in this consultation, and to contribute more broadly to the ongoing debate surrounding how best to fund Further and Higher Education in Scotland. In keeping with the spirit in which the consultation is requested, we comment herein firstly on the general principles, and secondly on the practicalities of the measure as outlined. Finally, we offer alternative approaches that may, in our view, be more effective. We see this issue as a clear point of principle, and have decided to keep our response concise on this basis. It is of some concern that although this consultation has not been completed, measures relating to differential fees for medicine have been included in the recently introduced Further and Higher Education (Scotland) Bill. We would remind the Executive of their commitment “not to support the introduction of top-up tuition fees”, and question whether this proposal is consistent with that principle.

2. Principle

NUS Scotland opposes the introduction of any form of differential tuition fee. Fundamental to our policy is that we should put in place a funding system that is fair and equitable, regardless of a student's nationality or career aspirations. We believe that promoting access to, and diversity within, Higher Education should be a priority.

Higher costs, in terms of both fees and debt, inevitably contribute to the fear that study will prove unaffordable in the long term. The introduction of higher, differential fees for medical students would primarily have the effect of discouraging net applications, especially from poorer students; this is not in our view the right first step in solving a recruitment shortfall within the medical profession in Scotland.

NUS Scotland is disappointed that Scottish Executive has sought to address this issue without sufficient experience of how English medical students will affect the situation in practice. The Higher Education Review (Phase 3) concluded that the Scottish Executive would “monitor the demand for medical and related subjects within Scottish HEIs and if, over time, there is a distortion of current student flows, ensure that Scottish students... do not find it harder to enter such professional areas.” There simply has not been enough time operating under the status quo to know if there will be a distortion; the measure appears to be overly zealous when seen in this context.

NUS Scotland believes that it is wrong to believe that introducing such a negative measure (to be applied when an individual begins or concludes their training) would be as productive as introducing genuine incentives to actually practice medicine in Scotland, which is the root of the problem. We believe there are a range of suitable incentives that have not been properly considered, and will take this opportunity to propose a range of alternatives.
In summary, we believe the Scottish Executive's reaction to variable fees in England has so far been fair in terms of keeping a flat level fee and rejecting a market-based system. To accept that the principle of variable or differential fees is wrong, divisive and exclusive for every course in Scotland except medicine leaves us confused as to the Scottish Executive's true beliefs, and we find it very disappointing.

3. Practicalities

NUS Scotland believes there are numerous practical difficulties inherent in the measure proposed:

1. Stopping rises in the number of English students attending Scottish medical schools will not help Scottish students from poorer backgrounds. They will face exactly the same barriers as currently – including cost, inadequate financial support, burden of student debt, length of the course, and so on. The Higher Education Review (Phase 3) concluded that students from private schools are much more likely to study medicine than those from state schools, largely due to these factors.

2. The measure does nothing to address the needlessly exclusive requirements to study medicine, in terms of achievement at Higher level. A Scottish student will need to achieve five Highers at S5, rather than five Highers across the whole programme. This excludes many capable students who would have applied from secondary schools that are not currently able to deliver this framework.

3. During the Higher Education Review (Phase 3) process, it was argued that it is mostly wealthy students that study cross-border. Wealthy Scottish students can go to England, and won't be much put off by the fees; wealthy English students can study in Scotland because the extra year adds to the costs. This was, of course, mainly anecdotal, and doesn't appear in the report. If, however, it is true, it means that increasing fees for medical courses in Scotland will not make any difference to the students coming to Scotland, because they are already well off and will not be put off by increases in fees. Wealthier students are more likely to see the chance of taking medicine, whether in Scotland or the rest of the UK, as more important than the cost of the course.

4. Fees are proposed to be increased to an average of the cost in England; this will mean that fees for medical courses in Scotland will equal, not exceed, levels in England. Scotland is, by and large, no more expensive to live in as a student than England. Scottish medical courses are no longer than those in England. Therefore, the cost of a medical course in Scotland for a student from the rest of the UK, will be at most equal to the cost of the same course in Scotland. The measure will not have the desired effect of preventing outflow of students from the rest of the UK after concluding medical training in Scotland.

5. The numbers of Scottish students will not increase. Fees for student from the rest of the UK will not mean that there will be more Scottish students studying medicine, and will not address recruitment or retention of medical practitioners. At best, it will maintain the status quo, which is widely recognised as being flawed.

6. The relative deterrent value of increasing medical fees beyond the flat rate is insignificant compared to the dangers inherent in introducing variable fees to Scotland, with its concomitant risks of future increases in other fees for other subjects.
4. Alternative Proposals

NUS Scotland would like to take this opportunity to propose alternatives to introducing fees that we believe are more likely to both address the student flows concern and improve the underlying problem surrounding recruitment and retention of medical practitioners.

1. Financial incentives could be offered to all students, whether from Scotland or the rest of the UK, to study medicine in Scotland, provided that they practice in Scotland for a defined period of time at the conclusion of their training.

2. Financial incentives could be offered to students domiciled in Scotland only, in order to maximise recruitment of medical students from within Scotland relative to applicants from the rest of the UK.

3. Institutions should be encouraged to relax the overly stringent academic entry requirements for medical courses, and consider alternative entry criteria, in order to maximise applications from Scottish students. Alternatively, an “access to medicine” foundation course could be provided for those students who obtained excellent Highers, but not entirely at S5.

4. Special attention should be paid to potential medical students as part of existing schemes for widening participation, especially active mentoring of talented students from disadvantaged backgrounds.

5. The Scottish Executive should take steps to provide incentives for medical practitioners to remain in practice within NHS Scotland.

NUS Scotland thanks the Scottish Executive for considering our response to this consultation. We hope to discuss the issues raised with representatives of the Scottish Executive in the near future.

Persons with Learning Difficulties

Section 12 of the Further and Higher Education (Scotland) Bill

NUS Scotland believes that the term ‘learning difficulty’ as defined in section 12 of the Bill is very narrow and excludes many people who do not have any difficulty in learning if they have the additional support that they need. ‘Learning difficulty’ does not reflect the whole spectrum of different needs that learners may have that can lead to barriers to education if not provided for. To use a person’s age as a point of reference to establish a learning difficulty and the support to be given is not appropriate in lifelong learning, which includes people of all ages. In addition, this term takes a backward step from the Disability Discrimination Act that requires aids and services to be provided for disabled students if they are disadvantaged – disabled students encompass a much broader group of students than those with learning difficulties.

The Bill therefore uses a term that is no longer an accurate reflection of the current responsibilities or approach to supporting learners in further and higher education in Scotland. We would propose that the broader term of ‘additional support needs’ would reflect the work to build inclusive learning environments that is already underway in colleges and universities.

The Additional Support for Learning (Scotland) Act states that schools should provide the additional support that is required by pupils in order to learn. This will broaden the definition of those whom schools should provide for, and is a positive statement about making school education inclusive of all. The ASL Act changes the arrangements to smooth young people’s transition from school to college or university. Therefore, to use the same broad definition in further and higher education would encourage a more joined-up approach at transition. It must also be noted that proposed
changes to policies around 14-16 year olds attending college would benefit from shared understanding of provision for those who need additional support to learn.

NUS Scotland would welcome further discussion of this issue by the Committee and indeed an amendment to the Bill to use the definition “those persons with additional support needs”.

SUPPLEMENTARY WRITTEN EVIDENCE (NUS SCOTLAND) SKILL SCOTLAND

I am writing with regards to a proposed amendment to the Further and Higher Education (Scotland) Bill. This letter is written with the support of the Scottish Disability Team (funded by SHEFC to improve provision for disabled students in higher education), Capability Scotland, Lead Scotland: Linking Education and Disability, and NUS Scotland.

Section 12 of the Bill states that the Funding Council must have regard to persons with learning difficulties. This terminology is no longer appropriate, nor does it place a sufficient duty on the Funding Councils to ensure that all students can fully participate in learning.

Instead, we urge the Committee to amend the Bill so that the Council should have regard to persons with additional support needs.

I have attached a briefing paper that sets out the reasons to amend the bill. Skill Scotland would be keen to meet with you to discuss this proposed amendment, and to provide any further clarification or detail as required.

Further and Higher Education (Scotland) Bill
Requirement to have regard for persons with additional support needs

Background
Section 12 of the draft Further and Higher Education (Scotland) Bill states that the Council should have regard to the requirements of people who have a learning difficulty, defined as significantly greater difficulty in learning than the majority of other people of the same age.

The term ‘learning difficulties’
The term ‘learning difficulty’ is very narrow and excludes many people who do not have any difficulty in learning if they get the additional support that they need. For example, a person with a visual impairment may have no difficulty in learning if they get information in large print and adequate assistive technology.

To use a person’s age as a point of reference to establish a learning difficulty is not appropriate in lifelong learning that includes people of all ages.

In addition, this term takes a backward step from the Disability Discrimination Act that requires colleges and universities to make reasonable adjustments for disabled students if they are disadvantaged – disabled students encompass a much broader group of students than those with learning difficulties.

The transition from school
The transition from school is often very difficult for young disabled people, mainly due to a lack of coordination between agencies and a lack of opportunities with adequate support provided. Regulations are expected under the Additional Support for Learning (Scotland) Act that will seek to resolve these difficulties, at least to some extent. They will do this by placing duties on colleges and universities to provide assistance to schools in supporting the transition from school for young people with additional support needs. Therefore, colleges and universities will already have to have regard to those with additional support needs who are coming from school. This legislation
presents an opportunity to give the Funding Councils a corresponding duty to have regard to not only those with ‘learning difficulties’ but to all those who have additional support needs.

It must also be noted that proposed changes to policies around 14-16 year olds attending college would benefit from shared understanding of provision for those who need additional support to learn.

Inclusive lifelong learning
The Lifelong Learning Strategy for Scotland stated that Scotland should be a place where ‘people have the chance to learn, irrespective of their background or current personal circumstances’. There must be a duty on the Funding Councils to provide the necessary support and funding to make this a reality.

Proposal
The Council should be required to have regard for persons who have additional support needs. The definition of additional support should be similar to that of the Additional Support for Learning (Scotland) Act i.e. additional support means ‘provision which is additional to, or otherwise different from, the educational provision generally provided by’ fundable bodies.

Extract from Equal Opportunities Committee Official Report, 15th Meeting 2004 - 5 October 2004

OR Column 642

Mhairi Snowden: I want to raise an issue that has become more urgent, as the Further and Higher Education (Scotland) Bill is going through at the moment. One of the things that we wanted that bill to include was choice for disabled people. At the moment, if a disabled person chooses to go to a college south of the border— which may be because there is a specialist college there—the funding comes via local authorities. Local authorities have only the discretion to fund; they do not have a duty to do so. Our concern is that that funding is on quite a different footing from the rest of student funding, which, as you know, is all nationalised, through the Student Awards Agency for Scotland or through the funding councils. Students can choose to go to university south of the border. Although disabled people make up a small group, that small group has real difficulties getting funding. We have had quite a lot of inquiries to our information service about it. I do not know whether the committee can do anything to affect the bill, but it is an opportunity that might be missed to get that sorted out.
Introduction

1 This paper is a joint submission from the Scottish Further Education Funding Council (SFEFC) and the Scottish Higher Education Funding Council (SHEFC) to the Scottish Parliament Enterprise and Culture Committee’s stage one scrutiny of the Further and Higher Education (Scotland) Bill. The purpose of the paper is to provide the Committee with the Councils’ views on the principles underpinning the Bill.

What should a new Council achieve?

2 The two Councils support the principle of a single funding council for further and higher education. Given the relatively small size of the two sectors - and the opportunities of size and scale in Scotland - it makes good sense to establish a single body that can take a strategic overview of further and higher education and develop coherent policies. We believe that this will be in the best interest of learners, who should be entitled to a coherent system of provision in Scotland.

3 The merger of the two Councils is also a logical step in a continuing process of development that is already leading to improved coherence. This has resulted in:

- the establishment of a single credit and qualifications framework for Scotland;
- improved arrangements for learner progression between further education and higher education; and
- new cross-sectoral developments that will benefit learners.

4 We believe that this process was also helped last year by the publication of the Councils’ first joint corporate plan. The plan describes the steps that the Councils - and the two sectors - are taking to contribute to the vision of an outstanding system of education, learning, training and research in Scotland.

What principles should underpin the Bill?

