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NAPIER UNIVERSITY
EDINBURGH

Mr Jim Wallace MSP
Deputy First Minister and Minister
for Enterprise and Lifelong
Learning
The Scottish Parliament
Edinburgh
EH99 1SP

FROM THE CHAIRMAN OF COURT
Dr Andrew Cubie CBE, LL.D, FRSE

Tel: 0131 343 2500
Fax: 0131 343 3166
Email: acubie@fyfeireland.com

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DFM'S OFFICE

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Dear Mr Wallace,

**Response to the Scottish Executive Consultation Paper on the merger of
the SHEFC and the SFEFC**

The Court of Napier University welcomes the opportunity to respond to the above consultation paper, and would ask the Executive to give serious consideration to the following points.

We have always supported the merger of the funding councils, which already share a single executive. However, we believe that the draft legislation extends far beyond what would be necessary to achieve that limited, but important goal, and that the relationship between the declared aims of the legislation and the detailed provisions of the draft Bill is often difficult to trace. It appears to envisage not just a merger of the Councils but a merger of the two sectors involving an increase in the powers of the Minister and the Chief Executive of the new Funding Council, and a significant move towards central planning sufficient to pose a serious threat to institutional autonomy, and hence the role of our Court.

The main concerns of the Court of Napier University are those that relate to the proposed increase in central control and the anticipated diminution of institutional autonomy.

First, it is proposed in Section 20 that the Funding Council should have the general power to "do anything that is necessary or expedient for the purpose of or in connection with discharge of its functions". We believe that this power is excessive in the absence of any criteria against which to judge the reasonableness of actions deemed to be "necessary or expedient".

Secondly, there are a number of specific provisions that seem likely to have a direct and adverse effect on the governance of Universities. Sections 13, 24 and 26, in particular, place unproductive and unhelpful restrictions on the freedom of governing bodies to determine the strategic direction of their



institutions. We believe that these provisions are an unnecessary addition to the powers already available to the Funding Council via the Financial Memorandum and the use of Conditions of Grant.

Section 13 permits the Funding Council to require the governing body to hold a special meeting that the Chief Executive will then have a right to address. There are no pre-conditions required to justify the calling of such a meeting, so long as it relates to the financial support that the institution receives, or might receive, from the Council. This appears to be a direct intrusion upon the role of the Court as the supreme governing body of the University and does not appear to be in any way justified by reference to defects in the existing legislation. This new power is entirely unnecessary.

Section 24 requires the governing body to prepare annually a "development plan" for the Funding Council which must contain "such information, and be in such form, as the Council may determine" and cover a three year period. This is unnecessarily prescriptive, less good than existing practice in higher education, and inappropriate as a legal requirement enshrined in the proposed Act. It is unnecessary for the legislation to do anything more than require the Funding Council to assure the Minister that the institutions that it funds have adequate and effective arrangements in place for forward planning. The form and content of those plans should be for the Court of the University to determine. It would in any event be unreasonable for the Funding Council to require detailed plans regarding activities that are not funded from the grants that are allocated by it.

Section 26 requires the governing body to evaluate the feasibility of an institutional merger at the request of the Funding Council and on the instruction of the Scottish Ministers, and to submit a report of the evaluation to the Funding Council according to a timetable determined by them. While we understand that Ministers have been frustrated recently by the pace of change in certain parts of the FE sector, we believe that this is an inappropriate solution to that problem, and a direct intrusion upon the powers of governing bodies to determine the strategic direction of their institutions. We also believe that the enforced consideration of potential mergers is likely to be counter-productive to their effective achievement.

We are also particularly concerned about the following points of detail.

The proposal to designate all HE and FE institutions as Specified Tertiary Education Providers (STEPS) and then to sub-divide them into four different groups is seen by us as an attempt to re-introduce the so-called "binary line" that existed before 1992, and is certainly considered likely to damage the reputation and branding of a large number of Scottish Universities, especially in markets overseas. We would urge the Executive to reconsider this proposal.

We are concerned also that the Bill fails adequately to reflect the differences in mission between FE and HE. For instance, the Bill lays a "duty" upon Ministers "to secure the adequate and efficient provision of tertiary education

and undertaking of research" (Section 1) and subsequently upon the governing body to "secure the efficient provision ... of tertiary education of a suitable range" with specific regard to "the area in which the provider is situated" (Section 23). These principles may be appropriate to FE colleges, but are clearly inappropriate to Universities that compete and operate on a national and international basis, especially when the majority of their research is not funded by the Funding Council. We would ask the Executive to give serious consideration to reviewing the wording of Section 23.

Following from the above, we believe that the relationship between Section 1 and Section 23 of the draft Bill is unclear. Section 1 specifically includes reference to research. Section 23 makes no such reference. Section 1 refers to the provision being "adequate and efficient". Section 23 refers only to "efficient provision... of a suitable range". If these differences are intentional, it is not clear what the implications might be. If not, the draft legislation would appear to require amendment.

Together, we believe that these provisions are likely to undermine the role of the University Court as the body that has ultimate responsibility for setting the future direction of the institution. This is also particularly troubling when all Universities in Scotland are seeking to populate their Courts with people with experience of taking responsibility for their own and group decisions to the undoubted betterment of the sector. Furthermore, we believe that they are particularly inappropriate given that the sector derives a steadily declining proportion of its total income from funding provided by Scottish Ministers, and that the ability to lever in funds from other sources may itself be damaged if HEIs are increasingly treated as if they were public sector institutions.

We strongly urge the Executive to reconsider all of these matters.

Yours sincerely



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Dr Andrew Cubie CBE
Chairman of the University Court, Napier University



Prof J K Stringer CBE
Principal and Vice-Chancellor, Napier University