ENTERPRISE AND CULTURE COMMITTEE

21st Meeting, 2004 (Session 2)

Tuesday, 5th October 2004

The Committee will meet at 2 pm in Committee Room 1.

1. **Declaration of Interests:** Michael Matheson MSP.

2. **Arts in the Community Inquiry:** The Committee will take evidence from:
   - Jim Tough, Deputy Director, Scottish Arts Council;
   - Caroline Docherty, Head of Planning and Area Development, Scottish Arts Council; and
   - Maggie Maxwell, Visual Arts Officer, Scottish Arts Council.

3. **Further and Higher Education (Scotland) Bill:** The Committee will take evidence from:
   - Mark Batho; Head of Group; Lifelong Learning; Scottish Executive Enterprise, Transport and Lifelong Learning Department;
   - Gill Troup, Head of Division, Higher Education and Science, Scottish Executive Enterprise, Transport and Lifelong Learning Department; and
   - Gavin Gray, General (Higher Education), Scottish Executive Enterprise, Transport and Lifelong Learning Department

   on the Further and Higher Education (Scotland) Bill.

4. **Subordinate Legislation:** The Committee will consider the following negative instruments –
   - The Scottish Network 1 Tourist Board Scheme Order 2004, (SSI 2004/396);
5. **Committee work programme:** the Committee will consider its work programme for the period October to December 2004.

Simon Watkins  
Clerk to the Committee  
Room 2.7, Committee Chambers  
Ext. 0131 348 5207

The following meeting papers are enclosed:

**Agenda Item 2**

Submission from the Scottish Arts Council  
EC/S2/04/21/1

**Agenda Item 3**

Further and Higher Education (Scotland) Bill including:  
Clerk’s cover note  
SPICe note (Annex A)  
Scottish Executive note (Annex B)  
Further and Higher Education (Scotland) Bill (as introduced)  
Policy Memorandum  
Explanatory note (including Financial Memorandum)  
EC/S2/04/21/2

**Agenda Item 4**

SSI Cover Paper including:  
The Scottish Network 1 Tourist Board Scheme Order 2004, (SSI 2004/396) – *hard copy only*  
The Scottish Network 2 Tourist Board Scheme Order 2004, (SSI 2004/397) – *hard copy only*  
EC/S2/04/21/3

**Agenda Item 5**

Paper on the Committee work programme  
EC/S2/04/21/4
SUBMISSION FROM SCOTTISH ARTS COUNCIL

Contents

Introduction .................................................................................................................. 3

Definition of Community Arts/ arts in the community ........................................ 4
  ➢ Scottish Arts Council Definition .................................................................... 4

Key Points .................................................................................................................... 4

Arts in the community – focus purpose and outcomes .................................... 5
  ➢ Delivery of arts in the community .................................................................. 5
  ➢ Art for what purpose ....................................................................................... 5

Recreational/ voluntary arts ................................................................................. 6
  ➢ Definition ......................................................................................................... 6
  ➢ Funding ............................................................................................................. 7
  ➢ Recipients ......................................................................................................... 7
  ➢ Professional / amateur overlap ...................................................................... 8

Access to the Arts .................................................................................................... 9
  ➢ Geographical access issues .......................................................................... 9
    o Supporting local authorities / regional agencies ..................................... 9
    o Infrastructure ............................................................................................... 11
    o Artists and art workers working in communities ..................................... 12
    o Festivals, small promoters and touring ................................................. 13

Access and elderly people .................................................................................... 17
Access and Cultural Diversity .............................................................................. 17

Improving quality of life ...................................................................................... 19
  ➢ Arts and SIPs .................................................................................................. 19
  ➢ Arts and health ............................................................................................... 19
  ➢ Arts and mental health ............................................................................... 21
  ➢ Arts and disability ......................................................................................... 21
  ➢ Disability arts ................................................................................................. 22
  ➢ Arts and criminal justice .............................................................................. 23

Scottish Arts Council investment in arts in the community ............................ 25

Conclusion .............................................................................................................. 27
Introduction / preamble

The Scottish Arts Council welcomes the decision by the Enterprise and Culture committee to hold an inquiry into arts in the community. At a time when the whole culture sector is under increased scrutiny this inquiry presents an opportunity to investigate this important area of the arts.

Arts in the community is a wide and flexible term which encompasses a great deal of activity which is taking place in the arts. All artforms – music, dance, drama, literature, visual arts and crafts, engage with the communities in different ways and of course different communities demand or expect different things from the arts. There is no ‘one size fits all’ solution to delivering the arts to the people of Scotland.

This submission highlights the Scottish Arts Council’s role in the delivery of arts in the community - funding projects and advocating best practice, and our longstanding commitment to community based practice. Some arts projects are simply intended to entertain while others have a broader purpose of improving access or contributing to quality of life in other policy areas such as health.

This inquiry coincides with the publication of the Scottish Arts Council Corporate Plan for 2004 – 2009. The ‘Plan’ is the Council’s ambitious action plan for the arts in Scotland with the primary aim of increasing participation in the arts.

The ‘Plan’ highlights the Scottish Arts Council’s unique role as the national funding body for the arts, able to provide a national overview, promote excellence and identify regional needs. This is essential to delivering the arts to all of Scotland’s communities.

Jim Tough
Definition of community arts / arts in the community

Community arts, although a recognised term, has a wide range of definitions, from the narrowest view as arts for social change (activist art that intends to cure social ills) to the broadest view that includes public art (art installed in public places or buildings that is open and available to the community). The term ‘arts in the community’ widens this concept further with and could go as far as to include any art which takes place in any community i.e. all art.

Arts in the Community – Scottish Arts Council definition

For the purposes of this response the Scottish Arts Council will take the definition of arts in the community to include:

- Arts projects which are specifically targeted at particular communities in order to promote inclusion
- Arts projects in which professional artists work with or alongside a community.
- Arts projects which are specifically designed as public artworks.
- Amateur / volunteer led arts projects.

The definition of the term community is not exclusively a geographical term. Communities can exist through mutual interests, needs and cultures. The Scottish Arts Council endeavours to serve all of Scotland’s diverse communities.

Key points

- Definition - Community arts, although a recognised term, has a wide range of definitions. The term ‘arts in the community’ widens this concept further
- Scottish Arts Council supports a number of programmes and initiatives which promote art in the community
- Art in the community projects rely on the expertise and experience of professional artists. The Scottish Arts Council provides essential support for artists and companies to allow them to work and engage with communities.
- Many of the community arts projects are funded through lottery funding which is aimed at widening access to the arts. However, the short term project funding, which lottery grants support, creates a difficulty in continuity of service and longer term funding.
- Arts in the community projects can have a range of intended outcomes; projects can range from increasing participation and accessibility to having targeted outcomes, such as improving physical or mental health, or community cohesion. The arts can be therapeutic, motivational, educational and inspirational in many other areas of life.
- The Scottish Arts Council has a unique national overview that allows strategic decisions to be made into investment in the arts. The Council can identify need and supports every stage of the process, from funding infrastructure and venues, supporting artists and performing companies and supporting promoters of local festivals.
Arts in the Community – focus, purpose and outcomes

Delivery of arts in the community
Many who work in the fields have at times been frustrated by the profile of community arts held in some quarters. It is sometimes pigeon-holed into what is perceived to be lower quality or less important than the recognised professional art forms.

In reality, art in the community is very different to this perception and the boundaries between ‘community’ and ‘professional’ art are by no means clear. There has been a growing trend of an overlap between the community and cultural sectors. Professional artists work with communities in a variety of ways and professional companies embark on extensive outreach programmes.

The Scottish Arts Council has encouraged this trend which benefits the community, the artists and contributes to the development of the art form. The Council has provided funding through both lottery and voted (Executive) funds to enable these projects to take place.

Art for what purpose?
The arts are a fundamental part of a confident cultured society. They challenge and inspire us. They bring beauty, excitement and enjoyment into our lives. They help us express our identity as individuals, communities and a nation. However, art is not just a source of enjoyment and recreation, the arts can have a broader purpose.

The arts can be therapeutic, motivational, educational and inspirational in many other areas of life.

All arts projects expect an audience and to some extent have an intended outcome. Some arts are simply to entertain and provide enjoyment, or to challenge and inspire. Other projects are designed to provide access or engage with excluded groups and others still have more tangible outcomes. Although many, if not most, projects cover more than one of these outcomes, arts in the community projects can be broadly defined into these three themes, and of course each of these areas will overlap in both impact and intent. The diagram below serves to illustrate this perspective:
Many arts projects could arguably serve more than one if not all of these purposes – for example an elderly person who is involved in recreational arts may not only enjoy the pastime but also see it as beneficial to their health and wellbeing; providing better access to the arts for people from economically or socially deprived areas may lead to a decrease in crime levels. To some extent all three groups are principally about access or providing access.

This report will look at the Scottish Arts Council’s investment in arts in the community in these three areas.

**Recreational or voluntary arts**

**Definition of voluntary Arts**

The Scottish Arts Council uses the Voluntary Arts Network definition i.e. voluntary arts groups are those led and run by volunteers. The voluntary arts are arts and crafts that people undertake for self-improvement, social networking and leisure, but not primarily for payment. The range of artforms includes folk, dance, drama, literature, media, music, visual arts, crafts and applied arts, and festivals. For the purposes of this report, we are also including umbrella organisations that support the work of volunteer-led organisations, some of whom may have paid staff.

Many people take part in the arts on a voluntary basis either through formal membership of a group or organisation or on a personal level. A survey of participation in the arts in Scotland commissioned by the Scottish Arts Council in 2001/02 revealed that 78% of respondents participated in some sort of arts event. Arts activities ranged from reading books, the most popular (70%) to performing arts such as drama, singing or amateur dance (23%).

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**Funding**
Analysis of Scottish Arts Council funding for the voluntary sector was carried out in 2001/02. Grants are not currently recorded by voluntary status, therefore this analysis is based on data from the Scottish Arts Council and the Awards For All databases and officers’ knowledge.

In the year 2001-2002 funding (lottery and voted) for voluntary arts organisations amounted to £2,956,211 (that is 5.4% of the Scottish Arts Council budget for the year).

  Awards for all: £1.1million annually  
  Scottish Arts Council Voted: £1,158,867  
  Scottish Arts Council Lottery: £ 770,603 (excluding awards for all)

**Recipients**

**Awards for All**
Much of the direct funding for the voluntary sector is through National Lottery Awards for All schemes. Each year £1 million of our National Lottery budget is ring-fenced for the Awards for All programme which distributes small grants (max £5000) and is aimed at local community projects. Evaluation of the Awards for All scheme has shown that over 90% of the organisations receiving funding have no paid staff.

**Umbrella Bodies**
The Scottish Arts Council provides annual funding of £30,000 to the umbrella organisation Voluntary Arts Scotland. The Council also supports the following groups with a national or regional remit (involving participation in voluntary arts). They exist to support their members by funding, training and information. The organisations funded by the Scottish Arts Council include:

<p>| crafts         | Applied Arts Scotland                      |
|               | Scottish Potters Association               |
|               | Scottish Basketmakers Circle               |
| dance         | Scottish Traditions of Dance Trust         |
|               | Royal Scottish Country Dance Society       |
| drama         | Scottish Carnival Arts Consortium          |
|               | Scottish Community Drama Association       |
|               | Promoters Arts Network                     |
|               | Scottish Mask &amp; Puppet Centre              |
| literature    | Scottish Storytelling Forum                |
|               | Poetry Association of Scotland             |</p>
<table>
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<tr>
<th>Music Organizations</th>
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<tbody>
<tr>
<td>Enterprise Music Scotland</td>
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<tr>
<td>Traditional Music and Song Association</td>
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<tr>
<td>National Youth Choir of Scotland</td>
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<tr>
<td>British Federation of Youth Choirs</td>
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<tr>
<td>National Youth Orchestras of Scotland</td>
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<td>Feisean nan Gaidheal</td>
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<td>Scottish Music Information Centre</td>
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<td>Scottish Folk Arts Group</td>
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<td>New Music Scotland</td>
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<td>National Federation of Music Societies/Making Music</td>
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**Professional / amateur overlap**

Many of the above organisations enable voluntary organisations to work with professional artists. Providing either professional tuition for participants or funding professional artists to work with an amateur group on a production.

