

UNIVERSITY OF STIRLING  
 Proposed Merger of the Funding Councils: Consultation

1. Preamble

1. In responding to the consultation it is emphasised that the University is in principle opposed to the proposed merger of the Further Education and Higher Education Funding Councils. It is recognised that such a merger may offer some benefits to both sectors within Scotland in terms of efficiency and effectiveness. Although it needs to be noted, since the current Funding Councils' Executives already share the same resources both in staffing and in premises, that such benefits as may be created by a formal merger of the Councils themselves are likely to be relatively limited.
2. The University's response is founded on the acknowledged and demonstrable success of the higher education sector in Scotland. The sector has a long and distinguished record within the United Kingdom and, since the passing of the Further and Higher Education (Scotland) Act 1992 (hereinafter referred to as the Act), it has been clear that the sector has "launched above its weight" within the United Kingdom. Indeed, in its 3<sup>rd</sup> report in 2003, the Enterprise and Culture Committee stated:
 

The Committee considers that Scottish higher education currently has a number of strengths arising from its distinctive character: its wider accessibility; its closer links between the further and higher education sectors; its traditions of excellence and achievement; and its long history of providing useful knowledge to society. Scottish higher education is already different to English higher education, and the Committee considers that there are opportunities to build on this diversity". [Paragraph 4, Executive Summary]

In summary, therefore, there is no evidence to suggest that there are any major lacunae in the higher education sector which need to be resolved or filled.
3. A major concern to the University, in the light of the above, is that both the consultation document and the draft Bill proceed from a presumption of the creation of a new sector within Scotland. The further education sector and the higher education sector each has a distinctive and appropriate mission to support of Scotland. While closer working between the two sectors would be beneficial, it is not at all evident that there is such a thing as a tertiary education sector nor that one should be created. This is an inappropriate starting point for draft legislation. What is required is simply a minimalist Bill to merge the Funding Councils.
4. Whilst the University could expand on its concerns generated by the consultation document itself, in the interests of clarity and efficiency it is thought best to address the attached draft Bill as presented. It is emphasised that, in responding to the draft Bill, the University has not concentrated on what might be intended by those who have prepared the

draft Bill, but is concerned with the capacity and powers which any enacted legislation might confer on the future Scottish Executive and the merged Council. It is also judged to be critically important to address the existing Act and compare the ways in which the proposed new legislation differs from the existing Act which, as mentioned above, has served the needs of Scotland well over the past decade or more.

5. As is stated in the May edition of Highlight (SHEFC Newsletter) "the really big issue underlying this consultation" is "national interest versus academic freedom", this is of great concern to the University. In particular, it is evident that the autonomy of the higher education institutions in Scotland has served the Scottish national interest very well. Any erosion of this power will prevent the sector to develop organically and autonomously, whilst remaining fully accountable for the public funds utilised, would adversely affect the sector's ability to meet the needs of a "smart successful Scotland" in the 21<sup>st</sup> century.
6. Section ii of this response addresses individual clauses within the draft Bill as presented.

#### ii. Draft Bill

1. Part 1, (paras 1 and 2) immediately sets out to create a tertiary education sector and defines the terminology adopted throughout the rest of the Bill. Such a definition seriously weakens the identity of the higher education sector within Scotland and would severely and adversely affect the competitiveness of Scottish higher education in comparison to that of the rest of the United Kingdom and other universities world-wide. Furthermore paragraph 1.2, at a stroke, very significantly extends the power of Scottish Ministers in regard to higher education. As an autonomous body established by Charter, the University has its own requirements laid down by the Rectorial Body Council. The role of Scottish Ministers, as set out in the present Act, is not to secure the adequate and efficient provision of tertiary education but rather to fund the provision. By contrast Part 1.1 (2) of the draft bill, in particular, gives unbridled authority to the Scottish Ministers in the future to intervene in the affairs of individual institutions and may lead to significant conflict between any powers which might be conferred by the Bill and the provisions of the University's Charter and Statutes.
2. Part 1, paragraph 7 is notably different from the provision in the existing Act which places a duty upon the Secretary of State (of Scottish Ministers) to consult both the Council and the institution before giving such directions. This subtle omission once again signals an extension of the power of the Scottish Ministers which is proposed by the Bill.
3. Part 2, paragraph 12 refers to the funding of specified tertiary education providers (STEPS) and much flows from the introduction of this concept throughout the Bill. No clear purpose is served by the introduction of such terminology which has the potential for damage and confusion. The

current Act refers to "designated institutions" and it is not at all apparent that such a term is not sufficient for the purposes of any new legislation.

4. Part 2, paragraph 13 grants to the proposed Scottish Tertiary Education Funding Council (STEFEC) the power to require the holding of a special meeting of the governing body of a STEP. The taking of such a power through the Bill represents a further extension of powers and is an unacceptable infringement of the autonomy accorded to the University through its Charter and Statutes. As indicated in the preamble, there is no evidence that there is a problem in the governance of Scottish higher education institutions and the attempt to impose such a new power, without justification, is very worrying. Furthermore, it highlights a possible conflict between the draft legislation and the existing instruments of governance. In this context it is perhaps worth emphasising that the current Charter and Statutes clearly provide the University with robust autonomy in the conduct of its affairs. Any attempt to erode this autonomy needs detailed justification.

