



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

Summary

This consultation response affirms Scottish universities' support for the principle of effective articulation between further and higher education, and for the creation of a single funding council, but states our opposition to the elements of the Executive's proposals which

- threaten the funding which we need to deliver international-quality learning and teaching;
- threaten new bureaucracy and controls which will reduce our efficiency and compromise our ability to act enterprisingly and innovatively; and
- threaten the distinctive 'brand' of Scottish higher education as one of Scotland's leading products.

1. Introduction

1.1 Universities Scotland welcomes the opportunity to respond to the consultation paper on the proposed merger of the funding councils for further and higher education. We also wish to record our appreciation of the willingness of Ministers and officials to engage openly and freely in discussion on this important subject. Our comments on the proposals, both those that are supportive and those that are critical, are made in the context of our vision for Scottish higher education and of what it can do for Scotland.

1.2 Higher education is of fundamental importance to Scotland because of the benefits it delivers in social, cultural and economic terms. The most vital benefit of all is the opportunity it provides for learners to achieve the highest levels of educational attainment of which they are capable, and to acquire the habit of learning. The personal fulfilment of learners brings other benefits too, most importantly for the economy. The knowledge economy is the right way forward for Scotland, and one essential prerequisite is that Scotland be a learning nation that encourages its people to aspire to the highest possible levels of intellectual achievement. Labour market projections by the Institute for Employment Research show that the demand for graduates will increase significantly in the current decade, and that opportunities for those without post-school qualifications will decrease correspondingly. Our higher education system is rightly regarded as being world-class, but it is vulnerable. It needs to be empowered and resourced to enable it to deliver the people the knowledge economy requires. Striving for excellence has to be encouraged, and must not be mistaken for elitism.

1.3 Of course it is not just in meeting the needs of learners that higher education is crucial. A smart successful Scotland also depends on thriving and internationally competitive research and innovation in its universities and specialist institutions. It is essential that the new council attaches at least as much importance to supporting excellence in research as SHEFC does now, and we comment on this in more detail below, particularly in paragraph 4.3.

1.4 Nor are the benefits purely economic. The encouragement to everyone to realise their full potential through education is the foundation for a healthy civic society, and the underpinning for our cultural identity. Higher education – and not only the universities but the specialist institutions too – is a key element in the positioning of Scotland as one of the world's leading small nations. Our higher education institutions have a reputation for excellence in learning and teaching and in research which we cannot afford to see compromised or diluted. In sum, higher education is of strategic importance to the great majority of the Scottish

Executive's main policy priorities, and especially to its top priority of economic growth. Therefore the direction of change should be towards supporting and enabling higher education institutions to play their part in achieving these objectives to the very best of their ability, and any change that might have the opposite effect ought to be avoided.

2. Policy and funding

2.1 The issue of funding is so vital that Universities Scotland's support for the proposal to merge the councils must be conditional on a clear commitment that higher educational institutions will be funded at a level that will allow them to remain internationally competitive. The Transparency Review work co-ordinated by the Treasury has demonstrated that public funding currently falls short of meeting the full cost of educational provision, and that it is only by HEIs cross-subsidising provision from other income sources that the sector's competitive position is being secured. It is important that public funding be increased to close the gap which exists at present. Correspondingly any reduction in resourcing would have potentially grave consequences.

2.2 Higher education institutions have been major drivers of change in Scotland, achieving major structural changes including nine mergers in as many years. We are enthusiastic about developing all parts of our system of education to improve and extend the opportunities for learners, and by pioneering the SCOTCAT system prepared the ground for the still more ambitious SCQF. We set out our vision of higher education and of what it can deliver for Scotland in our publication *The Knowledge Society*, which we submitted as evidence to the Scottish Executive's review of higher education. Our most substantial criticism of the current proposals is that they establish new bureaucratic controls, but not a vision or a policy for further and higher education's contribution to Scotland's well-being. Such recognition as there is of the value of higher and further education is expressed largely in terms of the economic contribution, and even that is excessively narrowly defined. The approach is predominantly mechanistic and instrumental, showing little understanding of the extent to which a successful knowledge economy is dependent on creating conditions which support intellectual endeavour at the highest levels. There is little recognition of the diversity of the agenda addressed by higher education institutions – for example the vital international dimension of their activities – or of the importance of minimising regulation. Nor do the proposals address the urgent policy imperative of tackling the longstanding underinvestment in higher education, and ensuring that Scotland retains its competitive advantage in this area by responding not just to the changes in England but to increased investment being made in many key competitor countries.