**Case Studies**

**Making Music Scotland**: represents and supports amateur choirs, orchestras and music promoters of all kinds throughout Scotland.

Making Music provides a comprehensive range of artistic and administrative services, training opportunities and fulfils a lobbying and advocacy role for members. The 2000+ member societies represent over 130,000 musicians and music lovers, present over 7,500 concerts a year to an audience of 1.5 million.

**Feisean nan Gaidheal** supports the development of community-based Gaelic arts tuition festivals throughout Scotland. Each year the Feis movement offers the opportunity of tuition in Gaelic song, music, drama, dance and Gaelic language to over 4000 people, primarily to young people. The Feisean employ professional musicians as tutors during the annual Feis and in tuition workshops throughout the year.
Access to the arts
Barriers to accessing the arts can take different forms for different people and communities. The Scottish Arts Council strives to address the individual needs of communities rather than apply a blanket approach to promoting access to the arts. The Scottish Arts Council hosted an ‘Arts for All’ conference in 2002 which attracted over 300 delegates, with many more who were unable to secure places. The conference focussed on community arts and papers can be viewed at www.artsforallscotland.org.

Geographical access issues
One of the most identifiable barriers to accessing the arts is that of geography. Communities in remote areas may have to travel long distances to attend or participate in an arts event. In urban areas, some communities can feel excluded from the arts through lack of local provision. The Scottish Arts Council, with its unique national overview, tackles the issues of geographic access through:

- Working with local authorities and regional agencies
- Investing in new arts infrastructure across Scotland
- Supporting artists and arts workers working with communities
- Investing in touring programmes.

Local authorities and regional arts agencies
Local authorities and regional arts agencies play a key role in delivering Scottish Arts Council funded projects in communities. These links provide us with a national overview of arts provision in Scotland.

Local Authorities
In 1995, the Scottish Arts Council put in place a strategy for partnership with local authorities with the aim of increasing investment, capacity and quality in the arts at local level. The key building blocks have been research, advocating the need for strong arts policy and increased investment at local level.

The Scottish Arts Council encourages local authorities to make further commitments to the arts through seed-funding posts to bring in additional expertise and targeted funding programmes to increase the level and range of activity. Scotland’s local authorities received over £4.3 million from the Scottish Arts Council in 2003/04 to fund projects in their areas.

Local Authority Partnerships
In 1999 the Scottish Arts Council set up the Local Authority Partnership scheme which provides grants of up to £120,000 to local authorities identified as having a low arts spend. The aim of the fund is to help distribute arts lottery funding more evenly across Scotland. The Scottish Arts Council identified 11 local authorities which had the lowest investment in the arts and the grants were awarded on condition that the local authorities matched at least 50% of the investment.

Interim monitoring of the programme in November 2002 saw a more effective leadership of the arts within the local authority and a substantial increase in arts activity2.

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2 Lewis, Lindsay, Local Authority Partnership Scheme Review, 2002, Hartleap, Selkirk.
Regional Arts Development Agencies
The Scottish Arts Council provides annual support to a number of regional arts development agencies which act as advocates for the arts and small scale distributors of funding in their areas.

<table>
<thead>
<tr>
<th>Name</th>
<th>Area and role</th>
<th>Scottish Arts Council Funding 2003/04</th>
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| Dumfries and Galloway Arts Association | DGAA was established in 1985 and is supported by Dumfries and Galloway council and the Scottish Arts Council. It is an independent arts development agency serving South West Scotland. | Revenue: £57,150  
Project: £56,000  
Lottery: £244,215                                                                                                   |
| Hi Arts                              | Hi-Arts is contracted by Highlands and Islands enterprise to support and initiate development opportunities for the arts throughout the Highlands and Islands area.                                          | Revenue: £29,050  
Project: £173,291  
Lottery: £76,978                                                                                                         |
| Pròiseact nan Ealan                  | “Pròiseact nan Ealan is an arts development agency promoting Gaelic music, theatre and visual arts through initiatives such as exhibitions, publications, festivals, television programmes, CDs and training courses. A landmark was An Leabhar Mòr (The Great Book of Gaelic) launched by Pròiseact nan Ealan in November 2002.” | Revenue: £112,550  
Project: £15,000  
Lottery: £14,831                                                                                                         |
| Shetland Arts Trust                  | Shetland Arts Trust provides comprehensive arts development to Shetland and is supported by Shetland council and the Scottish Arts Council.                                                             | Revenue: £38,750  
Project: £36,382  
Lottery: £100,646                                                                                                         |
Infrastructure
Over £125 million of lottery funds has been invested since 1995 in the capital arts infrastructure of Scotland. The Scottish Arts Council believes that Capital funds should be used to ensure that there is a fair spread throughout the country of artistic activity that is inspiring and transforms lives.

Capital grants range from grants as small as £5000 to millions of pounds and projects can be as varied as providing new instruments for a pipe band to the An Lanntair arts centre which has recently been awarded a £3 million capital grant for redevelopment. Of the 725 awards which have been granted since 1995, 520 (72%) of the awards were less than £50,000.

Case Studies
Craignish Village Hall is a community run venue in a rural area of Argyll and Bute.

The venue offers a programme of regular arts (and non-arts) activity for all ages in the community, including an annual arts festival. The village hall is a focal point for much of the activity throughout the year. The village hall provides a venue for educational, cultural and social events within Craignish and aims to be accessible to all.

Craignish Village Hall committee applied to the small capital grants programme for equipment to enhance the theatre, music and exhibition facilities in their new village hall. The equipment applied for included staging, curtains, chairs, lighting and sound systems, IT equipment for administration and marketing, a video system and an electric piano.

In July 2004, the Scottish Arts Council approved a grant of up to £29,971, which is 73% of total project costs (£40,789).

The equipment will enable local organisations to enhance the quality of the production and presentation of work, and will also have a positive impact on the quality of the arts programme as the venue will now have the facilities to attract professional touring theatre companies to the area giving local audiences more opportunities to participate in the arts.

Northern Rock - Glasgow
The Scottish Arts Council provided a capital lottery grant of £217,000 in 2000 towards the cost of refurbishment of the basement of the Millburn Centre Royston to create Northern Rock a community music resource. The facility now has two recording studios, rehearsal facilities, reception area, café and other ancillary accommodation.

Since its inception, the group has successfully organised a number of activities with the support of the Scottish Arts Council including a Northern Rock festival, regular city centre events featuring local bands and taster music workshops. The group works with children and young people as well as asylum seekers from the Sighthill area of Glasgow.
Scottish Arts Council support for Arts Centres
Along with providing capital funding for infrastructure the Scottish Arts Council also provides annual core funding for arts venues across the country. Of the 110 core funded organisations (CFOs) 37 are arts venues or centres. These venues cover all artforms and some are multi purpose art centres.

Recent years have seen an increase in the development of combined multi-arts centres across Scotland. Many of these centres provide a base for local artistic activity, as well as a venue for touring professional work. These centres stretch the length and breadth of the country providing a local resource for communities.

Case Studies

Dundee Contemporary Arts (DCA): DCA is an internationally-renowned centre for contemporary arts, an award-winning leader in the field of education, and a vibrant and hugely popular social and cultural meeting place. Innovative and inspiring in its approach to all areas of its work, DCA is the focus and stimulus for an expanding and successful regional cultural and creative industry sector and a major flagship organisation for its national funding bodies.

DCA has five floors of galleries, cinemas, artists’ facilities, education resources, the University of Dundee visual research centre and a hugely popular Cafe Bar.

Dundee City Council received a grant from the Scottish Arts Council of £5.38 million in 1995 towards the building of the Dundee Contemporary Arts centre. The Scottish Arts Council also provides annual revenue funding. Overall the City of Dundee has received over £11 million in capital funding from the Scottish Arts Council.

Lyth Arts Centre is a small scale arts venue and promoter in Caithness presenting good quality work particularly in performing arts. Most of the programme is devoted to presenting the work of professional British and international artists and performers and the centre also acts as a stepping-off point for local artistic activity. The main aim is to promote work of the highest standard.

The centre has recently re-opened after substantial re-development supported by a Scottish Arts Council capital grant of £100,000. The centre provides a vital arts resource to this remote community and receives annual revenue support from the Scottish Arts Council.
Artists and arts workers working with communities
Along with investing in the arts infrastructure the Scottish Arts Council also supports individuals working in the arts to work with communities, for example:

Artists-in-residence
Artists-in-residence programmes are an excellent opportunity to allow artists to engage with communities and for communities and amateur artists to learn and interact with professional artists.

Case studies
Collective Gallery
The Collective gallery, based in Edinburgh has run a number of projects where artists work in collaboration with communities. One of these projects, entitled ‘Scheming’, was a collaboration with residents of the Dumbiedykes flats which neighbour the Holyrood parliament. The project involved four artists working in the area and focussed in issues of housing and poverty. The artists worked with residents to produce work which was exhibited in the Dumbydykes area.

Striding Arches Project
The Striding Arches Project is an environmental Sculpture project by the internationally renowned artist Andy Goldsworthy. The sculpture made up of sandstone arches will be situated in the Cairnhead forest, Dumfries on the route of the Souther Upland Way.

The project is being run jointly by the Dumfries and Galloway Arts Association and the Cairnhead Forrest Trust was awarded a grant of £99,500 in 2004 from the Scottish Arts Council.

The project has an extensive education programme including the conversion of an existing derelict byre into an interpretive/educational shelter.

Cultural Co-ordinators
The Scottish Arts Council manages the Cultural Co-ordinators programme on behalf of the Scottish Executive. This is a four-year programme totalling £3.25 million which introduced Cultural Co-ordinators in local authorities to work with schools. There are currently 86 Cultural Co-ordinators based in Scotland’s 32 local authorities.
The remit of Cultural Co-ordinators is wide and focuses on activities appropriate to the local context. Working closely with schools and managed by Creative Links officers or their equivalents, Cultural Co-ordinators facilitate a wide range of activities which might include visits by artists, trips to museums or galleries, and opportunities for children to create and perform.

**Creative Link Officers**
The Scottish Arts Council also joint fund, together with local authorities, 22 Creative Links officers based in local authorities. Creative Links posts access local, national and international professional arts resources to augment arts experiences for children and young people in their area. The network will be extended to each of the 32 local authority education departments by 2007. Annual monitoring has shown that the current posts have made a noticeable difference to the profile and practice of arts in education in their areas.

**Festivals, small promoters and touring**
Art in the community involves promoting participation in the arts and enabling professional artists to engage with people across Scotland. Our support for festivals and local promoters is key for these priorities. Over arching this is the Scottish Arts Council’s support for professional artists and companies to allow them to tour. The Council recognises and supports all the stages essential to allowing good quality performances, exhibitions and art work to be seen and enjoyed by people across Scotland.

It is the Council’s unique national overview that allows strategic decisions on investment in touring and local festivals. The Council identifies need and supports every element of the process, from funding infrastructure and venues, supporting artists and performing companies to supporting promoters of local festivals.

**Festivals and local promoters**
The Scottish Arts Council provides direct funding for around 65 festivals across the country and also supports many organisations which run festivals, such as the Traditional Music and Song Association (TMSA). Many festivals are supported through the Council’s Arts in Communities fund which has an annual fund of £300,000 and provides grants of up to £5000 to local festivals or promoters of arts. Other festivals, such as book and music festivals, are supported separately by the art form departments.

We also support small local promoters, which are instrumental in bringing first class artists to smaller venues in Scotland throughout the year.

Local festivals are an excellent way to promote community cohesion or challenge negative perceptions of deprived communities, as well as along with helping to promote the arts to new audiences.

