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15 July 2004

Rt Hon Jim Wallace MSP
Deputy First Minister
Scottish Executive
St Andrews House
Regent Street
Edinburgh EH1 3DG

Dear Jim

I am writing to submit the formal response of the Association of Scottish Colleges to your consultation on the proposed merger of the Funding Councils (SHEFC and SFEFC).

We were very grateful for the opportunity to discuss the issue informally with you over dinner. Our response takes account of those discussions and subsequent consideration by the colleges. The response is in 2 major parts:

- A joint submission with Universities Scotland on key principles for the merger; and
- A more detailed response by ASC on behalf of its member colleges on the detail and on issues specific to further education colleges and their learners.

We are also submitting – but not as part of the published response – some suggestions for amendment of provisions in the draft Bill. ASC would like the opportunity to discuss these proposals in detail during your consideration of the consultation. Some of the points we are making could helpfully be taken into account in the revised version of the Bill which will be presented to the Scottish Parliament.

On one point, I hope we agree with you and your colleagues in the Scottish Executive. Although changing the structure of the funding body is important, coherence and quality of provision for learners is the critical issue. A single funding body will contribute to your objectives for lifelong learning, employability and social inclusion, only to the extent that it helps colleges and universities to deliver better opportunities and experience for learners.

The public debate on the Bill is an ideal opportunity to take forward implementation of the single qualifications framework for Scotland (SCQF). Our members were disappointed that the consultation paper did not appear to be as enthusiastic as earlier policy statement of the Scottish Executive on this issue. A guarantee of recognition for learning at one level as a credit towards qualifications and for progression towards other levels will be a major step forward in terms of opportunity and value-for-money.

The quinquennial review of SFEFC (the Policy and Financial Management Review) is an opportunity to explore how a "smaller, smarter, more strategic" funding body can be achieved. Progress in shifting resources from the back room functions to frontline delivery fits well with the Scottish Executive's initiative on Efficient Government.

We look forward to further discussions with you and your officials in the run-up to presentation of the Bill.

I am copying this letter to Lewis Macdonald as your Deputy for the Enterprise and Lifelong Learning.

Yours sincerely

TOM KELLY
Chief Executive

**ASC RESPONSE TO THE SCOTTISH EXECUTIVE'S CONSULTATION ON
THE MERGER OF THE SFEFC AND SHEFC**

1. This is the response of the Association of Scottish Colleges (ASC) to the Scottish Executive's consultation paper "A Changing Landscape for Tertiary Education and Research in Scotland".
2. The paper accompanies – and supports – a joint paper with Universities Scotland on the issues of concern for institutions in both the HEI and college sectors which has already been submitted.
3. This paper sets out ASC's views on the main implications for the college sector of the proposal to merge SFEFC and SHEFC into a single funding body and on the proposed legislation as set out in the draft Merger Bill. It gives specific commentary and suggestions from the colleges point of view.

Key Principles

4. ASC's initial position was set out in its platform statement in the consultation paper (copy at Appendix 1). ASC recognises that the proposed merger of the Funding Councils is a key pledge of Scottish Ministers (as set out in the Partnership Agreement) to be delivered in the lifetime of the current Scottish Parliament.
5. ASC supports the opportunity this presents to simplify and clarify responsibilities of Scottish Ministers and their officials, the Funding Body, and institutions (universities and colleges). It presents opportunities to empower the institutions to take more accountability and responsibility for delivery of teaching and research, for reductions in the administrative costs and burdens of the Funding Body, and greater coherence in the planning and delivery of provision.
6. Tidying up structures and responsibilities is important and potentially beneficial. But the key test is whether or not the proposed changes will improve service (quality of learning and teaching, range of choice, and volume of opportunity) for the students, employers, and communities that they serve. If there is to be a single Funding Body as proposed, ASC wants to make sure that the new body will focus efforts and add value for lifelong learning and research in Scotland.