2.3 Although the draft Bill does not of itself prescribe new approaches to funding, we have serious concerns about the possible implications of comments in the consultation paper. The assumption behind the statement in paragraph 37 that "we...need to think in less stratified ways about how, where and by whom provision is offered" is unjustified. There is less stratification in Scotland than most other countries, as is demonstrated by the contribution made by further education colleges to higher education delivery, as well as by the Crichton and UHI Millennium Institute projects. We support flexibility and innovation in educational provision. We also regard diversity and clarity of mission as vital, and believe that the role of higher education institutions is fundamentally different in character from, and complementary to, that of other providers. There is common ground between the two sectors, but areas of distinct difference such as the research mission of higher education and our commitment to education in an environment informed by that research. Funding must reflect the fact that different programmes at the same SCQF level offer different learning experiences. A degree level learning experience is not the same as one leading to a non-degree qualification. Special arrangements need to be made to achieve smooth articulation between one type of learning and the other, and it is of real benefit to learners that Scottish universities and colleges are so strongly committed to extending the opportunities for HN students to progress to degree level study. However, it should be recognised that there are costs – and real benefits in terms of quality of education and development of flexible social and intellectual skills for employment – associated with teaching by highly-qualified academics in institutions

with internationally-competitive facilities such as laboratories and research libraries to support the learning experience. Any new method of funding which reduces the resources allocated to higher education institutions, or which fails to take account of levels of funding for institutions of a similar type in our leading competitor countries, will do great damage.

2.4 We believe that there are benefits which can be realised through merger of the funding councils. A shared executive has served the two councils well, but it is preferable for that executive to report to a single council rather than to two. This should result in improved efficiency and clearer accountability. However, we note that no significant savings are anticipated, since the consultation paper (paragraph 39) states that it is "not a purpose of this merger to reduce the staffing levels or running costs of the two Councils". We think that a smaller bureaucracy would have a clearer strategic focus, and be less tempted to be drawn into planning and management which is much more efficiently undertaken at institutional level. It has been suggested that a single council will enable the better integration of lifelong learning opportunities, and we agree that the council will have a valuable role in supporting this work. A single council ought to have a better understanding and overview of the full range of higher and further education and of the way in which the various parts relate to each other, and as a consequence should be better able to support and facilitate collaborative work. However, the organisations which deliver the substantive benefits are Scotland's higher education institutions and further education colleges. Like our colleagues in the further education sector, we strongly support the extension of our collaboration and the improved articulation of courses for the benefit of learners. The extent of this collaboration is already much greater than in other parts of the UK and compares favourably with most other countries, as was confirmed by the research undertaken for the Scottish Executive Enterprise and Lifelong Learning Department in 2002 by Osborne, Gallacher and Murphy. The fact this has been achieved mainly by the institutions themselves, supported by two separate funding councils, indicates that their merger is not a prerequisite for success. There will be some additional benefit from merger, but it should not be exaggerated. Our support is therefore qualified and conditional. If the overall package is poorly constructed it would be easy for the disadvantages to outweigh the modest benefits.

2.5 The danger that the benefits could be outweighed by disadvantages is most readily avoided by focusing simply on the merger of the existing councils and resisting the temptation to make more far-reaching changes. We think that the Bill should begin, like the 1992 Act, by providing for the establishment of the new funding body and by stating its main purpose, namely to distribute funding to universities and colleges for activities eligible for such funding. Moreover, additional powers with respect to either sector which are not present in the 1992 Act should not be granted to Ministers or to the new council unless there is clear and unambiguous evidence that there is some serious defect in the existing legislation and that these powers will serve some necessary purpose. It is our view that some of the proposals contained in the consultation paper are more far-reaching than simple merger of the existing councils, and that the draft Bill does grant significant additional powers to Ministers and the new council which are unjustified and unnecessary. Without substantial changes the disadvantages of the current proposals would considerably outweigh the benefits. In the remaining sections of this response we outline the other major areas of concern and indicate the changes which are required.