**Case studies**
**North Glasgow International Festival** - The North Glasgow International Festival was organised in the Sighthill area of Glasgow in response to a number of violent incidents against the relatively new asylum seeker community. Now in it’s fourth year, the festival has helped introduce a better understanding of new and minority ethnic cultures.
Promoters Arts Network (PAN) - PAN is the promoters’ umbrella body for the Highlands, Argyll and Bute, Orkney, Shetland, Western Isles, and beyond. Membership of PAN is an indicator that a good quality programme will be delivered. PAN offers support, advice and networking opportunities for promoters in the Highlands and Islands. It facilitates the exchange of information about touring companies to local promoters, and information to touring companies about who the promoters are.

Touring
Artists are essential in making any local festival or event happen. Touring is an important element of bringing the arts into the community, it also serves to reconcile arts for all with arts of excellence.

Scotland’s four major national companies, Scottish Ballet, Scottish Opera, the Royal Scottish National Orchestra and the Scottish Chamber Orchestra, all tour Scotland on an annual basis. Many also tour smaller-scale productions to small venues across the country. The Scottish Arts Council supports many other companies which work on a national basis touring to many parts of Scotland.

We also provide grants to allow artists and arts organisations to tour their work – often to Scottish Arts Council-funded venues. Touring covers all artforms, from a visual arts exhibition to a mainstage opera tour. In 2003/04 the Scottish Arts Council awarded over 120 grants specifically for touring.

Case Studies
7:84 Theatre Company
7:84 Theatre Company is one of Scotland’s longest-established touring companies. Each year the company’s three productions tour extensively across Scotland. Its recent production of Reasons to Be Cheerful visited 17 venues, from Paisley to Peebles, via Lossiemouth and Ballachulish in February and March 2004, as well as performing on main stages in Dundee, Inverness, Edinburgh and Glasgow. In addition to main stage productions, the company’s outreach team developed an innovative education project linking young people at risk of offending from Kerelaw School, with young people from secondary schools across Scotland, around a theme of youth offending. The resulting performance piece was presented to MSPs in May 2004.

An Leabhar Mór (The Great Book of Gaelic)
The An Leabhar Mór project, described as the contemporary Book of Kells, is centred around 100 specially commissioned artworks based on Scottish and Irish poems dating from the 6th to the 21st century. The artworks were created by some of Scotland and Ireland’s best known artists including John Byrne, Calum Colvin and Alasdair Gray, who worked with a team of 10 calligraphers to create a range of contemporary artworks in a wide variety of media on handmade paper.

The artworks have toured around Scotland and Ireland and have recently been dispersed among eight galleries in the Scottish Western Isles and Ireland. Visitors to each gallery were able to view the entire exhibition through internet screenings that use the latest broadband satellite technology to connect the remote locations.
Tune Up

Tune Up was established by the Scottish Arts Council in 2003 and provides funding for top musicians and artists to perform across Scotland with particular emphasis on including more remote locations that do not usually benefit from a varied range of high quality live music. During the 2004/05 programme, there will be more than 60 gigs between now and August 2005 and the tours will visit venues ranging from Edinburgh’s Queen’s Hall to Ullapool’s village hall and from the Wynd Theatre in Melrose to Stirling’s Tolbooth. This is the second year of the Tune Up programme and the line up includes leading Scottish acts Eddi Reader, SLAM, The Delgados, Battlefield Band, Dochas, Scottish Ensemble, Hebrides Ensemble and Phil Bancroft as well as international acts ranging from African guitarist Louis Mhlanga to Rajasthan’s traditional group of musicians, Musafir. The Tune Up tours will take in venues from Skye, to Melrose, Forres, Clashmore, Glenrothes and Tobermory amongst the 60 venues visited.
Access elderly people

With an ageing population, arts provision for older people is becoming increasingly important. According to the Scottish Arts Council Audience and Participation survey people aged 55 and over are more likely to be interested in the arts and cultural events in general. A research paper commissioned by the Scottish Arts Council revealed that young people continue to be the focus for local authorities’ arts education, consequently the majority of policy is focused on formal education in schools.

In November 2001, the Scottish Arts Council launched the Third Age Research Project. Six organisations working in different artforms were awarded funds ranging from £5000 - £10,000 to carry out a series of pilot projects with older people. These projects were:

- Scottish Ballet – Gener8
- Taigh Chearsabhagh
- The Lemon Tree, Aberdeen
- Scottish Chamber Orchestra
- Dundee Contemporary Arts
- Moniack Mhor

The projects were all evaluated in line with Scottish Arts Council standard evaluation procedures, in addition in depth interviews were carried out for the RGA research paper.

Case Studies

**Dundee Contemporary Arts Centre (DCA)**

In January 2002, DCA launched a digital art / new media project aimed at introducing people aged 60 and over to new technology. With a maximum of 20 participants, the small working groups helped participants overcome the fear of new technology evident at the start of the course. The project was offered at no cost, which was well received by participants, many of whom are on state pension income.

**Moniack Mhor**

Moniak Mhor is a writers' centre based in Inverness-shire, run by the Arvon Foundation. The centre ran a course for 16 people aged 60 and over who were all nominated to attend by their local writers in residence. The course covered all aspects of writing and the publishing industry. The course received excellent feedback and has been continued.

Access and cultural diversity

The Scottish Arts Council’s work to develop a vibrant and culturally-diverse arts community stems initially from our 2002 Cultural Diversity Strategy and includes:

- A dedicated cultural diversity funding scheme.
- Continuing professional development for artists from minority ethnic backgrounds, including targeted residencies where desirable.

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4 A Strategy for Lifelong learning, the Arts and Older People, 2002, Edinburgh, Prepared for the Scottish Arts Council by RGA Ltd.
• Partnership working with other Scottish cultural bodies, galleries and arts institutions on programming work for diverse audiences
• Workshops and seminars to discuss and develop cultural diversity in specific artforms.
• Funding of a pilot Arts Ambassador post at Audience Business, Scotland. The arts ambassador will work directly with arts organisations on audience development initiatives.

While we are aiming to ensure that work for, and by, culturally diverse artists is included in mainstream programming, we also recognise that support for grassroots organisations is vital to develop skills at all levels of arts provision.

During 2004-05, we will invest at least £275,000 in specific cultural diversity projects, this is in addition to supporting our core-funded arts organisations to develop and programme work for a broad audience.

The types of organisations supported include those presenting performing arts from South Asia, India and the Middle East; literature and storytelling from Persian, Urdu and Arabic traditions; music from the classical Chinese tradition; dance from a range of cultures; supporting new technologies to increase access within minority ethnic communities. There are also site-specific works, such as the Hidden Gardens, behind Glasgow’s Tramway.

This work complements that of some of the well-established organisations like the Edinburgh Mela, Scottish Academy of Asian Arts, Multi-ethnic Aberdeen, all of which have also received dedicated funding for organisational and programme development.

In February 2004, we hosted the New Voices, Hidden Histories conference to explore cultural diversity in the arts in Scotland. Over 180 delegates attended to participate in discussions highlighting the successes and challenges in developing, presenting and programming work from diverse backgrounds.

The Scottish Arts Council has also funded a series of successful arts traineeships aimed at enhancing career opportunities for those from a minority ethnic background. The traineeships covered several artforms and cultural organisations, including Glasgow’s Citizens Theatre; Glasgow Film Theatre; Edinburgh’s Royal Lyceum Theatre Company and Stills Gallery; and the Scottish Book Trust.
Improving Quality of Life

Arts and Social Inclusion Partnership

Involvement in the arts can benefit individuals by increasing confidence and developing new skills; the arts can also benefit communities by attracting people into local activities, and improving an area’s image. The Scottish Arts Council recognises the benefits that the arts can bring to community cohesion.

In 1999 the Scottish Arts Council introduced an Arts and Social Inclusion Scheme targeted at Social Inclusion Partnerships. The Scottish Arts Council invested in arts and social inclusion schemes in 29 of the 48 SIP areas, investing over £1.3 million.

The scheme ended in 2003 following the dissolution of SIPs. Funding formerly targeted for Social Inclusion Partnership areas or areas of low arts provision (through the Local Authority Partnership fund) will now fund artists-in-residence projects. The priority is to support artists-in-residence in areas of economic deprivation, or for new and under-represented groups, specifically children and young people, people with disabilities and people from minority ethnic communities.

Aim 1 of our corporate plan is to:

“Increase participation by 5%, especially opportunities for young people by supporting national networks of artists in the community/development posts, including 24 new posts prioritising work with under-represented groups”.

Arts and Health

There are a number of organisations which work within the arts and health field in a range of different art forms. As well as including artists working with patients, staff and carers in creative activities, arts and health can also extend to public art commissions, the architecture and design of healthcare facilities and health education. Outside of the health care environment the arts can play an important role in healthy living for the wider population, particularly performance arts such as drama, dance and music.

The Arts Council England has published a review of the medical literature on arts and health (Staricoff, Arts Council England Research Report 36). This review of almost 400 papers focused primarily on studies between 1990-2004. It reports that there is compelling evidence of the benefits of introducing arts and humanities into healthcare for patients, for staff, for the patient-staff relationship, for hospitals and for the general population. Clinical outcomes have been achieved through the intervention of the arts and specific outcomes were highlighted in: cancer care; cardiovascular units; intensive care; screening and diagnostic procedures; pain management; and surgery.

Distinction should be made between art therapy and arts in health. The Scottish Arts Therapy Forum (SATF) states:
‘We hold that it is the intentional use of art for therapeutic purposes which distinguishes it from the participatory use of art with therapeutic results which is the chief distinction between the arts therapies and arts activities.’

The Scottish Arts Council and the Scottish Executive have recently joint-funded a two year development programme in arts and health. This includes an arts development post within a major urban health authority and a programme of research and evaluation.

**Case Studies**

**Elderflowers / Clowndoctors – Hearts & Minds**

Hearts and Minds aim to promote quality of life for people in hospital and hospice care through the performing arts. Based primarily in Edinburgh and the Borders the organisation runs two projects clowndoctors – which works in children’s hospitals and Elderflowers which works with elderly people suffering from dementia. Both projects use clowning as a method of performance and communication and have been hugely popular with patients and medical staff.

“They are magic, they made my daughter laugh. She couldn’t walk or talk but she laughed and that kept us all going; the catastrophe was bearable”

Mother of four-year old who sustained brain injuries in a road traffic accident.

“Theyir skills seem to reach many of the children more conventional routes aren’t able to and there is a therapeutic as well as an entertainment role.”

Dr P J Carragher, Medical Officer to Rachel House

**Art in hospitals** – The Scottish Arts Council has supported the commission of a number of site specific visual arts projects in hospitals. These projects have allowed patients and hospital staff to work closely with artists during the commissioning process. Projects have included the Aberdeen Royal Children’s Hospital, Dykebar Hospital in Paisley and Glasgow NHS Trust.

Artlink Edinburgh – Functionsuite is a unique collaboration between artists and senior clinical staff in commissioning artworks, videos and a soundscape for use in a clinical setting.

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5 Cathy Wilson, Secretary, Scottish Arts Therapy Forum
Arts and Mental Health
One in four Scots will be diagnosed with a mental health problem at some point. The Health in Scotland 2000 report identifies mental illness as a priority disease and has embarked on a number of initiatives to combat this disease. Research (Staricoff, 2004) has shown that the use of the arts in mental health services brings about behavioural changes in mental health service users; patients become more calm, attentive and collaborative. These changes help in the everyday managing of a mental health service, diminishing the need for medication and physical restraint.

A partnership between ourselves and the Scottish Executive’s Healthy Living initiative will develop a two-year programme of research, an activity programme, outreach and advocacy work, as well as a dedicated arts and mental health post, based at the Scottish Arts Council.

Case studies
Artlink Edinburgh – Arts For Mental Health programme
Artlink's Arts for Mental Health programme facilitates cultural participation for people with mental health problems to promote increased social contact and self-confidence and to combat stigma through a variety of projects, ie during Mental Health Week 2003, we funded the Poetry on the Buses initiative.

The Wonderful World of Dissocia - Edinburgh International Festival
This year's Edinburgh International Festival hosted a production of a new Scottish play ‘The Wonderful World of Dissocia’ by Anthony Neilson. The play focused on the experiences of a woman suffering from bipolar depression and gave a vivid demonstration of the effects that mental illness can have on an individual and their family. In conjunction with the performances, we provided funding for the Edinburgh International Festival’s education department to run a number of workshops involving schools and adult participants looking at the issues of mental health. The EIF also hosted a discussion on the role of arts and mental health for professionals in both fields.

