



SCOTTISH EXECUTIVE

A CHANGING LANDSCAPE FOR TERTIARY EDUCATION AND RESEARCH IN SCOTLAND

**A Consultation Paper on the Merger of The Scottish
Further Education Funding Council and The Scottish
Higher Education Funding Council**

April 2004

MERGER OF FUNDING COUNCILS FOR FURTHER AND HIGHER EDUCATION

Ministerial Forward

Lifelong learning is at the heart of the Scottish Executive's commitment to create a Scotland where enterprise can flourish, where opportunity does exist for all and where our people and our country have the confidence to face the challenges of a global society.

As a country, we invest a significant proportion of our wealth in FE and HE. As a result we have colleges, universities and other institutions of which we can be proud, and teaching and research that is in places world class - nearly 50% of research is rated as internationally competitive in the Research Assessment Exercise (RAE). But there is no room for complacency. The world around us is not standing still. If we are to retain a competitive edge, both economically and academically, and if we are to meet the aspirations of our own citizens - businesses, students, people from disadvantaged backgrounds, people looking for work, or whoever - we have to ensure that the money we are investing is being used to the best possible effect.

That is what our commitment as an Executive to lifelong learning, as set out in our strategy "Life through Learning; Learning through Life", is all about. And the proposal under discussion in this document, the merger of the Funding Councils, should be considered in that context. This is not just a technical exercise. It is a vital part of the work to achieve greater strategic co-ordination and coherence of tertiary education in Scotland that is fit to face the challenges of our age and strong enough to drive the economic success on which the country's prosperity depends.

The new body will provide one strategic organisation for tertiary education in Scotland, establishing a more integrated view of lifelong learning. The new body will have a single overview of, and be able to make decisions about, both further and higher education, thereby maximising the benefit of direct read across from experiences in one sector to the other. By providing a single overview of the tertiary education system it will be able to provide a coherent point of linkage between the objectives of post-school education and Scotland's national economic objectives. The merger will also aid the achievement of parity of esteem for different types of learning and learning providers, recognising the different – and often complimentary – strengths of different institutions.

This consultation paper details our proposals for the new body, and how it will relate to tertiary education providers. We know that our FE Colleges and HE Institutions are among the best in the world, and we want to build on these successes, creating the right relationship between the checks and balances necessary to ensure Best Value from tertiary education while allowing maximum autonomy for these critical providers.

This consultation will run for three months, and we welcome views on the proposals for the new body.

Jim Wallace MSP

Deputy First Minister and Minister for Enterprise and Lifelong Learning.

EXECUTIVE SUMMARY

THE CHANGING LANDSCAPE

In order move towards achieving greater parity of value between further and higher education, and start considering the range of lifelong learning, we intend to bring together the definitions of further education and higher education and refer instead, in broader terms, to tertiary education.

STEPS

In supporting the concept of tertiary education, we propose to create a new overarching category of providers eligible for funding through the new body. These will be *Specified Tertiary Education Providers* (STEPs). In the first instance, these will be the current HEIs and colleges whose individual titles and designations will not change. However, in future it will be possible for the new funding body to specify other providers for the purposes of funding provision of lifelong learning.

This does not mean that we regard all institutions as being the same, but creates a common classification for all bodies being funded by the new body. **We fully recognise the distinctive legal status, character and mission of HEIs and Colleges, and there is no intention to change any of these.** Designation as STEPps will not diminish the diversity of these distinctive contributions to tertiary education in Scotland.

HEIs and Colleges have different governance arrangements in place based on differing pieces of legislation. It is not intended to interfere with any of these provisions. This means that Scottish Ministers and the new body will have the same relationship with the individual institutions as they do at present, for example, Scottish Ministers can close a College but not a pre-1992 university – this will not change.

For this reason, we have grouped STEPps into different categories as convenient ways of describing how Scottish Ministers and the new body can interact with them. The sections of the 1992 Act which describe these relationships will therefore remain in force.

ROLE OF THE NEW BODY

One of our main policy intentions is to broaden the role of the new body to ensure that it has regard to the future skills needs of Scotland. In exercising its function, the existing Funding Councils provide funding for the Colleges and HEIs but they also have an important role in regulating, influencing, incentivising, stimulating and supporting activity in the sectors.

We believe that this wider responsibility to use public funding in support of the delivery of Ministerial priorities should be more explicitly recognised. We will expect the new body to take a strategic lead in Scottish tertiary education and research by identifying, encouraging, influencing facilitating and advising on opportunities for strategic development particularly in the following areas:

- Responsiveness and relevance of learning provision
- Quality of learning provision and research
- Coherence of provision and collaboration between providers

- Mergers and new institutional models
- Progression through learning (including articulation).

RESEARCH

The research base must be fully supported by the new body to ensure that Scotland remains able to attract the best researchers and postgraduate students and thus is also able to compete successfully for research funding. It will also be essential to ensure that the new body continues to increase its support for knowledge transfer, and within that the exploitation of research for the wider benefit of the economy and society.

Scotland continues to be a home for high quality research and the new body will be expected, as now to form strong links with the research community and work closely with its stakeholders to maximise collaboration and partnership in the sector and further enhance commercialisation and knowledge transfer. The draft Bill makes provision for a statutory research committee to support this.

FUNDING

With this legislation our intention is to modernise the accountability structures that surround our substantial investment in tertiary education in Scotland to make it more coherent and transparent.

We propose that the Scottish Parliament allocate funding for the tertiary sector to the new body in total terms, and that the new body propose an allocation based on Ministerial guidance, for agreement by Scottish Ministers. Ministers would recommend the basis for the allocation of funds which would be high level, and could be by type of institution, as at present, or over time by other criteria, for example non advanced teaching/ advanced teaching/ research, or SCQF levels. The new body will be required to report to Parliament on an annual basis on the activities they have funded.

For the first year or so, we would expect the funding allocation to remain by type of institution – this would be based on existing relative levels of funding to SFEFC and SHEFC. This will allow time for the new body to develop funding systems and minimise any potential for disruption across the sectors. A similar type of arrangement was put in place to safeguard the distribution of funds between teaching and research when SHEFC first distributed funds in 1993.

POWERS AND DUTIES

Like all Non Departmental Public Bodies, the new body will be intended to achieve Best Value for the provision it funds and Ministers will expect the new body to ensure what it funds is fit for purpose.

Scottish Ministers and SFEFC currently have a duty to provide ‘adequate and efficient’ further education. There is no corresponding duty for HE. We propose to extend this duty on Scottish Ministers and the new body to cover all tertiary education and research.

STRUCTURE

We do not propose to specify any organisational structure for the new body, with one exception. As mentioned above, we believe that, given the strategic importance of research, there should be a Research Committee specified as a statutory committee.

THE DRAFT BILL

The draft Bill attached to this Consultation Paper sets out to modernise the way Scottish Ministers and Parliament relate to the new body and the sector and increase transparency, value for money and accountability.

The draft Bill deals with the aspects of our proposals where we believe legislation is required. However, as detailed above, we have left a significant proportion of the 1992 Act intact. The sections relating to colleges and HEIs, and how the Councils and Scottish Ministers interact with them will, to a large extent remain. To assist readers, Annexes H and I set out what in the new Bill is new or modified in comparison to the 1992 Act and what provisions we intend to leave in force in the 1992 Act.

A CHANGING LANDSCAPE FOR TERTIARY EDUCATION AND RESEARCH IN SCOTLAND

This consultation paper which follows has been structured as follows

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THE CHANGING LANDSCAPE

Scottish Public Services Ombudsman

ROLE OF THE NEW BODY

Responsiveness and relevance of learning provision

Quality of learning provision and research

Coherence of provision and collaboration between providers

Mergers and new institutional models

Progression through learning (including articulation)

FUNDING

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INTRODUCTION

The Vision for Scotland – The Partnership Agreement

1. In May 2003, the Executive published "A Partnership for a Better Scotland"¹. This Partnership Agreement reflects the Executive's priorities for the next four years and sets out Scottish Ministers' vision for:
2. "A Scotland which cares for its people and where opportunities are increasing for everyone, enterprise is rewarded, and where people have confidence in their communities and in public services. A Scottish government that focuses on the issues that matter the most to people, is outward looking and confident, and delivers real sustainable improvements in our quality of life."
3. The Partnership Agreement sets out an agenda for delivering this vision, and demonstrates Ministers' determination to work with communities to create a Scotland we can all be proud of, focusing on four key priorities:
 - Growing the economy
 - Delivering excellence in public services
 - Supporting strong communities
 - Developing an ambitious and confident Scotland.
4. Colleges and HE Institutions (HEIs) have a key role to play in helping to deliver these Ministerial priorities, and to support them in achieving this, the Agreement cements the previous recommendations to merge the Further and Higher Education Funding Councils and "charge them to have regard to the future skills needs of Scotland".

The Lifelong Learning Strategy

5. The proposal to merge the Funding Councils was initially raised during the Scottish Parliament's inquiry into lifelong learning and was subsequently included as a recommendation in the Executive's Lifelong Learning Strategy, "Life through Learning; Learning through Life" published in February 2003². The strategy developed the theme of **relevant** provision, that is:
 - **Responsive** to the needs of employers and individuals
 - **Flexible** on the part of providers
 - Of high **quality**, and
 - **Coherent**, transparent and offers the same opportunities to all.
6. The Lifelong Learning Strategy states that:
7. "We will merge SFEFC (the Scottish Further Education Funding Council) and SHEFC (the Scottish Higher Education Funding Council). This merger would make possible greater **comparability** and **transparency** in the way that different

¹ Available online at: www.scotland.gov.uk/library5/government/pfbs-00.asp

² Available online at: www.scotland.gov.uk/library5/lifelong

types of institution and levels of courses are funded in tertiary education. It will also provide an opportunity to ensure even **closer integration** between the work of the Funding Councils and the **Enterprise Networks**.

8. The strategy goes on to define the role of the existing Funding Councils as:
9. "...to respond constructively to Scottish Executive policy and guidance to:
 - Distribute and allocate financial resources to deliver effective and efficient provision by colleges and HEIs
 - Encourage the delivery of **quality** outputs from colleges and HEIs
 - Encourage the **responsiveness** and **relevance** of provision
 - Encourage appropriate **collaboration** between providers, and
 - Advise the **Scottish Executive** as appropriate".

Higher Education Reviews

10. While developing the Strategy, the Executive has also been undertaking a major three-part review of higher education. The overall remit of this review has been:
11. "To identify how the Scottish Executive Enterprise, Transport and Lifelong Learning Department's investment in the delivery of higher education can most effectively maximise the personal, social and economic benefits of teaching and research over the medium to long term, and support a culture of challenge, innovation and partnership in and beyond Higher Education Institutions".
12. The first part of the review centred on the operation of the Scottish Higher Education Funding Council³. This paved the way for a second part which focussed on the wider issues within the sector. The report of this second part – "A Framework for Higher Education In Scotland"⁴ – was published in March 2003, and set out the Executive's ten year strategy to develop the HE sector. The Framework also undertakes to introduce legislation to merge SHEFC and SFEFC, stating that "This merger will make possible greater **comparability** and **transparency** in the way different types of institution and levels of course are funded in tertiary education".
13. The third phase of the review considered the competitiveness of Scottish higher education in a UK and wider context, including the implications for Scotland of any new funding system implemented in England. The final report of this final stage of the review was published in March 2004⁵.

Initial Consultation

14. Last year, we consulted with key stakeholders on broad policy issues. This consisted of consideration of a discussion paper, and a series of meetings. At this time we asked for view on the role, powers and scope of the new body. The discussion paper was sent to

³ Available online at: www.scotland.gov.uk/who/elld/reports/Review_Scot_High_Ed_Fund.pdf

⁴ Available online at: www.scotland.gov.uk/library5/lifelong/herp2-00.asp

⁵ Available online at: www.scotland.gov.uk/library5/lifelong/che3m-00.asp

sixteen bodies, and we received written responses from twenty two. We also met with eleven of the key stakeholder bodies.

15. There was broad agreement on the principles of merger, although some partners raised concerns about our proposal that “We start from the assumption that, unless there is a very good reason to the contrary, any conditions applying to one sector should apply to both”. This was seen by some as an attempt to undermine the distinctive roles of different institutions.
16. This is not the case and we were happy to give reassurances that we believe that the distinctiveness of institutions is a strength of the system, and do not intend to undermine this. In fact, our intention is to enhance this diversity and allow it to flourish by creating a legislative framework which recognises that all partners have an equal and varied contribution to make, and this is reflected in the proposals which follow.
17. As part of an ongoing pilot approach to consultations, we have also given key partners the opportunity to have a platform within this consultation document. This allows these partners to express their views on the issues that matter to them. We hope this will encourage different views to emerge and be explored in a positive manner and allow the legislation to be robust and flexible enough to meet the needs of Scotland and the requirements of the sector now, and in the future.
18. There will be a relatively finite group of consultees, and it is therefore proposed that, in the main, the consultation will be electronic. We believe this will allow us to reach all of our target audience without the need for production of a ‘glossy’ consultation paper.
19. All of the organisations listed in Annex G will receive an electronic copy of the document. Colleges and HEIs will be asked to place a hard copy of the paper in their libraries. NUS Scotland and all relevant trades unions will also receive an electronic copy. They will be asked to bring the consultation to the attention of staff and students, who will be able to access the document. Staff and students in colleges and HEIs have ready access to ICT, and we believe this will be the most efficient way of reaching all of our main target audience.
20. The electronic format has several advantages over the paper form, but principally it will allow readers to search and sort by the issues that matter to them, without having to skim through the whole document.
21. A copy of the paper will also be placed on the Scottish Executive website. Hard copies will also be available (although not in ‘glossy’ format) for anyone who requests a copy.
22. **We are seeking views on the proposals detailed below. Throughout the consultation document we set out our policy intentions in positive, unqualified terms. This allows us to set out our proposals, but should not be seen as indicating that final decisions have been taken.**
23. **We have decided, in general, not to ask specific questions on each particular point, but rather we are seeking views from you on the issues that matter to you. We welcome thoughts from anyone on any aspect of our proposals.**

24. There are however, some areas where we are asking for views on specific questions. These are around the structures and function of the new body, and its culture and day to day operations. These will not have any legislative implications, but will assist in setting the context for the new body.
25. We are also seeking suggestions on a name for the new body. The draft Bill attached refers to the Scottish Tertiary Education Funding Council. Specific views are sought on the suitability of this name, and whether it adequately covers its greater strategic role, as well as its research responsibilities.
26. **How to respond:**
27. Written responses to this consultation paper should be sent to.