5 In our view, the merger Bill should provide a new enabling framework that allows the colleges and higher education institutions to contribute further to the vision for further and higher education. We believe that such a framework should be underpinned by the following broad principles:

- to build parity of esteem for learners, the legislation should treat the FE and HE sectors the same wherever practicable;
- the autonomy of universities and colleges should be protected, since well-led and responsive autonomous institutions are best placed to respond quickly and effectively to the changing needs of students, employers and society;
- mechanisms such as policy and management guidance from Ministers and conditions attached to grants are effective and more flexible methods for achieving particular priorities and setting out functions than detailed legislation; and
- the legislation should not embody very specific and short-term concerns in a way that might be irrelevant and constraining in the future.
These principles informed our response to the provisions contained in the earlier consultation on the draft Bill.

6 We welcome the revised Bill and believe that it is consistent with the principles that we have previously outlined. There are some technical issues of drafting which we have identified in the Bill and some areas where further clarification is sought - such as the scope of the new Council’s powers to fund activities in support of knowledge transfer and culture. We would intend to address these directly with the Scottish Executive, since they do not affect materially our view of the principles underpinning the Bill.

What challenges will the Bill create?

7 We are in no doubt that the Bill will now present the Council and the sectors with some important challenges, the most important of which we would suggest are to:

- **Maintain diversity:** Scotland benefits from a wide diversity of high quality provision in its further education colleges and higher education institutions. This puts the sector as a whole in an excellent position to respond to the many and changing educational, economic, social and other demands placed on it. An important challenge will be to ensure that we maintain this diversity - both between and within the two sectors - while maximising the opportunities for greater coherence in the way they work.

- **Fully implement a credit and qualification framework:** If a framework is to work effectively, we believe that its integrity and its relevance to learners and employers will need to be guaranteed. Given the importance that it will have to the development of the education system in Scotland - and the number of agencies that are involved in developing and implementing the framework - there is an argument that the primary duty to promote it should rest with Ministers.

- **Create an effective Council:** the new Council will have a much wider remit than either of the two existing Councils but no more members than either of the existing Councils. If it is to be effective, it will be essential that it has a diverse and balanced membership from both the public and private sector, with the appropriate range of skills, expertise and experience.

- **Protect Scotland’s research competitiveness:** Scotland’s economic and social success depends crucially on maintaining the international standing of the nation’s research base. A key challenge will be to protect and enhance Scotland’s competitiveness in research in the face of increased competition at the UK and international level. A first step for the new Council will be to ensure that its Research Committee has international authority by including on its membership leading researchers from both inside and outside Scotland who can offer independent, expert advice.

- **Secure collaboration:** Collaboration between the various agencies and bodies with a material interest in further and higher education will be essential if the policy objectives of the Bill are to be achieved. Achieving timely and effective collaboration will continue to be a challenge and this would be assisted if a reciprocal statutory duty to collaborate was placed on the range of other bodies that will be expected to work with the new Council.

Our views on the revised Bill

8 We believe that the revised Bill provides the new Council and the sectors with the ‘tools’ to develop the shared vision for further and higher education in Scotland. In particular, we welcome the following provisions in the Bill:

- the duty on the Council to secure coherent provision through fundable bodies (as a whole) of a high quality of FE and HE. The Councils reflected the concept of
coherence in their joint corporate plan last year by introducing a key aim of achieving “a coherent system of well-led, innovative and responsive colleges and institutions.”

There will be considerable discussion about what the term ‘coherent’ means in terms of provision. One interpretation is that it is the achievement of a system of provision across Scotland as a whole that best meets the needs of learners and potential learners within the resources available to the Council.

- the duty to have regard to: the needs of learners and potential learners in fundable bodies; skills needs in Scotland; the economy and social and cultural issues in Scotland. We believe that these duties are consistent with the long standing role that both Councils - and the colleges and higher education institutions that they fund - have played and underline the importance of further and higher education to Scotland’s well-being.

- the duty to secure that provision is made for assessing and enhancing the quality of fundable further education and higher education. We believe that assessment by itself does not provide high quality provision for learners and we therefore welcome the new duty on the enhancement of quality.

- the duty to have regard to the UK and institutional contexts in which fundable bodies operate. We welcome this new duty which ensures that the benefits that Scotland gains from the UK and international context in which many colleges and higher education institutions operate are taken into consideration formally. This is particularly important for higher education institutions as maintaining and enhancing Scotland’s reputation for high level teaching and research depends on attracting highly qualified individuals and financial resources - from both the public purse and the private sector - from both inside and outside Scotland.

**Concluding remarks**

9 We think that it is important to recognise that although - within the existing legislation - further education colleges and higher education institutions in Scotland have been very successful over the last decade or so, there will always be further opportunities for development. We believe that the merger Bill should provide an enabling framework that allows Ministers, the Council and the colleges and higher education institutions that it will fund to work together in clearly defined roles - and in a spirit of mature partnership - to take forward these opportunities. We are hopeful that the Bill - as now introduced in the Parliament - will allow this to happen.
WRITTEN EVIDENCE FROM SKILL SCOTLAND

Skill Scotland: National Bureau for Students with Disabilities raises these two issues as areas that need addressed within the above bill to ensure that disabled people are fully included in the future shape of further and higher education in Scotland.

These are:
1. Funding for places at colleges outwith Scotland

Background

Further education colleges used to be run by local authorities. When these were taken out of local authority control in 1992, responsibility for funding for students to attend college was given to the Scottish Further Education Funding Council (SFEFC). SFEFC pays the fees for Scottish students to attend further education courses at college in Scotland.

However, funding for students to attend college outwith Scotland has remained at the discretion of the local authority. This includes any student who wants to attend college elsewhere e.g. some dance and drama students, as well as some disabled people.

Some disabled people who have complex needs choose to attend residential colleges that specialise in support and learning for people with different kinds of impairments. There are no such colleges within Scotland, and so these students have to travel to England or Wales to access this type of opportunity. Therefore, they can only get funding for fees for this purpose from their local authority.

The issue

Skill Scotland regularly has enquiries from young people (or their parents) who cannot get funding for fees or transport from their local authority to attend college outwith Scotland. This situation causes a small number of families considerable stress and frustration.

There is no consistency amongst local authorities around policies on meeting the cost of fees at specialist colleges. Research carried out by the Scottish Executive showed that out of the 29 local authorities who responded to the survey, 14 local authorities have a general policy of not funding students to attend further education at all. This same research concluded that ‘It is perhaps questionable whether or not such an activity ought to be carried out by local authorities.’

The current exclusion of these particular learners from national student funding is an anomaly that urgently needs changed. It is only when funding for these students is held by those with direct responsibility for all other student funding and support provision, that impetus will be afforded to ensure that adequate provision is planned for and delivered.

Proposal

Responsibility for funding for students to attend colleges outwith Scotland should rest with Scottish Ministers.

2. Requirement to have regard for people with additional support needs

Background

The draft bill states that the Funding Council should have regard to the requirements of people who have a learning difficulty, defined as significantly greater difficulty in learning than the majority of other people of the same age.

The issue

The term ‘learning difficulty’ is very narrow and excludes many people who do not have any difficulty in learning if they have the additional support that they need. ‘Learning difficulty’ does not reflect the whole spectrum of different needs that learners may have that can lead to barriers to education if not provided for. In addition, this term takes a backward step from the Disability Discrimination Act which requires aids and services to be provided for disabled students if they are
disadvantaged – disabled students encompass a much broader group of students than those with learning difficulties.

The draft Bill therefore uses a term which is no longer an accurate reflection of the current responsibilities or approach to supporting learners in further and higher education in Scotland.

Proposal
To use the broader term of ‘additional support needs’ would reflect the Beattie report and consequent work. It would reflect the work to build inclusive learning environments that is already underway in colleges and universities. Proposed changes by the Council to funding for students who need additional support in further education (ELS and Group 18 funding) would also chime well with such a needs-led approach.

The Additional Support for Learning (Scotland) Act states that schools should provide the additional support that is required by pupils in order to learn. This will broaden the definition of those whom schools should provide for, and is a positive statement about making school education inclusive of all. The ASL Act changes the arrangements to smooth young people’s transition from school to college or university. Therefore, to use the same broad definition in further and higher education would encourage a more joined-up approach at transition. It must also be noted that proposed changes to policies around 14-16 year olds attending college would benefit from shared understanding of provision for those who need additional support to learn.

If Scotland is to be a place where ‘people have the chance to learn, irrespective of their background or current personal circumstances’, one of the five goals of the Lifelong Learning Strategy for Scotland, there must be a commitment to provide the support to make this a reality. The Council should therefore be required to have regard to those who additional support needs, to make the learning fit the learner.

Conclusion
The Council should be required to have regard for persons who have additional support needs. The definition of additional support should be similar to that of the Additional Support for Learning (Scotland) Act i.e. additional support means ‘provision which is additional to, or otherwise different from, the educational provision generally provided by’ fundable bodies.
WRITTEN EVIDENCE FROM THE EQUAL OPPORTUNITIES COMMITTEE

In the course of preliminary evidence taking as part of its Disability Inquiry, the Equal Opportunities Committee has heard specific issues raised in relation to the Further and Higher Education (Scotland) Bill. The Committee agreed at its meeting of 5 October 2004, that I should write to you to inform you of these concerns, in order that we might reassure those giving evidence that the issues faced by disabled people who wish to study are fully factored into your Committee’s Stage 1 deliberations.

An essential component of the Equal Opportunities Committee’s Disability Inquiry is to fully consider the barriers faced by disabled students across Scotland and how opportunities might be created or improved. It has been through this process that both of the points I draw to your attention have been brought to the attention of the Committee.

Firstly, the Disability Rights Commission in written and oral evidence (attached at Annex A to this letter) highlighted the need to increase the number of disabled students in higher and further education and to consider the current funding differences for students studying in Scotland and England. In addition, Skill Scotland has raised with the Committee concerns in relation to the funding for disabled students (attached at Annex B to this letter).

I understand that the Equal Opportunities Committee clerking team has raised this at official level and I now write to you formally to raise these matters in advance of final Stage 1 evidence taking.

Cathy Peattie MSP
Convener
Equal Opportunities Committee

SUBMISSION FROM THE DISABILITY RIGHTS COMMISSION


The Disability Rights Commission (DRC) is an independent body, established by statute to eliminate the discrimination faced by disabled people and promote equality of opportunity. Our goal is a society where all disabled people can participate fully as equal citizens.

The DRC welcomes the Equal Opportunities Committee inquiry on disability, coming as it does at the same time as the UK Prime Minister’s Strategy Unit work on the life chances of disabled people, and believes that its findings could form the basis of a far-reaching policy agenda for disability and disabled people’s rights in a devolved Scotland.

This paper is intended to be open-ended rather than prescriptive, and to raise general areas of concern.

1. Disability in Scotland: Some Key Facts

Despite important shifts in public attitudes over recent years and, since the introduction of the Disability Discrimination Act 1995 (DDA), enforceable civil rights, disabled people in Scotland still routinely face barriers to their participation in society as equal citizens.

- There are an estimated 1 million disabled people in Scotland, about one in five of the population.
- More than two fifths (42%) of Scottish households with a disabled person have an income of £10,000 or less.
- The unemployment rate for disabled people is almost double that of non-disabled people.
Enterprise and Culture Committee, 12th Report, 2004 (Session 2)- ANNEX D

- Disabled people are three times as likely to have no qualifications as non-disabled people. 34% of disabled people of working age have no qualifications.

- A fifth of disabled people in Scotland have experienced public harassment for a reason related to their disability.

- Only 2% of public appointments in Scotland are held by disabled people.

- There is overwhelming public support in Scotland for increased rights for disabled people; at the same time however, nearly a third of Scots still believe that a wheelchair user would not make a suitable teacher.

2. The Evolving Legislative Context

The Committee inquiry gets underway at the start of a period of major change in reserved disability discrimination law. At the same time, in Scotland a markedly different legislative and policy landscape is emerging in the field of disability equality. Although Equal Opportunities law is reserved to Westminster, The Scotland Act 1998 gives the devolved institutions in Scotland specific powers to encourage and promote equal opportunities. With equal opportunities therefore effectively straddling the reserved/devolved split, the committee will be anxious to ensure that it is familiar with the full range of reserved and devolved legislation, both passed and pending, which does or will have a bearing on disabled people’s rights in Scotland.

- 1 October 2004 sees the final provisions covering employment and access to goods and services come into force. From that date, every organisation which provides a service to the public in Scotland, from corner shops to supermarket, local authorities, and hospitals, must take steps to remove physical barriers to access. At the same time, small businesses which are currently exempt from the employment provisions of the DDA will be covered, as will the uniformed (but not the armed) services.