Arts and Disability
Disabled people face many barriers – physical, social, economic and attitudinal. The Scottish Arts Council has adopted the Social Model of Disability which distinguishes between someone’s impairment, which is their medical condition, and the disabling barriers that they face in trying to participate in the world at large and in the arts. We seek to address these barriers to participation and strive for equality of opportunity in everything we do and fund.

Scottish Arts Council Support for Arts and disability
- **European Year for Disabled People (EYDP) 2003** - The Scottish Arts Council invested an additional £270,000 into arts and disability projects. A full programme of events, seminars and conferences was developed. In addition, a series of consultations, research projects and awareness-raising was used to identify policy areas for future development.
- The Scottish Arts Council has an on-going commitment to arts and disability organisations and funding has continued beyond EYDP. The Scottish Arts
Council’s plan for arts and disability during 2004/05 and beyond reflects the issues identified during EYDP.

- All applications to the Scottish Arts Council for infrastructure capital funding must be fully accessible for people with disabilities. The Council’s commitment to access initiatives, both physical and attitudinal is wide in scope.

**Case Studies – arts and disability**

**Artlink**, based in Edinburgh and the Lothians, runs a number of programmes including an escort service to enable people with disabilities to get out and about to arts venues and events; hospital arts programs in hospitals throughout the Lothians and a community involvement program which investigates way of including people with disabilities into community-based programmes.

**Disability Arts**

Along with providing access for disabled people to the arts the Scottish Arts Council recognise that for the disabled community to be fully engaged with the arts there must me the opportunity for disabled artists to use the Arts to say something about being a disabled person. The Scottish Arts Council supports many companies and projects involved in disability arts. The EYDP saw an increase in funding in this area.

**Case studies**

**Theatre Workshop**

Theatre Workshop, based in Edinburgh, is Scotland’s only theatre company working with a professional company of actors with disabilities. Its annual programme includes a community play, a showcase of arts and disability work during the annual Edinburgh Festival Fringe and a Christmas show. Most recently, the company toured a sold-out production of Bertolt Brecht’s Threepenny Opera to Glasgow, Aberdeen and Edinburgh with a full cast of actors and musicians with disabilities. Supported by European Year of Disability funding from the Scottish Arts Council and the Scottish Executive, this outstanding production earned rave reviews, both for the choice of material and the skills of the performers.

‘What Rae has set out to do, in the most ambitious show of his ten-year artistic directorship, is use the political position of his company of disabled actors as a mirror of, and a metaphor for, the social exclusion and “freak” status enjoyed by Brecht’s cast of beggars, prostitutes, pimps, people-traffickers and rogues. (Joyce MacMillan, Scotsman, June 23, 2004)

**Lung Ha’s** - Lung Ha's is an Edinburgh based professional theatre company providing opportunities for adults with learning disabilities to become actively involved in the performing arts. In the past 19 years the company has produced at least 26 original stage productions, and has made its mark as one the most avant-garde companies in Scottish theatre.

The company has a membership varying from 30 to 40 actors with learning disabilities, rehearsing weekly for the production of two or three plays a year. In addition to regular rehearsal work, specific training workshops such as clowning, dance, voice work and music are organised to develop further the skills, and interests of each company member.
Drake Music Project - Drake Music Project Scotland creates opportunities for people with disabilities to play, learn and compose music. Participants span all ages and abilities and each individual faces a different challenge when trying to actively take part in music-making.

Arts and criminal justice

In 2000 the Scottish Executive and Scottish Arts Council studied the way the arts can affect the crime rate and regenerate communities. The study, called The Role of the Arts in Regeneration concluded: ‘The arts are seen to be able to operate in a number of different ways: they can attract people who otherwise might not be attracted to participate in activities; the arts can increase the individuals’ personal development; improve an area’s image; they can attract economic investment, they can help in the process of community development and they can lead to training and employment and have a positive influence on reducing offending behaviour.’

It went on to say: ‘The arts have an important role to play in the regeneration of economically, environmentally, socially and culturally disadvantaged areas. However, the potential of this role has not been fully realised nor has the impact of current arts projects been fully recognised’.

In the last three years the Scottish Arts Council has supported a range of projects including:

- £102,879 to the North Ayrshire Council to fund the Springvale arts drop-in centre for residents of the Saltcoats Area;
- £800 to Artlink Central towards the cost of a pilot jazz music project with young offenders at Polmont Young Offenders Institution;
- £403 to Artlink Central towards the cost of a further three jazz sessions at Cornton Vale Women’s Prison;
- £64,617 to the Glasgow Alliance - Big Step Care Leavers programme towards the cost of a year-long arts project in partnership with young people leaving local authority care.
- 7:84 Theatre Company received a grant of £14,167 towards the cost of a three-stage outreach project targeting young offenders at the Kerelaw School in North Ayrshire.
- Wester Hailes Art Agency received £30,000 in funding to run the Altern8 programme – Chief Constable Paddy Tomkins quoted in the WHALE Annual Report 2003 that the programme resulted in, ‘A significant reduction in youth crime and anti-social behaviour’

- Southside Housing Association received a grant of £23,661 to enable vulnerable young minority ethnic single homeless people aged 16 to 25 to participate in a programme of performing arts including photography, music production, drama, video production.
Case Studies

Artlink Central - The Scottish Arts Council funded Artlink Central to encourage inmates at the Polmont Young Offenders Institute to take part in a drama programme in August 2003. Twelve young offenders worked together for three weeks. The plays were improvisational as reading skills of the prisoners were limited. Costumes were lent by Scottish Opera and the audiences were made up of guests and the prisoners’ families some of which had never experienced live theatre.

One of the participants commented, 'I was involved in the last drama production within Polmont. At first I went to see what it was like but it got me starting to talk to more people within the hall because I just used to keep myself to myself. I didn’t think I could do it at first but the Director proved me wrong. I felt good at it. My family were over the moon with it. I thought it was good for the families to come up and see it. To let them know we are not locked up in a cell all day doing nothing but we are trying to better ourselves and learning.'
Scottish Arts council investment in ‘arts in the community’

Background
The Scottish Arts Council distributes over £60 million each year to arts organisations across Scotland. Due to the complexity of the definition of ‘arts in the community’ it is impossible to give an accurate figure of Scottish Arts Council investment.

Scottish Arts Council funding is derived from the following funding sources.

Scottish Executive unrestricted (Voted Funds) - £36 Million
In 2004/05 the Scottish Arts Council has been allocated £35.5 million of unrestricted funds
Of which 81% goes to support 105 annually core funded organisations (CFOs). In addition the Scottish Arts Council has been allocated a ringfenced sum of £500,000 for to develop of traditional arts. Public benefit and demand are core criteria in assessments for all funding.

Additional funds
Together with the annual non-restricted budget the Scottish Executive also provides funding for certain initiatives. These currently include:
Youth Music Initiative – (£5 million for 2004/05, and £10 million for 2005/06)
National Theatre (£3.5 million for 2004/05 and £5 million for 2005/06)
Cultural co-ordinators (£750,000 for 2004/05 and 2005/06)

National Lottery funds - £20 million
The Scottish Arts Council has been the distributor of lottery funding to the arts since its inception in 1994 and has so far distributed over £215 million. In 2004/05 the Scottish Arts Council has been allocated £20 million of National Lottery revenue for the arts. In line with the fundamental aim of the National Lottery, which is to benefit the public, and following a consultation in 2003, the Scottish Arts Council has set the following priorities for the use of lottery funds for 2004 – 2009

1) Making the arts available to those who have had few or no opportunities to appreciate them.
2) Increasing the numbers and broadening the range of people enjoying and taking part in the arts.
3) Increasing arts activity for and by children and young people
4) Making sure that there is a fair geographic spread of buildings and activities throughout Scotland.6

All four aims are, in effect, targeted at arts in the community, promoting access, participation and enjoyment of the arts by all. The majority of community arts projects are funded through the lottery budget.

The Lottery Act specified a principle of ‘additionality’, which means that Lottery funding should always be additional to existing public spending. This principle has led to a focus on funding projects, rather than organisational development, limiting lottery funding to a maximum of three years. Such limitations have created

difficulties in maintaining the continuity of projects over longer periods of time for arts organisations

The National Lottery has seen a drop in ticket sales since it was established in 1994 and funding available for good causes has correspondingly declined with DCMS forecasts predicting further decline in the future.

**Funding arts in the community**
The Scottish Arts Council funds many projects across the country which help people in their communities engage with the arts. The Council supports festivals, touring companies, art centres, galleries, promoters and arts resource centres across Scotland, encompassing all the art forms.

In addition, many core funded organisations supported by the arts council include some form of community arts in their work,

The Scottish Arts Council has outlined key priorities for the next five years in the recently published Corporate Plan 2004-2009. The primary aim outlined in the plan is to increase participation in the arts – an aim directly related to arts in the community. Through evaluation of each budget the Council has produced a financial breakdown of spending towards its three key aims outlined in the table below. Activities focussed on the community and participation consumes over half of the Council’s budget for 2004/05 with almost £41.5 million being attributed to this aim.

![Scottish Arts Council budget 2004/2005](image)

Source: Scottish Arts Council Corporate Plan 2004-2009, p15
Conclusion
We have moved a long way from the stereotypes associated with the community arts movements which emerged in the 1960's at a time of wider social and political change, to the extent that the phrase is no longer helpful.

What has emerged is a spectrum of practice that is increasingly rigorous, concerned with the quality of the experience for both artist and participant, and moving from the margins of provision and profile to a valid and valued aspect of our cultural landscape. The Scottish Arts Council has in part responded to and in part contributed proactively to this shift. There remains work to be done however. From our experience in the field a number of issues need to be addressed.

- **Sustainability**
The opportunity offered through national lottery funding has seen the quality and scope of community based work benefit, but moving this from a project funding basis to more secure revenue support has proven difficult for major funding bodies. From Northern Rock in Glasgow to WHALE in Edinburgh we can see exceptional practice struggle with a dependency on project funding. This needs serious consideration.

- **Coherence**
Much good work still tends to operate in isolated pockets, diminishing its impact and political clout. The Scottish Arts Council’s ‘Arts for All conference’ held in 2002 demonstrated the exceptional interests in this area. The enthusiasm, commitment and source of knowledge need to be co-ordinated and built upon.

A mechanism for a national network of relationships, building on good practice and undertaking research could help make progress in this, and could be a key outcome of the Committee’s inquiry. The Scottish Arts Council has within its Corporate Plan an objective to develop Scotland as an international centre for excellence for participation in the arts’ and we plan to commission a feasibility study into an Institute for Community Cultural Development to that end. We would welcome the inquiry’s views on this approach and the Executive’s support to pursue it.

- **Continuing Professional Development**
Those who work in this field come from varied backgrounds; professionally trained artists, and other arts professionals, community education specialists, youth workers, teachers and so on. There is a recognition in the sector that a fresh look at professional standards is needed; qualifications and professional recognition would help build a recognisable career path, and improve the status of the work and those that are committed to it.

This report has demonstrated the wide and positive impact that the arts can have on Scotland’s communities and how the arts can impact on many areas of life in Scotland. The Scottish Arts Council congratulates the committee for choosing to investigate this important issue.
Introduction

The Further and Higher Education (Scotland) Bill was introduced to the Parliament on 30 September 2004. The Bill and accompanying documents are attached as follows:

- Further and Higher Education (Scotland) Bill (as introduced)
- Policy Memorandum
- Explanatory Note (including Financial Memorandum)

Annex A to this paper is a note from SPICe which sets out the key differences between the Bill as introduced and the draft Bill which was circulated for consultation earlier this year.

The Executive has also provided, at Annex B, a comparison between the consultation draft and the Bill as introduced.

Scottish Executive officials will be present at the meeting to answer factual questions on the Bill and accompanying documents. They will update members on consultation responses and highlight the main changes to the Bill post-consultation.