Merger of the Funding Councils Team
Enterprise Transport and Lifelong Learning Department
2nd Floor, Europa Building
450 Argyle Street
Glasgow G2 8LG
By e-mail to : fcmerge@scotland.gsi.gov.uk

Responses to this paper are required by Thursday 15 July 2004.

28. This paper can be found on the Scottish Executive's web site at www.scotland.gov.uk/consultations.
29. We will make all responses available to the public on the Scottish Executive website and in the Scottish Executive Library⁶ unless confidentiality is requested. Any confidentiality disclaimer generated by your computer system in an e-mail will not be treated as such a request. Confidential responses will be included in any statistical summary of numbers or comments received or views expressed. All responses not marked confidential will be checked for any potential defamatory material before being logged in the library or placed on the website.

Further Discussions

30. To supplement the information collected through written submissions we intend to host events around Scotland during the consultation period to discuss the key issues. These meetings will be held in June, and will be open to anyone with an interest in the merger. They will be held as follows, Dundee – 8th June; Edinburgh – 3rd June; Glasgow – 10th June; and Inverness – 1st June. If you would like to attend, please advise us by email on the address above, stating the venue you want to attend, so that we can make catering arrangements.

⁶ K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD. Telephone 0131 244 4552.

BACKGROUND

The Further and Higher Education (Scotland) Act 1992

31. The Further and Higher Education (Scotland) Act 1992⁷ removed further education colleges (FECs) from the management and control of the local authorities (with the exception of Orkney College and Shetland College). The 1992 Act made provision for the incorporation of further education colleges as autonomous institutions and set in place a framework for establishing a separate SFEFC to fund FE colleges. In 1993, responsibility for funding the FECs transferred from the local authorities to the then Scottish Office, which continued to fund them directly until the establishment of SFEFC in 1999⁸.
32. The 1992 Act also established SHEFC and brought together most higher education institutions (HEIs), including the ‘pre-1992’ universities, previously funded through UK-wide arrangements, into a single, unified HE sector in Scotland. It set out the powers and duties of the Scottish Ministers, the Funding Councils and, in the case of HEIs, the Privy Council. It made provision for:
 - Institutional mergers, closures, changes of name
 - A mechanism whereby FECs could be re-designated as HEIs
 - Additional institutions to be designated as eligible for funding by SHEFC (“designated institutions”) and for new HEIs to be established, and
 - HEIs other than the 8 pre-1992 universities to achieve powers to award their own degrees.
33. Parallel reforms were implemented for England and Wales through the Further and Higher Education Act 1992.

The need for change

34. It is clear to Ministers from the evidence of a number of Scottish reviews and inquiries into lifelong learning that the time is right to merge the Funding Councils. The current funding models relate to the type of institution rather than the level and nature of learning provision. SFEFC funds programmes undertaken in FECs, and SHEFC funds programmes undertaken in HEIs.
35. The new body will provide one strategic organisation for tertiary education in Scotland, establishing a more integrated view of lifelong learning and ultimately creating a more coherent system for learners. The new body will have a single overview of, and be able to make decisions about, both further and higher education, thereby maximising the effectiveness of public investment in tertiary education will also allow greater sharing of experience and learning between further and higher education.

⁷ Available online at: www.hmsso.gov.uk/acts/acts1992/Ukpga_19920037_en_1.htm

⁸ SI 1998/2887 – Available online at: www.legislation.hmsso.gov.uk/si/si1998/19982887.htm

36. By providing a single overview of the tertiary education system it will be more easily able to provide a coherent point of linkage between the objectives of post-school education and Scotland's national economic objectives. The merger will also aid the achievement of parity of esteem for different types of learning and learning providers, recognising the different – and often complimentary – strengths of different institutions.

Current funding

37. For both HE and FE in Scotland, current funding is by type of institution, rather than level of course. However, from the learners' perspective, there is no neat dividing line between what is provided by HEIs and what is provided by FECs. For example, around a quarter of students studying HE courses do so in an FE College, mostly on vocational courses at HNC/D level. We therefore need to think in less stratified ways about how, where and by whom provision is offered. It has been suggested by some that the rigidity of the institutionally based funding models inhibit flexibility, collaboration and innovation and may mean we are not as successful as we could be in widening access and diversifying the student body. New types of collaborative arrangements, such as the Crichton Campus and UHI Millennium Institute, are being developed that bring together FE colleges and HEIs to stimulate and meet demand for learning.
38. Taking the rapidly changing environment into consideration, it seems clear that if Scotland is to flourish then the current Further and Higher Education (FHE) landscape and funding arrangements need to adapt if they are to continue to stimulate lifelong learning and meet individual aspirations, and to be in a position to respond effectively to national priorities in relation to, for example, an appropriately skilled workforce.

Staffing

39. As the two Funding Councils already have a common staff, which facilitates close working and some synergies between the Councils, the efficiencies of shared working have already been met. However, these synergies are necessarily limited at the strategic level by the statutory requirement to have two separate Funding Councils, each with their own distinct statutory powers and duties and resources. It is therefore not a purpose of this merger to reduce the staffing levels or running costs of the two Councils. Schedule 1 of the draft Bill sets out the requirements for the new Council including references to staff, Council membership, committees etc.

LEGISLATING FOR MERGER

40. The planned merger of the Funding Councils is an opportunity to look again at legislation which underpins the tertiary education landscape in Scotland, and ensure that any new legislation is fit for purpose and enables Scotland's needs to be met without new legislation in the future.
41. The legislation required for the new body will, to a large extent, replicate existing provisions. For example in thinking about the way the two Councils are constituted, we have borrowed heavily from the existing model. There will, however, be areas where we are proposing changes. Annexes H and I set out what in the new Bill is new or modified in comparison to the 1992 Act and what provisions we intend to leave in force in the 1992 Act.

42. When SHEFC underwent a Policy and Financial Management Review (PFMR) in 2001-02 the positive contribution of the Council to the support of the sector was widely cited. Its approach to its role was seen as appropriate and its status as a non-departmental public body (NDPB) was valued. In his guidance to SFEFC for 2004-05 the Minister for Enterprise and Lifelong Learning announced that a PFMR of SFEFC would be conducted during the year and would be, “limited in scope, drawing on existing information, and will be conducted in tandem with discussions relating to the merger of the Councils.”
43. An important output from the PFMR of SFEFC will therefore be to inform the structure and functions of the new body and the culture and method of its day-to-day operation.
44. **In this context, we would be interested to hear what lessons you think we might learn from the operation of SFEFC and its joint executive and how might these shape the future direction of the new body?**

Diversity

45. We recognise that FECs and HEIs are autonomous institutions with distinctive characteristics and missions and we believe that this diversity is essential for the continued success of Scotland’s society and economy. While this diversity is key to what we want to achieve, we strongly believe that except in those areas where there is a very good reason to the contrary, the legislation should create an environment where the Council has the same powers and duties over all institutions. We believe this will assist the new body in developing relationships with the different tertiary education providers which it funds

THE CHANGING LANDSCAPE

46. Views about further education and higher education - and how and where best they should be provided - have changed fundamentally over the past 10 years, and the pace of change is accelerating.
47. The Further and Higher Education (Scotland) Act 1992 includes definitions of “further education” and “higher education”. Although these definitions are important, for example in defining eligibility in areas such as student support, definitions in legislation can sometimes create barriers to change in the future.
48. These existing definitions raise some concerns at the boundaries, for example, higher vocational education (higher national certificate and higher national diploma courses) currently falls within both definitions and there are further issues of dual definitions between further and secondary school education.
49. The majority of HNC/Ds are delivered through FECs, but some are delivered through HEIs. Some FECs offer degree level programmes under external validation arrangements, as do those HEIs without degree awarding powers.

50. The existing Funding Councils have put in place internal arrangements to develop policies that will encourage synergies between the sectors, including a joint committee structure, various other joint initiatives and reviews, and a joint corporate plan. These arrangements - along with the increasing number of links between individual institutions in the two sectors in their own right - are contributing to a coherent system of tertiary education, learning, training and research in Scotland.
51. When describing the new sector in order to reflect more accurately the reality of provision and to move toward greater parity of esteem between, and treatment of, further and higher education, we intend to bring together the definitions of the further education sector and the higher education sector and refer instead, more broadly, to tertiary education. To support the various provisions set out in the draft Bill, Section 2 sets out a single definition of tertiary education based on merging the existing legislation (sections 6 (FE) and 38 (HE) of the 1992 Act).
52. In doing this, we do not wish to remove the existing definitions of FE and HE altogether. This is a signal of intention to change how we think about and fund lifelong learning, and we do not expect any immediate structural changes to take place, other than the creation of the new body, as a result of the Bill.
53. We are also aware that these existing FE and HE definitions are used in many other important pieces of legislation, such as that governing student funding arrangements. For this reason, we do not intend to repeal the existing definitions in the 1992 Act.
54. We have considered using the Scottish Credit and Qualifications Framework (SCQF)⁹ as the basis for defining tertiary education and associated levels of provision, but were persuaded by arguments put forward during the initial consultation that the SCQF model is not mature enough at this stage. However, we would want to emphasise its importance in providing a common language, and facilitating articulation routes, and would expect to see its continued development and support by the sector.

The Scottish Credit and Qualifications Framework (SCQF) brings together all Scottish mainstream qualifications into a single unified framework and aims to:

- *Allocate credit and levels to all assessed and quality assured learning*
- *Signpost people of all ages and circumstances to appropriate education and training over their lifetime, and*
- *Help employers, learners and the public understand how qualifications can improve the knowledge and skills of Scotland's workforce*

⁹ Background on the SCQF is available online at www.scqf.org.uk. The Framework is attached at Annex D.

55. In supporting the concept of tertiary education, we propose to create a new overarching category of providers eligible for funding through the new body. These will be *Specified Tertiary Education Providers* (STEPs) and are covered by sections 21 to 28 of the draft Bill. In the first instance, these will be the current HEIs and FE colleges funded by SHEFC and SFEFC. However, in future it will be possible for the Scottish Ministers to specify other providers for the purposes of funding provision of lifelong learning.
56. All existing colleges and HEIs will be specified as STEP s on the day which the legislation comes into force and will retain their existing names and status. Current arrangements for the creation of new institutions and the merger or renaming of existing institutions will continue unchanged. It is expected though that over time potentially new models of tertiary education providers will emerge and that institutions will be able to change their names.
57. This new definition, does not mean that all institutions should be regarded as being the same, but creates a common classification for all institutions being funded by the new body. We fully recognise the distinctive legal status, character and mission of different HEIs and colleges. Designation as STEP s will not diminish the diversity of these distinctive contributions to tertiary education in Scotland.
58. Our HE institutions operate in UK-wide and international markets. Universities and other HEIs, for example, have traditionally focused primarily on teaching, scholarship and research, including the advancement of knowledge, testing the boundaries of understanding and advancing new, and sometimes controversial opinions. They have also provided education and training for the professions such as medicine, dentistry, the law, the ministry, engineering, and attract students from far beyond their immediate locale.
59. Colleges of further education have traditionally had a local focus, providing a wide range of non-advanced and vocational programmes, from standard grades and Highers to City and Guilds and higher national diplomas for employers, from language courses for non-native speakers of English to leisure classes. They promote social inclusion, increasingly attract students from further afield including internationally, and play a role in the transfer of knowledge and in developing innovative approaches to training and learning.
60. The draft Bill will include a list of all STEP s. STEP s are grouped into four different categories and the initial list of STEP s is attached at Annex B, and is included as schedule 2 in the draft Bill. The categories are convenient ways of describing how Scottish Ministers and the new body can interact with them. These are incorporated colleges, non incorporated colleges, designated higher education institutions and ancient and chartered universities
61. Scottish Ministers will also be able to specify other providers as STEP s and therefore make them eligible for funding through the new body. The legislation will specify basic conditions with which they must be able to demonstrate compliance and sustainability before becoming eligible to be specified as STEP s. These are detailed at Annex A.

62. STEPs will need approval from Scottish Ministers to change name. This is a change for incorporated colleges, and brings them into line with Designated HEIs. The Ancient and Chartered Universities will be required to give Scottish Ministers notice of intention to close, but Scottish Ministers will continue to have the power to close other STEPs as currently provided for in the 1992 Act.
63. Similarly, there is no intention to change any of the powers of the Privy Council in relation to higher education institutions specified in the 1992 Act, for example, those in relation to the power to award degrees.
64. Scottish Ministers will continue to have the power to designate any STEP as a higher education institution. Designation as an HEI will be a condition for eligibility to receive RAE-related volume/quality funding derived from UK-wide peer-review assessments of research carried out in higher education institutions. We will make this clear in any memorandum attached to the legislation. We will not, however, exclude colleges from receipt of “research” funding as there may be benefit in supporting their activity in knowledge transfer. HEIs will also come under the remit of the QAA with regards to quality assurance and enhancement.
65. In most respects both FECs and HEIs are free to determine what programmes to offer, and whether to offer them part-time, full-time, by distance learning, or in partnership with other institutions or employers. This autonomy is essential in allowing institutions to react quickly to national and local needs and ensures flexibility and relevance in terms of modes and types of provision.
66. Under the current Act, HEIs enjoy a significant degree of academic freedom. Section 42 (3) of the existing Act prevents Scottish Ministers from framing terms and conditions of grant by reference to particular courses of study or programmes of research. This restriction also extends to the selection and appointment of academic staff and the admission of students. We intend to extend this to all STEPs.
67. However, Scottish Ministers are currently reviewing teacher qualifications in FE Colleges, and Scottish Ministers may give guidance to the new body which would include a provision which would require lecturing staff to gain an appropriate teaching or professional qualification within a prescribed period of time.
68. We are also proposing to add a power in the new legislation which will allow Scottish Ministers to invest additional funds – beyond the grant funds available to the new body – to expand capacity in particular courses or areas of study to meet Executive priorities in specific areas such as teacher education or the healthcare professions.

