



Queen Margaret University College

EDINBURGH

Response by Queen Margaret University College to the Consultation on the Merger of the SFEFC and the SHEFC, and on the draft Tertiary education (Scotland) Bill.

A. INTRODUCTION

1. We support the proposal to merge the SFEFC and the SHEFC; and we applaud the intention to enhance the standing of the Scottish further education colleges. However, the Scottish Executive's consultation paper (hereafter CP) and the draft Tertiary Education Bill (TEB) appended to it go far beyond these objectives. They are, in effect, comprehensive statements about how the SE sees the composition, the purposes, the competences, and the rights and obligations of institutions in the further and higher education sectors, and their statutory and other relationships to the Executive. As such, they are obviously vulnerable to mistakes of fact and of perception, of over-generalisation, and of the felt need to legislate on matters which are regarded by practitioners as unnecessary and undesirable subjects for legislation. It is in this context that ministers have subsequently disclaimed their intention of using the powers which the proposed legislation gives them. In the course of the consultation, the civil servants' explanation has been that the need for this legislation has been identified by their lawyers. Legal opinion on the matter on the universities' side appears to be that the quality of and the necessity for this law are highly questionable.
2. The SE's present proposal to deal with this apparent confusion is to pursue 'maximilist' legislation (it should be noted that the draft Bill (TEB Part 1: 1 (2) gives ministers virtually unlimited powers), but qualified by a Ministerial memorandum setting out Ministers' intentions. This is obviously unsatisfactory — in our view, unacceptable — because such a memorandum could not be made binding on future ministers.
3. We feel it would be inappropriate to comment on all of the provisions about which we have been consulted. Instead, we have attempted to derive from both documents the rationale for the provisions which go beyond the formal integration of the two funding agencies; and to identify the key principles set out in the consultation.

B. SECTOR MISSIONS

4. The Partnership Agreement formally enshrined the commitment of the Scottish Executive to merge the SFEFC and the SHEFC. In the earlier consultation on this matter, QMUC accepted this proposal, in common with Universities Scotland and all of its institutional members. However, while fully recognising some overlap of educational function, in that a minor part of FE colleges' activity may be to teach degree credit-bearing courses to a certain level, this is not adequate justification for blurring the distinctive missions of the two sectors. It appears to us that the SE may misunderstand the nature and significance of this overlap.

5.1. The SE argues that an important motivation for the merger and for this enabling legislation is to promote increased articulation between the two sectors. We enthusiastically endorse the desirability of this objective; but there is no proposal or provision within the draft legislation which would actually help to realise it — other, possibly, than the merger of the two agencies themselves. The Executive's approach of subsuming the two sectors under the rubric of 'tertiary education', classifying all of their member institutions as STEPs (Specified Tertiary Education Providers), then further classifying these, but saying that there is no intention to subvert or in any way mitigate the distinctiveness of the missions and competences of the two sectors seems to us simply to be self-contradictory. We therefore have to ask if the professed commitment to the discreteness of the two sectors is unreliable. Our doubts could be very easily addressed.

5.2. §34, §51 and §107 of the consultation paper imply the wish of ministers to equalise the funding of HE provision in the two sectors. Notwithstanding our view that the SE have failed to recognise the differences between the ways in which HE work is delivered in the two sectors (*see Paragraph 6, below*), we are extremely concerned about the possibility that funding for HE provision could be 'equalised' downwards to the rate at which it is funded in the FE colleges; or, alternatively, that the unit of teaching resource (UTR) could be diminished in a way which threatens the Scottish four-year honours degree. Our concerns could be simply met by an explicit commitment by ministers that the UTR in the HE sector will not be diminished; and we would welcome ministers' aspirations to increase HE funding in the FE sector.

6. The documents appear to imply a mistaken belief within the SE that teaching and research are discrete activities, such that learning and teaching up to HND level in the FE sector and in years 1 & 2 of university-based degree work are alike, and are therefore unrelated to the research mission of universities. University teaching is research-led, and this impacts directly on the content, the transferable skills and the methods which characterise university learning. The content of curricula differs significantly among universities, precisely because they express the particular interests, expertise and missions of the individual universities. Beyond the requirements of professional accreditation, there is no national curriculum for higher education, and no appetite for one. If, as the consultation paper repeats, there is no intention on Ministers' part to subvert the distinctiveness of the two sectors, we do not understand why they should wish to render learning and teaching identical in the two sectors. This is not to imply that one should be more highly regarded than the other; simply, that they are different, and each will be damaged by supposing otherwise.