Background

The Further and Higher Education (Scotland) Bill is intended to merge the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council, to create the Scottish Further and Higher Education Funding Council. This body, like its predecessors, would be a Non-Departmental Public Body. The body would have responsibility for allocating funding for further and higher education to the further education colleges and higher education institutions (including universities) in Scotland. The Bill also sets out a range of additional powers and responsibilities for the new body, outlined in the attached SPICe paper.

Consultation

The Executive’s intention to merge the two funding councils was set out in the Partnership Agreement. The Executive has carried out wide-ranging consultation, including publication of a draft Bill. The consultation period ended mid-July 2004, and consultation responses will be made available to members when they become available. Copies of the consultation draft are available from the Clerks.
Committee Approach

As noted above, the consultation period on this Bill has only recently ended. It is therefore proposed that a limited number of key witnesses be called at Stage 1. The full approach is set out in paper EC/S2/04/21/XX Committee Work Programme.

Recommendation

Members are invited to give initial consideration to the Further and Higher Education (Scotland) Bill.

Simon Watkins  
Clerk
Further and Higher Education (Scotland) Bill

SPICe Note

Purpose of the Bill – Key Points

- The Bill proposes to merge the Scottish Higher Education Funding Council (SHEFC) and the Scottish Further Education Funding Council (SFEFC) to create the Scottish Further and Higher Education Funding Council (SFHEFC). The Bill intends to create the single body that will have a duty to provide ‘coherent strategic decision making’ at a National level covering both sectors.

- It sets out the general duties of both Scottish Ministers and of the new Funding Council, with Ministers having high level responsibilities for the policy context.

- It explains the specific responsibilities of the new Funding Council in terms of allocation and administration of funding to the ‘fundable bodies’.

- The Bill establishes a number of criteria and conditions in place for bodies to comply with in order to achieve and maintain ‘fundable body’ status, and that it will be the duty of the Council to monitor this.

- It seeks to extend and standardise the level of autonomy across both the further and higher education sectors, and preserve the distinctive roles of both sectors.

- As a regulatory measure, a new power is included for the Council to be able to attend and address any governing body meeting of a ‘fundable body’ that relates to the issue of financial support. This power is intended only to be used in extreme circumstances.

- The Bill also proposes to place a duty on the Council to work with and share information with certain key bodies, as well as placing a duty on these bodies to provide information as reasonably required by the Council. Section 22 sets out the key bodies included in these provisions.

- Provisions have been included to allow changes in the way that funding is allocated to the Council i.e. The Scottish Parliament may vote one budget for both sectors, rather than agree two separate budgets. Therefore, it is proposed that the Council will be required to provide the Parliament with an annual report of its activities for scrutiny.

- A new provision on fees (section 8) is also included to allow for possible fee changes by Ministers i.e. a maximum fee level set, and different fee levels for different courses. It allows Ministers to use the...
conditions of grant to control tuition fees. They will be able to set the fee levels by subordinate legislation, which is subject to the affirmative procedure.

- The Bill intends to create a power for Ministers to enable the Executive to channel additional funds to the new Funding Council for specific purposes (set out in the bill) and areas of importance, for example the support of collaboration.
- The remit of the Scottish Public Services Ombudsman will also be extended to include the actions of the further and higher education bodies (currently including the Scottish Agricultural College, but excluding the Open University as it is under UK wide procedures)

Amendments since the Draft Bill and Consultation

The draft Bill was published in April 2004, with the title ‘Tertiary Education (Funding etc.) (Scotland) Bill. Alongside the draft Bill, a consultation paper was also published, titled 'A Changing Landscape for Tertiary Education and Research in Scotland'. The Scottish Executive invited written responses to the consultation paper to be received by the 15th July 2004. It was explained that these responses would be placed in the Scottish Executive Library by the 12th August 2004, and would be available on the Scottish Executive website by 7th October 2004 (unless confidentiality was requested). To this date they are currently not available on the website.

This part of the paper details the amendments made since the draft Bill and consultation to each section of the Bill. The content of the sections has also been re-iterated where appropriate for clarification and comparison.

Part 1 – Further and Higher Education etc

This part of the Further and Higher Education (Scotland) Bill proposes the merger of the existing Scottish Further Education Funding Council (SFEFC) and the Scottish Higher Education Funding Council (SHEFC) to form a single Funding Council covering both sectors, to be known as the Scottish Further and Higher Education Funding Council (SFHEFC).

Establishment of the Scottish Further and Higher Education Council

Sections 1 and 2 propose the establishment of the new Funding Council and make provisions for the dissolution of the existing two Funding Councils. Section 1(2) introduces schedule 1, which makes provisions for the constitution of the new Funding Council and other matters relating to the Council. There have been several alterations to this schedule since the consultation draft Bill. These amendments are listed:
Amendments to Schedule 1

- **Section 2(1)** a makes specific reference to the Chief Executive being a member of the Council, which is not the case in the consultation draft. Various small changes are consequential to this addition.

- **Section 4** in the Bill has removed the requirement on Scottish Ministers to consult with the Council before making the first appointment of Chief Exec (if the current incumbent is unable to fulfil the role).

- **Section 7** has removed the reference to 'the body created by virtue of section 59A (2) (c) of the 1992 Act'. This is the body known as the Scottish Funding Councils for Further and Higher Education.

- **Section 8** replaces a section in the consultation draft called TUPE.

- **Section 9** again has removed the reference to 'the body created by virtue of section 59A (2) (c) of the 1992 Act'.

**Provision of Further and Higher Education etc**

**Sections 3 and 4** set out the general duties of Scottish Ministers and of the new Funding Council, which have changed quite considerably since the draft Bill.

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<tr>
<th>Bill</th>
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<tr>
<td>- ‘Coherent’ provision of fundable further and higher education</td>
<td>- ‘Adequate and efficient’ provision of fundable further and higher education</td>
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<tr>
<td>- Duty of the Funding Council to secure provision</td>
<td>- Duty of Ministers to secure provision</td>
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</table>

Section 3 of the Bill explains that the general duty of the Funding Council is to secure the ‘coherent’ provision by the ‘fundable bodies’ of high quality fundable further and higher education, and also securing that research be undertaken by these fundable bodies. These general duties were originally proposed as Scottish Ministers’ duties, with more emphasis on the ‘level’ of provision, described as adequate and efficient in the draft Bill, but changed to ‘coherent’ in the Bill.

Section 4 explains the Scottish Ministers general duties. This section has changed, in that the Scottish Ministers general duties are now not to ‘secure’ the provision of fundable further and higher education as well as the
undertaking of research, but that they will ‘provide support’ for these provisions by making grants to the Council and by other means deemed appropriate. So the duty of securing provision is now to fall on the Council and not on the Ministers as originally proposed.

Sections 5 and 6

<table>
<thead>
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<th>Bill</th>
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<tr>
<td>- Terminology used: ‘Fundable further and higher education’ and ‘Fundable Bodies’</td>
<td>- Terminology used: ‘Tertiary Education’ and ‘Specified Tertiary Education Providers’ (STEPs)</td>
</tr>
<tr>
<td>- Schedule 2 includes 2 categories of ‘Fundable bodies’</td>
<td>- Schedule 2 includes 4 categories of ‘fundable bodies’</td>
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<tr>
<td>- Glasgow Metropolitan College included in list of ‘Fundable bodies’</td>
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Sections 5 and 6 explain the meaning of ‘Fundable Further and Higher Education’ and ‘Fundable Bodies’. The terminology used in these sections has changed from ‘Tertiary Education’ and ‘Specified Tertiary Education Providers’ or ‘STEPs’ used in the draft bill, as a result of the consultation process. Section 6 introduces schedule 2 where the ‘fundable bodies’ listed in the schedule are no longer split into the 4 separate categories of ‘incorporated colleges’, ‘non-incorporated colleges’, ‘higher education institutions’ and ‘ancient and chartered universities’, but are now split into just 2 categories, those that were formerly eligible for funding by the SFEFC and those that were formerly eligible for funding from the SHEFC. It also should be noted that Glasgow Metropolitan College has been added to schedule 2, due to the merger between Glasgow College of Building and Printing and the Glasgow College of Food Technology in August 2004.

Section 7

Section 7 of the Bill explains that Scottish Ministers may be able to add or remove entries in schedule 2, but only if the Council has proposed or approved this change. It also details the conditions that a body must fulfil in the opinion of the Council to be deemed a ‘fundable body’. This section has been extended since the draft to include conditions on the provision for planning and development of the fundable bodies’ activities and arrangements, and for the use of a credit and qualification system (which refers to section 14).
Sections 8 – 12 make provisions for the funding of the Council, additional grants to the Council, and the administration of these funds, as well as the funding of ‘fundable bodies’ and provisions for people with learning difficulties.

<table>
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<tr>
<th>Bill</th>
<th>Draft Bill</th>
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<tr>
<td>- Specifies the purposes for which Ministers can make additional grants to the Council</td>
<td>- Explains that additional grants could be made to the Council by Ministers, but detail of purposes are not specified</td>
</tr>
<tr>
<td>- Ministers and the Council can support collaboration (and mergers) through additional funding, but cannot require a merger evaluation</td>
<td>- Ministers are able to require that the Council request the Governing body of a ‘Fundable body’ to carry out a ‘Merger feasibility’ evaluation with any other ‘Fundable body’</td>
</tr>
<tr>
<td>- The definition of a learning difficulty refers to an individual that has greater difficulty than those in the same age group. People suffering from disabilities have been removed from this definition (see below)</td>
<td>- The definition of a learning difficulty refers to an individual that has greater difficulty to someone over ‘school’ age, and also included individuals that suffer from a disability in the definition (see below)</td>
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Section 8 explains the conditions under which Ministers may make grants to the Council, and is largely unchanged since the draft Bill. Section 9 makes provisions for Ministers to make additional grants to the Council and has been altered to specify purposes that these additional grants can be used to support. These purposes include:

- Restructuring among the fundable bodies (including the merger or de-merger of such bodies)
- Innovation in the provision of fundable further education and fundable higher education
- Collaboration between the fundable bodies

Section 26 of the draft Bill on merger evaluation allowed Ministers to require the Council to request the governing body of a ‘fundable body’ to carry out an evaluation of the feasibility of, and advantages and disadvantages of, a
merger of the fundable body with any other specified fundable body as requested. This section has now been removed and the above proposals in the Bill now allow Ministers and the Council to provide additional funding in support of mergers and collaboration, rather than being able to require that evaluations take place.

**Sections 10 and 11** on the administration of funds and the funding of fundable bodies respectively remain the same as the draft bill, apart from the new terminology of ‘fundable further and higher education’ and ‘fundable bodies’.

The provisions for people with learning disabilities in **section 12** have been altered in that it is now the Council’s duty, and not the Ministers’, to have regard to the requirements of people with learning disabilities when exercising it’s funding functions under sections 10 and 11.

The definitions included have also changed from the draft Bill. Section 12 originally referred to people over school age, but now refers to an individual having a learning difficulty ‘if they have significantly greater difficulty in learning than the majority of other persons within the same age group as the person’. It has also removed the definition of someone with a learning disability as being ‘a person who suffers from a disability, impairment or condition which prevents the person from making use of educational facilities generally provided by the fundable bodies’

**The Council: Functions**

**Sections 13 – 19** set out provisions for the functions of the Council, including quality assessment, efficiency studies and advisory functions. There are some changes since the draft Bill:

<table>
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<tr>
<td>- A section is included covering the promotion of a credit and qualification Framework by the Council. Details of the framework are not specified</td>
<td>- The establishment of a credit and qualification framework is under consultation at this time and so the draft Bill does not include provisions for this</td>
</tr>
<tr>
<td>- The Council will have the right to ‘Attend and address’ meetings of the Governing body of a ‘fundable body’ that cover issues of financial support</td>
<td>- The Council have the right to ‘require’ the holding of a meeting with the Governing body of a ‘fundable body’ about issues related to financial support</td>
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</tbody>
</table>
Section 14 has been added, which explains that the Council is to promote whichever credit and qualification framework that it adopts. However, this section does not specify which framework this is.