Scottish Public Services Ombudsman

69. The Partnership Agreement states, “We will give students in Further and Higher Education the right to refer matters to the Ombudsman when institutional mechanisms fail them”. As we acknowledge in the consultation paper on the Ombudsman proposals ‘A New Complaints Landscape for Further and Higher Education’, since the consideration of academic matters is an integral facet of the independent nature of

further and higher education institutions, we believe it would be necessary to exclude the substance of such complaints from the Ombudsman's remit.

70. Scottish Ministers regard it as important that all users of publicly funded services have the right to independent scrutiny of the treatment of any complaints they have about such services. Scottish Ministers are currently considering the response to the consultation paper on the Ombudsman proposals. Their conclusions will be considered in the drafting the final Bill, including making it a condition of STEP status that providers put in place and publish arrangements for the consideration of student complaints and identify the Scottish Public Services Ombudsman as the final arbiter of complaints.

ROLE OF THE NEW BODY

71. The existing Funding Councils provide funding for the Colleges and HEIs but they also have an important role in regulating, influencing, incentivising, and stimulating activity in the sectors. We believe that this wider role in supporting the delivery of Ministerial priorities should be more explicitly recognised and sections 9 to 20 of the draft Bill set out the key roles and requirements of the new Council.
72. We will expect the new body to take a strategic lead by identifying, encouraging, influencing, facilitating, and advising on opportunities for strategic development of the tertiary education sector, particularly in the following areas:
 - Responsiveness and relevance of learning provision
 - Quality of learning provision and research
 - Coherence of provision and collaboration between providers
 - Mergers and new institutional models
 - Progression through learning (including articulation).
73. In supporting the achievement of these objectives, the new body will have a duty to have regard to the future skills needs of Scotland. This will require them to take a national and sub national view and work with appropriate partners to ensure that tertiary education in Scotland is:
74. Comprehensive in coverage, both geographically and subject based – meeting the needs of learners, employers and society
 - Accessible to all – including for learners with special needs
 - Quality assessed with independent review.
75. We will also expect the new body to work closely with STEPs and appropriate partner bodies to continue to support research and knowledge transfer and ensure that Scotland remains fully competitive within the UK and internationally.

Responsiveness and relevance of learning provision

76. The lifelong learning strategy and the higher education framework both emphasise the importance of improving the responsiveness of providers to demand from learners and employers and look to improve the ability of learners and employers to make informed choices, with the help of bodies such as Futureskills Scotland, *learnirect scotland* and Careers Scotland.

77. The Strategy sits alongside *A Smart, Successful Scotland*¹⁰ and its conclusions derive in part from a substantial internal analysis of our position on skills: the Vocational Education and Training Review. It is directed at the full range of players in lifelong learning, but for the Enterprise Networks it effectively elaborates on aspects of *A Smart Successful Scotland*.
78. Success in the innovation of new products and processes is required for Scotland to be an internationally competitive knowledge economy. An important factor in achieving this success is a workforce with appropriate skills. The quality of generic skills and mix of vocational skills available in the Scottish labour market is also an important factor in productivity growth. However, defining the appropriate skills required in Scotland is more complex.
79. In delivering national priorities, the new body will collaborate with partners such as Scottish Enterprise (including Futureskills Scotland and Careers Scotland), Highlands and Islands Enterprise, Trades Unions and Sector Skills Councils so that learning provision responds to skills needs (see sections 17 and 18 of the draft Bill). This may include joint planning and delivery of learning provision and research.
80. In allowing the new body to fulfil its duty to provide adequate and efficient tertiary education and a competitive research base, the following organisations will have a duty to give the new body such information as they may require for the purposes of the exercise of any of their functions:
- A Scottish local authority
 - The governing body of any STEP
 - The governing body of any other institution which provides tertiary education
 - Scottish Qualifications Authority
 - Scottish Enterprise (including Futureskills Scotland and Careers Scotland)
 - Highlands and Islands Enterprise
 - Any local enterprise company
 - Scottish University for Industry [learndirect scotland]
 - Communities Scotland, and
 - Such other organisations as Scottish Ministers may determine.
81. The new body will also play an important role in stimulating colleges and institutions to be responsive to the needs of learners and employers. Where appropriate, it will play a co-ordinating role to ensure coherent and responsive provision at the local, regional and national levels. This will include ensuring that STEPs take account of outputs from local community partnerships, and that they contribute effectively to such local partnerships, including Community Planning and Local Economic Forums.
82. However, in recognising and responding to economic priorities, it is important we do not lose sight of the need for the sector to be able to respond to learners – as individuals with personal aspirations - as well as cultural and social priorities. Indeed, learners should be at the heart of the tertiary education system.

¹⁰ Available online at: www.scotland.gov.uk/library3/enterprise/smart-successful-scotland.pdf

Quality of learning provision and research

83. Under section 15 of the draft Bill, the new body will be responsible for ensuring quality assessment and enhancement for all the learning provision that it funds. This will be a general duty, specified in the same way for both sectors. While the duty will be standardised, we expect that the current arrangements – with the Councils contracting with HMIE and QAA – will continue under the new body in the foreseeable future, particularly given the expertise that has been built up by both HMIE and QAA. However, this will be a matter for the new body.
84. Of central importance to this is that quality assessment and enhancement is best driven forward on the basis of robust self-evaluation by colleges and HEIs themselves. This is a key element in the development of parity of esteem, reinforcing institutional autonomy and the maturity of the relationship between the new body and the sector. For this reason processes for ensuring quality assurance and enhancement will be a condition of STEP status as detailed in Annex A.
85. We will expect the new body to assure the quality of the research base in Scotland by continuing to participate in UK-wide assessments of research quality and by providing the majority of its funding for research on the basis of quality assessment results.

Coherence of provision and collaboration between providers

86. As today's changing environment places greater emphasis on institutions being more flexible and innovative, and making the best use of their allocated resources, it is essential that institutions work well individually and collectively, and build strategic relationships not only within Scotland's borders, but throughout the UK and internationally.
87. The higher education framework clearly recognises the value of encouraging greater collaboration and dialogue between key partners and the benefits that this can bring to a country of the size and scale of Scotland. We believe that productive collaboration can contribute to a tertiary education system that is outward looking, responsive to learners and contributes effectively to the economy and society. The new body will continue to stimulate collaboration – where there are potential strategic benefits to be gained - and identify opportunities for collaboration up to and including mergers of STEPs.
88. Recent examples have shown that best value can be enhanced through cross-institutional and cross-sectoral provision, ranging from institutional mergers to various forms of collaboration and joint working. In higher education, these examples include the creation of a Scotland-wide Institute for Excellence in Social Work Education, the Synergy¹¹ partnership between the Universities of Glasgow and Strathclyde, and many other collaborative projects funded by SHEFC through the Strategic Change Grant and from Strategic Research Development Grant awards.

¹¹ Further details available online at: www.strath.gla.ac.uk/synergy/synergyupdate2003.html

89. Following their Area Mapping exercise¹² which looked at supply of and demand for further education in Scotland to inform its consideration of adequacy and efficiency issues, SFEFC has been working with colleges to develop area-based strategic planning. Although not in all cases a collaboration initiative, there are good examples of collaboration emerging and this project is progressing into 2004-05.
90. There are currently a number of high profile and successful examples of collaboration between further and higher education, for example, UHI Millennium Institute; the Crichton Campus partners in Dumfries; and Fife College and the University of Abertay Dundee.
91. We expect that the new body, within a more flexible system, should make it easier to fund innovative models such as these, while maintaining its overall level of fairness and objectivity in allocating funds. For example, UHIMI has unique relationships with its academic partners. In the current mechanism, most UHIMI academic partners receive funding for FE provision from SFEFC, while HE level courses are now funded through UHIMI by SHEFC.
92. It is important to restate here that **the method of funding individual colleges and HEIs is, and will remain, an administrative matter for the new body**, however, our goal is to create a framework which will allow decisions about collaborative activities to be made in a way which will allow tertiary education to optimise our use of resources.

UHIMI and Crichton Campus: new approaches

93. UHIMI and Crichton Campus are both examples of the recent development of new approaches to the delivery of tertiary education in Scotland. In both cases existing providers have come together within new structures to both stimulate and meet demand in geographic areas where there was a strategic need for such development. At UHIMI and Crichton the academic partners involved are dealing with both SFEFC and SHEFC. Whilst these relationships have been managed well to date we see benefits in removing this complexity and giving the new body a focus on the development of both further and higher education. The UHI Millennium Institute was designated as a higher education institution in April 2001. The following paragraphs outline the relationship between each funding council and both UHIMI and the partners at the Crichton Campus.

UHIMI

94. The UHI is an educational partnership of colleges, research institutions and a network of over 50 learning centres across the Highlands and Islands. As a designated HEI the UHI receives funding from SHEFC. In 2003-04 the UHI was allocated £14.7m by SHEFC for all teaching provision, including widening access grants and taught post-graduate provision. In addition the UHI was allocated 0.37m from SHEFC's Main Quality Research Grant and 0.17m from the Research Development Foundation Grant.

¹² Available online at: www.sfec.ac.uk/publications/other/demand_supply.pdf

95. Of the 12 academic partners within UHI, 8 are colleges funded by SFEFC. Collectively they were allocated some £20m in recurrent funding for 2003-04.

Crichton Campus

96. The Crichton Campus is a multi-institutional FE/HE campus which offers opportunities at undergraduate and postgraduate levels and for continuing professional development. The current partners are the Universities of Paisley and Glasgow and Bell College (all HEIs receiving their funding from SHEFC) and Dumfries and Galloway College (a further education college receiving its funding from SFEFC).
97. The campus started in 1997 following a successful bid to SHEFC's Strategic Change Grant for £1.8m. Subsequently this was supplemented by an award of a further £0.5m from SHEFC's Strategic Change Grant and the specific allocation of a total of 150 FTE (full-time equivalent) funded student numbers, as well as general funding from the partner institutions.

Mergers and new institutional models

98. Through sections 26 and 27 of the draft Bill, Ministers will continue to have powers to merge Colleges, and to merge a designated HEI with one or more other HEIs. Because policy has been to support institution-led proposals, Ministers have not initiated mergers; their policy has been to consider applications voluntarily submitted by partners who wish to merge. Indeed, Ministers have a quasi-judicial role in approving mergers, which requires them to consider any objections. Since 1992, nine institutional mergers have been approved¹³, all of them HEIs. No proposal for mergers by FECs has come to fruition. Ministers currently have no specific powers to initiate cross-sectoral mergers.
99. Mergers are most likely to succeed where they are driven by a belief in their value shared by the organisations concerned. However, in fulfilling its strategic role, and in pursuing best value for public money, the Scottish Ministers will have the power to request that any STEP investigate the feasibility of a merger. **We have not proposed any change beyond that at this stage, but would welcome views on how best this area could be taken forward to encourage and facilitate cross-sectoral mergers.**
100. Ministers have powers to create new HEIs. These have been used twice since 1992, to create Glasgow Caledonian University (at the request of two merging partners who were concerned to ensure that the merger was seen as a partnership of equals) and to create UHI Millennium Institute (UHIMI). During this time, Bell College of Technology has also changed its designation moving from an FEC to become an HEI. Ministers also have powers, unused to date, to create new FECs.

¹³ Jordanhill College of Education with the University of Strathclyde, Craigie College of Education with the University of Paisley, The Queen's College, Glasgow with Glasgow Polytechnic to form Glasgow Caledonian University, Duncan of Jordanstone College of Art with the University of Dundee, Moray House Institute of Education with the University of Edinburgh, The Scottish College of Textiles with Heriot-Watt University, St Andrew's College of Education with the University of Glasgow, Northern College of Education with the Universities of Aberdeen and Dundee.

Progression through learning (including articulation)

101. Under existing mechanisms, Scotland has demonstrated its ability to develop innovative provision to improve articulation, resulting in an increasing percentage of entrants to higher education institutions coming through further education colleges with advanced standing.
102. Through the SCQF and SCOTCAT, Scotland has been at the forefront in Europe in developing credit and qualification frameworks, which facilitate and support successful articulation where it is appropriate.
103. There will be no additional specific powers in the proposed legislation to support the development of articulation. The existing powers allow a wide range of actions, and provide sufficient flexibility, to promote articulation between the sectors. For example, the existing Councils currently jointly fund the Wider Access Regional Forums, as well as a set of projects on mapping, tracking and bridging being conducted by the Scottish Advisory Committee on Credit and Access¹⁴.
104. The new body will continue to encourage STEPs to work together to ensure effective articulation routes for students who wish to progress into and through higher education.

FUNDING

105. The creation of the new body allow us an opportunity to modernise the accountability structures that surround our substantial investment in tertiary education in Scotland to make it more coherent and transparent and make possible greater comparability in the way that different types of institutions and levels of courses are funded in tertiary education. This is also an opportunity to review the way funding is provided to the new body by Parliament. Currently, the Scottish Parliament allocates funding to SFEFC and SHEFC to distribute to colleges and HEIs respectively.
106. This method of allocation means the funding of HE provision is split across two bodies since around a quarter of students studying HE courses do so in FE colleges, mainly at HNC/D levels.
107. We propose that the Scottish Parliament allocate funding for the tertiary sector to the new body in total terms, and that the new body propose a broad allocation based on Ministerial guidance, for agreement by Scottish Ministers. Ministers would recommend the basis for the allocation of funds which would be at a high level, and could be by type of institution, as at present, or over time by other criteria, for example non advanced teaching/ advanced teaching/ research, or SCQF levels.

