Dear Convener

Thank you for your letter of 1 November, on behalf of the Education and Skills Committee, providing an update on the Committee’s consideration of the Legislative Consent Memorandum (LCM) on the UK Higher Education and Research Bill (“the Bill”). I note that the LCM evidence session on 16 November will focus primarily on the research elements of the Bill and any wider concerns the panel members may have on the Bill’s impact in Scotland.

The LCM on the Bill supports its extension to Scotland in three discrete areas. In each area, the UK Government amendments associated with the LCM are primarily technical and do not diminish devolved competence, which is why Scottish Ministers agreed to propose and support an LCM in respect of them.

You have asked me for my views on the broad themes arising from the written submissions, on the Scottish Government’s engagement at UK level on the Bill, and on how the Bill has changed at Committee stage. I will address these matters in turn.

**LCM Written Submissions**

I am pleased to note that the majority of written submissions – from the Royal Society of Edinburgh (RSE), National Union of Students (NUS) Scotland and the Scottish Funding Council (SFC) – appear to offer no substantive objections to the LCM as tabled.

University and College Union Scotland (UCU), as you will be aware, have stated that they acknowledge that the LCM proposals on joint working and funding research are necessary, however, they do not support measures (that the LCM proposals will enable) to allow Scottish institutions to participate, voluntarily, in the UK wide Teaching Excellence Framework (TEF). This matter is addressed on page 4 of this letter.

With reference to Universities Scotland, I note their support for the policy intent of the LCM in respect of TEF and the devolved administrations, and joint working.
As regards the concerns raised by Universities Scotland in respect of the LCM and funding of research, I can confirm that there was no amendment tabled by the UK Government to create a power to share in profits arising from research. The amendment referred to in the LCM is that which is now clause 103 in the Bill as amended. The purpose of the amendment as tabled was to amend section 5 of the Science and Technology Act 1965 and section 10 of the Higher Education Act 2004 to make clear that the powers they contain to provide financial support for research include power to make grants, loans or other payments subject to terms and conditions.

The UK Government amendment in respect of this matter only goes so far as enabling the terms and conditions of grant to provide for the repayment of the grant; for interest to be charged on any sums remaining unpaid after demand; and the provision of information by the grant recipient on the exercise of its functions. The repayment provisions are only exercisable if the terms and conditions of the grant are not complied with. The Scottish Government does not consider that the amendments facilitate any kind of profit sharing but simply allow the terms and conditions of grant to require the repayment of grant should certain conditions not be fulfilled.

Themes arising from the Written Submissions

**UK Research and Innovation**

I note that Universities Scotland highlight residual concerns about the Bill largely in respect of Part 3 as it relates to research and UK Research and Innovation (UKRI), and that these concerns about this part of the Bill are also shared by RSE and NUS Scotland, in particular in respect of UKRI and its relationship with the devolved nations, and the system of dual funding.

In respect of this part of the Bill in particular, I and my officials have had, and are continuing to have, discussions at both Ministerial and official level in order to pursue amendments to the Bill (described elsewhere in this letter) which I consider would be beneficial. I first raised matters relevant to Part 3 of the Bill with Jo Johnson MP, Minister of State for Universities, Science, Research and Innovation, at our introductory meeting on 27 June. This was followed up in subsequent letters to the Minister in early July and mid October and in the intervening period my officials have been liaising closely with UK officials.

I agree with both the RSE and Universities Scotland that the Board of UKRI should have experience and understanding of the research and innovation policy context and landscape across the whole of the UK, including in Scotland, in order to perform their functions effectively, although this may not necessarily be in the form of a representative of the devolved administrations. While such an amendment to the Bill would not lie within the legislative competence of the Scottish Parliament, in my correspondence with Jo Johnson MP, I have requested that the UK Government considers an amendment to the Bill to:

- Require the Secretary of State (SoS) to take account of the need for UKRI members to have experience of the different research and innovation policy and structural landscapes across the UK, including in the devolved administrations; and consult Scottish Ministers (and their equivalents in other devolved administrations) before appointing UKRI members (Schedule 9 as amended);
The RSE, Universities Scotland and SFC have highlighted further concerns around the hybrid nature of UKRI, balancing the mix of competitive awards (through Research Councils) and long-term support for English HEIs (through Research England), and the importance of effective engagement with the devolved administrations. Sir Paul Nurse noted in his 2015 Review of the UK Research Councils that “there is a need to solicit and respond to distinct research priorities and evidence requirements identified by the devolved administrations...” He also noted that “it is essential that the Research Councils should play a strong role in ..... Shaping research priorities and promoting the distinctive requirements of UK research, including in association with the devolved administrations.”