- The Special Educational Needs and Disability Act 2001 (SENDA), which amends part IV of the DDA, makes it unlawful for schools and other educational institutions to discriminate for a reason related to a person’s disability. The Education (Disability Strategies and Pupils’ Educational Records) (Scotland) Act 2002 places a duty on education providers to remove, over time, barriers to communication and the curriculum. From September 2005, further and higher education institutions must take steps to remove physical barriers to access for disabled students.

- A new Disability Bill is expected to go through the Westminster Parliament before next year’s UK general election. It will address many of the gaps in the present DDA. Among its most important provisions will be a public sector duty to promote disability equality, similar to the race equality duty under the Race Relations Amendment Act 2000. It will also ensure that the DDA covers all functions of public authorities, and not simply service provision. The Bill will also give ministers the power, through regulation, to bring various modes of transport within the scope of the DDA. Given the very distinct transport challenges faced by Scotland, this is one of many areas which could impact in a different way in Scotland to the rest of UK.

- Several pieces of Scottish legislation, including the Housing Act 2001, the Local Government in Scotland Act 2003 and the NHS Reform Act 2004, place duties on the observance of equal opportunities on key public authorities. In areas such as housing, Scotland is leading the way for Westminster in helping disabled tenants make adaptations to their homes. The Education (Additional Support for Learning) (Scotland) Act 2004 should, for the first time in Scotland, ensure that disabled children have a positive entitlement to the educational support they require, and the DRC hopes that the proposed education tribunals will be empowered to hear DDA education cases. Further legislation on transport, housing and planning has been announced or is expected in the 2003-2007 Parliament.
3. **Key Inquiry Themes/Questions**

Below are some of the questions the committee may wish to consider as points of departure when tackling the inquiry’s three thematic areas.

- **Employment:** Given that the re-launched Framework for Economic Development in Scotland only mentions equality of opportunity twice, what does the committee propose to raise disability equality’s profile in the devolved lifelong learning agenda? Are Scotland’s devolved institutions ensuring that there is sufficient co-ordination between devolved enterprise and employment areas and reserved job and welfare initiatives? How is the committee defining work? What kinds of jobs are envisaged? Over 98% of businesses in Scotland are SMEs: what challenges does this raise in bedding in the October 2004 employment changes?

- **Post-16 Education:** how does the committee propose to increase the number of disabled students in higher and further education? How is the committee’s report likely to influence the proposed bill to amalgamate the further and higher education funding councils? What, given the difference in student finance arrangements north and south of the Border, can be done to close the gap in the numbers of disabled and non-disabled people who have no qualifications?

- **Participation in the Arts, Leisure and Civic Life:** What can the Parliament, Executive and Executive agencies and NDPBs do to build on the work of the European Year of Disabled People 2003 in raising the profile of disabled people in society? What barriers do disabled people still face in accessing the arts and sports, as participants, spectators or both? What can be done, through the public appointments system or by other means, to close the gap between the proportion of Scots who have a disability and the proportion of Scottish public appointments held by people with a disability? What needs to change structurally, and what mind sets need altered?

How will the committee’s inquiry develop and raise awareness of the disability equality agenda in Scotland? How will it address – and change – the attitudes of non-disabled Scots?

**Equal Opportunities Committee, 21 Sept 2004, Official Report, Column 582**

**Bob Benson:**

There are many issues to do with the immediacy of support that relates to individual requirements. That relates again to the point that disabled people are not a homogeneous group. Disabled people have a whole range of different needs and it is up to the education authorities and the FE and HE bodies to ensure that there is support. There might be an opportunity in the proposed FE and HE bill that is coming before the Scottish Parliament to consider some of those matters more closely in addition to issues to do with the merger of the further education and higher education funding bodies. There might be a legislative opportunity in Scotland.

**Equal Opportunities Committee, 5 October 2004, Official Report, Column 642**

**Mhairi Snowden:** I want to raise an issue that has become more urgent, as the Further and Higher Education (Scotland) Bill is going through at the moment. One of the things that we wanted that bill to include was choice for disabled people. At the moment, if a disabled person chooses to go to a college south of the border—which may be because there is a specialist college there—the funding comes via local authorities. Local authorities have only the discretion to fund; they do not have a duty to do so. Our concern is that that funding is on quite a different footing from the rest of student funding, which, as you know, is all nationalised, through the Student Awards Agency for Scotland or through the funding councils. Students can choose to go to university south of the border. Although disabled people make up a small group, that small group has real difficulties getting funding. We have had quite a lot of inquiries to our information service about it. I do not know whether the committee can do anything to affect the bill, but it is an opportunity that might be missed to get that sorted out.
Further and Higher Education (Scotland) Bill: Stage 1

14:03

The Convener: We now move to item 2, which is the Further and Higher Education (Scotland) Bill. I welcome Chris Masters, chairman of the Scottish Higher Education Funding Council, Esther Roberton, chairman of the Scottish Further Education Funding Council, and the chief executive of both, Roger McClure. Chris and Esther will say a word or two to begin with, then we will open up the discussion for questions.

Esther Roberton (Scottish Further Education Funding Council): Thank you for the opportunity to come along today. We provided a—hopefully suitably brief—written submission on behalf of both councils. I want to make only a small number of introductory comments.

As the committee is probably well aware, we have already welcomed the bill and support the principles that underlie it. We have identified five key challenges that arise from it, which are challenges for us all, not just for the funding councils, to ensure that we achieve greater coherence and have diversity in the system.

A first important challenge will be to maintain the standing and integrity of the credit and qualifications framework that we have designed in Scotland. We have no doubt that a successful framework will be an essential tool in achieving better coherence for learners, and we welcome the prominence that is given to it in the bill.

Secondly, we are clear that the framework will be successful only if it is fully implemented and trusted by learners and—as important—employers. One way to ensure that will be to ensure that all stakeholders continue to collaborate to make the arrangements work. We will need better all-round collaboration if we are to achieve the wider goal of improved coherence. Learners should be entitled to expect such collaboration among the various public agencies to ensure that the outcome is a better deal for them.

A third important challenge for the future is the membership of the new council. Clearly, the new council will be smaller than the two existing councils combined and will have a much wider remit than either of them. We believe firmly that, if the council is to be effective, it will be essential that it has a diverse and balanced membership.

Chris Masters (Scottish Higher Education Funding Council): I totally agree with Esther Roberton that it is essential that the new council has the right mix of membership. In that context, it is important that the funding council should
continue to include people from both the public sector and the private sector who have the appropriate range of skills and experience. It is also important that, where possible and appropriate, we should look to attract people from outwith Scotland to participate on the council.

On research, it is vital that the new council has access to expert advice of the highest level from both within and without Scotland. As the committee will be aware, Scotland currently benefits from a strong research base that includes some internationally recognised research teams. However, it is important to recognise that that is a moving feast. If we are to continue to attract and retain the best people and to maintain our international standing, we need to stay ahead of the game. Therefore, it will be essential that the single council retains a strong focus on the importance of leading-edge research for the nation’s future health and prosperity.

If we are to meet the future challenges, I am totally convinced that we must be committed to maintaining diversity of provision in both further and higher education. If there are two certainties, they are: first, that we cannot predict the future; and secondly, that change is endemic to all our activities and the rate of change is continuously accelerating. If Scotland is to be in the best position to respond to such change, it is vital that we maintain the range and diversity of our further and higher education institutions both within the sectors and, indeed, between the sectors.

I will sum up. A respected credit and qualifications framework is a basis for easy articulation between further and higher education. Meaningful collaboration and joined-up thinking are required among all the various bodies and stakeholders. The new council will need the right balance of skills and experience to cope with what, by anybody’s definition, will be a challenging remit. We need to maintain a Scottish research base that is the envy of the world. Most important, we need to safeguard diversity throughout the system. Those are just five challenges that we believe arise from the bill.

That said, both funding councils are totally convinced that the move to merge the councils is the right course for Scotland. The bill has significant potential to help us to meet the challenges. I will stop on that positive note. As Esther Roberton said, we are delighted to have the opportunity to interact with the committee. We look forward to responding to members’ questions and comments.

Christine May: I thank the witnesses for their brief and succinct comments. Mr Masters said that the rate of change will continue to accelerate. However, one would hope that the fairly large event that the bill proposes would happen rarely. Can I take it that people are not looking for further legislative changes?

Chris Masters: Far from it. I was referring to the external environment in which we all operate, which is unpredictable. Increasingly, we will have to meet challenges that arise from outwith Scotland, both at Westminster and internationally. Rather than trying to freeze the system in stone and say, “We’ve got it right,” we need to ensure that we have a system that can respond rapidly to whatever the challenges are. We certainly do not need more legislation.

Christine May: You said that you hoped that we might have membership of the council from outwith Scotland. Is there precedence for that in other, similar organisations throughout the world? How do you see that that might work?

Chris Masters: I am not sure about other organisations around the world, but the Scottish Higher Education Funding Council has had on it a principal from the University of Newcastle upon Tyne. His input was extremely useful, especially in the area of quality enhancement. When we were looking to fill the existing places on the council, we again considered people from outwith Scotland. The advantage of such people is that they bring a different perspective—an international or national perspective—and, increasingly, a new dimension. I would be keen on that, and I am sure that there are precedents outwith Scotland.

Christine May: My second question relates to the first bullet point on page 6 of the submission, which concerns “a process for approving and modifying a list of fundable bodies.” I have raised in the past the issue of whether it is appropriate that the council should do that or whether it would be more appropriate for the council to make recommendations to the minister and for the minister to do it. Do you have a view on that?

Chris Masters: We agree. I hope that the minister would take advice from the council, as it would be the expert body. Making modifications to the list is certainly a matter for ministers.

Roger McClure (Scottish Funding Councils for Further and Higher Education): My understanding of the bill is that it is not intended that modifications to the list should be decided solely at the discretion of the council. The council is invited to propose or approve, but I believe that the process involves the Executive as well—I do not have the section in front of me. It would be quite normal for the council’s advice to be sought and for it to give its view on a specific proposal.

Christine May: I am grateful for that. That was my understanding of how it should be, ideally. I
consider the wording in the bill to be a little ambiguous on the matter. Thank you for your clarification. We will perhaps take up the matter with the minister.

The Convener: My first point follows on from what Christine May said. In their education provision, the Irish have been successful at bringing in people from the Organisation for Economic Co-operation and Development, who have a fund of knowledge about what happens in a range of countries. We do not make enough use of such people, who were instrumental in many of the educational reforms that took place in Ireland.

I have two questions on the research committee. First, what do you envisage as being the relationship and the division of labour between the research committee of the new, merged council and the Scottish Science Advisory Committee? Is there a case for making the research committee and the Scottish Science Advisory Committee one and the same body? We do not want to separate the spending from the strategy and the advice.

Secondly, some witnesses have expressed concern about the fact that there is no equivalent committee for skills built into the bill. Under the legislation, the council is quite free to set up a skills committee or any other committee that it wishes to set up and to bring in outside experts. Is there a need to build into the bill a statutory skills committee or something similar?

Chris Masters: I will kick off on the research committee. My personal view is that the two bodies should not be merged, as they have different remits. The Scottish Science Advisory Committee covers the remit of science in schools, policy on how we get people more involved in science and the sort of event that was held here last week—I think that it was called science in the Parliament. It has a much broader remit and a broader, more diverse membership.

The research committee will be focused on much more technical issues, such as funding, so it requires a different balance of skills. My guess is that trying to get the required mix of skills on one committee would not work. Our current research policy advisory committee includes highly qualified international research people who are good at research, but I am not sure that they are the people I would use to develop science in schools. It is all about horses for courses. The committees have separate remits.

14:15

Roger McClure: I agree entirely. The purpose of the research committee will be to help the funding council to channel funds into research activity, which involves thinking about how basic research should be developed in Scotland's universities. The boundary between the committees is clearly drawn. As Chris Masters said, the Scottish Science Advisory Committee has a much wider remit.