¹⁴ The Scottish Advisory Committee on Credit and Access (SACCA) has appointed a project team to carry out a three stage exercise into the movement of students through the system, or articulation. The SACCA exercise involves mapping existing articulation routes between FECs and HEIs; tracking students through this route; and collating examples of good practice in bridging mechanisms to support students wishing to take this route - to share with both sectors. This work will build on the activity of the Wider Access Regional Forums and includes representatives of colleges and HEIs. At the moment, the majority of good examples of articulation are evident through local arrangements between individual colleges and HEIs.

108. For the first year or so, we would expect the funding allocation to remain by type of institution – this would be based on existing relative levels of funding to SFEFC and SHEFC. This will allow time for the new body to develop measurement and funding systems and minimise any potential for disruption across the sectors.
109. A similar type of arrangement was put in place to safeguard the distribution of funds between teaching and research when SHEFC first distributed funds in 1993.
110. To ensure proper Parliamentary scrutiny of funds, we are proposing that the new body produce an annual report on the activities it has funded, which they will be required to lay before the Parliament.
111. Currently the two Councils only fund FE colleges, universities and designated HE institutions. The new body will only fund Specified Tertiary Education Providers. All existing FE Colleges and HEIs funded by the two existing Councils will be specified as STEPs. Sections 4 and 5 of the draft Bill address the allocation of funds to the Council, while sections 11 and 12 cover the administration of funds and the funding of STEPs.
112. The allocation of funding to individual STEPs will be for the new body, and we expect the new body to consult on how these allocations should be made.

Student Support

113. There are currently different schemes for student support operated by different bodies. For example student support for students in HEIs and higher education courses in Colleges is delivered through SAAS, and for students in Colleges through SFEFC. We do not intend to change any of these provisions, but want to give the new body a general power to provide any type of financial student support to colleges and institutions including grants and loans. It is proposed that the details of the types of support that the new body may give will be specified in a separate SSI.

POWERS AND DUTIES OF THE NEW BODY

114. Despite the similarities between FECs and HEIs there are significant differences in the powers and duties that the Funding Councils, the Scottish Ministers and other agencies exercise over them. These differences reflect the different histories and purposes of colleges and HEIs.
115. Like all Non Departmental Public Bodies, the new body will be intended to achieve Best Value for the provision it funds and Ministers will expect the new body to ensure what it funds is fit for purpose.
116. Under current legislation, Scottish Ministers and SFEFC have a duty to secure “adequate and efficient” provision of further education, but there is no corresponding duty for higher education. This will be extended to cover all tertiary education and research in Scotland, and will continue to be the duty of Scottish Ministers and the new body.

117. In discharging their duty of providing adequate and efficient tertiary education and research the Scottish Ministers will continue to have regard to the requirements of persons [over school age] who have learning difficulties.
118. Scottish Ministers are consulting separately on the question of school pupils in Colleges¹⁵. The school/college review consultation paper asks whether the powers of FE Colleges to engage with various age groups of school pupils should differ. It also asks whether there should be some form of statutory duty on incorporated colleges (and education authorities) to encourage school/college collaboration, and if SFEFC (or the new body) remains the principal source of funding for school enrolments in FE whether this should be incorporated into its duties.

RESEARCH AND KNOWLEDGE TRANSFER

119. Scotland has a world class reputation for research, with nearly 50% of its research classified as internationally competitive. A key feature of the Executive's strategies is to harness more effectively the benefits of this research for Scotland's economy and quality of life. It will therefore be essential to ensure that, under the new body, the research base is supported to ensure that Scotland remains fully competitive within the UK and internationally. It will also be essential that the new body continues to identify effective mechanisms for the support of knowledge transfer and the exploitation of research for the wider benefit of the economy and society. The new body will need to work closely with its stakeholders to maximise collaboration and partnership in the sector and further enhance commercialisation and knowledge transfer.
120. It is important to distinguish between research and knowledge transfer. Knowledge transfer is a pervasive activity that occurs in both FECs and HEIs and flows from teaching, research and the other activities undertaken by these institutions.
121. On the other hand, undertaking high quality basic research is a fundamental mission for most higher education institutions. From this research often flow ideas and discoveries which have commercial potential. While there is still great scope for expansion of commercialising activity, Scottish HEIs exceed the UK average on various aspects of this activity, including spin-out companies, licensing and patenting of intellectual property. They are supported in this by a host of initiatives through Scottish Enterprise/Highlands and Islands Enterprise and the Executive. The recently formed Intermediary Technology Institutes¹⁶ will be a highly important stimulant to Scotland's HE sector in developing commercially useful research.
122. Continued investment in these activities is a strategic priority, and to safeguard this investment there will be a statutory requirement on the new body to establish a Research Committee (section 11 of schedule 1 in the draft Bill).

¹⁵ Available online at: www.scotland.gov.uk/consultations/lifelonglearning/bfil-00.asp

¹⁶ Available online at: www.scottish-enterprise.com/sedotcom_home/services-to-business/ideas-and-innovation/iti.htm?siblingtoggle=1

GOVERNANCE, ORGANISATION AND MANAGEMENT

123. Incorporated FECs and HEIs have in common their autonomous status. They are independent self-governing institutions, responsible to their governing bodies for their organisation and management, including admission of students and selection, pay and conditions of staff.
124. The new body, along with incorporated colleges will continue to be covered by relevant provisions in the Public Finance and Accountability (Scotland) Act 2000 (PFA). Section 25 of the draft Bill sets out the conditions for inspection of accounts of STEPs.
125. The PFA requires them to comply with any applicable guidance issued by the Scottish Ministers which includes relevant guidance in the Scottish Public Finance Manual (SPFM). The SPFM is mainly designed to ensure compliance with statutory and parliamentary requirements, promote value for money and high standards of propriety, and secure effective accountability and good systems of internal control. Bodies subject to the requirements of the SPFM have a duty to secure best value which, among other aspects, assists in embedding the principles of good governance and helps to bring public sector organisations on to a common standard.
126. HEIs are not covered by this legislation, and we do not think it is necessary to extend the scope of the Act to cover them. However, there are elements which we intend to extend to all STEPs. These are considered to be so fundamental to good governance and accountability that we have included them as part of the basic criteria for ensuring STEP status. Details are given at Annex A below, and include the need to demonstrate good corporate governance, involving staff and students, and appoint a non executive Board of Governors.
127. For the purposes of the Bill, we have used the term Board of Governors. However institutions have many different names to describe their governing bodies. Colleges currently use the term Boards of Management, and in HEIs the terminology varies depending on the constitutive charter or Order of Council. In various HE Institutions the Board of Governors is known as the University Court, the Governors or the Governing Body. There is no intention to impose restrictions on how the governing body chooses to be known. The requirement is simply that there should be one.
128. There is also no intention to interfere with existing arrangements for constitution/make up of the governing body. Currently colleges are covered by the 1992 Act, some of the provisions of which will remain, and the HEIs by various legislation including Universities (Scotland) Acts 1858-1966.
129. The Chief Executive of the new body will have a right to request attendance at a special meeting of the Board of Governors of any STEP, a request with which the institution will be obliged to comply. This power is set out in section 13 of the draft Bill. We envisage that this right would only be exercised in extraordinary circumstances.
130. For Colleges, a Review of Governance and Accountability in the Further Education Sector reported in 2003. The proposals for change contained in the Report represent a programme for modernisation designed to ensure the best possible future standards of

governance and accountability in Colleges building upon existing good practice within the sector.

131. Ministers announced the outcome of the review in the form of a Report of the Ministerial Review of Governance and Accountability in the FE Sector, which was published on 28 March 2003¹⁷. The proposals for change contained in the Report represent a programme for modernisation designed to ensure the best possible future standards of governance and accountability in the FE sector building upon existing good practice within the sector.
132. Scottish Ministers are consulting separately on amendments to the governance arrangements for colleges. It is not intended that this will extend to HEIs.

CONSULTATION PLATFORMS

133. This paper extends a new approach to consultations by the Scottish Executive by giving some key stakeholders interested in its subject-matter, a platform within the paper to help shape the consultation process.
134. Most consultation papers detail the Executive's views (and plans) and seek respondents' views either generally or in respect of specific questions. Sometimes the Executive does not have a firm view and options are spelt out in the paper. In this case, the consultation paper and associated draft Bill clearly articulates the Executive's position, and the purpose is to gauge respondents' reactions to it. What is common to both approaches is that the consultation paper is the principal means by which the Executive delivers its views as a means of eliciting the reactions of others to those views. The Executive then awaits receipt of the (sometimes diverging) views of the consultation paper's client groups and other respondents, considers these, comes to a conclusion, then articulates its considered view.
135. The current process does not strike us as a particularly dynamic form of consulting. **We believe we could improve upon this by giving the key stakeholders interested in the subject-matter of a consultation paper a platform within it to help shape the consultation process.** We consider that if the contributions of the key stakeholders are published alongside the Executive's consultation proposals, there could be a more informed, rounded, understanding of the issues. This would enable respondents to add more to the process. We believe that the new approach would help us better engage in constructive dialogue with outside organisations – a key plank of the Executive's "Changing to Deliver" agenda.
136. We recognise that our stakeholders have issues of accountability within their own organisations to consider. These early contributions does not prejudice their considered, formal response to the consultation paper. It was for participants in the pilot to consider how best to fill their allocated space within the consultation paper. The extent to which, and the way in which, they contributed is a matter for them. The Executive has exercised no editorial control on content.

¹⁷ Available online at www.scotland.gov.uk/library5/education/feaccount.pdf

137. The following are the Consultation Platforms provided by some of our key partners.

Association of Scottish Colleges

138. 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.

139. 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.

140. 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.

141. 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.

CBI Scotland

142. The further and higher education sectors in Scotland both make a huge contribution to our economy. Developing vocational and academic skills, helping individuals return to learning, and conducting basic and applied research all play their part in boosting our wealth creation ability.

143. Business wants to work in partnership with both sectors, and to see their distinctive contributions to wealth creation maximised. In principle we agree with Ministers that a single Funding Council should encourage transparency, and parity of esteem across the sectors. We would not, however, want the creation of a single Funding Council to lead to ‘mission drift’ within individual institutions.

144. Business does want to see a single Funding Council promote:

- Innovative collaboration between institutions to meet the needs of employers, learners and communities
- Efficient use of resources across the sectors
- The relevance of learning to life and work opportunities

- The needs of learners and employers as the customers of institutions, in terms of the flexibility, responsiveness and clarity of provision.
- The research excellence of our universities

145. A single Funding Council must also have regard to the importance of particular provision, some of which may be relatively high-cost, to individual business sectors.

COSLA

146. We welcome the review and hope that from it will emerge an organisation that can support a more flexible, transparent funding system bringing better results for the delivery of national and local priorities, especially economic development and social justice.

147. To bring this about we would want to see the funding council to enable further education institutions to build on the already valuable work they presently carry out within Community Planning Partnerships. Additionally though, we would want to see the facility for the funding body to provide funding for structures set up by CPPs to address identified, local priority issues that FE institutions are unable to deal with, perhaps because low numbers cannot justify their involvement.

148. Additionally, we suggest that new and innovative approaches should be considered for how the sectors of education work with each other. In this we would include school age education and the way this relates to the FE and HE sectors. The use of the SCQF, even though it is still in its infancy, can prove to be an effective tool in making the qualification structure, and through this the links between the education institutions, simpler and more customer-focussed.

Federation of Small Businesses

149. Skills are now recognised as one of the key drivers of productivity, and the FSB welcomes the proposed merger of SFEFC and SFEFC, as we believe it should lead to better integration of Further and Higher Education, and facilitate better links between both these sectors and the business community.

150. Traditionally, small businesses have had closer links to FE colleges than with universities, and there is a perception that FE is more focused on delivering the skills needed by business. There are questions to be asked about the relevance of many degrees to the work environment and the usefulness of many of the skills learned in a traditional degree course. This is not just an issue for business, but also for those young people leaving university to enter the job market, and the creation of a joint funding council should bring more focus to this issue.

151. For too long the FE sector has been the poor relation in post-school education, and the merger should encourage people to attach greater value on the work done by the sector. It may also help to challenge the perception that anything other than a university place is a 'failed' educational outcome for our young people.

152. Given the large investment in HE and FE every year, and the increasing pressure for more money, it is vital that the new funding body clarifies the sectors' roles in

delivering the Executive's strategy for economic growth to ensure the maximum return on this significant public sector spend

NUS Scotland

153. NUS Scotland is the representative body of students in Scotland. We represent over half a million students across further and higher education.
154. This consultation is a historic opportunity to take forward the lifelong learning agenda and move toward a merged sector.
155. The new body must be able to deliver a high quality tertiary education sector that is learner-centered, transparent and accountable. It should deliver funding in a fair and efficient manner with funding based on the level and nature of learning rather than by type of institution.
156. A merged Council should deliver its main objectives in a learner focused manner. For students, FE and HE do not exist as separate and defined sectors. Students recognise that there are different courses that will result in different qualifications, and look for a course that suits their needs at an institution where they wish to study, regardless of whether it is funded by WSUMS or FTE's. Students are often confused as to why courses that are comparable do not attract comparable funding. Students believe that funding should be driven by student needs, and should serve the learner, and not arbitrary funding mechanisms. A merged funding Council should deliver on this basis and should address the fact that the experience of an HE student in FE is very different to that of a HE student at a university.
157. The new body must be able to address the inequalities and anomalies that occur throughout tertiary education and be able to think cohesively about the role, purpose and future direction of tertiary education, while recognising the autonomous and individual nature of institutions. Learners deserve sector that is integrated and cohesive in its strategic approach.

Scottish Enterprise

158. What is education for? Yes, it is to help people grow up rounded, have a desire to understand and an ability to analyse. But if it does not also - and I repeat, also - prepare them for work, we are selling those people short and dealing a blow to our economy. For most of us a decent job, or a series of decent jobs, is one of the fundamentals to having a good life.
159. Public spending per person on education and training has long been higher in Scotland than in the rest of the UK. A greater proportion of our population has higher level qualifications than the GB average. Yet our economic performance persistently lags the UK. What does the further and higher education system have to do reap a greater economic benefit from this investment?