In my correspondence with Mr Johnson I have therefore also requested that the UK Government consider two further amendments to:

- Impose a general duty on UKRI to ensure that it discharges its functions (clause 86 as amended) and develops its research and innovation strategy (clause 92 as amended) to take account of the different research and innovation policy and structural landscapes across the UK, including those in the devolved administrations; and that the Bill be amended to require the SoS to consult and to take account of the views of Scottish Ministers (and their equivalents in other devolved administrations) before approving the UKRI’s research and innovation strategy; and

- Impose a general duty on the SoS that, in issuing direction to UKRI (clause 95 as amended), to take account of the different research and innovation policy and structural landscapes across the UK, including those in the devolved administrations; and to consult and to take account of the views of Scottish Ministers (and their equivalents in other devolved administrations) prior to issuing direction to the UKRI.

Again, these matters are not within the legislative competence of the Scottish Parliament.

**Dual funding**

I agree with Universities Scotland and the RSE that there are risks around protecting the integrity of the dual support system while allocating both of the funding streams (at least in England) to UKRI - one stream of competitive funding allocated through the UK Research Councils, and the other through Research England, with the potential for flexibility across the funding streams.

The Bill does not currently address how the balance of funding allocated through competitive funding streams via the UK Research Councils and via Research England will be supported. The creation of UKRI provides an opportunity for it to support the SoS in determining the appropriate balance through the provision of advice.

UK BEIS officials have since indicated (13 October) that the UK Government “is fully committed to the principle that funding decisions should be taken by experts in their relevant areas” and it invokes the Haldane principle.

In my recent correspondence with Mr Johnson I have therefore requested that the UK Government consider the following amendments to address these issues:

- Define the “balanced funding principle” (clause 96 as amended) to ensure it can be measured in relation to the proportion of funding allocated by the SoS for reserved (UK) and for devolved (England only) funding and to provide clarity of when it might not be achieved;
• Include a provision in the current Bill to ensure separate funding streams from the SoS to the Research Councils (collectively), to Innovate UK, and to Research England which are agreed annually by the UK Parliament on a transparent basis; and

• Include a provision which does not permit any in-year virement of funding between the Research Councils (collectively), Innovate UK, and Research England.

Again, these proposed amendments are not within the legislative competence of the Scottish Parliament.

University Title and Degree Awarding Powers

In addition to concerns relating to Part 3 of the Bill, Universities Scotland also highlight university title, and degree awarding powers. As set out by Universities Scotland, neither the power to grant degrees or university title within the Bill extends to Scotland. Scottish Ministers too would only wish to see such powers exercised in a manner which ensures that only institutions of sufficient quality and standards are granted university title or degree awarding powers.

Quality, Standards and TEF

As you will know, quality, standards and the UK TEF are areas of concern shared by Universities Scotland, NUS Scotland and UCU. In respect of this, as I set out in my letter of 12 September to the UK Parliament Public Bills Committee, I am clear that the current system of quality assurance in Scotland works. The Scottish Government fully supports teaching excellence, and values the well-established approach taken in Scotland to quality assessment involving students, institutions, the QAA in Scotland and the Scottish Funding Council.

I have responded positively to the sector in Scotland by enabling their voluntary participation in years 1 and 2 of the TEF and through the LCM and linked amendment. This has introduced enabling powers whereby Scottish Ministers can both provide and withdraw their consent to the voluntary participation of Scottish higher education institutions (HEIs) in TEF. Participation or not will therefore rightly be a decision for individual HEIs, as autonomous organisations, to make if the Scottish Government is first satisfied that participation in the scheme will be beneficial. In a process parallel to development of the legislation, officials have been engaging with the UK Government on TEF since the Green Paper was published in November last year. That engagement continues both with the UK Government and the sector in Scotland.

How TEF will ultimately be received on an international stage remains to be seen, however the Scottish Government is committed to continuing to monitor the impacts of TEF on the sector in Scotland and taking such action as is considered necessary to protect the interests of the sector as a whole.