7. This cannot be achieved by the Bill alone. The new structures and responsibilities envisaged in the Bill will only help to the extent that they are appropriately supported by resourcing, priorities and guidance from Scottish Ministers and better opportunities for institutions to deliver service.
8. In looking at the proposals, therefore, ASC has considered whether these:
 - are the best choice available for long-term improvements of lifelong learning and research in Scotland
 - make coherence, quality, and improved opportunities easier to achieve for learners
 - enhance opportunities for institutions to work more closely with each other and with other agencies and interested parties
 - legislate only for those things which only legislation can secure or deliver effectively

Redefinition of Sectors

9. The consultation paper specifically asks respondents for their views on the proposed title of the new Funding Body as the "Scottish Tertiary Education Funding Council". To this question must also be tied the questions of whether it is helpful to have universities and colleges described as the "tertiary education" sector and for the Bill to identify both for funding purposes as "specified tertiary education providers" (STEPS).
10. ASC does not believe that the introduction of the term "tertiary education" will help explain the work of colleges and universities to students, employers or society at large. It is archaic and not widely understood beyond those in public bodies and institutions with a direct interest in legal matters. The concept also complicates matters if – as the Bill also proposes – current definitions of "further education" and "higher education" are to be retained and simply aggregated up.
11. ASC's view is that the title for the new body should emphasise that it is the funding body for colleges and universities. We would prefer the new funding body to be called the **Scottish Colleges and Universities Funding Council**.
12. ASC is not concerned about the formal, legal terminology which ensures that colleges can be funded by the new funding body. Colleges do not currently use any such labels based on the 1992 legislation for their marketing or public identification. We would not expect any title in the new legislation to be required or used for such purposes. There are more important issues about eligibility for funding than the legally convenient labels used in the Bill.

13. ***ASC would be happy to discuss with the Scottish Executive, Universities Scotland and other interested bodies, whether a better range of terminology could now be proposed.***

Responsibilities of Scottish Ministers

14. ASC envisages that the new funding body should have responsibility primarily for the distribution of funds and monitoring the financial health of institutions. The present Funding Councils – and their joint Executive – do not have, and should not be assigned as a single funding body, responsibilities which encroach upon or reduce the strategic responsibilities of the Scottish Ministers or the responsibility of the institutions for the delivery of service.
15. ASC does not support the suggestion that Scottish Ministers should assign a single aggregate of funds for the new funding body to divide up between the main funding streams (research, teaching and learning and student support). It is our view that decisions on the major priorities should be taken by Scottish Ministers – as now – through the Spending Review process, taking account of advice from the funding body and submissions from various interested bodies. The ultimate decisions on this are, and should remain, *so*
16. It is undesirable for the new funding body to be lobbied directly by competing interests when it would not have the ^{political} authority or electoral mandate to resolve such differences. ***ASC would welcome a formal assurance that Scottish Ministers will retain their responsibility to decide on the aggregate of public spending provision for the main elements of service of universities and college – in particular research, teaching and learning, and student support.***
17. Similarly, ASC does not wish to see a funding body which, mistakenly, assumes direct responsibility for trying to match supply and demand for teaching and learning or research. The job of the funding body should be to ensure that there is proper use of and best value from the funds they distribute in order to meet the priorities of Scottish Ministers.
18. The Bill needs to be clearer as to the purpose of institutions having to submit plans, accounts or appraisals of mergers. There also needs to be greater clarity as to the “vires” of the funding body and how far these may be extended by further delegations by the Scottish Ministers not specifically authorised in this (or its earlier linked) legislation, or by wider and self-initiated interpretation of its role by the funding body.

Harmonisation of Burdens and Responsibilities

19. ASC supports the view that there should be parity of treatment for the institutions funded by the new funding body whatever the basis on which they were originally constituted. **ASC agrees that there should be formal requirements which any institution to be funded must meet as a prior condition for funding by the Funding Body.**
20. ASC also agrees that powers of intervention for the Scottish Ministers and for the new funding body should be the same as far as founding legislation for the institutions will permit. The aim should be to ensure that the funding body is able to enforce necessary conditions of grant funding but not authorised or encouraged to go beyond what is necessary for that purpose. Institutions have – and must retain – direct responsibilities under statute and other law for their dealings with students, staff, other users of service, partners, and the general public.