160. More than 90% of employees have the skills they need for their jobs. But the persistent complaint of a core of Scotland's employers is that some employees lack softer skills - like the ability to work in a team or to deal with customers. How can the education system become as effective in imparting softer skills as it is in imparting technical skills?

Scottish Further Education Funding Council and the Scottish Higher Education Funding Council

161. We believe that the new legislation should provide an enabling framework which allows the colleges and institutions that the new body will fund to deliver an effective tertiary education system and respond flexibly to changes over time. Such a framework should be underpinned by broad principles:

- to build parity of esteem for learners, the legislation should treat the FE and HE sectors the same wherever practicable;
- the autonomy of universities and colleges should be protected, since well-led and responsive autonomous institutions are best placed to respond quickly and effectively to the changing needs of students and employers;
- mechanisms such as policy and management guidance from Ministers and conditions attached to grants are effective and more flexible methods for achieving particular priorities and setting out functions than detailed legislation; and
- the legislation should not embody very specific and short-term concerns in a way that might be irrelevant and constraining in the future.

162. We welcome the merger and believe that it will provide a tremendous opportunity for Scotland to develop further its distinctive education system for the benefit of learners and researchers and, through them, for the benefit of the nation.

The Scottish Science Advisory Committee (SSAC)

163. The proposed merger of the Scottish Funding Councils offers the potential to initiate a level of greater coherence and connectivity across tertiary education. This should promote better linkages between the further and higher education sectors such that their complementarity can be exploited more efficiently. However, the SSAC would wish to seek assurances that this would not compromise the diversity of the sectors or the distinctiveness of individual institutions. Proper assessment mechanisms must be implemented to ensure that mission creep is avoided and the roles of FE and HE must not be duplicated or confused. In this way, a suitably wide range of opportunities can be retained at all vocational and academic levels to meet the broad needs of students and employers. The overall strategic objectives of tertiary education should convey with clarity an unambiguous message that a joint Council can support proportionately the FECs and HEIs to meet the changing needs of Scotland.

164. A merger will facilitate innovative and inter-connected routes of funding. From the SSAC viewpoint of supporting excellence in teaching, research and knowledge transfer, it is vital that any changes in organisational structure do not lead to funding reductions for the university science base, which underpins Scotland's desire to be a leading knowledge-based economy. Scotland's universities must be operating at the cutting edge of research, where intellectual property can be generated and exploited. The SSAC believes strongly that the joint Council must establish a dedicated Board that would be primarily concerned with supporting university-based research in Scotland.

STUC

165. The STUC is Scotland's Trade Union Centre, and is pleased to contribute to the debate on the shape and responsibilities of the new merged funding council for further and higher education. Representing over 630,000 working people and their families, the STUC speaks for trade union members in and out of work, in the community and in the workplace. Through our affiliates in the education sector we represent thousands of workers in tertiary education including academic and support staff.
166. The STUC believes the new body should have a broad remit, incorporating planning and funding roles. The planning role should ensure quality, consistency and good working practices in both HE and FE sectors within the democratic structures of the Scottish Executive and Parliamentary processes. The body should ensure institutions adhere to, fair employment practices including promoting equal opportunities and conducting equal pay audits. For the merger to be successful the new body requires adequate resources, and should distribute funding to achieve a comprehensive range of provision that meets all needs, social, economic, cultural and educational.
167. The STUC is concerned at, and opposed to, the long term implications of proposals to extend the range of learning providers eligible to receive funding, believing Scotland is well served by its publicly accountable FE colleges and HEIs. The STUC reiterates its opposition to education being considered a tradable commodity and opposes its inclusion in the General Agreement on Trade in Services (GATS).
168. The STUC believes it is essential that there is transparency in terms of powers, and, for democratic accountability, that the overall funding power is with Ministers and Parliament.

Universities Scotland

169. Universities Scotland believes that there is value in merging the funding councils only if the following conditions are met.
170. The importance of diversity must be recognised, and the distinctive identities and missions of higher education institutions and further education colleges respected and nurtured. Merging the councils should not lead to merging the sectors.

171. The burden of regulation should be minimised, recognising that higher education institutions
- a. enjoy a high reputation internationally, contributing significantly to Scotland's standing in the world,
 - b. have mature structures for governance and management and for assuring quality and standards,
 - c. raise a large and increasing proportion of their income from non-governmental sources,
 - d. are major drivers of economic growth and wealth creation through the supply of graduate skills and research outputs;
 - e. and that the foundation for these successes is their institutional autonomy, which enables them to be enterprising, innovative and creative.
172. The main function of the new body must continue to be funding, not planning.
173. The proposals in the consultation paper do not satisfy these conditions and could damage the effectiveness of Scottish higher education. Therefore, Universities Scotland will prepare a detailed response suggesting substantial changes.

OTHER MATTERS

Transitional arrangements

174. This paper, and the draft Bill which accompanies it, have made no proposals for transitional arrangements. It is important that provisions are put in place to ensure a smooth transition and to avoid destabilising the sectors, and we intend working with the existing Councils over the coming months to ensure that robust plans are put in place.
- We are keen to hear views on how best this could be achieved.**

Name

175. We are seeking suggestions on a name for the new body. The draft Bill refers to the Scottish Tertiary Education Funding Council, and we would welcome comments on this, or suggestions for improvement.

Conclusion

176. It is not our intention to include any other statutory obligations on institutions, but the new body will be expected to ensure best practice in all aspects of governance in the sector, including human resources management and effective student representation, and these aspects are included as part of the basic criteria for STEP status.
- 177. The new body should be forward-looking and able to support Scottish tertiary education and research to maintain and enhance its well-deserved international reputation. Respondents to this consultation are invited to make suggestions about further areas where we could use this opportunity to develop tertiary education in Scotland.**

Conditions for achieving and maintaining STEP status

It will be a condition of classification of being a STEP that the provider:

- Should demonstrate good corporate governance, involving staff and students, and appoint a non executive governing body.
 - The governing body of a STEP will have a duty to provide “suitable and efficient”, tertiary education. This does not imply that every STEP has a duty to provide the whole range of tertiary education.
 - Governing bodies will be required to provide information to local authorities on recorded children.
- Identifies and publishes the name of an individual who will be personally responsible for safeguarding the public funds received through the new body, and for ensuring propriety and regularity in the handling of those public funds.
- Makes their accounts available for scrutiny by the Auditor General for Scotland, and publish their Annual Accounts within such time as Scottish Ministers may direct.
- Provides the new body with a plan, on a frequency to be determined by the new body, to cover at least the next three academic years. The plan shall contain a statement, as regards each academic year to which the plan relates, of:
 - the number of persons the Board estimates will be students of the STEP
 - the programmes of learning of further and / or higher education (within the definition of the Act) which the Board proposes to provide or secure the provision of
 - its programme of research – where appropriate – and mechanisms for knowledge transfer
 - the capital expenditure and estates plans proposed by the Board and how these would be funded
 - their current income and expenditure and their estimate of future income and expenditure
 - such other matters with regard to funded activity or assets as determined by Scottish Ministers or the new body, and
 - any other matters which the STEP deems appropriate to allow Ministers or the new body to understand fully its plan.
- Demonstrates they have robust processes in place for ensuring continuous quality assurance and enhancement of activities funded by the new body.

- Puts in place and publishes arrangements for the consideration of student complaints and identifies the Public Services Ombudsman as the final arbiter of complaints about provision funded by the new body.

Specified Tertiary Education Providers (STEPS)

Incorporated colleges

Aberdeen College of Further Education
Angus College of Further Education
Anniesland College
Ayr College
Banff and Buchan College of Further Education
The Barony College
Borders College
Cardonald College
Central College of Commerce
Clackmannan College of Further Education
Clydebank College
Coatbridge College
Cumbernauld College
Dumfries and Galloway College
Dundee College
Edinburgh's Telford College
Elmwood College
Falkirk College of Further and Higher Education
Fife College of Further and Higher Education
Glasgow College of Building and Printing
Glasgow College of Food Technology
Glasgow College of Nautical Science
Glenrothes College
Inverness College
James Watt College of Further and Higher Education
Jewel and Esk Valley College
John Wheatley College
Kilmarnock College
Langside College
Lauder College
Lews Castle College
Moray College
Motherwell College
North Glasgow College
The North Highland College
Oatridge Agricultural College
Perth College
Reid Kerr College
South Lanarkshire College
Stevenson College Edinburgh
Stow College
West Lothian College

Non-incorporated colleges

Orkney College
Shetland College of Further Education
Newbattle Abbey College
Sabhal Mór Ostaig

Higher education institutions

Bell College of Technology
Edinburgh College of Art
Glasgow Caledonian University
Glasgow School of Art
Napier University
Queen Margaret University College
The Robert Gordon University
Royal Scottish Academy of Music and Drama
UHI Millennium Institute
University of Abertay, Dundee
University of Paisley

Ancient and chartered universities

University of Aberdeen
University of Dundee
University of Edinburgh
University of Glasgow
Heriot-Watt University
University of St Andrews
Stirling University
Strathclyde University
The Open University (so far as carrying on activities in or as regards Scotland)

FACTUAL INFORMATION

The following statistics and web site links will provide useful background to the paper.

Number of enrolments and students in FE and HE in Scotland 2001-02

2001-02	Total			HEIs (students)			FECs (enrolments)		
	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time
Total	890,751	215,560	675,191	375,874	142,751	233,123	514,877	72,809	442,068
Further education	618,124	45,240	572,884	167,336	41	167,295	450,788	45,199	405,589
Vocational	390,078	45,061	345,017	234	41	193	389,844	45,020	344,824
Non-vocational	60,944	179	60,765	0	0	0	60,944	179	60,765
Non-credit bearing	167,102	0	167,102	167,102	0	167,102	0	0	0
Higher Education	272,627	170,320	102,307	208,538	142,710	65,828	64,089	27,610	36,479
Postgraduate	52,465	20,126	32,339	52,000	20,108	31,892	465	18	447
First Degree	120,010	106,985	13,025	118,922	106,794	12,128	1,088	191	897
Other HE	100,152	43,209	56,943	37,616	15,808	21,808	62,536	27,401	35,135

Source: Higher Education Statistics Agency, Scottish Further Education Funding Council

More statistical data on HE and FE can be found in the Scottish Executive's Standard Tables on Further and Higher Education: www.scotland.gov.uk/stats/bulletins/00270-00.asp
 Statistical information on FECs is available from SFEFC at: www.sfec.ac.uk/infact
 The Executive publishes various statistics on lifelong learning. These are available on the Executive's website at:
www.scotland.gov.uk/about/ASD/ELL-EAS6/00017875/page830054467.aspx

IMPORTANT BODIES

Association of Scottish Colleges
 HM Inspectorate of Education
 Quality Assurance Agency for Higher Education
 Scottish Credit and Qualifications Framework
 Scottish Further Education Funding Council
 Scottish Higher Education Funding Council
 Universities Scotland

www.ascol.org.uk
www.hmie.gov.uk
www.qaa.ac.uk
www.scqf.org.uk
www.sfec.ac.uk
www.shefc.ac.uk
www.universities-scotland.ac.uk

KEY SOURCES OF INFORMATION

Scottish Executive Policy Documents:

A Partnership for a Better Scotland:

www.scotland.gov.uk/library5/government/pfbs-00.asp

Life Through Learning; Learning Through Life

www.scotland.gov.uk/library5/lifelong

A Framework for Higher Education in Scotland:

www.scotland.gov.uk/library5/lifelong/herp2-00.asp

The Competitiveness of Higher Education in Scotland:

www.scotland.gov.uk/library5/lifelong/che3m-00.asp

All HE Review Papers:

www.scotland.gov.uk/who/elld/herereview.asp

A Smart, Successful Scotland:

www.scotland.gov.uk/library3/enterprise/sss-00.asp

Measuring Progress towards A Smart, Successful Scotland:

www.scotland.gov.uk/library5/government/sss03-00.asp

Social Justicea Scotland where EVERYONE matters:

www.scotland.gov.uk/library2/doc07/sjmd-00.htm

Social Justicea Scotland where EVERYONE matters: Indicators of progress:

www.scotland.gov.uk/library5/social/emsjt-00.asp

Scottish Parliament:

Report of Enterprise and Lifelong Learning Committee Inquiry into Lifelong Learning

www.scottish.parliament.uk/S1/official_report/cttee/enter-02/elr02-09-01.htm

Legislation:

Further and Higher Education (Scotland) Act 1992:

www.hmso.gov.uk/acts/acts1992/Ukpga_19920037_en_1.htm

The Scottish Further Education Funding Council (Establishment) (Scotland) Order 1998

SI 2887: www.legislation.hmso.gov.uk/si/si1998/19982887.htm

Public Finance and Accountability (Scotland) Act 2000:

www.hmso.gov.uk/legislation/scotland/acts2000/20000001.htm

Funding Councils:

www.sfc.ac.uk

Joint Corporate Plan

www.shefc.ac.uk/publications/corp_plan/2003-06/sfc_joint_corporate_plan_2003-06.pdf

SCOTTISH CREDIT AND QUALIFICATIONS FRAMEWORK

SCQF Level	SQA National Units, Courses and Group Awards	Higher Education	Scottish Vocational Qualifications
12		Doctorate	
11		Masters	SVQ 5
10		Honours Degree Graduate Diploma	
9		Ordinary Degree Graduate Certificate	
8		Higher National Diploma/ Diploma in Higher Education	SVQ 4
7	Advanced Higher	Higher National Certificate/ Certificate in Higher Education	
6	Higher		SVQ 3
5	Intermediate 2 / Credit Standard Grade		SVQ 2
4	Intermediate 1 / General Standard Grade		SVQ 1
3	Access 3 / Foundation Standard Grade		
2	Access 2		
1	Access 1		