NUS Scotland in particular notes English institutions participating in TEF will be required to prepare an access and participation plan and be subject to new transparency duties, Scottish HEIs will not. However it has been agreed that in Scotland Outcome Agreements will be the equivalent measure in respect of access.
In respect of tuition fees for students from the rest of the UK (RUK) studying in Scotland, NUS Scotland have stated that they “do not believe Scottish universities should be able to benefit ...off the back of TEF and RUK students without showing any additional increase in quality or standards”.

I have set out already my commitment to the assessment of quality assurance in Scotland. I am also clear that tuition fees charged for RUK students will not be directly linked to TEF awards in Scotland. I wrote to the Convener of Universities Scotland on 29 August to confirm this stating “through a voluntary arrangement, institutions agree not to charge RUK students tuition fees which are higher than those that can be charged in the rest of the UK. It is my intention to continue with this voluntary arrangement, whereby Scottish institutions will agree to charge a maximum fee of £9,000 in relation to continuing RUK students, and a maximum fee for new RUK students of £9,250 from the 2017/18 academic year. This is a decision relevant to the 2017-18 academic years only at this stage. The Scottish Government does not intend to introduce any link between TEF awards and tuition fees charged by Scottish HEIs to RUK students”. Tuition fees for RUK students beyond 2017/18 will be considered in due course.

Office for Students (OfS)

I note the concerns raised by UCU Scotland and NUS Scotland in respect of the OfS governance structures, including the composition of the Board, and student representation on the OfS Quality Assessment Committee (QAC). As I have set out the Scottish Government values greatly the participation and contribution of students in the well-established approach taken here in Scotland to quality assessment. In respect of the OfS board however, as a reserved body covering England only, I do not necessarily consider that this would require representation of the devolved administrations on the Board of the OfS.

Scottish Government Engagement at UK Level

As set out in a letter to the Chairs of the UK Public Bill Committee (12 September), which I understand you have published on the Committee’s web pages, I have found the engagement between the Scottish Government and the UK Government on this Bill to be generally productive. My priority in engaging with the UK Government has been the interests of Scotland, its higher education sector, and its students. This engagement is ongoing.

Changes to the Bill at Committee Stage

My understanding is that all UK Government amendments tabled during Committee Stage have been accepted and incorporated into the ‘as amended Bill’.

UK Government amendments accepted relevant to UKRI included: allowing Research England to take forward the results of consultations conducted by HEFCE or the SoS; amended descriptions of fields of activity in relation to each of the Research Councils; ensuring the humanities are considered on an equal basis with science and technology; giving UKRI the ability to pay staff pensions other than through the civil service; ensuring the majority of Council members were external to UKRI; enabling joint working with devolved administrations and the new Office for Students; and minor amendments for clarification or consistency, for example, reference to social sciences rather than to social science.
However, no opposition amendments - such as the proposal that devolved administrations be represented on the Board of UKRI - were accepted. The UK Government has not put forward nor accepted any amendments that address my concerns described earlier around the governance of UKRI and the dual support system.

I therefore believe that further amendments are needed to the Bill along the lines that I have described earlier. While the amendments I have proposed relate to the reserved responsibilities of the UK Government, they are intended to ensure that there are no unintended consequences for research and innovation policy in Scotland while taking the opportunity of new legislation to improve the current system and to clarify some aspects where appropriate.

Report Stage, immediately followed by the Third Reading, is scheduled to take place on 21 November. Following the Third Reading, the Bill will pass to the House of Lords. The exact timing of this is uncertain at this stage, although it may be some time before Christmas.

My understanding is that passage of the Bill through the House of Lords will provide opportunities for further amendments to be considered by the UK Government, either through its own tabled amendments or through those tabled by MPs or Peers. That is why I have asked my officials to maintain a positive on-going dialogue with their UK counterparts as the Bill progresses. Throughout this the Scottish Government will continue its scrutiny of the Bill with the aim of ensuring that there are no adverse consequences for HEIs or students in Scotland. Since the Commons committee stage finished on 18 October, my officials have been actively and productively discussing possible research amendments with their UK counterparts. I am hopeful that the UK Government will respond positively to the issues I have raised although disappointed that we have not seen more progress to date.

The Deputy First Minister and I recently met the interim chair of UKRI, John Kingman. I expect him to maintain a regular dialogue with Scottish Ministers and stakeholders to ensure he has a full understanding of Scotland’s perspective in the run-up to UKRI’s formal establishment.

I hope this information is helpful to the Committee.

SHIRLEY-ANNE SOMERVILLE