Esther Roberton: I want to pick up the point about the skills committee. It is interesting, because, ultimately, it will be for the new council to determine what its committee structure should be, other than what is set out in the bill. Both funding councils have been thinking about what kind of model might be chosen. Recently we had a debate about that in the Scottish Further Education Funding Council, which was focused on our learning and teaching committee, which is a joint committee with SHEFC. One of the thoughts that emerged was that perhaps the skills committee approach is more appropriate. We discussed whether a committee of council was the right approach. You asked specifically whether a skills committee should be provided for in the bill. I have not given that any thought, but I believe instinctively that we should keep the number of committees specified in the bill to a minimum simply because we want the legislation to be as long-standing as possible. Research is not going to change, neither are skills, but the focus might change. Subject to my colleagues’ view, my instinct is to say that it is not necessary to provide for a skills committee in the bill; the new funding council might choose to adopt that position anyway.

Roger McClure: I amplify Esther Roberton’s final point that it is not just that we want the legislation to be long-lasting, but that it will not be helpful for the new body if it finds that it must meet a legislative requirement even when it appears to have become redundant because of changes that have been made, of which we have already had examples. As the member pointed out, the council will have all the powers that it needs to create whatever committees it wants to create and will be able to change the committees as needs determine.

The Convener: My second question relates to quality. One of the issues that arose in the previous Enterprise and Lifelong Learning Committee’s lifelong learning inquiry and was the subject of recommendations in its report was the multitude of quality audits that institutions have to go through, particularly in the FE sector, and the need to rationalise the system. As you would expect, there is a commitment in the bill to the new council having great regard to quality, but are we making progress on the quality front?

Chris Masters: Esther Roberton will cover FE and I will cover HE. We have certainly made progress in HE.

Esther Roberton: We have made progress in FE, too. You will be aware that over the four-year
term we have been through our first round of quality assessments by Her Majesty’s Inspectorate of Education, with which we have a contract, which has shown that we have made significant progress on the quality front. We have also taken the opportunity to move, as HE is doing, to a model that is more about quality enhancement. However, we were clear that there was a huge burden. A number of pilots have tried new ways of doing things, but they have not come up with an easy answer. Colleges that have done well through their existing evaluations can now get credit transfers for nine of the 10 Scottish Quality Management System standards that the enterprise networks use. That is a good example of how instead of our having to go through two processes to achieve the same end, nine out of 10 targets can be covered by the work done by SFEFC, which saves another audit having to be done. It is a challenge. Work still needs to be done and we are working closely with the colleges and various agencies to draw work closer together and to reduce further the burden.

**Chris Masters:** In higher education, we have made a lot of progress. Roger McClure referred to the previous legislation, which required us to have a quality assessment committee, which has outlived its usefulness, because we have now moved to a new enhancement-led approach to quality assurance, based on the principle that we need continually to improve.

The key features are, first, an internal review process, in which the higher education institutions monitor the quality of provision—and after all, that provision is individual to the institutions. Secondly, there is an external review of institutions’ processes, which is called an enhancement-led institutional review—I realise that that is a mouthful. Yesterday, we had an all-day meeting with one of the institutions—I had better not say which one it was—and the people who were responsible for the quality of teaching said that they were absolutely amazed at how well the process was working. That slightly worried me until we asked the four students who were present how it was working. They confirmed that it really was working: they had much more input to the quality of provision; that quality was improving; and they now had a model that was learner-focused rather than based on audit.

As a result, considerable progress has been made. The question of how an institution handles the system all depends on its maturity. My guess is that we will see FE moving along that route as the systems become robust enough for people to trust.

**The Convener:** So, there has been progress, but there is more to be done.

**Chris Masters:** Yes, that is a fair comment.

**The Convener:** We have received evidence from the Equal Opportunities Committee and others on funding for people whom the bill refers to as students “with learning difficulties”. The point has been made in particular in respect of funding for students who go to specialist colleges down south, which are primarily—but not exclusively—within FE provision. For example, someone who goes to a ballet school in London does not receive funding, whereas they would if they went to the Royal Scottish Academy of Music and Drama in Glasgow. Although the 32 local authorities are responsible for providing discretionary funding to those learners, 14 of them do not provide any funding. Is there a case for transferring that responsibility from local authorities to the new, merged council or to another agency such as the Students Awards Agency for Scotland?

**Chris Masters:** This is a highly technical area.

**Roger McClure:** Are you talking specifically about students who go south?

**The Convener:** Yes.

**Roger McClure:** Moving responsibility for that funding to the SAAS would be logical and would have the benefit of consistency, because all the awards would be made by a single agency. After all, higher education students derive their loans and other bursaries to which they are entitled from that agency.

However, you will be aware that at the moment—and under the proposed provisions—support for students who are undertaking higher education is provided not through the merged funding council but through SAAS and, in some cases, local authorities.

**Esther Roberton:** Although we provide support for students, we give it to 42 FE colleges, which then disburse the money. We do not have any funds that we would disburse to other people who want to go elsewhere.

I am immediately struck by the fact that I come from a local authority that has supported a range of people who have gone to specialist colleges, of which ballet school is the classic example. I had not realised that the practice is not common across the country. That said, it would be stretching things somewhat to make it a funding council responsibility. That would mean having to make an individual student assessment, and we have never been involved in anything like that at all.

**Chris Masters:** I am thinking on my feet, but I think that it would be wrong to give that responsibility to the funding council. It would be right to make it a condition of grant or whatever is seen fit, but funding should go direct to the student from SAAS or another body rather than via the funding council.
The Convener: So it would be more logical for SAAS to have that responsibility rather than the funding council.

Chris Masters: I would have thought so.

Christine May: My question is very much on the same topic, although the point has not yet been raised in relation to this bill. What about funding for non-accredited courses? After all, many drama courses are not strictly part of the mainstream FE or HE curriculum. We might wish to raise the matter with the minister because, unless the situation has changed over the past 18 months, Fife Council no longer funds courses outside Scotland as well as some RSAMD and other such courses.

The Convener: But there is an inconsistency across Scotland in that respect.

Christine May: Yes, as well as across the UK. Many local authorities down south do not fund such courses either.

The Convener: That is right.

Richard Baker (North East Scotland) (Lab): I have three questions, the first of which concerns membership of the new council. At the moment, councils benefit from the membership of people who are able to give the student perspective. Do the plans for the new body include provision to continue such representation? Will the staff perspective also be included?

Chris Masters: Obviously, those decisions will be up to be the new council, but it is important that the people who are on the council are on it because they have been chosen to make a contribution to the whole and not to act as a representative of a particular constituency. That said, when we were thinking about the specification for the Scottish Higher Education Funding Council, we thought that it was extremely important to have people who at least have direct experience of the student perspective, although not necessarily people who represent the National Union of Students Scotland or whatever.

As I said, it is important to get the right balance on the council. We need to include the customers—if I can say that—the providers and, at the end of the day, the stakeholders who represent business or whatever. It will be difficult to do that given the limited number of places on the council, as one needs quite a mix of skills. That said, I think that the number is the right number. It would be dangerous to put into the bill a requirement for this or that representation. It is up to the chair of the council to ensure that the balance is right.

Richard Baker: That was a helpful answer. I did not mean to suggest that it should be included in the bill.

My second question concerns the development of the qualifications framework and your role in it. When Universities Scotland gave evidence, Professor Archer said:

"It is important that advice on the qualifications framework should largely come from the sector, which works at the sharp end of the issue. We would expect the funding council to be in the middle of those conversations, from where it can transmit views to ministers and receive, one hopes, approvals for proposals."—[Official Report, Enterprise and Culture Committee, 2 November 2004; c 1160.]

Is that how you see the council's role in the development of the framework? Would you say that there is unity of vision on the issue?

Roger McClure: Yes. It is a bit like the question that the convener asked earlier. Although the new funding council—or, indeed, the existing two funding councils—will fund courses within the framework, they do not fund everything that falls within it. The matter is more one for the Scottish Executive, which must take an overview of the qualifications that it deems to be appropriate and to which it is prepared to provide funding. In the main, it is public funding that is going into this.

Of course, as is the case in all such matters, the Scottish Executive will not have to work out the detail. It will rely on practitioners and others to come together as has happened before to put together an appropriate framework. This is another instance of the wording of the bill being slightly ambiguous. If the Executive intended to say that only the funding council will be able to decide on the appropriate framework and adopt it, I do not think that that is the right way of doing things. We are talking about a wide matter in which there is a breadth of interest. The Scottish Executive requires to be content on the matter.

Richard Baker: My final question is—

The Convener: I am sorry to interrupt you, Richard, but I have a follow-up question. The bill currently says:

"The Council is to promote such credit and qualification framework as it may adopt."

Surely that brings us back to the general question that Christine May raised about the division of responsibility between ministers and the new council. It seems that ministers would adopt the framework and you would be told, "This is what you will fund."

Chris Masters: That is one of the challenges that we have identified. The convener is absolutely right: the key issue is the need for the system to be totally credible and highly regarded throughout the sector. Input from the sector is needed.

The Convener: It should not be funding driven.

Chris Masters: No. Obviously, having taken the advice from the council, Scottish Executive
ministers will have to take the decision. It will then be up to the council to adopt it—or promote it.

Esther Roberton: One of the things that we have discussed is the fact that the bill should refer to “a framework”. Again, it is quite possible that a time might come when the framework has to be changed and given a new name. We should keep things flexible and not tie ourselves into something at this stage—albeit that it is something that all of us have bought into, which means that it should be in place for a while.

Roger McClure: Currently, we live in impressively harmonious times.

The Convener: We can change all of that.

Roger McClure: I was about to say that it is possible to imagine a time when disagreements could arise on some of these things.

Christine May: We know disagreement all too well.

Roger McClure: As the legislation is currently drafted, it would appear to be possible for the funding council to decide to adopt and promote a completely different framework from everyone else. The council distributes a lot of money, which might cause people to change their allegiance. That all just serves to reinforce the fact that the framework will have to be determined at the highest policy level after all the consultation and input. That will mean that everyone has the same framework.

14:30

The Convener: Sorry, Richard.

Richard Baker: That is fine. The clarification was helpful.

My final question concerns the duty to secure coherent provision. You referred to the fact that there is bound to be discussion on what that is. Your submission says that the organisation has already introduced

“a key aim of achieving ‘a coherent system of well-led, innovative and responsive colleges and institutions.’”

Clearly, there have been debates about aspects such as mergers and how to achieve the most efficient provision. A review of FE governance is also coming up. How can you achieve coherence of provision and what are your developing thoughts about what that means generally?

Esther Roberton: As we said in our submission, the two councils have been working ever closer together since SFEFC was established. We have started to do that kind of work, but bringing the councils together formally will create many more opportunities. The colleges are beginning to discuss what opportunities the merger might provide and we would like them to join with HE institutions.

The focus of our new governance memorandum is being developed to address both sectors in as close to the same way as is practical given their different statutory positions. Coherence is already coming out of the work that we are doing on matters such as widening participation and articulation. A good start has been made, but again there is a long way to go. The sectors are much closer together, and the widening participation forums and the like are contributing to that.

Chris Masters: As we said in our submission, the key issue is having well-managed institutions in both FE and HE, with high-quality leadership and excellent transparent governance. That must be the key and there is still a way to go.

We are working on a new financial memorandum that will put less prescription but more requirements on the governing councils to ensure that there is good leadership, whatever organisation they are responsible for. If we can achieve that, we will start to see the real benefits of cohesion across the system.

Chris Ballance (South of Scotland) (Green): I have three questions, none of which will surprise the witnesses if they have read the Official Report of last week’s meeting. First, concern was voiced about the erosion of academic freedom that has been seen to be taking place during the past few years with extra funding coming in from business and so on. Concern was also expressed that the merger of the funding councils might further erode that freedom. Would you care to comment on that?

Secondly, there was a fear that the economic benefits of learning were taking greater priority within the new council’s jurisdiction than the cultural or health and well-being side of learning, and that with the merger of the funding councils, that might well be accentuated.

The third question relates—

The Convener: We will take those two points first and then come back to you, Chris.

Roger McClure: You said that you thought that academic freedom had been eroded in recent years, but I do not think that I have picked up on that. Are you referring to a specific change that you believe is causing that erosion?

Chris Ballance: As more and more academic research is funded by outside and non-governmental organisations, there is a fear that researchers’ freedom to work as they would wish to work is lessened. The researchers start to become almost employees of outside organisations. There is also a fear that the merger
of the councils might send things even further down that road.

The Convener: In addition to that, the Association of University Teachers made a specific point in its evidence about the pre-1992 universities having academic freedom already built into legislation, while that does not apply to the post-1992 institutions. Part of the AUT’s evidence was its view that every institution should have the same guarantee when it comes to academic freedom.