GLOSSARY OF ACRONYMS

1992 Act	The Further and Higher Education (Scotland) Act 1992
2002 Act	Scottish Public Services Ombudsman Act 2002
ASC	Association of Scottish Colleges
ELLC	Enterprise and Lifelong Learning Committee
FE	Further Education
FEC	Further Education College
FHE	Further and Higher Education
FTE	Full-time Equivalents
HE	Higher Education
HEI	Higher Education Institution
HMIE	Her Majesty's Inspectorate of Education
HNC/D	Higher National Certificate/Diploma
LTL;LTL	Life Through Learning; Learning Through Life
QAA	Quality Assurance Agency for Higher Education
SCQF	Scottish Credit and Qualifications Framework
SFEFC	Scottish Further Education Funding Council
SHEFC	Scottish Higher Education Funding Council
SI	Statutory Instrument
SSS	A Smart, Successful Scotland
SUMs	Student Units of Measurement
UHIMI	UHI Millennium Institute
US	Universities Scotland

LIST OF CONSULTEES

Association of Scottish Colleges
AUT
CBI
Coalition of Higher Education Students in Scotland
Communities Scotland
COSLA
EIS
Federation of Small Businesses
46 Further Education Colleges
Her Majesty's Inspectorate of Education
20 Higher Education Institutions
Highlands and Islands Enterprise
NUS (Scotland)
Office of Science and Technology
Scottish Public Services Ombudsman
QAA Scotland
Royal Society of Edinburgh
Scottish Agricultural College
Scottish Enterprise
Scottish Further Education Funding Council
Scottish Higher Education Funding Council
Scottish Parliament Enterprise and Culture Committee
Scottish Qualifications Authority
Scottish Science Advisory Council
Scottish University for Industry
STUC
UK Funding Bodies
Universities Scotland

ANNEX H

Key to draft Bill provisions

Part 1 - Provision of tertiary education etc

Section	Title	Comment	1992 Act
1	Duty to sector provision of tertiary education and research	This provision currently exists in the 1992 Act for FE only. This extends the duty to all tertiary education and research	1
2	Tertiary Education	This provides a definition of Tertiary Education and is based on amalgamating the current definitions from the 1992 Act. The definition will be used for the purposes of this Act only, the 1992 definitions will remain intact The definition also refers to 'over school age' and 'not in school. This is currently the subject of the School/College review and may change	6,38
3	Persons with Learning Difficulties	This provision currently exists in the 1992 Act for FE only. This extends it to all tertiary education.	2
4	Funding of the Council	This section relates to the funding Scottish Ministers can make to the new body. It largely replicates section 42 of the existing Act. Subsection 13 previously existed for HE, and has been extended to all Colleges	42
5	Funding of the Council – additional grants	This section has been added to regularise the current position where additional grants are made for specific purpose, for example additional money for medical training.	
6	Directions to Council	This allows Scottish Ministers to issue directions of a general or specific nature to the new body. These directions cannot relate to an individual STEP	21, 54
7	Directions where mismanagement	This extends a provision from the 1992 Act which related to Colleges to all STEPs	24
8	Delegation of functions under section 1(1)	Delegates the adequate and efficient duty to the new body. Gives the new body rights – from the 1992 Act	7 (5)

PART 2

FUNDING OF TERTIARY EDUCATION ETC.

Scottish Tertiary Education Funding Council

9	Scottish Tertiary Education Funding Council	Creates the new body. At this stage the name Scottish Tertiary Education Funding Council is being used	7
10	Dissolution of other funding bodies	Dissolves SFEFC, SHEFC and the joint body – Scottish Funding Councils for Further and Higher Education	
11	Administration of funds	Sections 11 and 12 are adapted from section 40 of the original act and set out how the Council can allocate its funds	40
12	Funding of specified tertiary education providers	As Above	
13	Funding: requirement to hold meeting	This is a new section which will give the Council a power to require the holding of an extraordinary meeting of a STEP's governing body to discuss matters relating to the financial support it may receive.	
14	Efficiency studies	Adapted from section 51 of the '92 Act which give Council the power to carry out or commission efficiency studies.	51
15	Quality of tertiary education	Extends existing duty to assess quality in HEIs to cover colleges as well. This duty will also now encompass enhancement.	39
16	Advisory functions of the Council	Duty on Council to provide advice to Ministers as they require. Adapted from existing provisions in sections 8 and 43 of the 1992 Act.	8, 43
17	Skills needs	New section, reflecting the Partnership Agreement commitment, which tasks the Council to have regard for the future skills needs of Scotland.	
18	Consultation and collaboration	Sets out the key bodies which the Council must work and share information with. It also puts a duty on these bodies to provide information to the Council. Expands on what is contained in section 50 of the 1992 Act.	50
19	Equal opportunities	New section which make explicit reference to equal opportunities legislation.	
20	General powers	This section outlines other powers given to the Council in relation to property, contracts borrowing money etc. This is adapted from what is in schedules 1 and 7 of the 1992 Act.	S1, S7.

Specified tertiary education providers

21	Specified tertiary education providers	Reference to Schedule 1 in the new Act which outlines the institutions who will become STEPs	
22	Specified tertiary education providers: further provision	New section. Provides an outline of the kind of conditions an institution must meet to become a STEP and to retain STEP status.	
23	Duty to provide tertiary education	New section. Duty on the governing body of any STEP to provide a suitable range of efficient provision having regards to local needs and the needs of learners. Based on current requirement on College Board of Managements	12
24	Development plans	Requirement for STEPs to provide a development plan to the Council each year. Based on section 22 of 1992 Act.	22
25	Inspection of accounts of specified tertiary education providers	Adapted version of provision in section 53 of 1992 Act.	53
26	Merger evaluation	New section which gives Ministers power, through the Council, to require the governing body of any STEP to evaluate the feasibility and advantages of a merger with any other STEP, and report back to the Council with findings.	
27	Change of name by certain institutions	Amends section 3(4) of the 1992 Act so that colleges only need Ministerial consent to change name, bringing them into line with post 92 HEIs.	3(4)
28	Information about recorded children	Duty for STEPs to provide information to local authorities as required under the 1980 Act. Adapted from section 23 of 1992 Act.	23

Part 3 - General

29	Amendment of enactments	Ref to schedule 3	
30	Ancillary provision	Gives Ministers powers to amend this Act in future if required.	
31	Orders and regulations	Give Ministers the power to make orders or regulations under the Act.	
32	Interpretation	Sets out definitions etc. as used in the Act.	
33	Short title and commencement	Details of name and when this legislation will come into force.	
Schedule 1	—The Scottish Tertiary Education Funding Council	This schedule sets out the statutory requirements on the Council – For example, around the membership of the	

		Council, terms and conditions for the chief executive and other staff, Committees, Accounts etc. These are in the main carried over from the schedules in the 1992 Act, although the requirement to have a statutory research committee is new, as is the requirement to lay a report before Parliament.	
Schedule 2	Specified tertiary education providers	List of all current HEIs and Colleges currently funded by SHEFC and SFEFC who will become STEPs.	
Schedule 3	Amendment of enactments	Provides a list of consequential amendments which will be required to other legislation as a result of this Act.	

ANNEX I

Sections of the 1992 Act left in force

6	Further education to which section 1 applies.
13	Subsequent transfers of colleges
14	Transfer of colleges of further education not under local authority management.
15	Transfer of staff.
16	Transfer of property etc. to boards of management
17	Surpluses and deficits.
18	Disposal of certain property.
19	Educational endowments.
20	Variation of trust deeds.
38	Meaning of higher education.
45	Power of Privy Council in relation to designated institutions.
48	Power to award degrees etc.
49	Change of name by institutions.
52	Exercise of powers of Privy Council.
53	Inspection of accounts.
55	Amendment of section 7 of the Teaching Council (Scotland) Act 1965.
Schedule 2	Constitution and proceedings of boards of management

Tertiary Education (Funding etc.) (Scotland) Bill

CONSULTATION DRAFT

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- 3 Persons with learning difficulties
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PART 2

FUNDING OF TERTIARY EDUCATION ETC.

Scottish Tertiary Education Funding Council

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Schedule 2 —Specified tertiary education providers

Schedule 3 —Amendment of enactments

CONSULTATION DRAFT

Tertiary Education (Funding etc.) (Scotland) Bill

An Act of the Scottish Parliament to make provision about the provision and funding of tertiary education; and for connected purposes.

PART 1

PROVISION OF TERTIARY EDUCATION ETC.

1 Duty to secure provision of tertiary education and research

- (1) It is the duty of the Scottish Ministers to secure the adequate and efficient—
 - (a) provision of tertiary education; and
 - (b) undertaking of research among the institutions which provide tertiary education.
- (2) The Scottish Ministers may do anything that is necessary or expedient for the purposes of or in connection with the exercise of their function under subsection (1).

2 Tertiary education

- (1) For the purposes of this Act, “tertiary education” means a programme of learning—
 - (a) to which subsection (2) applies; and
 - (b) which—
 - (i) is provided for persons over school age (within the meaning of the 1980 Act); and
 - (ii) is not school education (within the meaning of that Act).
- (2) This subsection applies to any programme of learning which—
 - (a) prepares a person for a vocational qualification;
 - (b) prepares a person for—
 - (i) a qualification awarded by the Scottish Qualifications Authority; or
 - (ii) a General Certificate of Education qualification of England and Wales or Northern Ireland;
 - (c) is designed to assist persons whose first language is not English to achieve any level of competence in English language;

-
- (d) is a course at a higher level in preparation for a higher diploma or certificate;
 - (e) is a first degree course;
 - (f) is a course for the education and training of teachers;
 - (g) is a course of post-graduate studies (including a higher degree course);
 - (h) is a course at a higher level in preparation for a qualification from a professional body;
 - (i) is a course at a higher level not referred to in any of paragraphs (d) to (h); or
 - (j) provides instruction for persons who are participating in a programme of learning referred to in any of paragraphs (a) to (i) and who have a learning difficulty;
 - (k) is designed predominantly to prepare a person for access to or participation in any programme of learning referred to in any of paragraphs (a) to (i);
- (3) For the purposes of subsection (2)(d), (h) and (i), a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses in preparation for examinations for—
- (a) the Scottish Qualifications Authority Higher; or
 - (b) the Scottish Vocational Qualification Level 3.
- (4) For the purposes of subsection (2)(g), post-graduate studies includes a course following the award of a higher diploma or certificate.
- (5) The Scottish Ministers may by order modify subsections (2) to (4).
- (6) Before making an order under subsection (5), the Scottish Ministers must consult the Council.

3 Persons with learning difficulties

- (1) In exercising their duty under section 1(1), the Scottish Ministers are to have regard to the requirements of persons over school age (within the meaning of the 1980 Act) who have learning difficulties.
- (2) For the purposes of subsection (1)—
- (a) a person has a learning difficulty if the person—
 - (i) has significantly greater difficulty in learning than the majority of persons over school age (within the meaning of the 1980 Act); or
 - (ii) suffers from a disability, impairment or condition which prevents or hinders the person from making use of educational facilities generally provided by specified tertiary education providers; but
 - (b) a person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which the person is, or will be, taught is different to a language (or form of a language) which has at any time been spoken in the person's home.

4 Funding of the Council

- (1) The Scottish Ministers may make grants to the Council of such amounts as they may determine.

-
- (2) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (3) Terms and conditions imposed under subsection (2) may, in particular—
- (a) relate to—
 - (i) the repayment (in whole or in part) of a grant in such circumstances as they may specify;
 - (ii) the interest payable in respect of any period during which a sum due to the Scottish Ministers is outstanding;
 - (b) include the conditions referred to in subsections (4) and (5).
- (4) The condition is that, before the Council makes a payment to a specified tertiary education provider under subsection (1) of section 12 of such amount or description as the Scottish Ministers may in the condition specify, the provider is to comply with such matters concerning specified tertiary education providers or any class of them as the Scottish Ministers may so specify.
- (5) The condition is that—
- (a) when making a payment to a specified tertiary education provider under subsection (1) of section 12; and
 - (b) in such cases as the Scottish Ministers may in the condition specify,
- the Council is (under subsection (2) of that section) to impose on the provider a condition making the requirement referred to in subsection (6).
- (6) The requirement is that the provider to whom the payment is being made is to secure that the fees payable to the provider—
- (a) by the persons to whom this paragraph applies; and
 - (b) in connection with their attending the programmes of learning to which this paragraph applies,
- are equal to the maximum fees which may, in relation to those persons attending those programmes, be determined by the Scottish Ministers under section 73D(2) of the 1980 Act.
- (7) Paragraph (a) of subsection (6) applies to such class of persons as the Scottish Ministers may by order specify.
- (8) Paragraph (b) of that subsection applies to programmes of learning of such description as the Scottish Ministers may by order specify.
- (9) A condition imposed on a specified tertiary education provider by virtue of subsection (5) is to make provision that is to apply if the provider fails to comply with the requirement referred to in subsection (6).
- (10) A condition imposed on a specified tertiary education provider by virtue of subsection (5) does not apply in relation to any fees which are payable, in accordance with regulations under section 1 (fees at universities and further education establishments) of the Education (Fees and Awards) Act 1983 (c.40), by students other than those falling within any class of persons prescribed by such regulations for the purposes of subsection (1) or (2) of that section.
- (11) The Scottish Ministers may not specify descriptions of programmes under subsection (8) in such a way as to discriminate—

-
- (a) in relation to programmes for the training of persons preparing to be teachers which are open only to persons holding a degree, between different programmes on the basis of the subject in which such training is given; or
 - (b) in relation to other programmes, between programmes at the same or a comparable level on the basis of the particular areas of study or the research to which they relate.
 - (12) Terms and conditions imposed under subsection (2) may not, except in so far as provided for in subsection (4), relate to the provision of financial support by the Council in respect of activities carried on by any particular specified tertiary education provider or providers.
 - (13) Terms and conditions imposed under subsection (2) may not—
 - (a) except in so far as provided for in subsections (5) to (8), be framed by reference to particular programmes of learning or research (including the contents of such programmes or the manner in which they are taught, supervised or assessed); or
 - (b) be framed by reference to the criteria for—
 - (i) the selection or appointment of academic staff; or
 - (ii) the admission of students.