Proposed Amendments to the Bill

21. ASC is not opposed in principle to most of the provisions in the draft Bill provided there is appropriate consultation with institutions before such powers are put into effect. **However we do have concerns about elements of the draft Bill and have identified suggested amendments for further discussion with officials.**
22. There are some respects in which ASC thinks that the provisions of the draft Bill could be substantially improved. These changes set out in Appendix 2 are important in order to ensure that:
 - Ministers consult the funding body and the institution before intervening on grounds of financial mismanagement (Section 7)
 - The funding body must have regard to financial health of institutions before making major changes in its allocation of funds (Section 11)
 - The funding body can distinguish between different kinds of provision in the funding it makes but has the opportunity to more fully implement the funding that is related to the purposes and requirements of the Scottish Credit and Qualifications Framework (Section 12)
 - Any additions to the institutions to be funded by the funding body meet threshold standards such as academic assurance and track record (Section 22 and - proposal for new Schedule 4)
 - The duty proposed to provide “suitable and efficient ... tertiary education in the area that the provider is situated” does not diminish the responsibility or flexibility of institutions in addressing student demand, employer requirement, and society’s needs (Section 23)

- Colleges are represented on the proposed statutory Research Committee and that there is a "Skills Needs Committee" (Schedule 1, Section 11 amended and supplemented)

Consideration of Mergers

23. The consultation paper specifically asks for views on whether the new power proposed in Section 26 of the Bill might be used by Ministers to "encourage and facilitate cross-sectoral mergers.
24. ASC acknowledges that the intervention of previous Ministers triggered the early stages and infrastructure development of the University of the Highlands and Islands Millennium Institute (UHIMI). The onus for continuing this development rests with UHIMI and its college partners. Although the first stage of designation for funding by the present SHEFC has been passed, there is still a long way to go in making this new institution a full reality as a university in its own right. By contrast, the shared campus at Crichton in Dumfries was initiated and has been taken forward since by the university and college partners.
25. It is not obvious that requiring unwilling partners to evaluate an unwanted merger will assist at all. It is quite reasonable for Scottish Ministers – or indeed the new funding body – to suggest to institutions that there are areas of overlap today or future collaboration tomorrow which could be usefully examined and developed. But consideration of mergers is costly and should only be undertaken where there is a firm interest on the part of prospective partners.
26. ASC does not believe that legislation is required or indeed the best way to encourage future partnerships or to evaluate possibilities. This can and has been achieved by a combination of informal influence and grant incentives without the risk of disturbing the stability of college and university staff, students and user communities which a statutory intervention would inevitably cause.
27. ***ASC acknowledges that there is a role for Scottish Ministers and the current Funding Councils – or the new funding body – to discuss issues and a possible strategy for future configuration of the sectors. ASC does not believe that this requires legislation to achieve the desired outcome. Past experience has shown that cross-sectoral collaboration can work, and is best nurtured, from the bottom up.***

Stability of Colleges and Universities

28. ASC welcomes the recognition that creation of a single funding body could potentially destabilise both colleges and universities. Much depends on the capacity and willingness of the new funding body and its staff to work with institutions in a more balanced and constructive way than at present.

29. This can best be achieved by a combination of:
- Appropriate and well-targeted Ministerial guidance to the new funding body
 - Concordats with the representative bodies for colleges and universities (ASC and Universities Scotland) on strategic dialogue and joint working on best use and allocation of funds
 - Looking at 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,
30. One area of difficulty is likely to be harmonisation of funding both for institutions and student support. Rapid and unpredictable changes in funding methodology or legibility have been very destabilising in the past. Such problems can best be overcome by agreement with the representative bodies on principles of funding and regular liaison to identify problems before they cause serious difficulties and to iron out any operational snags which do arise on these issues.

Further discussion

31. *The comments enclosed in this note are intended as a guide and ASC would welcome further dialogue with the Scottish executive prior to the Merger Bill be laid before the Scottish Parliament in the Autumn.*

ASC Executive
15 July 2004

ASC PLATFORM STATEMENT FOR CONSULTATION PAPER ON
MERGER OF FUNDING COUNCILS

1. ASC welcomes this consultation as an opportunity for colleges to deliver better service to students with reduced administrative burdens. The proposal to merge the funding councils should simplify responsibilities and secure **coherence, quality and parity of esteem** for lifelong learning opportunities for everyone.
2. To achieve this aim, the new funding body must be empowered to support colleges to:
 - **plan and deliver** lifelong learning provision that meets local student demand and employer requirements;
 - **be responsible and accountable** for appropriateness of curriculum, standards, employment of staff and the use of public funds;
 - **deliver the priorities** determined by Scottish Ministers for the use of available funds.
3. A key principle is the need for decisions to be taken as close as possible to the point of delivery. This should enable savings in the running costs of the new funding body with the maximum proportion of funds being used for lifelong learning, while strengthening the **institutional autonomy** of colleges.
4. It is also vital that funding arrangements for colleges should be sustainable and realistic. ASC accepts that it is for Scottish Ministers to determine, and the Scottish Parliament to approve, the volume and priorities for public funds. The new funding body must recognise and reward the central role that colleges play in delivering both **further and higher** education to a wider range of students.