Roger McClure: One could give a somewhat trite answer on the first point: when universities take on research that is commissioned by businesses or whomever else, they do so voluntarily. At the same time, public funding for research has continued to increase at a substantial rate. There has not been a falling back in the amount of discretionary funding that is available for research.

It is a question of what institutions choose to do. At the moment, the balance is quite reasonable. The degree of discretion has kept pace with, or indeed outpaced, the growth in funding for other aspects of universities’ work. The universities make choices about what kind of other research they want to take on. Contract research work is not a great profit-making activity, however; the money that the universities are paid to do the work simply covers the cost of their providing the research. One of our worries is that the research costs are greater than the money that is being paid by industry. Provided that the institutions have reasonable freedom of choice in deciding what work to take on and in negotiating that work, I do not see their undertaking such work as an erosion of academic freedom.

I agree with your general point that there should be the same provision of academic freedom across the board. Whether that requires changes in the legislation depends on whether you think that there are substantial differences in practice in the freedom of academics at the different types of institution.

Chris Masters: The thrust of the question was whether the creation of the merged council will erode academic freedom or take away from education in a cultural sense, making it a purely economic consideration. My view is that it will not; I think that the absolute reverse is the case. Roger McClure has made a point about what taking on contract research means for academic freedom.

A lot of research comes from charities such as the Wellcome Foundation. Having a dedicated, high-profile research committee, which is enshrined in legislation, which has the ability to attract the right people and which is responsible for distributing public funds, would be more beneficial for academic freedom in the field of research than what we have at the moment. I see that as a positive move.

The issue around the economic benefits of learning has worried me in the past. There has been a danger of too much emphasis being put on spin-out companies and too little emphasis being put on the major contribution that further and higher education make to the country—the production of highly qualified, well-taught graduates.

If we have a joint council that deals with both sectors, rather than two separate councils, there is more chance that we will recognise that the economic and cultural benefits are interrelated and that they are important for the health of the nation. I am quite positive about the proposals. While taking on board the concerns, I think that the legislation will diminish rather than accelerate them.

Esther Roberton: Section 20, which covers an area that our council has discussed a lot, says:

“the Council is to have regard to … skills needs in Scotland … issues affecting the economy of Scotland; and … social and cultural issues in Scotland.”

Having discussed whether those factors had been listed in the bill in the right order, we accepted in the end that they had not been listed in order of priority, and that they were just three things. We welcomed the fact that "social and cultural issues in Scotland" had been included, because that will help to avoid education being considered purely in terms of economic ends, as opposed to social and cultural ends. We were quite heartened by how the bill had addressed that.

Chris Ballance: I see where you are coming from on that and I take the point that a merger of two organisations with different cultural values may work either way. Obviously, it is to be hoped that the outcome will be what you say that it will be. Are you putting in place any measures to ensure that that will be the case?

Esther Roberton: Although we welcome what is in the bill, much of the role of the new council—as with the existing councils—will be determined by the letters of guidance from ministers. That provides the opportunity for Parliament and the Executive to shape the agenda more regularly. If the ministerial decision was that we were to have a more economic focus, we would have to adopt such a focus to deliver on the letter of guidance. However, we feel that it is unlikely that we would be asked to do that, given the spirit of what is in the bill.

Chris Masters: Anticipation of the merger has been around for a long time. I have always been a
great fan of the idea, although I readily admit that I wanted it to be implemented three or four years ago, which was probably the wrong time. I think that now is the right time for the merger.

There are a number of joint committees that receive input from the arts side and the science side, so there is a balance. That balance will protect the cultural contribution and the economic contribution. That said, it is important to acknowledge that higher education and further education must be of economic benefit to the nation and must demonstrate that they are fulfilling that part of their role.

Roger McClure: I wonder whether it would help to remind the committee that, some 18 months ago or more, the two councils came together and produced a joint corporate plan. In other words, they were working together well before the legislation was drafted.

The joint plan’s vision of the two councils was:

“to play our respective roles in creating and developing an outstanding and sustainable system of tertiary education”—

“tertiary” was the word that we used at that time—

“learning, training and research which:
• enriches society and the lives of individuals;
• stimulates and supports economic development; and
• increases skills, knowledge and understanding.”

The economic role is incredibly important—without it, how will the economy develop and innovate in the 21st century? Of course, the fact that that is not the only role is always present in our minds.

The Convener: At the top of page 5 of your helpful submission, you talk about securing collaboration. You state:

“Achieving timely and effective collaboration will continue to be a challenge and this would be assisted if a reciprocal statutory duty to collaborate was placed on the range of other bodies that will be expected to work with the new Council.”

Does that suggest that someone is not collaborating and, if so, will you name and shame them? Which are the key bodies on which a similar statutory duty should be placed?

Esther Roberton: I will turn that question on its head by saying that one of the reasons for that recommendation being included in our submission is that, when my council considered the bill, we were very uneasy about the notion that a duty to secure collaboration should be placed on us, because although we will do all that we can from our side of the table, it is very difficult to force the issue if there are players who do not want to play; we are not saying that there are such players.

The duty should require us to act collaboratively or, if it is a duty to secure collaboration, it should be placed on all the players. Part of the difficulty is that the list of players would be quite long, because it would include Scottish Enterprise and Highlands and Islands Enterprise and perhaps the Scottish Qualifications Authority and others, all of whom we are working collaboratively. Our point was that it would be right and proper not to place the sole responsibility on the funding council. That was the reason for that recommendation.

The Convener: Is the duty to secure collaboration another example of something that should be a ministerial duty? A statutory duty to collaborate is different from a statutory duty to secure collaboration.

Esther Roberton: That was our view.

The Convener: I would have thought that the council—and other organisations—should have a statutory duty to collaborate, but that the duty to secure collaboration should be ministerial.

Chris Masters: I agree totally. The answer to your question is yes. Collaboration is a two-way process that is essential, perhaps more so in Scotland than in other parts of the UK. Given the size of the country and the organisation’s remit, it would be ridiculous not to have meaningful collaboration. It is not for me to decide, but I think that the letter of guidance to all the organisations should say that collaboration is a key part of their remit going forward.

14:45

Esther Roberton: I have a specific example of a long-term problem, which is not about those who refuse to collaborate. I am sure that the example came up in the predecessor committee’s original inquiry. Further education colleges are required to consult local enterprise companies and seek their cooperation with the colleges’ corporate plans. However, there is no reciprocal duty for a local enterprise company to include an FE college. That situation creates an imbalance and the perception of an unequal relationship. Examples of that appear regularly and are a matter of public record.

The Convener: I thank you for your written evidence—I think that it is the fourth submission that you have made over the past three years on the same subject—and your extremely helpful oral evidence.

We move to agenda item 3. I welcome Jim Wallace, the Deputy First Minister and Minister for Enterprise and Lifelong Learning. I invite the minister to introduce his team and to say a few introductory words.

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Mr Jim Wallace): I am delighted to give formal evidence to the committee for the first time since you took over the convenership.
On my right are Gill Troup, who heads up the higher education division, and Colin Gilchrist, from the office of the solicitor to the Scottish Executive, whom the committee specifically requested to attend. Also with me are Audrey Robertson and Gavin Gray, from the Enterprise, Transport and Lifelong Learning Department, who have primary responsibility as the bill team. I hope that, from our meetings on the bill, they will know it inside out.

In giving evidence to the committee, it is important to mark the fact that the origins of the bill came from the committee’s predecessor committee—Mr Neil was its convener—which called, in one of its reports, for a merger of the funding councils. The bill that is before members looks somewhat different from the one that we issued for consultation; nevertheless, the policy position has remained largely unchanged. I believe that what we have done is a good example of how our system in Scotland can work well. Those of us who were engaged in the preliminary work, before the Parliament was established, on how we would develop legislation were anxious that transparency and consultation should be built into our process. What we have done on the bill is a good example of that in practice.

The officials and I consulted widely on broad policy issues before drafting the bill and the consultation. There was general agreement among the partners about the broad thrust of our policy intentions. However, it is fair to say that, when policies were translated into the formal legal language of legislation, some sections gave rise to concerns among stakeholders. Issuing the draft bill as part of the consultation allowed us to focus on specific concerns that had not arisen earlier because our policy intentions were not in legislative form.

Both texts were discussed in some detail during bilaterals and a series of open meetings, which were held across the country, at which people were able to make their views heard. There were also two written responses. By taking all that information into account, we have produced, I believe, a stronger and better bill. That can be measured by the responses of stakeholders. There has been acknowledgment—notably in evidence from Universities Scotland and the Association of Scottish Colleges—that the consultation worked well. I believe that the bill, as introduced, addresses a number of the concerns that were aired. That shows the strength of our pre-legislative consultative process.

I have been aware, since the publication of the bill, of concerns about the provision on fees. Some have interpreted that provision as the introduction of top-up fees. I repeat what I have said in other forums: categorically, this provision will not permit top-up fees.

As the committee knows, top-up fees will be introduced in England and Wales. That is a reality that we have to face. Our phase 3 higher education review tried to take into account what would happen as a result. The broad consensus among stakeholders and in the Parliament was that we needed to do something to respond to the real challenges that are thrown up by Westminster decisions, not least with regard to the cross-border flow of students. Committee members will recall that I set out to the Parliament in June the measures that we proposed to take. Those decisions have not been easy, but I remain convinced that doing nothing was not an option.

In the specific case of medical students, the committee will be aware that the Calman report highlighted the fact that around half the medical students in Scottish universities already come from outwith Scotland. I have noted that changes in fee levels in England might result in greater difficulties in recruiting sufficient numbers of graduates to the national health service in Scotland. That finding was worrying and echoed findings in the phase 3 review back in March. The issue is serious and has led us to consult on the principles and the practicalities of introducing a separate flat-rate fee for medicine. Responses to that consultation were due by the end of October and are being analysed.

It is important to acknowledge that the provisions in the bill do not negate that consultation in any way. Ministers have still to determine whether to introduce a different fee rate for the specific course. Should that be deemed necessary, the section in the draft bill will allow ministers—subject, of course, to the approval of Parliament—to implement any proposals to introduce a separate flat-rate fee for medicine. As things stand in legislation, we could not implement any such recommendation; we would require primary legislation. This particular section of the bill simply facilitates our taking that option—an option that will be used only if deemed necessary as a result of consultation and if agreed to by Parliament.

Scotland-domiciled students who are studying medicine or any other first degree will continue to have their fees paid for them in full. Any change in fee levels will have no financial impact on Scotland-domiciled students, but students who are not eligible for fee support from the Scottish Executive will pay more. In the face of tough choices, striking that balance best discharges our duties as Scottish ministers.

Another point that I wish to make relates to the provision on the Scottish public services ombudsman. The bill gives students, however funded, and other aggrieved persons the right to refer complaints about colleges or universities to
the ombudsman when institutional mechanisms fail them. That proposal came originally from the recommendations of the inquiry into lifelong learning that this committee’s predecessor undertook. The proposal was picked up in the partnership agreement.

I believe that the bill, as introduced, will help to secure the coherence, responsiveness and relevance of further education and higher education as delivered in our colleges and universities, and will help to ensure that those colleges and universities continue to be recognised by all as delivering high-quality further and higher education to all students, as well as carrying out research that is recognised internationally.

The Convener: That is very helpful, minister. I always welcome it when people adopt a policy that has been recommended by a committee that I chair. I could send you a few more documents.

It is fair to say that, in all the evidence that we have heard, everybody has accepted the principle of the merger. You will find, therefore, that most of our questions are on the practicalities or on the wording of the bill. You will no doubt have read much of our evidence; much of today’s meeting will be about clarification—not least on some of the legal points that have arisen.

Christine May: Perhaps I could ask two questions. One is on new fundable bodies and the question of who will have responsibility for making the ultimate decision. There is ambiguity in the bill’s wording over whether the council would have responsibility or whether you or a subsequent minister would have responsibility on a recommendation of the council. Could you clarify that?

Mr Wallace: I am looking for the relevant section—

The Convener: While you are doing that, it might be useful to say that similar issues arise in other areas, such as the credit and qualification framework. In a number of areas, the drafting of the bill in relation to the division of responsibility between ministers and the new council might require clarification and definition; in some cases, it might not be the right way round.

Christine May: If the minister and his team need some time to consider and revisit the issue, I would be happy to wait for an answer.