Section 16 relates to the Council’s right to address meetings. In the draft bill, this section proposed that the Council would be able to ‘require’ the holding of a ‘special meeting’ of the governing body of a fundable body, on any matters relating to the financial support of the fundable body received from the Council. However, in the Bill this has been altered, and it is now proposed that the Council is allowed to ‘attend and address’ these meetings, but will not, as originally proposed be able to ‘require’ that one is held.

Section 18 extends the existing provisions of Section 43 of the 1992 act to all ‘fundable bodies’. This section has been added since the consultation and makes provisions for the Ministers to delegate their functions to the Council, which relate to land and property that is used for the purposes of a fundable body.

Section 19 amends the Education (Scotland) Act 1980, to allow Ministers to direct the Council or any other body/person to administer certain forms of student support. These provisions made relate only to support for students undertaking/undertaken courses of education at the ‘fundable bodies’ defined in the Bill. It is understood that the purpose of this section is to give Ministers the power to provide funds to certain persons via the Council rather than directly. This includes funds to be given as allowances to students. It may be used to create a new administration system for funding, or changing of funding streams.

The Council: Exercise of Functions

**Section 20**

**Bill**

- The Council must have regard to skills needs in Scotland, but also to economic, social and Cultural issues.

- The Council must have regard to the wider UK and International Context.

- Definitions of ‘skills needs and ‘issues are included

**Draft Bill**

- The Council must have regard to the skills needs of Scotland when considering the activities of any of the ‘fundable bodies’
Section 20 of the Bill is a wholly new section from the 1992 Act. It refers to particular matters the Council should have regard to. This section has a number of additions to the draft Bill due to concerns from the higher education sector. Not only does it require the Council to have regard to the skills needs in Scotland (as in the draft Bill), but also economic, social and cultural issues of importance. A further amendment is that it now proposes that the Council, when exercising its functions, should also consider the wider UK and International context in which any of the ‘fundable bodies’ may carry out their activities. Definitions of ‘skills needs’ and ‘issues’ are also provided.

**Section 22** sets out how the Council must exercise its functions, with regards to consultation and collaboration. This section has remained almost the same as the draft Bill, although section 22 (6) has been added which states that the Council must, in relation to the provision of fundable further and higher education, promote collaboration between the fundable bodies. Again, this addition will be partly due to the removal of the merger section that had been proposed in the draft Bill. The emphasis now is on ‘promotion’ of collaboration by the Council, rather than ‘required’ merger evaluation.

**The Scottish Ministers: Requirements and Directions (Sections 24 and 25)**

It was proposed originally that Scottish Ministers may impose requirements on the exercise of the Council’s functions, with the exception that these requirements could not relate to functions under section 7: Fundable bodies, further provision. This limitation has been extended in the Bill (section 24) where these requirements also do not relate to functions under section 17, which covers the advisory functions of the Council.

The draft Bill set out that if it appears to Scottish Ministers that the financial affairs of a ‘fundable body’ have been/are being mismanaged, they are able to direct the Council about the provision of financial support for the activities of that fundable body as they consider necessary. However, a further provision has been included in the Bill (Section 25(2)) to state that Ministers must consult the Council and the fundable body first, before giving out these directions.

**Fundable Bodies: Miscellaneous**

**Section 26** of the Bill is an addition to the draft following consultation, and states that the remit of the Scottish Public Services Ombudsman will be extended to include the actions of the ‘fundable bodies’ (including the Scottish Agricultural College, but excluding the Open University as this body is under a UK system). Section 26 (4) explains that Schedule 4 of the Scottish Public Services Ombudsman Act has been changed. This schedule explains the matters that the Ombudsman must not investigate, and a new limitation has
been added to prevent the Ombudsman from investigating matters of academic judgement.

PART 2: Other Entries Amenable by Order of the Council

Sections 27 - 29 included in this part of the Bill cover inspection of accounts, change of name by certain bodies, and information about recorded children. These three sections remain unchanged since the draft Bill.

PART 3: General

Sections 30 - 34 make provisions for amendment of enactments, ancillary provision, orders and regulations, interpretation, and short title and commencement respectively. All of these sections in the Bill remain unchanged, with the exception of section 32 – orders and regulations.

Section 32 sets out the powers for making orders and regulations under the Act, and explains that these powers are exercised using Scottish statutory instruments (SSIs).

The Bill states that any SSI containing an order or regulation under this Act is subject to annulment in pursuance of a resolution of the Parliament. The exception to this is an order under section 34 (2) which cover the short title and commencement. The exceptions to SSIs are listed in subsection 4.

Subsection 4 explains that certain SSIs cannot be made unless a draft of the SSI has been laid before, and approved by, the Scottish Parliament. These are SSIs that contain:

- Regulations under section 7(2)(i) – This regulation relates to the conditions a ‘fundable body’ should fulfil, that the Council must regard when proposing or approving a modification to schedule 2. 7(2)(i) states that a body should be considered by the Council to have suitable ‘provision, procedures or arrangements of such other kind as the Scottish Ministers may by regulations specify’

- Orders under section 7(4) or section 8(7) – section 7(4) explains that Ministers may by order change paragraphs (a) to (h) under subsection (2), these paragraphs list the provisions and procedures that a ‘fundable body’ should have suitable arrangements for, as regarded by the Council. Section 8(7) states that Scottish Ministers may by order specify fees payable and place maximum fee levels.

- Orders under section 31 which amends an act – this section covers ancillary provision and states that Scottish Ministers may by order much ‘such incidental, supplemental, consequential, transitional, transitory or saving provision’ as they deem necessary for ‘the purpose of or in consequence of this Act’
Schedule 3 is introduced under section 30 of the Bill – amendment of enactments. Schedule 3 has only one additional section since the draft Bill. This is section 5, which relates to the Education Reform Act 1988.

Fiona Mullen
SPICe Research
30th September 2004
OVERVIEW OF CHANGES TO BILL FROM CONSULTATION

This sets out the changes which have been made to the draft Bill in light of the consultation responses. The changes are listed below in the order of the sections in the new version of the Bill, with reference back to the ordering and sections in the consultation draft.

Summary

- Tertiary is dropped in favour of reference to Further and Higher Education. This makes clear that we recognise the distinctiveness of both sectors. The purpose of the Bill is to merge the Councils to increase the interface between both sectors. Not to merge them. This is also reflected in the name of the new Council.

- The Bill has also been re-ordered so that the merger of the Councils is the first section.

- It was never our intention that the new Council should have a greater planning role. However, some stakeholders clearly believed this was the case. In order to make our intention clearer we have removed the duty on Ministers to secure adequate and efficient tertiary education. This has been replaced by separate duties on Ministers and the Council which more accurately reflect the roles and relationships. That is:
  - Ministers provide support (through funding and other means) and high level policy guidance
  - The Council allocates funds and takes a strategic overview of this investment to ensure policy is delivered
  - Institutions remain fully autonomous and responsible for planning at a local level.

- The Specified Tertiary Education Provider (STEP) designation has been replaced by ‘fundable bodies’.

- Controversial sections on Mergers, Development Plans and the Duty to Provide Tertiary Education have been removed and reflected in other sections of the Bill in a way which will allow us to meet our policy goals, without increasing burdens on institutions.

- The section on skills needs has been extended to reflect the wider social, cultural and economic remits of institutions. This section now gives the Council a duty to have regard to the needs of learners.

- Section 8 on the allocation of funds has been amended to allow the possibility of increasing fees for certain subjects, such as medicine, subject to Parliamentary approval. This will facilitate any decisions that may be made in line with the Executive’s policy on monitoring effects of variable fees in England on cross-border flows of students.

- New sections have been added in relation to:
  - Credit and Qualifications Framework
  - Administration of student support
  - Functions Regarding Certain Property
  - Application of the Scottish Public Services Ombudsman Act 2002
FURTHER AND HIGHER EDUCATION (SCOTLAND) BILL

Title and Terminology

One of the most apparent changes to the Bill is the new title and the decision to drop the use of the term ‘tertiary education’. From the consultation responses it was clear that the HE sector was opposed to this in the strongest terms. The FE sector was more accepting as they supported a signal of greater convergence between the two sectors, but some reservations about the term itself were expressed. NUS has indicated its strong support for the tertiary concept.

As a result, in the title and throughout the Bill, we now refer to Further and Higher Education. This change will send a strong message that we are not intending to merge the FE and HE sectors.

Ordering

In the consultation, it was clear that many concerns were coming from the way in which the Bill was being read. To address this we have considered the ordering of many sections. As a result, the Bill looks very different in some parts.

Section 1 – Scottish Further and Higher Education Funding Council
Section 2 – Dissolution of other funding bodies
Sections 9 and 10 in consultation draft

These clauses create the new Council and dissolve the existing bodies. These have been brought to the front of the Bill to make it clear that the main purpose is to merge the existing Councils and create a new body.

Section 3 – The Council: general duty
Section 4 – Scottish Ministers: general duty
Section 1 in consultation draft

Section one of the consultation draft gave Ministers a duty to secure adequate and efficient provision of tertiary education. This duty was to be delegated to the Council. Adequate and efficient was read by many to be a move to increase the ability of the Executive and the Council to plan provision, especially in the HE sector. This was never the policy intention and the decision was taken to split this section and create new separate, and more accurate, duties on Ministers and the Council.

Section 3 gives the Council a duty to secure coherent and high quality FE, HE and support the undertaking of research. Section 4 puts a duty on Ministers to support FE, HE and research by providing support, as they determine, through grants, or any other means.

Subsection (2) of the consultation draft which gave Ministers a power to do anything necessary or expedient in exercising this duty has also been removed.
Section 5 – Fundable further and higher education

Section 2 in consultation draft

In light of the comments above on the title, the definition of tertiary education was removed and is replaced here, and throughout the Bill, by reference to fundable further education and fundable higher education.

The term fundable has been introduced here to be clear that the new Council should not have a duty to support all provision at these levels but what is determined to be appropriate by Ministers. This is in keeping with the use of the phrase fundable bodies below. It also separates this from the definitions of further and higher education set out in the 1992 Act which will remain in force as many other pieces of legislation still refer to them.

Section 6 – Fundable bodies

Section 21 in consultation draft

One of the most controversial aspects of the initial draft Bill was the term ‘Specified Tertiary Education Providers’. This term has been dropped in favour of ‘fundable bodies’ which stakeholders feel is more acceptable. Fundable bodies are listed in Schedule 2.

Section 7 - Fundable bodies: further provision

Section 22 in consultation draft

This section sets out the basic conditions which institutions must meet to become fundable bodies and then maintain fundable body status. Subsection (2) sets out the high level issues which the Council must have regard to on these matters, for example in relation to governance and management or procedures for resolving grievances. This list has been expanded since the consultation draft to include:

- Procedures for meeting the needs of learners
- Procedures for strategic planning
- Use of the credit and qualifications framework promoted by the Council

In the consultation draft it was suggested that Ministers would expand on requirements in these areas through an order. It has now been decided that the Council should decide on the detail of the requirements and that any addition or removal from the list should be based on the recommendation of the Council. Ministers will have the power to add to or change any of these high level conditions by order.

Section 8 – Funding of the Council

Section 4 in consultation draft

This section outlines the terms and conditions which Ministers may impose on grants it makes to the Council. Importantly, subsection (12) here gives the protection for academic freedom, which prevents Ministers from directing funds to particular institutions or courses of study. This was formerly a provision for HE which now extends to all fundable bodies.

Due to a new policy position which developed during the consultation period, this section has now changed the basis on which fee levels can be set as a condition of grant. The provision in the 1992 Act, which was replicated in the consultation draft, stipulates that fee level must
be less than the maximum allowance available to students under the Education (Scotland) Act 1980. This power had never been used, and has now been removed.

In the new provision, Ministers will use an affirmative order to stipulate a maximum fee level. It will also be possible to set different fee levels for different subjects, such as medicine. This is in line with the emerging policy to increase tuition fee levels and will allow the possibility of setting a higher fee for medicine, to address the concerns about cross-border flows with the introduction of variable tuition fees in England.