APPENDIX 2

ASC PROPOSED AMENDMENTS TO THE DRAFT BILL ON THE MERGER OF THE SFEFC AND THE SHEFC

Introduction

The following are a list of amendments that ASC would like the Scottish Executive to adopt in the final Bill. We are happy to discuss with you further our rationale for proposing these changes and the best way in which they can be taken forward by both parties.

Amendments

Section 7(1) Directions where financial mismanagement

The Scottish Ministers may, after consulting the Council and the specified tertiary education provider, if it appears to them that the financial affairs of a specified tertiary education provider have been or are being mismanaged, to give the Council such directions about the provision of financial support for the activities carried on by the provider as they consider are necessary or expedient by reason of the mismanagement.

Commentary: These amendments reinstate the original wording contained in Section 54 of the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). The ASC considers that as the Consultation Paper envisages the new funding body taking on a greater role in delivering the priorities of the Scottish Ministers, it is an important safeguard that the new body be consulted before the Scottish Ministers give directions to an individual provider.

The ASC considers that, where such a drastic step as envisaged by Section 7(1) is contemplated, it is only reasonable that the individual provider concerned be given an opportunity to state its case.

Section 11 Administration of funds

New sub-section 11(3)

In undertaking its responsibility under sub-section (1), the Council is to have regard to the financial stability of each specified tertiary education provider and to the reasonable expectation as to future funding, based on prior funding and the conditions attached thereto, each specified tertiary education provider will have had in planning its future allocation of resources.

Commentary: Unless directed otherwise, the new funding body will be free to allocate resources as it thinks fit between providers and across sectors. The ASC considers it is important to avoid imposing a financial "shock" on any individual provider due to an unexpected cut in resources. This amendment seeks to require the new funding body to avoid any unexpected funding cuts and to ensure that institutions can operate with a reasonable degree of predictability and stability in their funding expectations.

Section 12 Funding of tertiary education providers

New sub-section 12(1A)

In making such grants, loans or other payments, the Council shall not have regard to whether each specified tertiary education provider is a provider of further or higher education, but shall distinguish between them on the basis of the level and quantity of learning of each course for which funding is to be provided and the qualification or qualifications pertaining to such courses.

Commentary: The ASC wishes to see a transition from funding **solely** on the basis of institutional designation to funding being at least **partly determined** on the basis of levels (SCQF or similar). ASC believes that comparable provision should be funding on a comparable basis no matter where it is provided.

The ASC appreciates that it will not be possible to move directly to the use of such funding criteria and transitional arrangements will be required. The ASC envisages funding for the transitional period (2006-08 under CSR 2004) being on the basis of sector, as is the case at present.

The ASC considers it important that the draft Bill set out the requirement for funding, in the future, to be on the basis of SCQF levels, or similar. This amendment seeks to achieve this and the ASC considers it should be in the Bill, but accepts it should not come in to force until a later date to be specified by the Scottish Ministers.

Section 22 Specified tertiary education providers: further provision

- (1) The Scottish Ministers may by order modify schedule 2.
- (2) The conditions which must be met by the governing body of an institution before a reference to the institution may be added to schedule 2 under subsection (1) are specified in schedule 4.

- (3) A reference to an institution may not be removed from schedule 2 under subsection (1) unless at least one of the conditions specified in schedule 4 is not, or is no longer, being met in relation to that institution.
- (4) The Scottish Ministers may issue guidance in relation to the conditions specified in schedule 4.

Commentary *ASC considers it is important that the Scottish Ministers specify in the Bill the conditions which will have to apply for an institution to be designated a Specified Tertiary Education Provider (STEP). The ASC considers Annex A to the Consultation Paper and the original sub-section (3) of Section 22 to be an appropriate basis for such conditions and the amendments refer to the conditions being specified in a new schedule to the Bill, schedule 4.*

The ASC does, however, consider that qualification as a STEP should be measured objectively, rather than be based solely on the opinion and discretion of Scottish Ministers and so has produced its own schedule 4, which is included as Annex A below.