Mr Wallace: Obviously, we would consider any of the committee’s stage 1 recommendations. Section 7 indicates that the decision to add or remove fundable bodies would ultimately be one for ministers, because that would have to be done by way of an order. However, it is important—I recollect that this issue came up during the consultation—that any such decision should be based on an objective analysis. Concerns were raised in relation to the original draft when the power was solely in the hands of ministers. I suppose that theoretically I or, more likely, one of my successors could have woken up one morning and said, “Let’s abolish X university.” It was never intended to be like that. It was suggested that we should have objective criteria and analysis, the provision of which is properly the role of the funding council.

The criteria are set out in section 7. If the funding council believes that an institution meets all the criteria, or fails to meet them, it can make the appropriate recommendation to the minister to add or remove the body, and ministers can then make the decision. When ministers take the initiative and feel that a body should be added or removed, the safeguard is that the funding council would make the appropriate checks before action was taken. Although the council would be required to approve such a proposal, that would not be the final approval. It would be more in the nature of an endorsement, because ministers would have to lay an order.

The convener referred to the Scottish credit and qualification framework. Representations were made during the consultation that the bill should refer to the SCQF. We can take legitimate pride in Scotland in leading the way in developing a qualification framework. I know from contacts within the Bologna process that Scotland is looked to for much of the progress that we have made. It is therefore important that we develop the framework and embed it within our system, to ensure that as students move through the system their learning is recognised and appropriately rewarded. The provision to promote that is appropriate.

At some future date, there might be a different framework. The funding council has the necessary expertise, working in collaboration with the colleges and universities, to determine which framework should be adopted but, clearly, if ministers were to disagree with that, there would still be the option of a ministerial direction, which would be subject to a parliamentary debate. I think that I am right in saying that ministers can give a direction on that.

Promoting the SCQF is not an exclusive responsibility of the funding council. We as ministers, and the sector itself, would wish to do that as well. Bringing the SCQF within the ambit of legislation has been widely recognised and acknowledged. We have struck the right balance, but if the committee feels that tweaking is needed I will have regard to what it says, provided that the general thrust is observed.
The Convener: That sounds like a drafting issue more than anything.

Christine May: My second question follows on from my first question on fundable bodies, and has been raised on a number of occasions. When a fundable body that comes about as a result of a new institution coming into the group of fundable bodies rather than by a merger of two existing institutions is agreed to, how will capacity in the funding mechanism be made available for it? Will that be done by diluting the existing funds across all of the institutions, including the new one, or will additional budgetary capacity be made available?

15:00

Mr Wallace: We have set out our spending review plans for the period up to 2007-08, and they are widely recognised as being a fair and generous response to the representations that we have received. I do not expect that we will be able to top that up considerably, but one never knows—end-year flexibility might allow us to do something at the margins.

The reason why we have the arrangements that we have is to allow the possibility of new bodies emerging that would merit inclusion. As I hope the criteria that would have to be met recognise, that is not something that would ever happen lightly. It is obvious that, over a period of time, a body would have to work up accreditation and a track record that would allow the funding council to recommend that it should be included. Therefore, I think that we would be given a reasonable amount of notice. I do not believe that there are any such recommendations in the pipeline.

It remains our position that we will fund only existing providers and that additional providers will be included only if we find that the existing colleges and higher education institutions are not delivering in a particular area. I think of the situation as being one of filling a gap or taking account of something that might have fallen by the wayside rather than of bringing in people who are waiting in the wings.

Christine May: Do you accept that it is not beyond the bounds of possibility that a philanthropist might come along, buy land, endow buildings and so on—in short, meet all of the criteria—and thereby create an institution that would have to be funded? Has any consideration been given to that eventuality?

Gill Troup (Scottish Executive Enterprise, Transport and Lifelong Learning Department): The designation of a body as a fundable body does not carry with it an obligation on the funding council to fund it.

Christine May: That is helpful.

Mr Wallace: It was quite deliberate that the designation was of a “fundable body” rather than a funded body. I know that the difference seems small, but it is quite important.

The Convener: You have to know the difference between your ables and your eds, no doubt about it.

Murdo Fraser (Mid Scotland and Fife) (Con): Have you finished your sentence, convener?

Christine May: Was there a verb?

Murdo Fraser: I will return to fees, in particular for medical students, which are probably the most controversial aspect of the bill, as the minister will be aware.

Last week, when we took evidence from the National Union of Students, Melanie Ward expressed detailed concerns about that issue. She said that ministers have the power to vary fees for all students, although the bill specifically mentions cross-border medical students, and SAAS will pay the extra. However, ministers have the power to stop SAAS paying the extra. According to Melanie Ward, if the bill were passed as drafted, ministers could completely change the student funding system by removing funding from SAAS and varying fees for various courses, starting with medicine and, in time, extending the variation to other courses.

I am sure that you will tell us that that would never in a million years be your intention, but is it the case that if the bill were passed unamended, legally you would have the power that Melanie Ward said you would?

Mr Wallace: I have that power at the moment. With regard to subsections (6) and (7) of section 8, if we were to have a different fee structure or a different fee for a different course, the ability to have different fees for different subjects would not be on a ministerial whim; it would require parliamentary approval.

Members might recall that we abolished tuition fees for Scotland-domiciled students on a first degree at a Scottish university by means of a letter that Nicol Stephen, the then Deputy Minister for Enterprise and Lifelong Learning, sent to Mr Stephen of the Student Awards Agency for Scotland. Therefore, things were done at the stroke of a pen. I believe that that was good, and I assure the committee that the Administration has no intention of reneging on that decision.

Murdo Fraser: I appreciate that you have the power to change SAAS’s funding payments, but do you currently—before the bill is passed—have the power to vary the fees that universities charge?
Mr Wallace: In general terms, yes, but not the power to have a different level of fee for different courses, which is why we want to take the powers to do so through primary legislation. You might recall that, when I made my statement to Parliament back in June about the impact on cross-border flows, I indicated that we would look to set a higher fee level, which of course would be met by the Executive for Scotland-domiciled students, who would not pay. We could do that with existing powers but, because of the possibility that we might want to set a different fee for medicine, for example—I do not want to nit-pick, but medicine is not specified in the bill; it is mentioned in the accompanying documents, although it is, basically, what we have been discussing and, again, I emphasise that the position will be no different for Scotland-domiciled students who are studying medicine, who will continue to have their fees met—we want to take powers under primary legislation to have a different fee level for a different subject.

Murdo Fraser: I understand that.

I would like to ask one more question. There are specific exclusions for students on teacher-training courses and postgraduate students. Why have you restricted exclusions to those two specific areas?

Mr Wallace: History is the reason behind that. When the Westminster Government brought in the whole issue of fee paying in 1998, a provision was inserted in the Further and Higher Education (Scotland) Act 1992 that meant that the level of tuition fees that ministers could set could not exceed the overall level of student support that they would provide. That provision never really kicked in because we abolished the payment of tuition fees by Scotland-domiciled students in January 2000.

That fee-matching power was replicated in our consultation draft of the bill but, on reflection, we considered that it was unnecessary, given the changes that we had made. Our understanding was that there was also provision to prevent ministers from setting different fee levels for different teacher-training subjects. In repealing one part of the 1992 legislation, we thought that it was important to leave the part that related to teacher training. We are currently considering whether that is still the best way of achieving our objectives for teacher training.

Murdo Fraser: Thank you. I am sure that other members will want to come in on those points.

The Convener: We are dealing with fees, so members may ask all the questions that they have about fees so that we can have a continuous discussion.

Richard Baker: I have a couple of questions. First, one of the issues that the NUS raised was the fact that there was a lot in the draft bill and that excellent procedure was used in revising it. I speak with my Procedures Committee hat on when I say that that is good for the future of that kind of procedure. However, why was the fees issue not in the original draft bill? Why has the bill been chosen now to respond to the issue?

Mr Wallace: That was very much about the timing of events. You will recall that the draft bill and associated consultation documents were issued at the end of April. In my statement to Parliament in June, I said that we would give considerable consideration to, and consult on, how we should respond to the phase 3 review and the Calman report. Only at that point did we conclude that we might need to set a different fee level for medicine. Therefore, the decision was taken post publication of the draft bill. Since it became apparent at that stage that primary legislation would be required if we decided to pursue that course of action, it made sense to incorporate the provisions in the legislative vehicle that was available.

Richard Baker: My second question is about the alternatives that might exist. We are still waiting to hear back from the NUS about some alternatives that it proposed at our evidence-taking session last week, which, admittedly, I thought impractical. To what extent has the Executive been able to consider alternative proposals that might discourage swathes of English students from rushing north to take a place on a course in Scotland?

Mr Wallace: It is too early to provide an analysis of the responses that we received to our consultation on the Calman report. It is a bit like when the vote counters flick through the bundle. We want to analyse properly and consider the range of responses that we received. Some alternative might then emerge, but it is too early to say. My understanding is that we received some diverse responses to our consultation on the Calman report.

Gill Troup will elaborate on that.

Gill Troup: As members might be aware, an internal working group is working up proposals. Ministers aim to make an announcement on the subject by January. The group includes all the key stakeholders and it has input from student representative organisations. Our work is still at a stage where, if a workable alternative were proposed, we would have the time and scope to consider it.

Richard Baker: It is interesting to hear that the bill does not rule out other workable alternatives that might come forward.

My final question seeks reassurance for the student community, so it is helpful to have Colin
Gilchrest here. I am reassured that the bill does not provide for a top-up fee or anything comparable but is simply a response to what is happening in England. However, it is clear that the student community needs further reassurance on what the consequences of the bill might be. We have had a letter on the status of the explanatory notes, but I would be interested to hear further views on that. Also, is the minister able to give any further reassurance to the student community?

Colin Gilchrist (Scottish Executive Legal and Parliamentary Services): The legal principle is that if, exceptionally, there is found in the explanatory notes a clear assurance by the Executive to Parliament on the meaning of a section or on the circumstances in which a power will or will not be exercised, that assurance may in principle be admitted against the Executive in proceedings in which the Executive places a contrary contention before the court. Based on that principle, it is conceivable that a person could raise a litigation based on assurances in the accompanying documents. There is no guarantee that such a claim in litigation would be successful, but that is the legal principle.

Richard Baker: So the assurance in the explanatory notes could be at least considered in the courts.

Colin Gilchrist: Based on that principle, it could be considered in the courts.

Richard Baker: It is interesting to hear that the explanatory notes could carry that degree of weight.

Mr Wallace: Colin Gilchrist will correct me if I get this wrong, but I am sure that the assurances on the limited nature of the Executive’s intent that I have given on the record to the committee today and that I propose to give when we debate the stage 1 report on the floor of the chamber are also subject to a Pepper v Hart effect. I hope that members of the committee find that helpful.

Also, without getting into drafting technicalities, I point out that, once one reads through the legalese, the clear position under section 8(6) is that all institutions will be required to charge the fee that ministers set. Therefore, it will not be the case that different institutions will be able to bid against each other, as under the Westminster legislation on variable top-up fees. The bill itself is intended to give that guarantee.

Richard Baker: That is an important clarification.

15:15

Fiona Hyslop (Lothians) (SNP): I will pursue that point with the minister and with Colin Gilchrist. Regardless of whether the Executive’s intention is not to introduce variable fees or to open up the bill for other uses, it is what Parliament decides and what Parliament passes that makes the difference. Colin Gilchrist just cited Lord Steyn in the case of Westminster City Council v National Asylum Support Service. In his additional notes, he said that although the explanatory notes could be submitted to the courts, in the case that the Executive cites, they did not place any reliance on the explanatory notes in reaching their judgments. Lord Steyn said:

“What is impermissible is to treat the wishes and desires of the Government about the scope of the statutory language as reflecting the will of Parliament. The aims of the Government in respect of the meaning of clauses as revealed in Explanatory Notes cannot be attributed to Parliament. The object is to see what is the intention expressed by the words enacted.”

Therefore, although the Executive might make statements about how a phrase might be used, Parliament is perfectly entitled to decide whether it wants to pass legislation that opens up the potential to use the provision not just for medical students. Do you agree with that interpretation of Lord Steyn’s judgment?

Colin Gilchrist: Yes, I do. I agree that the principle does not establish the Parliament’s authority to pass the legislation and that it is the confirmation by the Executive that is relevant.

Fiona Hyslop: So, once the bill is passed and is law, it does not matter what has been said either by the minister to this committee or in explanatory notes.

Colin Gilchrist: Yes. The accompanying documents cannot be interpreted to confirm the view of Parliament, but they can be interpreted to confirm the view of the Executive.