3. Innovation, creativity and enterprise

3.1 One of the most important factors in the success of Scotland's higher education institutions is the extent of their independence through effective lay governance and professional management and the finely tensioned freedom they are able to exercise in a rapidly changing world, while still being fully accountable for the use of the public funding they receive and responding to government policy priorities. This framework produces institutions which are innovative, creative and enterprising, capable of initiating ground-breaking schemes which could not readily be undertaken by a public sector organisation. It also enables them to use public funding as leverage to raise a substantial and increasing proportion of their income

in competition and from private sources. And it enables them to recruit outstanding individuals from other sectors to serve on their governing bodies because these individuals believe that they are taking on real and meaningful responsibilities in a good cause. This model is much admired in Europe and in other parts of the world where there is more direct political control of universities, but where it is now seen that this comes at a high price: less enterprising, more slow-moving systems where dependence on public funding is much higher than it is in the UK. In the UK itself, the recent Lambert report on business-university collaboration explicitly rejected the "one size fits all" approach, and recommended "a significantly lighter-touch regulatory and accountability regime for well-run universities". In view of these facts, it is a mistake to apply a regulatory regime developed for further education colleges to higher education institutions. Such an approach fails to take account of important differences such as funding sources, mission and the international market for higher education. The 1992 Act recognised the significance of these differences, and notwithstanding the fact that it covered both higher and further education, it specified a different regulatory regime for each. The main purpose of the remainder of this section is to draw attention to a number of aspects of the proposals which appear to limit the ability of institutions to govern and manage themselves, and to extend the powers and duties of Ministers and the new council, in particular by facilitating more centrally-directed planning.

3.2 We support and we practise the planning of educational provision. However, we have grave concerns about the fact that both consultation paper and draft Bill imply a more interventionist central planning approach. We oppose any move in this direction primarily because it has a very poor track record, whereas planning driven mainly at institutional level has proved remarkably successful. Even when dealing with apparently straightforward issues such as the supply of doctors and teachers central planning has been erratic at best. More ambitious attempts to plan provision at subject level, such as the "rationalisation" attempted by the Universities Grants Committee in the 1980s, have done more harm than good: some of today's most successful academic developments survived only because the UGC's plans were frustrated by institutional independence. Planning has been most successful at institutional level: the viability of an institution is the responsibility of its governing body and chief executive, and this requires that they have discretion to determine the range of educational provision to be offered. The effectiveness of this arrangement is clearly demonstrated by the success of HEIs in consistently delivering the Scottish Executive's student number targets each year. They have also been responsive to the priorities of Scottish Ministers as indicated in their letters of guidance to the funding council, and to the steers given by the council using the funding levers available to it. The system works best when Ministers develop a broad vision for higher education and provide the funding body with the resources necessary to enable HEIs to deliver, and when that funding body allocates this public funding on a fair and rational basis, leaving the detailed planning responsibility at institutional level.

3.3 There are instances of provisions of which we are largely supportive, but where we think that some minor adjustment is desirable. For example, we understand the rationale for the new provisions on additional grants in section 5 of the draft Bill, and agree that it fills a gap in the existing legislation. However, it would give a clearer indication of the intent behind this part of the Bill if the wording were amended to indicate that additional grants were exceptional, would meet the full cost of the additional provision which the Scottish Ministers were seeking, and would never represent a significant proportion of the total grant funding of any institution. A more general observation is that there are a number of sections in the draft Bill, some of which are dealt with in more detail below, where the powers and duties specified are not objectionable in principle, but where their application appears wider than is necessary to satisfy the need to ensure proper accountability for the use of public funds. In addition to the examples dealt with more fully, this applies to the provisions of section 14 on efficiency studies and section 15 on academic quality. We do not seek radical change of either paragraph, but think that clearer and tighter boundaries should be set.

3.4 We are not convinced that section 1 of the draft Bill is necessary at all. However, if it is retained, we think that the duty and the consequent powers specified in it are too wide-ranging. In particular, the duty in respect of research is too broad, given that only a minority of

funding for research is provided by Scottish Ministers. If it is considered necessary to place a statutory duty on Ministers we think that it would be more appropriate to specify it in terms of a duty to provide funding for post-compulsory educational provision having regard to the needs of learners and to support research activity in higher education institutions. In subsection (2) it should be made clear that Scottish Ministers are limited by constraints no less than those which apply under the 1992 Act.