5. Part 2, paragraph 23 introduces a new power and duty. As mentioned above, the University's Charter and Statutes already set out the University's duties "to provide instruction in such branches of learning as the University may think fit and to make provision for research and for the preservation, advancement and dissemination of knowledge in such manner as the University may determine". Any further constraint on the University's responsibilities in the provision of teaching and research is unacceptable. In particular there is, implicit in paragraph 23 (2), a narrow parochialism which is quite inappropriate to higher education. The University, in planning provision of its programmes of teaching and learning, has regard to the local, regional, national, UK and international needs when developing its programmes. It is important to the regional economy of central Scotland that the University remains an international provider of higher education, as well as attracting students from throughout the United Kingdom. There is an implicit narrowness in paragraph 23 (2) which, if implemented, could damage the University's strategic interests and lead to a wider decline of Scottish higher education.

6. Part 2, paragraph 24 imposes a new duty on the University in its relationship to the Funding Council which is both unnecessary and an intrusion on existing autonomy. The University currently derives less than 10% of its funding from the Funding Council and develops its own strategic plans in the light of the very wide range of its total operation. Much of the University's business is neither in the domain of Scottish Ministers nor the Funding Council. The implicit overlay of centralised planning is inappropriate and unacceptable.

7. Part 2, paragraph 26 demonstrates once again the *dirigisme* which appears to be at the heart of the draft legislation. In recent years the University has completed a very successful merger with the Forth Valley and Highlands and Western Isles Colleges of Nursing and Midwifery. These mergers came about through the introduction of NHS contracts for

the delivery of Nursing and Midwifery education. It is widely acknowledged that the merger has been highly successful. Our experience demonstrates that successful merger is best achieved through enthusiastic engagement on the part of the staff of all institutions involved. This is an area where a "bottom up" approach is essential. The power accorded by paragraph 26 will be nugatory if it has to be exercised, since the imposition of a duty on institutions to consider a merger that they do not wish to consider themselves is bound to be a fruitless exercise. Furthermore such explorations can incur very significant amounts of public expenditure. The proposed power of direction is as unwise as it is unnecessary.

#### IV The Current Act

1. In responding to the consultation, it is judged helpful to draw the Executive's attention to the benefits of the current Act which appropriately sets out a mechanism for funding provision and provides a realistic and appropriate framework for ensuring full accountability for the public funding provided for higher education.
2. First, the Act proceeds from the correct starting point, which is to set out the establishment of the Funding Council as a body corporate whose purpose is to provide financial support for the activities eligible for funding under the Act. It is suggested that this should be the approach for the new Act legislation. It is not evident why the proposed merger of the Funding Councils necessitates a departure from this guiding principle in the legislation, at least in so far as it is concerned with higher education. Paragraph 40 of the Act brings helpful clarity as to the purposes of the funding provision; this is lost in the drafting of the proposed new legislation.
3. Paragraph 43 (5) of the Act gives the Secretary of State the power to confer or impose on the Council such supplementary functions relating to the provision of education as he thinks fit, but such powers are constrained by a duty of consultation imposed upon the Secretary of State by Paragraph 43 (6). It is not apparent from the draft Bill that there is any equivalent duty to consult imposed upon the Scottish Ministers in relation to their powers to direct as conferred by Part 1 (6) of the draft Bill.

#### V Conclusion

It is evident from the above that the University is seriously concerned by the framing of the draft proposed legislation which would confer new and unnecessary powers upon both Scottish Ministers and the proposed merged Funding Council. It is not evident that the principles from which the present Act proceeds have in any way ill served the higher education sector in Scotland, or the national interest, over the past decade or more. Furthermore, it is clear in the present Act that an appropriate balance has to date been struck between the powers of the Higher Education Funding Council and those of the University as conferred by its Charter and

Statutes. It is believed that this balance would be seriously disrupted by the draft legislation, if enacted, and may lead to the need for a very careful and equity-based review as to the appropriateness of the powers suggested by the draft legislation in the context of the University's Charter. It is emphasised once again, for the avoidance of any doubt, that the University absolutely accepts the duties of accountability which follow from its receipt of substantial public funding. The University is fully committed to seeking to ensure best value for the public funding provided. Nevertheless, it must be recognised that much of the University's activity is not funded by the Scottish Higher Education Funding Council, and therefore the powers taken by the Funding Council and Ministers should relate to the funding provided and not impose further constraints which, in due course, stifle the creativity of the institution and make it significantly harder to attract the high quality input that we presently gain from our members of Court. Such a weakening of Scotland's universities will undermine one of the essential elements of a "smart, successful Scotland".

University of Court  
21 June 2004