Fiona Hyslop: So, if the committee is to review the principles of the bill—the main principle is to open up a new provision—it has to review what is drafted in the bill rather than the notes.

The House of Lords also ruled in the case of Regina v Secretary of State for the Environment, Transport and the Regions and Another, Ex Parte Spath Holme Ltd that secondary legislation could be introduced regardless of the original intention in the explanatory notes. You are saying that there would have to be a statutory instrument to introduce the medical fees. Are you aware of that case in relation to this?

Colin Gilchrist: No, not in relation to this.

Fiona Hyslop: It might be helpful if you could reflect on it.

Another ruling was made recently in the case of Bidar v Ealing London Borough Council, which has gone to the European Court of Justice and is specifically about residency issues. Education is
now within the ambit of the Maastricht treaty and there is concern about indirect discrimination on the basis of residency. If you were to use the provision for medical students, it would concern students coming to Scotland from outwith Scotland and would be based on nationality or residency. Have you considered the recent ruling in the case of Bidar v Ealing London Borough Council?

Colin Gilchrist: The Advocate General’s decision in the Bidar case has been issued, but the ruling of the court has not. Obviously, Scottish Executive Legal and Parliamentary Services will consider the implications of the ruling when the court issues it.

Mr Wallace: We are aware of the Bidar case. As I have perhaps said in the past, there is provision in our budget for student support if the ruling goes the wrong way.

Where Ms Hyslop has got it wrong is in suggesting that a different fee would apply to students based on residency. The same fee would apply to everyone; the difference is that Scotland-domiciled students and European Union-domiciled students who do not come from the rest of the UK would have their fees paid for by the Scottish Executive. It is not that we set a different fee level for English, Welsh or Northern Irish students; the difference is that we pay the Scottish students’ fees.

Fiona Hyslop: So, it would be an additional fee across the board.

Mr Wallace: But we pay Scottish students’.

The Convener: So, it would be funded.

Fiona Hyslop: I have a final question on the general policy. Following whose initiative was the new section introduced? Was the policy intention a health initiative to ensure that more doctors stay in Scotland or was it just about keeping right the number of Scottish students who could access medical courses?

You mentioned the Calman report, which made a range of recommendations about ensuring a better balance in the representation of Scottish medical students. Why did you pick one recommendation and ignore the rest?

Mr Wallace: Our approach should come as no surprise to anyone, given that I specifically flagged up the medical student issue when I made my statement to the Parliament in June. I discussed the Calman report and its implications with the former Minister for Health and Community Care. There are implications for the availability of places at Scottish universities for Scotland-domiciled students, which in turn have longer-term implications for the recruitment of graduates to the NHS in Scotland. Evidence comes across in the Calman report that students who are originally from Scotland have a greater propensity to stay in Scotland than students from furth of Scotland have—it would be wrong to suggest that all students who are not from Scotland leave Scotland, but there is certainly a greater likelihood of their subsequently practising outside Scotland. If, over time, an ever-increasing proportion of places at Scottish medical schools is taken up by students who do not come from Scotland, there could be highly problematic implications for staffing the NHS in Scotland in the much longer term—even 10 or 15 years ahead. The Executive is concerned about that and I hope that there is recognition across the Parliament that we cannot take lightly or ignore the issue.

Christine May: I want to return to the point about ensuring that, when the Parliament takes a decision, everyone is clear about the will and intention of ministers. I recall that in preparation for a previous debate, we were given guidance that indicated that clarification of ministerial intentions and of the wording of legislation could be provided through an amendment to a bill, by specific exclusion or inclusion in subordinate legislation, or by the minister during the debate, before the vote. Can you confirm that that is your understanding of how such matters may be dealt with?

Colin Gilchrist: Are you directing that question at me?

Christine May: Yes.

Colin Gilchrist: That is my understanding of the situation.

Christine May: That is helpful.

Mr Wallace: It is important to make the point that, at the end of the day, orders would be voted on by the Parliament. The fee levels that would be determined under section 8(7) would be set out in an order subject to the affirmative procedure. If, at some stage in the future, the Parliament thought that ministers were abusing their powers, it would have the last word.

The Convener: Perhaps the committee should consult the Parliament’s directorate of legal services to clarify the situation. I am sure that we take the Executive at its word, but we always like to double check.

I see that Chris Ballance wants to ask a question; go ahead if your question is on fees—I want to wind up that part of our consideration. I will bring you back in later if you want to ask about something else.

Chris Ballance: I want to take Fiona Hyslop’s point a little further, to ensure that there is complete clarity. Colin Gilchrist said that a student could instigate a case and that the courts could consider the explanatory notes and the minister’s statement. However, do you agree that the
putative student would be ill advised to found a case purely on the explanatory notes and the minister’s statement and that the courts would be quite within their rights to place no weight on that evidence?

Colin Gilchrist: It would be legally possible for a claim to be based on the principle, against the contention of the Executive.

Chris Ballance: Is it the case that the courts would be quite within their rights to give no weight to the explanatory notes or the minister’s statement?

Colin Gilchrist: The courts would have regard to the House of Lords decision on the principle that was set out in Westminster City Council v National Asylum Support Service, which I mentioned.

Chris Ballance: I understand that principle to be that the courts need give no weight to the explanatory notes or the minister’s statement.

Colin Gilchrist: A statement in the explanatory notes or the minister’s statement would be a persuasive statement. There would be no guarantee that the court would follow it, but it would be a persuasive statement that could be considered in the litigation if a student were to raise such an issue.

Chris Ballance: I think that I shall take that as a yes.

Mike Watson (Glasgow Cathcart) (Lab): I had not intended to ask a question on fees, but I was struck by something in the minister’s response to the question from Fiona Hyslop about medical students. You said that your concern was that as many graduates as possible should remain in Scotland and put their skills to use in the NHS in Scotland. I am aware that University of St Andrews medical students go for part of their training to hospitals in Manchester. Given that St Andrews has a lot of non-Scottish students anyway, it seems to me that that diminishes the chance of them remaining in Scotland after their training is finished. Do you or your officials have anything to say about that? Would it be appropriate, or even possible, for your officials to tell the University of St Andrews that its focus should be on Scotland and that, as far as possible, training should take place entirely within Scotland?

Mr Wallace: I am certainly aware of the issue. If memory serves me correctly, it was raised in Professor Calman’s report. I know that St Andrews has been examining it. The concern addressed by that section of the bill is about the overall number of funded medical student places in Scotland. Your point about the University of St Andrews is indirectly relevant, as it is my understanding that the university is actively considering the points made in the Calman report.

The Convener: I think that it has done something already.

Mike Watson: I am glad to hear that. I had not realised.

The Convener: Is your next question on fees?

Mike Watson: No.

The Convener: I know that Jeremy Purvis wants to ask about fees, and I really want to make that the last question on fees. After that, I will come back to Mike Watson’s other points.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I am grateful for the opportunity to put my questions to the minister, and for the opportunity to be a substitute for Jamie Stone, if that is really possible.

Mr Wallace: I shall refrain from comment.

Jeremy Purvis: That was not a question to the Deputy First Minister.

There is a fair amount of agreement with Brian Adam, the SNP member, who said in the chamber in June:

“I welcome the fact that he is to address the difficulty with medical schools in Scotland. I look forward to hearing detail on the level of charge that will protect the national health service in Scotland.”—[Official Report, 24 June 2004; c 9489.]

We probably all agree with that.

On the fear of an extension and the difference between primary and secondary legislation, I would be interested to hear about the elements of a legal challenge. My understanding is that there can be an extension only on an affirmative vote of the Parliament. Without an affirmative vote of the Parliament, it would be impossible to make any extension to the provisions.

Mr Wallace: Section 8(6) is the one that obliges all universities and institutions to charge the same fee. The instrument to determine the programme of learning or course would be subject to negative resolution, but the fee level would be subject to affirmative resolution. It is a two-part process, and one is not worth the paper it is written on without the other. The committee might wish to consider whether it thinks that all orders under section 8(6) should be subject to affirmative resolution.

The Convener: I think that we would.

Mr Wallace: You might be pushing at an open door.

Mike Watson: I would like to ask about academic freedom, on which we have had some discussion today and in previous evidence-taking sessions. Section 8(12) gives assurances that funding decisions by ministers will not be tied to conditions affecting particular programmes of
learning or courses, but that is in effect institutional academic autonomy. Academic staff have raised the point that the question of individual academic freedom is not really addressed in the bill at all. That is highlighted by the anomaly of the position of those institutions that were universities before 1992, as opposed to those that have subsequently attained that status, as individual academic freedom does not apply in the newer universities. The bill offers an opportunity to bring all universities—indeed, all of further and higher education—into line. Is there any good reason why that opportunity should not be taken as the bill progresses?

15:30

Mr Wallace: That question allows me to confirm that one of the features of the bill is that it extends institutional academic freedom from the higher education sector to the further education sector, which is something that I wanted to see.

The reason why there are differences between the position of the pre-1992 universities and that of the others is that the academic freedom that allows staff the freedom to challenge perceived wisdom and express controversial or unpopular opinions without fear for their jobs came in under the Education Reform Act 1988 and therefore, by definition, pre-dated the 1992 legislation. The issue was not picked up in the drafting because the bill is very much focused on the institutions’ funding arrangements rather than on their internal organisation. I know that the AUT raised the issue in its evidence. I have asked whether the long title of the bill will allow us to address the issue and I am hopeful that it will.

Consideration of the issue is at its early stages, as I am trying to respond to what the AUT said in its evidence. We could perhaps make it a requirement that in order to become a fundable body it is necessary for an institution to observe the principles in the 1988 act that apply to the pre-1992 universities. It has only recently been drawn to our attention by the AUT evidence that such a difference exists. I am sympathetic to the principle, because I cannot see any logical reason why individual academic freedom should be applicable in only a limited number of institutions. I have therefore asked officials to consider whether, within the scope of the bill, there is a way in which we could make progress on the issue.

Mike Watson: I am encouraged to hear that. Can I clarify that you are talking about further education as well as higher education?

Mr Wallace: That would be my intention.

Mike Watson: Thanks. I have nothing further to say on that matter, in view of the positive answer.

Section 21 refers to equal opportunities. The committee has received representations about students with disabilities. There seem to be two issues. The first is one that we have already considered to some extent today and it primarily applies to further education. Students with disabilities who want to study outwith Scotland may or may not get funding. We heard that 14 of the 32 local authorities do not automatically give funding and some never give funding. That seems to be an uneven way of proceeding. The funding councils were asked whether they felt that the new funding council should be given responsibility. Their answer was, in short, no. How would you feel about a responsibility resting with Scottish ministers, perhaps through SAAS or another body—if there were another appropriate body—to ensure that all students with disabilities who apply for funding to study outwith Scotland have an equal chance, irrespective of where they are domiciled?

Mr Wallace: We are aware of the issue and we are currently drafting a consultation paper on it to investigate current practices. I am aware that, as you say, some local authorities provide funding and others do not. We want to establish the view of local authorities on their role in the provision of bursaries, particularly for those with additional needs who require to study outside Scotland. We also want to take stock of the demand for places that offer specialist provision outside Scotland and establish what the cost would be for us to meet that demand within Scotland. One option is to try to ensure that such provision is available within Scotland.

I do not shy away from the difficult issues that this matter raises. Fiona Hyslop has mentioned the Bidar case and what the eventual judgment might be. If the situation ends up being that Scottish ministers fund provision in colleges outwith Scotland, there could be difficulties. The intention with a consultation is to try to tease out those issues and engage all the relevant stakeholders. We are aware of the issue and we are taking soundings and consulting on it.

Mike Watson: I welcome that response. There might be a distinction to be drawn between students who want to go south of the border to take courses for which there is no equivalent in Scotland and students who simply choose to study at an institution south of the border, regardless of whether there is an equivalent course in Scotland. If there was no opportunity to take a specific course in Scotland, a student wishing to take up a place south of the border might be denied it simply on the whim of the local authority. I hope that both situations can be taken into account.

Mr Wallace: We will consult on that.
Mike Watson: The second question is terminological. It has been drawn to our attention that section 12 uses the term “learning difficulty”. It was suggested that the broader term “additional support needs” would be more appropriate and would ensure consistency with the Education (Additional Support for Learning) (Scotland) Act 2004. Could you respond to the representations made by various organisations and by the Equal Opportunities Committee, which has written to our convener asking us to raise the issue, by making a change along the lines suggested?