3.5 In section 7 of the draft Bill, which gives Ministers powers to issue directions on the provision of financial support to institutions in cases where they believe there has been financial mismanagement, the requirement on Ministers to consult the council or the institution concerned before issuing directions, as is specified in section 54(3) of the 1992 Act, has been removed. We suggest that the obligation to consult should be retained.

3.6 Section 13 of the draft Bill contains an entirely new provision that the new council can require the governing body of any organisation it funds to hold a special meeting to be addressed by the chief executive or other member of the council. This breaches the principle we set out in paragraph 2.5 above, that additional powers should be granted only where there is clear and unambiguous evidence that there is some serious defect in the existing legislation and that these powers will serve some necessary purpose. There is no evidence that existing provision is defective, and what is proposed is therefore unnecessary. The direction of governing bodies in such a manner represents a serious erosion of their authority. Moreover, the statutory institution of 'second guessing' of universities' management by the funding council would damage university ability to make responsible decisions and be held accountable for them by governing bodies, which already have sufficient non-executive membership to offer an effective level of scrutiny and challenge.

3.7 We believe that section 23 of the draft Bill on the duty to provide education is redundant and should be deleted. The duty to provide education is already specified in the Charters or other governing instruments of institutions, and the requirement to ensure that this provision is efficient is also satisfied in other ways, such as conditions of grant or the efficiency studies referred to in section 14 of the draft Bill. Within this framework, universities should be able to decide what range of provision is appropriate for them, taking account of their areas of relative strength and weakness and of changing market conditions. Section 23(2) is not only unnecessary but also parochial, placing undue emphasis on the area in which the institution is located, which is especially inappropriate in relation to higher education institutions with their national and international missions. The section leads to the possibility of third parties challenging universities in court about whether they have made a 'suitable range' of provision, which would be another constraint on managers' and governing bodies' ability to make responsible and accountable decisions without institutionalised second-guessing.

3.8 The provisions relating to development plans in section 24 of the draft Bill are too open-ended, especially when read alongside Annex A of the consultation paper which envisages annual production of plans including 'programmes of learning', research programmes, capital expenditure plans and estates strategies – a disproportionate burden for any organisation to produce annually. Plans should not be required on an annual basis. It would be preferable to ask for plans periodically, say every three or four years, with a light-touch annual review of the plan in intervening years. Moreover, it is not reasonable to expect governing bodies of institutions which derive a substantial part, and in some cases most, of their income from sources other than Scottish Ministers to provide plans in any form which the new council might require. It is reasonable to require that they provide a document covering their plans for those activities which are supported in whole or in part by funding provided by Scottish Ministers, and that sufficient information about the overall financial health of the organisation should be provided to give Ministers and the council proper reassurance on the safety of their investment. This section should be redrafted accordingly.

3.9 Much of what we have said in paragraph 3.6 above about section 13 of the draft Bill also applies to the new provisions on merger evaluation in section 26. We consider them unnecessary and a transgression on the authority of governing bodies. We also think that any

use of this power would be ineffective and even counterproductive. As we said in our response to the pre-consultation discussion paper, "mergers are most likely to succeed where they are driven by a belief in their value shared by the organisations concerned". We also emphasised the importance of Ministers being supportive of such initiatives, and we continue to believe that it is this that will be most helpful, rather than the use of statutory powers. Those governing bodies which are receptive to considering the possibility of merger will respond readily to informal approaches; no statutory stimulus is required. Where they are not receptive, the use of a statutory requirement to force them to consider merger will cause resentment and ill-feeling which is more likely to set back relations between the organisations concerned than it is to bring merger about. Moreover, the cost of any such exercise would be substantial, running to tens and more probably hundreds of thousands of pounds.