7. The legislation proposes a discrimination, supposedly based on existing statutory differences, between the pre-1992 and post-1992 universities. The justification for this discrimination refers to the differential rights which Ministers have to intervene in the conduct of the institutions. We reject this discrimination as dangerous. One of the key

sources of the strength of the Scottish university sector is its commitment to maximise the strength of the sector as a whole by means of collaboration. This commitment is now underpinned by the SHEFC's enlightened strategy of research-pooling. Any legislative device which, by disinterring the pre-1992 binary line, threatens to weaken or undermine the collaborative nature of the sector should be firmly resisted.

C. INSTITUTIONAL AUTONOMY

8. The executive summary to the consultation paper signals the Executive's intention to "modernise the accountability structures" of HEIs which follow from their funding by the Funding Council. It should be noted that all institutions in this sector are progressively decreasing the proportion of their funding which derives from the core grant. Moreover, the universities are already fully (some may argue, excessively) accountable by means of (i) the financial memorandum which governs the relationship between individual institutions and the Funding Council; (ii) the requirement annually to satisfy the SHEFC's 'conditions of grant'; (iii) requirements to comply with standards and procedures laid down by *inter alia* the NAO, the Nolan Committee and its successors; (iv) the QAA; (v) the RAE; and (vi) the many and varied relationships which universities have with professional accrediting bodies. If ministers seriously wish to modernise accountability in ways which would lessen the burden on universities and enhance their ability actually to get on with their work, the legislation should be proposing a lightening of this burden on the basis of the proposition that universities are well-governed, well-managed and efficient institutions unless demonstrated to be otherwise.

9. The consultation paper (§67) proposes that Ministers may give the funding council the power to insist that lecturing staff should be required to obtain a professional teaching qualification. This paragraph is ambiguous and it is not clear whether this is intended to apply to FE alone or to all of "tertiary education". If the latter, it is not acceptable to us. We expect our staff to become expert teachers; we support them in doing so, and reward them for teaching excellence and achievement. We have consistently encouraged and supported staff to qualify for membership of the Institute for Teaching and Learning. But a qualification of the kind implied would have to be generic and would be inappropriate to work at university level. Moreover, we would regard the imposition of such a requirement as an unwarranted intrusion into areas of professional competence and expertise.

10. It is proposed that Ministers should "continue to have powers...to merge a designated HEI with one or more other HEIs". In our view, this power is completely inconsistent with institutional autonomy. It is arguably the case that this power could not be legally exercised with respect to QMUC (as a limited company), or to the chartered universities. It should be formally renounced. The wording of the Bill (TEB 26 (1) & (2)) is slightly more reserved, referring to Ministers' rights to request Governing Bodies to evaluate merger proposals. But we are concerned that Ministers should not seek powers to pre-empt or intrude upon the rights of governing bodies.

11. Perhaps the most contentious provision of all with respect to institutional autonomy is the proposed right of the CEO of the new funding body to request attendance at a meeting of an institution's governing body, and the obligation which is to be placed on governing bodies to comply with such a request (TEB 13 (2)). QMUC regards this proposal as offensive to the legal autonomy of institutions, and to the ethic of expert, voluntary service which informs the composition and business of governing bodies. We firmly reject the proposition that the funding body should be legally entitled to usurp the powers of the governing body. We believe that any such entitlement would seriously, perhaps terminally

threaten the willingness of expert and experienced members of the community to volunteer their services to universities. We fully understand and accept that institutions must be fully accountable for the funds they receive from the public purse. But there are already adequate effective measures in place to ensure such accountability and we do not accept that further legislation in this regard is necessary or desirable.

12. The Scottish Executive should be mindful of the attempts now being made by our leading competitor universities in Europe to disengage themselves from state control and to achieve the autonomy enjoyed by British universities. We believe it would be nothing less than perverse for the Scottish Executive to seek to move the Scottish universities in the opposite direction.

D. CONCLUSION

13. We support:


- the merger of the funding councils;
- measures which would practically assist and enhance articulation between the FE and HE sectors.

14. We reject any measures proposed which could have the effect of:

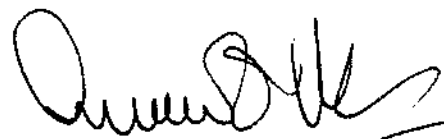
- blurring the distinctive missions of the two sectors;
- decreasing funding for teaching in HEIs;
- threatening the future well-being of the Scottish four-year honours degree;
- undermining the quality of research-informed learning and teaching in universities;
- increasing political control of universities;
- attacking and diminishing the autonomy of HEIs.

15. We fully accept that it is not Ministers' intention to exercise powers which would have the effects described in §14. But we are extremely concerned that the proposed legislation gives future ministers the legal right to act in these ways, and that future ministers could not legally be bound by a Memorandum of Ministerial Intention coincident with, but not incorporated into the proposed legislation.

Signed, on behalf of Queen Margaret University College



Professor J.P. Percy, CBE,
Chairman of the Governing Body



Professor A.P. Cohen, FRSE
Principal & Vice-Patron

6th July, 2004