Mr Wallace: We seek to address the issue in the bill in a number of ways. The term “additional support needs” came through the Education (Additional Support for Learning) Act 2004, which imposes a duty on education departments in local authorities. It is fair to say that local authorities have a much wider range of responsibilities to those of school age—or those under the statutory leaving age—than FE and HE institutions have to students. We have tried to acknowledge that the colleges are under statutory obligations under both the Disability Discrimination Act 1995 and the Special Educational Needs and Disability Act 2001. We have changed the wording. We borrowed substantially from the Further and Higher Education (Scotland) Act 1992, but we changed the wording from “learning disabilities” to “learning difficulty”, because a disability might imply a longer-term issue, whereas a difficulty might be of a shorter duration. In that way we have tried to broaden the scope, but we need to correct the explanatory note, which still uses the word “disabilities” as opposed to “difficulty”.

I draw to the committee’s attention a number of other provisions. Section 20(3) states:

“In exercising its functions, the Council is to have regard to the educational and related needs of persons who are, and the likely educational and related needs of persons who might wish to become, students of any of the fundable bodies.”

That is intended specifically to ensure that the new funding council has proper regard to the needs of students with learning difficulties. Section 12 relates specifically to learning difficulties and section 7(2)(g) states that one of the criteria for deciding whether a body should be a fundable body is the arrangements that it has with regard to the

“educational and related needs of persons who are, and the likely educational and related needs of persons who might wish to become, students of the body.”

In determining whether an FEI or HEI should become a fundable body or should continue to be a fundable body, the funding council has to direct itself as to the adequacy and appropriateness of the arrangements that the body makes for those with learning difficulties.

Mike Watson: I hear what you are saying, and having that on the record is helpful. However, as I read them, sections 7(2)(g) and 20(3) are not explicit. Someone could easily read them and not understand that they mean what you say they are intended to mean. It would be helpful if those sections were a bit more explicit. I suspect that we will return to that when we come to consider amendments. For the moment, there are no further points that I want to make.

Fiona Hyslop: I followed the progress of the Education (Additional Support for Learning) (Scotland) Bill very carefully and was involved in scrutinising it. There was a perceived gap in provision for 16 to 17-year-old young people going into colleges of further education in particular. As I recall, the Executive’s view was that the powers within the bill could not extend to further education colleges. There were concerns about some of the provisions in that bill and, although we tried to improve it so that it addressed that issue, there remained a gap.

If it was not thought appropriate for that bill to cover further education colleges, should this bill not be used to extend the broad and important policy concept of additional support needs as opposed to special needs? That is a huge area, which is not just about changing the name from “learning disabilities” but which involves quite a comprehensive policy statement. It would be helpful to have an idea of the Executive’s thinking on that from a policy perspective as opposed to a presentation perspective.

Mr Wallace: Bearing in mind Mike Watson’s point about whether the intention is immediately apparent in the bill, I point out that the bill refers to “educational and related needs”. We are not talking exclusively about students’ educational needs. As I said in my opening response to Mike Watson, colleges and HEIs are also covered by the Disability Discrimination Act 1995 and the Special Educational Needs and Disability Act 2001.

The Education (Additional Support for Learning) (Scotland) Act 2004 makes some provision for the transition from school to post-school provision so that there is a continuum of support. Subordinate legislation will have to be enacted under that and it could well be that that will place some duties on further and higher education to assist education authorities as they prepare, plan and make arrangements for the transition of pupils with additional support needs. I understand that a code of practice is to be published by ministers prior to the commencement of the act next year. Institutions will be required to have regard to that code of practice as well. There is therefore a range of measures adding up to quite a substantial package.
The Convener: I have a couple of quick questions on governance before we conclude the meeting. I understand that, under the act that took the colleges out of local government, councillors are debarred from chairing the governing boards of FE colleges. Is that true and, if it is, is it not time to revisit that restriction?

I have a second question. When we consider new fundable bodies, it is very clear that proper arrangements for governance are a condition of being a fundable body. However, as you know, there has been some difficulty, particularly with a college in Glasgow where some of the practices were questionable and the college was not abiding by the decision of statutory bodies. That has given rise to a lot of concern. Are you satisfied that, in relation to existing institutions in the FE sector in particular, the provisions and requirements for governance and management are satisfactory?

Mr Wallace: On your first point, there was a report of a review of governance that made several recommendations. We have recently concluded a consultation on whether there should be a relaxation or a removal of the restriction on local authority employees and councillors becoming the chair of a college board of management. Your question proceeds on the correct premise that, at the moment, that is not allowed. We have concluded a consultation on that, and we are now examining the results. My understanding is that if we wish to change it, the change could be made by way of an order and would not require to be incorporated into the bill. We hope to be in a position to give an indication of how we intend to proceed on that point within the next few months.

On more general issues of governance and the case that you mentioned, you will be aware, as we had an exchange about it in the chamber, that an independent review has been established. The review has engaged the Scottish Further Education Funding Council and the college concerned to examine issues of governance. My intention is that the review's findings should be public and that if it makes recommendations, they should not be restricted to the one college if they are capable of wider application. I assure you that, although ministers do not become involved in the detail of governance, we expect the highest standards of governance across the board, including in employee relationships.

The Convener: Are the powers that are available to the funding council and ministers satisfactory to deal with any need for intervention?

Mr Wallace: I believe that they are. If others think that they should be improved in any way, I would be willing to reconsider them, but I believe that they strike the right balance.

Chris Ballance: We have heard, from the AUT in particular, of concerns that the merger of the funding councils will emphasise the economic values of learning while downgrading the cultural and social aspects. We have just heard from Chris Masters that that is not a matter for the new funding council, but a matter of how ministers set it up. Are you aware of those concerns and what are you doing to address them?

Mr Wallace: I was aware of the concern during our consultation but, if you look at section 20 of the bill, you will find that "In exercising its functions, the Council is to have regard to—

(a) skills needs in Scotland;
(b) issues affecting the economy of Scotland; and
(c) social and cultural issues in Scotland."

In fact, we made significant changes from the original draft of the bill to try to reflect some of the concerns. If I remember correctly, the original draft was very much focused on skills needs in Scotland and on the Scottish context, but because we want to ensure that our universities and colleges remain competitive and improve their competitiveness in the United Kingdom and globally, section 20(2) gives the proposed new council a responsibility to have regard to the UK context and the international context when exercising its functions. I was aware that the point was raised during the consultation, and we specifically addressed it by adding provisions to the bill.

The Convener: That is fine. Thank you very much indeed. We hope to publish our stage 1 report before Christmas, so it will be good Christmas reading for any and all.

Mr Wallace: I look forward to debating the report in the new year.

The Convener: Thank you. That is helpful.

We will suspend the meeting for five minutes, because the temperature in here is quite hot because of the lights.

Meeting suspended.
14 December 2004 (29th Meeting, 2004 (Session 2)), Written Evidence

SUPPLEMENTARY WRITTEN EVIDENCE FROM THE BRITISH MEDICAL ASSOCIATION

Thank you for giving BMA Scotland the opportunity to provide comments on the Further and Higher Education (Scotland) Bill. We support the general principles of the Bill but have some concerns with Section 8 which includes provision for the introduction of higher tuition fees for some courses, and which we understand to be particularly aimed at medicine. Our submission will concentrate on this section of the Bill only.

The BMA is very uncomfortable with any plans to increase tuition fees in Scotland, particularly the prospect of a separate higher fee for medicine as it shifts the burden of educational costs further onto students. Given that students from lower socioeconomic backgrounds are generally more debt-averse than those from professional or managerial backgrounds, such proposals would seem to run counter to moves to widen participation in medicine.

A recent BMA report highlighted that 59% of applicants to medicine in 2003 came from managerial and professional backgrounds. The BMA firmly believes that entry to university must be based on academic ability, not ability to pay and it is essential to ensure equity of access for all young people to medical schools.

Our specific concerns with Section 8 are:

1. **Who will the higher fees apply to?** The rationale given by the Deputy First Minister in June this year for increasing fee levels for non-Scottish domiciled UK students from 2006, was to control demand for places in the Scottish higher education system from this group once variable fees are introduced in England and Wales. We understood that this would not in any way affect Scottish domiciled students studying in Scotland.

   Section 8 of the Bill refers to “a class of person” who might be required to pay these fees, but gives no detail on who this might refer to. We presume it is the intention to apply higher fees only to non-Scottish domiciled UK students and that there will be no prospect of a higher graduate endowment for Scottish domiciled students studying medicine. We are seeking confirmation from the Scottish Executive on its intentions in this respect, however it might also be useful for the Committee to request an answer to this question as part of its inquiry.

   Currently, Scottish domiciled students studying medicine in Scotland as a second degree are not entitled for the graduate endowment scheme, but instead are required to pay fees at a comparable rate to those from England studying in Scotland. We would seek reassurance that this group will not be affected by measures aimed at controlling demand from students elsewhere in the UK.

2. **At what level will the fees be set?** No information is provided in the Bill on the level at which the fee for medicine might be set. We would not expect legislation to prescribe the exact fee levels for particular courses, however, if variable fees are to be introduced, it would be important to specify a maximum percentage increase over standard fees (although this may be better placed within regulations). We would like to see further details on levels of fees and we would expect it to be at the minimum level required to achieve its purpose of influencing demand and not to be used as a means of providing additional revenue.

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In conclusion, we would urge the committee to consider the consequences of higher fee levels for medical courses and recommend that more detail be provided on this aspect of the Bill should it progress to Stage 2.
SUPPLEMENTARY WRITTEN EVIDENCE FROM UNIVERSITY OF STRATHCLYDE STUDENTS’ ASSOCIATION

FURTHER AND HIGHER EDUCATION (SCOTLAND) BILL: STAGE 1

As President of the University of Strathclyde Students’ Association, I keenly awaited publication of the Further and Higher Education Bill, and have been following with great interest the proceedings of the Enterprise and Culture Committee in considering it at Stage 1. I am pleased to note the many positive aspects of the Bill, in particular as regards the merger of the two funding councils, and the right for students to take complaints which have exhausted internal avenues to the Scottish Public Services Ombudsman.

I would however like to outline USSA’s opposition to one aspect of the Bill – the proposition to give ministers the power to vary the tuition fee set for different courses. I would endorse the points made by Melanie Ward of NUS Scotland in her oral and written evidence with regards to this issue, and would state the full opposition of students at Strathclyde to any move to raise the tuition fee for certain groups of students studying in Scotland. Rather than repeat the reasons eloquently outlined by NUS Scotland, I wish only to make one additional point on this issue, which I believe to have been missed out by the deliberations of the committee and those giving evidence to it thus far. I refer to the group of students who will be affected by any moves to charge higher fees for certain courses.

Throughout the meetings of the Enterprise and Culture Committee on the 9th and 16th November, it was alleged by members that any variability in the fees set by ministers for certain courses will only affect non-Scottish students, as the fees of Scottish domiciled students will be paid by SAAS. Leaving aside the points made by NUS with regards to the power of ministers to change the funding system, we are deeply concerned about this interpretation of the bill, and believe it to have a fundamental inaccuracy, which has unfortunately not yet been challenged by any of those giving oral evidence to the Committee. Any rise in tuition fees for certain courses will not only affect non-Scottish students, it will also, in its present format, affect Scottish domiciled students who are not in receipt of SAAS funding for all, or some, of their undergraduate higher education course. Students affected by this may include those who have had to repeat years of study, those who have progressed from an HND into a degree course at Level 1/2 (this may particularly affect those progressing from an HN course into medicine at some ancient universities), those who have changed course during their course of study, those who for various reasons do not meet the residency requirements, and those who are studying their second or subsequent degree - perhaps as a result of having dropped out of an initial course. For these non-SAAS funded Scottish students, many of whom can access only very limited finance, any increase in fees is likely to pose a great barrier to successful completion of their higher education course. While such Scottish students only comprise a small minority of Scotland’s undergraduate student population, they are an important minority, and deserve to be taken account of. While no national survey of these students and their needs has thus far been carried out, anecdotal evidence from Strathclyde would suggest that they are often those students who have overcome the greatest barriers to remain in higher education, and they are certainly deserving of the Committee’s consideration. I hope that the Bill, as amended, will take account of the particular needs of these Scottish students, as well as addressing the general points about variability outlined by NUS Scotland.

On behalf of the students at Strathclyde, I’d like to thank you for your consideration of these points, and look forward to reading your comments on the draft Bill.

Jamie Davidson
President
University of Strathclyde Students’ Association
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