Section 9 – Funding of the Council: additional grants

Section 5 in consultation draft. Now also incorporating section 26

This is the section which will allow Ministers to direct additional, marginal grants to the Council for specific purposes. This has been extended to allow the distribution of funds to support restructuring, collaboration or innovation in provision. These provisions replace section 26 of the consultation draft which looked at merger evaluation. During consultation there was a clear message that this would be a more effective way of achieving our goals in this area. This will allow Ministers to direct funds in some circumstances to support sector-driven initiatives for collaboration or merger.

Section 10 – Administration of funds

Section 11 in consultation draft

A new subsection (1) has been added to bring this clause into line with the new duty on the Council at section 3 above. Otherwise this clause is unchanged from the consultation.

Section 11 – Funding of fundable bodies

Section 12 in consultation draft

Unchanged from consultation.

Section 12 – Person with learning difficulties

Section 3 in consultation draft

Since the consultation, this has been changed from a duty on Ministers to a duty on the Council. This reflects the changes to the initial duties at sections 3 and 4. The duty has been changed to remove the ‘over school age’ restriction.
Section 13 – Quality of fundable further and higher education
  
  *Section 15 in consultation draft*

Unchanged from consultation.

Section 14 – Credit and qualification framework
  
  *New provision – not in consultation draft*

From the consultation, there was a clear message that more support should be give to developments with the Scottish Credit and Qualifications Framework (SCQF). Therefore, this new section gives the Council a duty to promote a credit and qualifications framework. This also links with the new provision in section 7 which will look for all fundable bodies to use a framework promoted by the Council.

Section 15 – Efficiency studies.
  
  *Section 14 in consultation draft*

Unchanged from consultation.

Section 16 – Council’s right to address meetings
  
  *Section 13 in consultation draft*

This was another of the more controversial clauses which the HE sector felt would infringe on the autonomy of governing bodies. After discussions with Universities Scotland we have softened terms of this provision in a way which should be more acceptable to them. We believe that this power remains essential in giving the Council a direct link to the governing body should other lines of communication break down.

Section 17 – Advisory functions
  
  *Section 15 in consultation draft*

Unchanged from consultation.

Section 18 – Functions regarding certain property
  
  *New provision – not in consultation draft*

On a final review of the 1992 Act it was realised that this section had to be brought forward. It was originally part of a larger section (43 - in the HE part) which was being repealed. This will now cover all fundable bodies.

Section 19 – Administration of certain support

The Scottish Further Education Funding Council currently allocates money to colleges for them to allocate to students as student support. This section amends the Education (Scotland) Act 1980 to permit the Scottish Ministers to direct the Council or any other body or person to administer forms of student support, where such support is granted under the 1980 Act.
These provisions will apply only in so far as relating to support for students undertaking or who have undertaken courses of education at fundable bodies as such bodies are defined in the Bill. The purpose of this provision is to allow, through direction or delegation, the administration of forms of student support on behalf of the Scottish Ministers by the Council or other bodies or persons.

**Section 20 – Council to have regard to particular matters**  
*Section 17 in consultation draft. Now also incorporating section 23*

In the consultation draft, this section focused purely on skills needs (as set out in the partnership agreement). During the consultation there was a strong message that this may have an adverse effect in skewing the way the Council allocates its funding. It was felt that this section should also recognise the wider role of fundable bodies and recognise that many of them also operate in areas outside Scotland. The re-draft reflects this.

Subsection (3) here is also new and makes explicit reference to meeting the needs of learners. This in part replaces the provisions that were in section 23 (Duty to provide tertiary education) of the consultation draft as this duty on institutions has now been removed.

**Section 21 – Equal opportunities**  
*Section 19 in consultation draft*

Unchanged from consultation.

**Section 22 – Consultation and collaboration**  
*Section 18 in consultation draft.*

This is largely unchanged from the consultation draft. However, it does include one new subsection (6) which gives the Council a duty to promote collaboration among fundable bodies in HE and FE.

**Section 23 – General powers**  
*Section 20 in consultation draft*

Unchanged from consultation.

**Section 24 – Requirements as to Council’s functions**  
*Section 6 in consultation draft*

In the consultation draft, this section gave Ministers the power to issues directions to Council. The HE sector felt that these powers should only be exercised by order to offer some protection from misuse. These have now be framed as requirements, rather than directions, as a result of using an order.
Section 25 – Directions where financial mismanagement
   Section 7 in consultation draft

Again, as suggested by the HE sector, this was strengthened so that directions could only be issued after consultation with the Council and the fundable body in question.

Section 26 – Application of the Scottish Public Services Ombudsman Act 2002
   New provision – not in consultation draft

This was not in the consultation draft as it was being consulted on separately. This new provision will bring all fundable bodies (other than the Open University) and the Scottish Agricultural College into the remit of the SPSO.

Universities have also voiced some concerns about this, but we believe that we can answer all of the concerns raised in their consultation response. Signals from Universities Scotland are that they do not see this as a priority now as they wish to focus on other parts of the Bill.

Section 27 – Inspection of Accounts
   Section 25 in consultation draft

Unchanged from consultation.

Section 28 – Change of name by certain bodies
   Section 27 in consultation draft

Unchanged from consultation.

Section 29 – Information about recorded children
   Section 28 in consultation draft

Unchanged from consultation.

Section 30 – Amendment of enactments
Section 31 – Ancillary provisions
Section 32 – Orders and regulations
Section 33 – Interpretation
Section 34 – Short title and commencement
   Sections 29-33 in consultation draft

Have all been updated as required
Schedule 1 – The Scottish Further and Higher Education Funding Council

Some changes have been made to this schedule. The Chief Executive of the new body will be a member of the Council, and provision has been made to ensure that some members of the Council have suitable experience of research. One of the Council members will be appointed chair of the research committee.

Schedule 2 – Fundable bodies

The four categories will be reduced to two, taking on board feedback from consultation. The two new categories will be bodies formerly fundable by the Scottish Further Education Funding Council and bodies formerly fundable by the Scottish Higher Education Funding Council.

Schedule 3 – Amendment of enactments

One addition has been made to the list of consequential amendments (Education Reform Act 1988) and some changes have been made to the amendments to the 1992 Act.
### Key to draft Bill provisions

#### Part 1 - Provision of tertiary education etc

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Consultation draft Comment</th>
<th>1992 Act</th>
<th>Draft Bill Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Duty to secure provision of tertiary education and research</td>
<td>This provision currently exists in the 1992 Act for FE only. This extends the duty to all tertiary education and research</td>
<td>1</td>
<td>The duty to secure adequate and efficient tertiary education has been removed and replaced by separate duties on Ministers and Council which better reflect their roles and relationships.</td>
</tr>
<tr>
<td>2</td>
<td>Tertiary Education</td>
<td>Provides definition of Tertiary Education 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.</td>
<td>6,38</td>
<td>Tertiary removed. Now refers to fundable further education and fundable higher education.</td>
</tr>
<tr>
<td>3</td>
<td>Persons with Learning Difficulties</td>
<td>This provision currently exists in the 1992 Act for FE only. This extends it to all tertiary education.</td>
<td>2</td>
<td>This has now become a duty on Council.</td>
</tr>
<tr>
<td>4</td>
<td>Funding of the Council</td>
<td>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, which protects academic freedom, previously existed for HE, and has now been extended to colleges</td>
<td>42</td>
<td>This allows the possibility for different fee levels to be set for certain subjects, such as medicine. This is in line with the Executive’s policy (announced on 24 June 2004) on controlling cross border flows of students in light of the introduction of variable fees in England.</td>
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<tr>
<td>Section</td>
<td>Title</td>
<td>Comment</td>
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<tr>
<td>5</td>
<td>Funding of the Council – additional grants</td>
<td>This section has been added to regularise the current position where additional grants are made for specific purpose, for example additional money for training health professionals.</td>
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</tr>
<tr>
<td>6</td>
<td>Directions to Council</td>
<td>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</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Directions where financial mismanagement</td>
<td>This extends a provision from the 1992 Act to all STEPs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Delegation of functions under section 1(1)</td>
<td>Delegates the adequate and efficient duty to the new body. Gives the new body rights – from the 1992 Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Section has been extended to include restructuring/innovation – replacing section 26 of the consultation draft</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Changes to ‘impose requirements’ and introduced need for an Order – this reflects the requirement of S54 of the 1992 Act.</td>
<td></td>
<td></td>
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<tr>
<td>54(3)</td>
<td>Introduced a requirement for consultation with Council and the fundable body before any action taken</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 (5)</td>
<td>No longer required since Ministers and Council now have separate powers/duties in sections 3 and 4 of the revised Draft Bill.</td>
<td></td>
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</tbody>
</table>
# Part 2
## Funding of Tertiary Education etc.

**Scottish Tertiary Education Funding Council**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Comment</th>
<th>1992 Act</th>
<th>Draft Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Scottish Tertiary Education Funding Council</td>
<td>Creates the new body. At this stage the name Scottish Tertiary Education Funding Council is being used</td>
<td>7</td>
<td>1: Reflects change of name to Scottish Further and Higher Education Funding Council. This has been moved to the front of the Bill as it is the main focus of the legislation.</td>
</tr>
<tr>
<td>10</td>
<td>Dissolution of other funding bodies</td>
<td>Dissolves SFEFC, SHEFC and the joint body – Scottish Funding Councils for Further and Higher Education</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Administration of funds</td>
<td>Sections 11 and 12 are adapted from section 40 of the 1992 Act and set out how the Council can allocate its funds</td>
<td>40</td>
<td>10: Text amended slightly to reflect change to duties and removal of ‘tertiary’ and STEPs.</td>
</tr>
<tr>
<td>12</td>
<td>Funding of specified tertiary education providers (STEPS)</td>
<td>As Above</td>
<td>11</td>
<td>11: Reference to STEP changed to fundable bodies and tertiary to ‘fundable further’ and ‘fundable higher’.</td>
</tr>
<tr>
<td>13</td>
<td>Funding: requirement to hold meeting</td>
<td>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.</td>
<td>16</td>
<td>15: Amended to right to attend and address a meeting in response to concerns from university governors.</td>
</tr>
<tr>
<td>14</td>
<td>Efficiency studies</td>
<td>Adapted from section 51 of the ’92 Act which give Council the power to carry out or commission efficiency studies.</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Consultation draft</td>
<td>1992 Act</td>
<td>Draft Bill</td>
<td></td>
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<td>Section</td>
<td>Title</td>
<td>Comment</td>
<td>Section</td>
<td>Comment</td>
</tr>
<tr>
<td>15</td>
<td>Quality of tertiary education</td>
<td>Extends existing duty to assess quality in HEIs to cover colleges as well. This duty will also now encompass enhancement.</td>
<td>39</td>
<td>13</td>
</tr>
<tr>
<td>16</td>
<td>Advisory functions of the Council</td>
<td>Duty on Council to provide advice to Ministers as they require. Adapted from existing provisions in sections 8 and 43 of the 1992 Act.</td>
<td>8, 43</td>
<td>17</td>
</tr>
<tr>
<td>17</td>
<td>Skills needs</td>
<td>New section, reflecting the Partnership Agreement commitment, which tasks the Council to have regard for the future skills needs of Scotland.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Consultation and collaboration</td>
<td>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.</td>
<td>50</td>
<td>22</td>
</tr>
<tr>
<td>19</td>
<td>Equal opportunities</td>
<td>New section which makes explicit reference to equal opportunities legislation.</td>
<td></td>
<td>21</td>
</tr>
<tr>
<td>Consultation draft</td>
<td>1992 Act</td>
<td>Draft Bill</td>
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<tr>
<td>Section</td>
<td>Title</td>
<td>Comment</td>
<td>Section</td>
<td>Comment</td>
</tr>
<tr>
<td>20</td>
<td>General powers</td>
<td>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.</td>
<td>S1, S7.</td>
<td>23</td>
</tr>
</tbody>
</table>