5 Funding of the Council: additional grants

- (1) In addition to any grants made under section 4, the Scottish Ministers may make further grants to the Council of such amounts as they may determine.
- (2) In making a grant under subsection (1), the Scottish Ministers must specify the purposes for which the grant is made.
- (3) A grant made under subsection (1) is subject to such terms and conditions as the Scottish Ministers consider it appropriate to impose.
- (4) Terms and conditions imposed under subsection (3) may, in particular—
 - (a) relate to—
 - (i) the repayment (in whole or in part) of a grant in such circumstances as they may specify;
 - (ii) the interest payable in respect of any period during which a sum due to the Scottish Ministers is outstanding;
 - (b) include the condition referred to in subsection (4) of section 4.
- (5) But—
 - (a) the purposes specified under subsection (2);
 - (b) terms and conditions imposed under subsection (3),may not be framed by reference to a particular specified tertiary education provider.

6 Directions to the Council

- (1) The Scottish Ministers may give the Council directions as to the exercise of its functions except those under section 16.
- (2) Directions under this section may—

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- (a) be of a general or specific character; and
 - (b) make different provision for different cases or classes of case,but may not relate to a particular specified tertiary education provider.
 - (3) The Council must comply with directions given to it under this section.

7 Directions where financial mismanagement

- (1) The Scottish Ministers are, 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.
- (2) The Council must comply with directions given to it under this section.

8 Delegation of functions under section 1(1)

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they may determine, delegate to the Council the exercise of their functions under section 1(1).
- (2) The Council is, in its own right—
 - (a) entitled to enforce any rights acquired; and
 - (b) liable in respect of any liabilities incurred (including liability in damages for wrongful or negligent acts or omissions),in its exercise of those functions; and any proceedings for enforcement of those rights or liabilities are to be brought by or against the Council in its own name.
- (3) Delegation of functions under subsection (1) does not (subject to subsection (2)) affect the responsibility of the Scottish Ministers for or in relation to the exercise of their functions.

PART 2

FUNDING OF TERTIARY EDUCATION ETC.

Scottish Tertiary Education Funding Council

9 Scottish Tertiary Education Funding Council

- (1) There is established a body to be known as the Scottish Tertiary Education Funding Council.
- (2) Schedule 1 makes provision about the constitution of the Council and about certain administrative and other matters with respect to the Council.

10 Dissolution of other funding bodies

The following bodies are dissolved on such date as the Scottish Ministers may by order appoint—

- (a) the Scottish Further Education Funding Council (established under section 7(1) of the 1992 Act);
- (b) the Scottish Higher Education Funding Council (established by section 37(1) of that Act); and

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- (c) the body created by virtue of subsection (2)(c) of section 59A (joint exercise of certain functions) of that Act.

11 Administration of funds

- (1) The Council is, for the purpose of providing financial support for the activities specified in subsection (2), responsible for administering—
 - (a) all grants made to it under section 4 and 5; and
 - (b) any other funds made available to it for that purpose.
- (2) The activities are—
 - (a) the provision of tertiary education by specified tertiary education providers;
 - (b) the undertaking of research at specified tertiary education providers;
 - (c) the—
 - (i) provision of such facilities; and
 - (ii) the carrying on of such other activities,by a specified tertiary education provider or any other person as are necessary or desirable for the purposes of or in connection with an activity specified in paragraph (a) or (b);
 - (d) the provision of services by a specified tertiary education provider or any other person for the purposes of or in connection with an activity specified in paragraph (a) or (b).

12 Funding of specified tertiary education providers

- (1) The Council may make grants, loans or other payments—
 - (a) to the governing body of any specified tertiary education provider in respect of expenditure incurred or to be incurred by the provider for the purposes of any of the activities specified in subsection (2)(a) and (b) of section 11;
 - (b) to—
 - (i) the governing body of any specified tertiary education provider; or
 - (ii) any other person,in respect of expenditure incurred or to be incurred by the provider or the person for the purposes of any of the activities specified in subsection (2)(c) and (d) of that section.
- (2) A payment made under subsection (1) may (in addition to any condition which is imposed by virtue of subsection (5) of section 4) be subject to such terms and conditions as the Council considers it appropriate to impose.
- (3) Terms and conditions imposed under subsection (2) may, in particular, relate to—
 - (a) the repayment (in whole or in part) of a payment in such circumstances as they may specify;
 - (b) the interest payable in respect of any period during which a sum due to the Council is outstanding.

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- (4) But terms and conditions imposed under subsection (1) may not relate to the application by the provider of any sums which were not derived from the Scottish Ministers.
 - (5) Before imposing terms and conditions under subsection (1), the Council is to consult—
 - (a) the governing body of the specified tertiary education provider to which the payment is to be made; and
 - (b) as it considers appropriate, such bodies as appear to it to represent the interests of specified tertiary education providers or any class of them.
 - (6) In making payments under subsection (1), the Council is to have regard to the desirability of—
 - (a) encouraging specified tertiary education providers to maintain or develop funding from other sources;
 - (b) preserving any distinctive characteristics of particular specified tertiary education providers.

13 Funding: requirement to hold meeting

- (1) The Council is (for the purposes of subsection (2)) entitled to require the holding of a special meeting of the governing body of a specified tertiary education provider.
- (2) A member of the Council or its chief executive is entitled to address the meeting on any matters relating to the financial support which the provider receives, or might receive, from the Council.

14 Efficiency studies

- (1) The Council may secure the promotion or carrying out of studies designed to improve economy, efficiency and effectiveness in the management or operations of any specified tertiary education provider.
- (2) The governing body of a specified tertiary education provider must—
 - (a) provide any person promoting or carrying out such studies by virtue of subsection (1) with such information; and
 - (b) make available to the person for inspection such accounts and other documents, as the person may reasonably require for the purposes of the studies.

15 Quality of tertiary education

- (1) The Council is to secure that provision is made for—
 - (a) assessing; and
 - (b) enhancing,the quality of tertiary education provided by specified tertiary education providers.
- (2) In exercising the function under subsection (1), the Council must, as it considers appropriate, consult such persons as appear to it to represent the interests of specified tertiary education providers or any class of them.

16 Advisory functions

- (1) The Council must provide the Scottish Ministers with such information, advice and assistance relating to the—
 - (a) provision and funding of tertiary education; and
 - (b) undertaking of research at institutions which provide tertiary education,as the Scottish Ministers may reasonably require.
- (2) The Council may provide the Scottish Ministers with other information and advice relating to those matters whenever it considers it appropriate to do so.
- (3) Any information, advice or assistance under subsections (1) and (2) is to be provided in such manner as the Scottish Ministers may determine.

17 Skills needs

- (1) In exercising its functions, the Council is to have regard to skills needs in Scotland.
- (2) For the purposes of subsection (1), “skills needs” includes any requirement or desirability for skills or knowledge which, following consultation with the Scottish Ministers (in addition to any consultation with persons referred to in section 18(3)), appears to the Council—
 - (a) to exist for the time being or be likely to exist in the future; and
 - (b) to be capable of being addressed (wholly or partly) by the provision of tertiary education.

18 Consultation and collaboration

- (1) The Council must, in the exercise of its functions—
 - (a) as it considers appropriate, consult the persons referred to in subsection (3); and
 - (b) so far as is consistent with the proper exercise of its functions, seek to secure the collaboration of those persons.
- (2) The persons referred to in subsection (3) must provide the Council with such information as it may reasonably require for the purposes of or in connection with the exercise of any of its functions.
- (3) The persons are—
 - (a) any local authority;
 - (b) the governing body of any specified tertiary education provider;
 - (c) the governing body of any other institution which provides tertiary education;
 - (d) the Scottish Qualifications Authority;
 - (e) Scottish Enterprise;
 - (f) Highlands and Islands Enterprise;
 - (g) any local enterprise company;
 - (h) Scottish University for Industry (that is, the organisation comprised of Scottish UFI Limited and Scottish UFI Trust);

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- (i) Communities Scotland (that is, the agency of the Scottish Executive known by that name); and
 - (j) such other persons as the Scottish Ministers may by order specify.
 - (4) In subsection (3)(g), “local enterprise company” means a person who is responsible, by virtue of an agreement made under of section 19 (delegation of certain functions and powers) of the Enterprise and New Towns (Scotland) Act 1990 (c.35), for the discharge of any functions of Scottish Enterprise or Highlands and Islands Enterprise.

19 Equal opportunities

- (1) The Council must exercise its functions in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In subsection (1) “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

20 General powers

- (1) The Council may (subject to subsections (2) to (9)) do anything that is necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular—
 - (a) acquiring and disposing of land and other property;
 - (b) entering into contracts;
 - (c) investing sums not immediately required for the purpose of the discharge of its functions; and
 - (d) accepting gifts of money, land or other property.
- (2) The Council may not borrow money.
- (3) The Council is not to give any guarantee or indemnity or create any trust or security over or in respect of any property to which this subsection applies.
- (4) The Council is not to dispose of any property to which this subsection applies without the written consent of the Scottish Ministers.
- (5) Consent, for the purposes of subsection (4), may be given—
 - (a) in respect of any case or class of case; and
 - (b) subject to such conditions as the Scottish Ministers may determine.
- (6) Consent, for the purposes of subsection (4), is not required for a disposal of land which is or forms part of property to which that subsection applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.
- (7) But the Council is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which subsection (4) applies.
- (8) Where property to which subsection (4) applies is disposed of, the Council is (after deduction of such expenses as appear to the Scottish Ministers to have been reasonably incurred in the disposal) to pay to the Scottish Ministers such portion of the proceeds or value of the consideration for the disposal as the Scottish Ministers may, after consultation with the Council, determine.

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- (9) Subsections (3) and (4) apply to any property of the Council which has been acquired, improved or maintained wholly or partly, directly or indirectly out of—
- (a) funds provided by the Scottish Ministers under section 4 or 5; or
 - (b) the proceeds of, or any consideration for, the disposal of any property so acquired, improved or maintained.

Specified tertiary education providers

21 Specified tertiary education providers

Schedule 2 specifies, for the purposes of this Act, institutions which provide tertiary education.

22 Specified tertiary education providers: further provision

- (1) The Scottish Ministers may by order modify schedule 2.
- (2) The Scottish Ministers may by regulations specify 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).
- (3) Any such conditions must include conditions—
 - (a) relating to the governance and management of the institution;
 - (b) requiring the appointment of 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;
 - (c) as to procedures for—
 - (i) assessing; and
 - (ii) enhancing,
the quality of the activities funded by financial support given to the institution by the Council;
 - (d) as to procedures for considering and resolving any grievances held by students of the institution.
- (4) A reference to an institution may not be removed from schedule 2 under subsection (1) unless at least one of the conditions specified in any regulations made under subsection (2) is not, or is no longer, being met in relation to that institution.
- (5) The Scottish Ministers may issue guidance in relation to the conditions specified in any regulations made under subsection (2).

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.

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- (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—
- (a) the provision of tertiary education in the area in which the provider is situated; and
 - (b) the needs of persons who are, and the likely needs of persons who might wish to become, students of the provider.

24 Development plans

- (1) The governing body of a specified tertiary education provider must, by such time in each financial year as the Scottish Ministers may direct, prepare a plan (a “development plan”) and send it to the Council.
- (2) A development plan is to—
 - (a) be prepared by reference to the academic year commencing in the following financial year and the succeeding two academic years; and
 - (b) contain such information, and be in such form, as the Council may determine.

25 Inspection of accounts

- (1) The Auditor General for Scotland may, at any reasonable time, inspect the accounts and accounting records of any specified tertiary education provider.
- (2) But the function under subsection (1) is exercisable only in relation to accounts and records which relate to a financial year in which expenditure to which this subsection applies is incurred.
- (3) Subsection (2) applies to expenditure which has been funded (in whole or part) by payments made by the Council under section 12.

26 Merger evaluation

- (1) The Scottish Ministers may require the Council to request the governing body of a specified tertiary education provider to—
 - (a) evaluate (on such basis as is referred to in the request) the—
 - (i) feasibility of; and
 - (ii) advantages and disadvantages which might result from, a merger of the provider with any other specified tertiary education provider referred to in the request; and
 - (b) prepare a report on the evaluation and send it to the Council by such time as is appointed by the Council.
- (2) A report prepared under subsection (1) is to—
 - (a) be in such form (including in the form of a joint report prepared by the providers to which it relates); and
 - (b) contain such additional information, as the Council may determine.

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- (3) The governing body of a specified tertiary education provider must comply with any reasonable request made to it by virtue of subsection (1).

27 Change of name by certain institutions

In section 3 (powers of the Scottish Ministers) of the 1992 Act, for subsection (4) there is substituted—

- “(4) The governing body (within the meaning of Part II of this Act) of a college of further education may, with the consent of the Scottish Ministers, change the name of the college or of the governing body.”.

28 Information about recorded children

A specified tertiary education provider must provide a local authority with such information or advice as the authority may reasonably require for the purposes of the exercise by the authority of its functions under section 65B (provision for recorded children) of the 1980 Act.

PART 3

GENERAL

29 Amendment of enactments

Schedule 3 amends enactments for the purposes of and in consequence of this Act.

30 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

31 Orders and regulations

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
 - (b) different provision for different purposes.
- (3) A statutory instrument containing—
- (a) an order under section 2(5), 4(7) or (8), 10, 18(3)(j), 22(1) or, except where subsection (4) applies, section 30; or
 - (b) regulations under section 22(2),
- is subject to annulment in pursuance of a resolution of the Parliament.
- (4) A statutory instrument containing an order under section 30 which amends an Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

32 Interpretation

(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980 (c.44);

“the 1992 Act” means the Further and Higher Education (Scotland) Act 1992 (c.37);

“the Council” means the Scottish Tertiary Education Funding Council;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“the Parliament” means the Scottish Parliament;

“tertiary education” has the meaning given in section 2;

“specified tertiary education provider” means an institution specified in schedule 2.