4. Identity, mission and reputation

4.1 One of the most fundamental ways in which the proposals appear to go much further than simply merging the councils is by implying merger of higher and further education sectors. Both the consultation paper and the draft Bill convey the strong impression that the underlying concept is of a single tertiary sector: the references to tertiary education are pervasive, and those to higher or further education are the exception. Indeed, because the term "tertiary education" is so central to the Bill as currently drafted, it is necessary to devote a full page to defining what it is. Universities Scotland accepts the assurances of Ministers that in fact they do not intend to merge the higher and further education sectors or to weaken their identities, and therefore proposes that the term "tertiary education" should not be used, and that instead the legislation should use the existing categories and definitions. Our preference would be that this is reflected in the name of the new council, and that it is called the Scottish Higher and Further Education Funding Council.

4.2 The proposal that all the organisations to be funded by the new council should be known as Specified Tertiary Education Providers (STEPs) also tends to imply moves towards a single sector. Concerns about this have been heightened further by the subdivision of existing higher education institutions into two groups. We welcome the public signals from the Minister that he is receptive to changes in these parts of the proposals. We consider it essential that the term STEPs be abandoned, and that a single undivided category of higher education institutions is retained. We recognise that for drafting purposes, it is necessary to have a term to describe all the bodies the new council will fund, but we suggest that a more neutral term such as "funded bodies", or the straightforwardly descriptive "universities and colleges", would fulfil that requirement. Very stringent criteria must be satisfied before any additional body is recognised as eligible to receive funding, and in particular a distinct process for designation as a higher educational institution must be retained and be applied rigorously.

4.3 The issues of terminology covered above matter because they relate to more substantive and vital issues concerning the distinctive mission of higher education institutions, their international role and reputation, and the strength of their brand. In terms of mission the higher education sector is highly distinctive, comprising two main elements: higher learning and research. We are delighted that the consultation paper and draft Bill recognise the significance of the research mission. In relation to research the only modifications we suggest are that experience of research should be added to the criteria to be taken into account by Ministers in appointing members of the new council. We think that at least two members of the council should be, or have recently been, active in research at a senior level in higher education, and that one of these should be appointed Convener of the Research Committee.

4.4 However, distinctiveness of mission does not relate only to research: the proposals do not sufficiently recognise the distinctiveness of the sector's role in relation to learning. The important contribution which the further education sector makes to higher education provision in Scotland (22.3 percent of higher education students studied² in further education colleges in 2002-03) is mainly in the form of Higher National programmes, valuable both in their own right and because for some students they are a progression route to degree level work. Over 99

percent of that degree level study is undertaken in higher education institutions, and the learning style with its emphasis on inquiry-based learning is very different. The role of each sector is vital, and there is of course some overlap as well as very substantial collaboration and articulation between them. However, they are also individual and distinctive. They make major, but different, contributions to meeting the country's needs for skilled and highly educated people. Effective articulation between further and higher education does not require erosion of the distinct mission and identity of universities.

4.5 Scotland's higher education institutions have a reputation that extends beyond Scotland itself. Scottish universities and Scottish higher education are strong brands, which add to Scotland's international standing, and it is essential that legislation and administrative arrangements affecting the sector recognise its distinctiveness and seek to maintain its reputation and strengthen the brand. Any dilution of the brand will be damaging and must be avoided. Section 23 of the draft Bill suggests a narrower and more local vision. We think that this section is unnecessary in any case (see 3.7 above) and ought to be deleted.

4.6 One reason for the strength of the brand is that higher education institutions in Scotland have a strong commitment to ensuring that the learning and teaching provided is of a high standard and quality, and that it is fit for purpose. This is assured by rigorous external academic quality mechanisms. Seen in this context, the proposal in the consultation paper (paragraph 67) that lecturing staff be required to gain a teaching or professional qualification is excessively rigid. It would place Scottish HEIs at a competitive disadvantage in recruiting leading academic staff from overseas and elsewhere in the UK where no such qualification is required, and would unreasonably constrain the ability of institutions to recruit gifted staff from other sectors, as well as undermining innovative approaches to teaching involving the use of other professionals including clinicians and business leaders. It is also inconsistent with the principle that Ministers should not interfere with the process for the appointment of academic staff.

5. Conclusion

5.1 Universities Scotland believes that there are some serious flaws in the proposals and draft Bill as currently constructed, but it also believes that these can be corrected. Ministers have made it very clear that they recognise the vital contribution which higher education can make to the delivery of their policy priorities, and that they are committed to supporting the sector to enable it to deliver this contribution. We look forward to continuing to work with them towards realising their vision of the learning nation and the knowledge economy.