Specified tertiary education providers

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Specified tertiary education providers</td>
<td>Reference to Schedule 1 in the new Act which outlines the institutions who will become STEPs</td>
</tr>
<tr>
<td>22</td>
<td>Specified tertiary education providers: further provision</td>
<td>New section. Provides an outline of the kind of conditions an institution must meet to become a STEP and to retain STEP status.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section</th>
<th>Comment</th>
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<tbody>
<tr>
<td>23</td>
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</tbody>
</table>

List has been expanded since the consultation draft to include:
- Procedures for meeting the needs of learners
- Procedures for strategic planning
- Use of the credit and qualifications framework promoted by the Council

In the consultation draft Ministers would expand on requirements in these areas through an order. It has now been decided that the Council should set out the detail of the requirements and that any addition or removal from the list
<p>| | | | |</p>
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<thead>
<tr>
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<tbody>
<tr>
<td>23</td>
<td>Duty to provide tertiary education</td>
<td>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</td>
<td>12</td>
</tr>
<tr>
<td>24</td>
<td>Development plans</td>
<td>Requirement for STEPS to provide a development plan to the Council each year. Based on section 22 of 1992 Act.</td>
<td>22</td>
</tr>
<tr>
<td>25</td>
<td>Inspection of accounts of specified tertiary education providers</td>
<td>Adapted version of provision in section 53 of 1992 Act.</td>
<td>53 and PFA Act</td>
</tr>
<tr>
<td>26</td>
<td>Merger evaluation</td>
<td>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.</td>
<td>Removed – amended version included in section 9 of final draft Bill (section 5 in consultation draft)</td>
</tr>
<tr>
<td>27</td>
<td>Change of name by certain institutions</td>
<td>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.</td>
<td>3(4)</td>
</tr>
<tr>
<td>28</td>
<td>Information about recorded children</td>
<td>Duty for STEPs to provide information to local authorities as required under the 1980 Act. Adapted from section 23 of 1992 Act.</td>
<td>23</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td>Comment</td>
<td>1992 Act</td>
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<tr>
<td>---------</td>
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<tr>
<td>29</td>
<td>Amendment of enactments</td>
<td>Ref to schedule 3</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Ancillary provision</td>
<td>Gives Ministers powers to amend this Act in future if required.</td>
<td>31</td>
</tr>
<tr>
<td>31</td>
<td>Orders and regulations</td>
<td>Give Ministers the power to make orders or regulations under the Act.</td>
<td>32</td>
</tr>
<tr>
<td>32</td>
<td>Interpretation</td>
<td>Sets out definitions etc. as used in the Act.</td>
<td>33</td>
</tr>
<tr>
<td>33</td>
<td>Short title and commencement</td>
<td>Details of name and when this legislation will come into force.</td>
<td>34</td>
</tr>
<tr>
<td>Schedule 1</td>
<td>The Scottish Tertiary Education Funding Council</td>
<td>This schedule sets outs 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.</td>
<td>Schedule 1</td>
</tr>
<tr>
<td>Schedule 2</td>
<td>Specified tertiary education providers</td>
<td>List of all current HEIs and Colleges currently funded by SHEFC and SFEFC who will become STEPs.</td>
<td>Schedule 2</td>
</tr>
<tr>
<td>Schedule 3</td>
<td>Amendment of enactments</td>
<td>Provides a list of consequential amendments which will be required to other legislation as a result of this Act.</td>
<td></td>
</tr>
</tbody>
</table>
New Sections in draft Bill

Section 14  Credit and qualification framework
Places a duty on the Council to promote a credit and qualification framework for use by the fundable bodies. This section is linked to the provision made in section 7(2)(f) which will require all fundable bodies to make use of whichever framework the Council promotes.

Section 18  Functions regarding certain property
Extends existing provisions for the Scottish Higher Education Funding Council from section 43 of the 1992 Act, to all fundable bodies. This allows Ministers to delegate their functions in respect of rights which Ministers may have in land and property that is used or held for the purposes of a fundable body, to the Council.

Section 19  Administration of certain support
The Scottish Further Education Funding Council currently allocates money to colleges for them to allocate to students as student support. This section makes further provision as to the powers under which Ministers and the Council are able to do this.

Section 26  Application of the Scottish Public Services Ombudsman Act 2002
This extends the remit of the Ombudsman to include those bodies which are fundable bodies under schedule 2 of the Bill, (with the exception of the Open University) and the Scottish Agricultural College (which is currently funded directly by Scottish Ministers and not through either of the existing Councils). The remit of the Ombudsman, however, does not apply to matters concerning academic judgement. This was subject to separate consultation.
### Sections of the 1992 Act left in force

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Duty of Secretary of State to secure provision of further education.</td>
<td>Some parts of section 1 have been repealed – subsections (1), (2) and (4)-(6).</td>
</tr>
<tr>
<td>2</td>
<td>Function of education authorities.</td>
<td></td>
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<tr>
<td>3</td>
<td>Powers of secretary of state.</td>
<td>This section remains in an amended form.</td>
</tr>
<tr>
<td>5</td>
<td>Requirement of Secretary of State to consult.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Further education to which section 1 applies.</td>
<td></td>
</tr>
<tr>
<td>11-21</td>
<td>Sections on Colleges of Further Education – Management, Staff, Property and educational endowments.</td>
<td>Section 12 remains in an amended form..</td>
</tr>
<tr>
<td>24-36</td>
<td>Miscellaneous provisions on colleges and Transitory and Transitional Provisions.</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Meaning of higher education.</td>
<td></td>
</tr>
<tr>
<td>44-49</td>
<td>Provisions relating to designated higher education institutions.</td>
<td>Section 44 remains in an amended form.</td>
</tr>
<tr>
<td>52</td>
<td>Exercise of powers of Privy Council.</td>
<td></td>
</tr>
<tr>
<td>55-62</td>
<td>General and Miscellaneous provisions relating to HE.</td>
<td>Section 59A is being repealed.</td>
</tr>
<tr>
<td>Schedules 2-6</td>
<td>Various constitutional issues concerning colleges.</td>
<td></td>
</tr>
<tr>
<td>Schedules 8-10</td>
<td>Transitional provisions, miscellaneous and consequential amendments.</td>
<td>Two sections from Schedule 9 – 4(3) and 5(3) – have been repealed.</td>
</tr>
</tbody>
</table>
Introduction

The following instruments were laid before the Parliament on 16th September 2004 and are attached at Annex A:

the Scottish Network 1 Tourist Board Scheme Order 2004, (SSI 2004/396)
the Scottish Network 2 Tourist Board Scheme Order 2004, (SSI 2004/397)

Purpose of instruments

These two Orders establish two new area tourist boards, representing, broadly, the north and south of Scotland. This is an interim measure towards the creation of an integrated tourism network with 14 hubs, as announced in the outcome of the Area Tourist Board Review.

The list of local government areas in each Order is incorrect; the pre-1996 local government reorganisation nomenclature has been used. The Executive has informed the Clerks that it intends to lay amending orders as soon as possible to correct this error. Members may wish to raise this issue with Executive officials at the meeting.

Both of these Orders are negative instruments which are subject to annulment by way of a resolution of the Parliament. They are both due to come into force on 1 December 2004.

Subordinate Legislation Committee report

The Subordinate Legislation Committee considered the Scottish Network 1 Tourist Board Scheme Order 2004, (SSI 2004/396) and the Scottish Network 2 Tourist Board Scheme Order 2004, (SSI 2004/397) at its meeting on 21st September. The Subordinate Legislation Committee had no recommendations to make to the Parliament on either of these instruments.

Recommendation

The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on these instruments.

Simon Watkins
Clerk
29 September 2004
Introduction

This paper outlines a proposed work programme for the Committee until the end of the year. The programme is set out in the attached table.

Elements of Work Programme

Funding Councils Bill

The Bill has been introduced and the Committee is likely to require to complete its stage 1 consideration by the end of the year. A number of evidence sessions are therefore proposed with the bodies most affected. There has in the past been debate within the Committee as to whether CHESS should be invited to give oral evidence.

Members should note that it is not proposed to issue a general call for evidence as the Executive has only just completed a consultation exercise on the draft bill, and these responses will be made available to Members.

The former Enterprise and Lifelong Learning Committee recommended the merger of the two Funding Councils. If members are agreeable I would propose to focus evidence sessions on the details of the Bill.

The Executive Budget

Delays in the publication of the Executive budget have left limited time for consideration by the Committee. It is proposed to invite the relevant Ministers to give evidence and then report to the Finance Committee. I would suggest that we agree in advance a limited number of areas on which areas of the budget to focus our scrutiny.

Arts in the Community

The Committee will conclude its inquiry with a session with the Minister. Following discussion, a draft report will be produced and considered in Committee. I am proposing that these sessions be held in public.
ATB Review

The Committee previously agreed to return to this topic in November. A single session with the main bodies involved, and the Minister, is proposed.

Business Growth

The research commissioned by the Committee will be presented to it on 23 November, and Scottish and Highlands and Islands Enterprise invited to update the Committee on their present strategies. This will permit the Committee to have a considered discussion about the full remit for its business growth inquiry, which will commence in the new year.

Recommendation

The Committee is invited to:

i) consider and agree the work programme as set out in the attached table
ii) agree on which areas to focus its scrutiny of the budget.

Alex Neil
Convener
Enterprise and Culture Committee  
Work Programme  

October – December 2004

Please note that this is an indicative work programme. Other Parliamentary business (e.g. Public Petitions, Subordinate Legislation) will be scheduled as it arises. This work programme will be updated regularly. All meetings take place in the Committee Rooms, Scottish Parliament, Holyrood, Edinburgh, unless otherwise stated. The stated start times and locations of meetings are liable to change at short notice. The agenda and papers for each meeting will be posted to the Committee’s webpage by the Friday preceding the Tuesday meeting. (Note AC = Arts in the Community Inquiry)

<table>
<thead>
<tr>
<th>Meeting Date</th>
<th>Proposed Agenda Items</th>
<th>Other Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 - 22 Oct 2004</td>
<td>October Recess</td>
<td></td>
</tr>
</tbody>
</table>
| 26 October 2004    | • AiC 5 – Frank McAveety  
                   Committee Room 1                      | Budget 2005-6 – Frank McAveety  
                   • Budget 2005-06 – Lewis Macdonald  
                   • Budget report discussion (private) |                   |
| 2 Nov 2004         | • Bill evidence:  
                   Committee Room 6                      | ASC/Unis Scotland  
                   • Aic case studies report back  
                   • AiC discussion of report issues  
                   • Agree budget report (private)  
                   • Renewables witness expenses (private) |                   |
| 9 Nov 2004         | • Bill evidence:  
                   Committee Room 6                      | NUS/CHESS  
                   • AUT/EIS  
                   • Draft Arts Report discussion1 |                   |
| 16 Nov 2004        | • Bill evidence: Funding Councils  
                   Committee Room 6                      | Minister  
                   • FE/HE Bill report initial discussion | private) |
| 23 Nov 2004        | • Business growth research presentation  
                   Committee Room 4                      | Scottish Enterprise – Jack Perry +  
                   • 2005 Work Programme  
                   • Draft Arts Report Discussion 2 | HIE – Sandy Cumming |
<table>
<thead>
<tr>
<th>Date</th>
<th>Committee Room</th>
<th>Agenda Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 Nov 2004</td>
<td>4</td>
<td>• ATB Review – Scottish Tourism Forum</td>
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<td></td>
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<td>• ATB Review – ATB Chairs</td>
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<td></td>
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<td>• ATB Review – Minister (+VS)</td>
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<td></td>
<td></td>
<td>• ATB report discussion (private)</td>
</tr>
<tr>
<td>7 Dec 2004</td>
<td>5</td>
<td>• FE/HE report 1 (private)</td>
</tr>
<tr>
<td>14 Dec 2004</td>
<td>5</td>
<td>• Private – agree FE/HE report (private)</td>
</tr>
</tbody>
</table>

**Recess Dates:**

All dates inclusive:

- 11 October - 22 October 2004
- 27 December 2004 - 7 January 2005
- 12 - 20 February 2005
- 25 March - 10 April 2005
- 2 July - 4 September 2005

For inquiries about this work programme please contact:

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