(2) In this Act, any reference to the governing body of an institution means—

(a) in the case of an institution conducted by a body corporate, that body;

(b) in the case of an institution not falling within paragraph (a), the executive body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs;

(c) in the case of any other institution not falling within paragraph (a) or (b) for which the Scottish Ministers by regulations or the Privy Council by order has constituted a governing body, that governing body; and

(d) in any other case, any board of governors of the institution or any person responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors.

33 Short title and commencement

(1) This Act may be cited as the Tertiary Education (Funding etc.) (Scotland) Act 2004.

(2) This Act, except sections 30 to 32 and this section, comes into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be so appointed for different provisions and for different purposes.

SCHEDULE 1
(introduced by section 9)

THE SCOTTISH TERTIARY EDUCATION FUNDING COUNCIL

Status

- 1 (1) The Council is a body corporate.
- (2) The Council—
 - (a) is not a servant or agent of the Crown;
 - (b) has no status, immunity or privilege of the Crown,and its property is not to be regarded as property of, or held on behalf of, the Crown.

Membership of the Council

- 2 (1) The Council is to consist of the following members—
 - (a) a person appointed by the Scottish Ministers to chair meetings of the Council; and
 - (b) no fewer than 11 nor more than 14 other members appointed by the Scottish Ministers.
- (2) Each member is to be appointed for a period not exceeding 4 years.
- (3) The Scottish Ministers may, on the expiry of a period of appointment of a member, extend that appointment for a single further period not exceeding 4 years.
- (4) A member—
 - (a) may by giving notice in writing to the Scottish Ministers resign office as a member of the Council; and
 - (b) otherwise, holds and vacates office in accordance with the terms and conditions of appointment.
- (5) If the Scottish Ministers are satisfied that a member of the Council—
 - (a) has been absent from meetings of the Council for a period longer than 6 consecutive months without the permission of the Council; or
 - (b) is otherwise unable or unfit to discharge the functions of a member,the Scottish Ministers may by giving notice in writing to the member remove the member from office.
- (6) A person is, on ceasing to be a member, eligible for reappointment.
- 3 (1) In appointing members, the Scottish Ministers are to have regard to the desirability of including—
 - (a) persons who—
 - (i) have experience of, and have shown capacity in, the provision of tertiary education; or
 - (ii) have held, and have shown the capacity in, any position carrying the responsibility for the provision of tertiary education;

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- (b) persons who have experience of, and have shown capacity in industrial, commercial or financial matters or the practice of any profession; and
 - (c) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Council's functions.
 - (2) In appointing members, the Scottish Ministers are also to have regard to the desirability of—
 - (a) including persons who are currently engaged in the provision of, or carrying responsibility for the provision of, tertiary education; and
 - (b) the membership of the Council (taken as a whole) having experience of, and having shown capacity in, a broad range of tertiary education.

Disqualification from membership

- 4 A person is disqualified from appointment, and from holding office, as a member of the Council if that person is—
 - (a) a member of the House of Lords;
 - (b) a member of the House of Commons;
 - (c) a member of the Scottish Parliament;
 - (d) a member of the European Parliament; or
 - (e) disqualified from election as a member of the Scottish Parliament or as a member of a local authority.

Remuneration, allowances and pensions for members

- 5 (1) The Council—
 - (a) is to pay to its members such remuneration and allowances; and
 - (b) is, in respect of any office held by a person as member, to pay, or make such payments towards the provision of, such pensions, allowances and gratuities,as the Scottish Ministers may in each case determine.
- (2) Where a person ceases to be a member of the Council, the Scottish Ministers may, in special circumstances, direct the Council to make to the person a payment of such amount of compensation as the Scottish Ministers may determine.

Chief executive

- 6 (1) The Council is to employ a chief executive.
- (2) The person referred to in sub-paragraph (3) is (except where sub-paragraph (4) applies) transferred to the employment of, and becomes the first chief executive of, the Council.
- (3) That person is the person who (by virtue of holding (under section 59A(1) and (2)(a) of the 1992 Act) appointments as both the chief officer of the Scottish Higher Education Funding Council and as the equivalent officer of the Scottish Further Education Funding Council) was acting as the chief officer of the body created under section 59A(2)(c) of the 1992 Act immediately before the dissolution of those bodies under section 10.
- (4) But if—

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- (a) there was no person acting as the chief officer of the body created by virtue of section 59A(2)(c) of the 1992 Act immediately before the dissolution of that body; or
 - (b) the person so acting immediately before the dissolution of that body is unwilling, unable or unfit to be transferred to the employment of the Council,

the Scottish Ministers are, after consultation with the Council, to make the first appointment of the chief executive of the Council on such terms and conditions as the Scottish Ministers may determine.

- (5) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed by the Council on such terms and conditions as the Council may, with such approval, determine.

Other staff

- 7 (1) All staff employed (immediately before the coming into force of this paragraph) by—
- (a) the Scottish Higher Education Funding Council;
 - (b) the Scottish Further Education Funding Council;
 - (c) those Councils jointly; and
 - (d) the body created by virtue of section 59A(2)(c) of the 1992 Act,
- are transferred to the employment of the Council.
- (2) The Council may, with the approval of the Scottish Ministers, appoint such other employees on such terms and conditions as the Council may, with such approval, determine.

TUPE Regulations

- 8 The Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply to transfers under paragraphs 6(2) and 7(1) (and whether or not they would so apply apart from this paragraph).

Transfer of property and liabilities

- 9 (1) All property (including rights) and liabilities (subsisting immediately before the coming into force of this paragraph) of—
- (a) the Scottish Higher Education Funding Council;
 - (b) the Scottish Further Education Funding Council; and
 - (c) the body created by virtue of subsection (2)(c) of section 59A of the 1992 Act,
- are transferred to, and vest in, the Council.
- (2) Sub-paragraph (1) has effect in relation to property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.

Proceedings of the Council

- 10 (1) The Council may regulate its own procedure (including any quorum).

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- (2) The validity of any proceedings of the Council is not affected by a vacancy in membership nor by any defect in the appointment of a member.

Committees

- 11 (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.
- 12 (1) The Council may establish other committees for any purpose relating to its functions.
- (2) The Council is to—
- (a) subject to paragraph 11(2), determine the composition of its committees;
 - (b) determine the terms and conditions of committee membership; and
 - (c) determine the procedure (including any quorum) of its committees.
- (3) Any of the committees of the Council may include persons who are not members of the Council.
- (4) The Council is to pay to the members of its committees (whether or not they are also members of the Council) such allowances as the Scottish Ministers may determine.
- (5) The Council is to keep under review the structure of its committees and the scope of the activities of each.

Delegation of functions

- 13 (1) The Council may authorise—
- (a) the person appointed to chair meetings of the Council;
 - (b) the chief executive; or
 - (c) any of its committees,
- to exercise such of its functions (to such extent) as it may determine.
- (2) Sub-paragraph (1) does not affect the responsibility of the Council for the exercise of its functions.

Participation of Scottish Ministers at meetings

- 14 Any representative of the Scottish Ministers is entitled to participate in any deliberations (but not in decisions) at meetings of the Council or of any committee of the Council.

Accounts

- 15 (1) The Council must—
- (a) keep proper accounts and accounting records;
 - (b) prepare in respect of each financial year a statement of accounts; and

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- (c) send the statement of accounts to the Scottish Ministers,
in accordance with such directions as the Scottish Ministers may give.
 - (2) The Scottish Ministers must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports and information

- 16 (1) As soon as practicable after the end of each financial year, the Council must prepare a report on its activities during that year and must—
 - (a) send a copy of the report to the Scottish Ministers; and
 - (b) publish the report,in accordance with such direction as the Scottish Ministers may give.
- (2) The Scottish Ministers must lay a copy of the report before the Parliament.
- (3) The Council must provide the Scottish Ministers with such other information (including information in the form of a document) relating to the exercise of its functions as the Scottish Ministers may reasonably require.

SCHEDULE 2
(introduced by section 21)

SPECIFIED TERTIARY EDUCATION PROVIDERS

Incorporated colleges

Aberdeen College of Further Education
Angus College of Further Education
Anniesland College
Ayr College
Banff and Buchan College of Further Education
The Barony College
Borders College
Cardonald College
Central College of Commerce
Clackmannan College of Further Education
Clydebank College
Coatbridge College
Cumbernauld College
Dumfries and Galloway College
Dundee College
Edinburgh's Telford College
Elmwood College

Falkirk College of Further and Higher Education
Fife College of Further and Higher Education
Glasgow College of Building and Printing
Glasgow College of Food Technology
Glasgow College of Nautical Science
Glenrothes College
Inverness College
James Watt College of Further and Higher Education
Jewel and Esk Valley College
John Wheatley College
Kilmarnock College
Langside College
Lauder College
Lews Castle College
Moray College
Motherwell College
North Glasgow College
The North Highland College
Oatridge Agricultural College
Perth College
Reid Kerr College
South Lanarkshire College
Stevenson College Edinburgh
Stow College
West Lothian College

Non-incorporated colleges

Newbattle Abbey College
Orkney College
Sabhal Mòr Ostaig
Shetland College

Higher education institutions

University of Abertay Dundee
Bell College of Technology
Edinburgh College of Art
Glasgow Caledonian University

Glasgow School of Art
Napier University
University of Paisley
Queen Margaret University College
The Robert Gordon University
Royal Scottish Academy of Music and Drama
UHI Millennium Institute

Ancient and chartered universities

University of St. Andrews
University of Glasgow
University of Aberdeen
University of Edinburgh
University of Dundee
Heriot-Watt University
Stirling University
Strathclyde University
The Open University (so far as carrying on activities in or as regards Scotland)

SCHEDULE 3
(introduced by section 29)

AMENDMENT OF ENACTMENTS

Superannuation Act 1972 (c.11)

- 1 In the Superannuation Act 1972, in Schedule 1 (kinds of employment, etc. referred to in section 1) entries relating to—
- (a) the Scottish Further Education Funding Council;
 - (b) the Scottish Higher Education Funding Council; and
 - (c) a body corporate created by virtue of section 59A(2)(c) of the Further and Higher Education (Scotland) Act 1992,
- are repealed.

House of Commons Disqualification Act 1975 (c.24)

- 2 In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (disqualifying offices) the entries relating to—
- (a) the Scottish Further Education Funding Council; and
 - (b) the Scottish Higher Education Funding Council,
- are repealed.

Sex Discrimination Act 1975 (c.65)

3 In the Sex Discrimination Act 1975, section 23B is repealed.

Race Relations Act 1976 (c.76)

4 In the Race Relations Act 1976—

- (a) section 18B; and
 - (b) in Schedule 1A (bodies and other persons subject to general statutory duty), the entries relating to—
 - (i) the Scottish Further Education Funding Council; and
 - (ii) the Scottish Higher Education Funding Council,
- are repealed.

Further and Higher Education (Scotland) Act 1992 (c.37)

5 (1) In the 1992 Act—

- (a) in section 3 (powers of Scottish Ministers), in subsection (1), the words from “shall” to “he” are repealed;
- (b) in section 12 (boards of management), in subsection (1), for the words from “of” in the second place where it occurs to the end there is substituted “managing and conducting their college.”;
- (c) in section 44 (designation of institutions), in subsection (1), for the words from “by” to the end there is substituted “, for the purposes of this Part, by order designate any institution providing higher education (whether or not it also provides education of any other kind or carries on any other activities).”; and
- (d) in section 61 (interpretation), after the words “1980;” there is inserted—

“the Council” means the Scottish Tertiary Education Funding Council;”.

(2) In that Act—

- (a) section 1(1) and (2) and (4) to (6);
 - (b) sections 4, 7 to 10, 21 to 23, 37, 39 to 43, 50, 51, 53, 54 and 59A;
 - (c) Schedules 1 and 7; and
 - (d) paragraphs 4(3) and 5(3) of Schedule 9,
- are repealed.

Teaching and Higher Education Act 1998 (c.30)

6 In the Teaching and Higher Education Act 1998—

- (a) section 37 (joint exercise of functions of funding council in Scotland); and
 - (b) in paragraph 2 of Schedule 3 (minor and consequential amendments), the entry relating to a body corporate created by virtue of section 59A(2)(c) of the Further and Higher Education (Scotland) Act 1992,
- are repealed.

Public Finance and Accountability (Scotland) Act 2000 (asp 1)

- 7 In the Public Finance and Accountability (Scotland) Act 2000, in paragraph 11 of schedule 4 (modification of enactments), sub-paragraphs (2) and (4) are repealed.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 8 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies)—
- (a) the entries relating to—
 - (i) the Scottish Further Education Funding Council; and
 - (ii) the Scottish Higher Education Funding Council,are repealed; and
 - (b) after the entry relating to the Scottish Sports Council there is inserted—
“The Scottish Tertiary Education Funding Council”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 9 In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities)—
- (a) paragraphs 41 and 43 are repealed; and
 - (b) after paragraph 52 there is inserted—
“52A The Scottish Tertiary Education Funding Council.”.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 10 In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
- (a) in paragraph 49, for the word “Higher” there is substituted “Tertiary”;
 - (b) paragraphs 86 and 87 are repealed; and
 - (c) after paragraph 100 there is inserted—
“100A The Scottish Tertiary Education Funding Council.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 11 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities)—
- (a) the entries relating to the—
 - (i) Scottish Further Education Funding Council; and
 - (ii) Scottish Higher Education Funding Council,are repealed; and
 - (b) after the entry relating to the Scottish Sports Council there is inserted—
“Scottish Tertiary Education Funding Council”.

The Scottish Further Education Funding Council (Establishment) (Scotland) Order 1998 (S.I. 1998/2667)

- 12 The Scottish Further Education Funding Council (Establishment) (Scotland) Order 1998 (S.I. 1998/2667) is revoked.