Section 23 Duty to provide tertiary education

- (1) The governing body of a specified tertiary education provider must secure the efficient provision by the provider of tertiary education of a suitable range.
- (2) For the purposes of subsection (1), in determining what (in relation to a particular tertiary education provider) is a suitable range of tertiary education, regard is to be had to the needs of persons who are, and the likely needs of persons who might wish to become, students of the provider.

Commentary: *The ASC is concerned with the impact of Section 23(2)(a), which requires each provider to have regard to the provision of tertiary education in its area, when determining the suitable range of tertiary education it is to efficiently provide.*

The ASC considers this is a material change of emphasis, which could be used by the new funding body to engage in area mapping and similar planning functions which would limit the flexibility of provision currently offered by colleges to meet student demand.

Sch. 1, Section 11 Committees

- (1) The Council must establish a committee (a "research committee") for the purposes of advising the Council on matters concerning research.
- (2) In appointing members of the research committee, the Council is to have regard to the desirability of including persons who—
 - (a) have experience, and have shown capacity, relating to research or the application of research; and
 - (b) are currently engaged in research or the application of research;and must appoint at least one person representing the interests of further education providers and one person representing the interest of higher education providers.

Commentary: The ASC considers the research committee is likely to be dominated by university representatives for the reason that the bulk of research is carried on at universities. This amendment seeks to ensure there is further education representation on the committee.

Sch. 1, Section 11A Committees

New Section 11A

- (1) The Council must establish a committee (a "skills needs committee") for the purposes of advising the Council on matters concerning its obligation to have regard to skills needs in Scotland in exercising its functions.
- (2) In appointing members of the research committee, the Council is to have regard to the desirability of including persons who have experience, and have shown capacity, in the field of skills needs; and must appoint at least one person representing the interests of further education providers and one person representing the interest of higher education providers.

Commentary: The ASC considers the new funding body should concentrate as much on skills needs as research. As a skills needs committee is likely to be dominated by further education representatives, the amendment seeks to ensure there is higher education representation on the committee.

ANNEX A (to be known as Schedule 4 in the draft bill)

Conditions for achieving and maintaining STEP status

It will be a condition of classification as a specified tertiary education provider that the governing body of the institution:

- (a) demonstrates good corporate governance, involving staff and students;
- (b) is a non executive body;
- (c) has a duty to provide a range of suitable and efficient tertiary education;
- (d) has an officer who is responsible for:
 - (i) signing the accounts of the expenditure and receipts of the institution;
 - (ii) ensuring the propriety and regularity of the finances of the institution; and
 - (iii) ensuring that the resources of the institution are used economically, efficiently and effectively;
- (e) provides the Scottish Ministers and the Council with a plan to cover at least the three academic years following the proposed date of classification as a specified tertiary education provider containing a statement, as regards each academic year to which the plan relates, of:
 - (i) the number of persons the governing body estimates will be students of the institution
 - (ii) the programmes of learning of further and / or higher education which the governing body proposes to provide or secure the provision of
 - (iii) the programme of research – where appropriate – and mechanisms for knowledge transfer;
 - (iv) the capital expenditure and estates plans proposed by the governing body and how these would be funded;
 - (v) the institution's current income and expenditure and the governing body's estimate of future income and expenditure;
 - (vi) such other matters with regard to funded activity or assets as determined by Scottish Ministers or the Council; and
 - (vii) any other matters which the governing body deems appropriate to allow the Scottish Ministers or the Council to understand fully its plan;
- (f) demonstrates it has robust and independently assured processes in place for ensuring continuous quality assurance and enhancement of activities funded by the Council; and

- (g) has in place and has published arrangements for the consideration of student complaints and identifies the Public Services Ombudsman as the final arbiter of complaints about provision of activities funded by the Council.

Commentary: ASC would like a set of criteria to be established in the draft bill that indicates that before an organisation can be classified as a new STEP it must meet comparable standards (to that currently delivered by colleges and universities) of:

1. *Quality of provision (as independently assured)*
2. *Financial management (to ensure accountability for public funds)*
3. *Governance and accountability (to ensure a robust and effective management structure/process is in place in the new STEP to meet conditions 1 and 2)*

ASC are particularly keen that there are objective criteria on which new STEPs are designated. ASC do not want the designation of new STEPs to lead to a dilution in the resource available to existing STEPs. Therefore we would look for this to be referenced against the need for funding to be 'predictable and stable'.