The Committee will meet at 2 pm in Committee Room 6.

1. **Items in private:** the Committee will consider whether to take agenda items 4 and 5 in private.

2. **Further and Higher Education (Scotland) Bill:** the Committee will take evidence from:

   - Chris Masters, Chair, Scottish Higher Education Funding Council;
   - Esther Roberton; Chair, Scottish Further Education Funding Council; and
   - Roger McClure, Chief Executive, Scottish Funding Councils for Further and Higher Education;

  on the Further and Higher Education (Scotland) Bill.

3. **Further and Higher Education (Scotland) Bill:** the Committee will take evidence from:

   - Jim Wallace MSP, Deputy First Minister and Minister for Enterprise and Lifelong Learning;
   - Audrey Roberts, Head of Sponsorship of Funding Councils, Enterprise, Transport and Lifelong Learning Department;
   - Gill Troup, Head of Higher Education and Science Division, Enterprise, Transport and Lifelong Learning Department;
   - Gavin Gray, Higher Education and Science Division, Scottish Executive Enterprise, Transport and Lifelong Learning Department; and
   - Colin Gilchrist, Legal and Parliamentary Services, Office of the Solicitors of the Scottish Executive;

  on the Further and Higher Education (Scotland) Bill.

4. **Arts in the Community Inquiry:** the Committee will consider a draft report on its Arts in the Community inquiry.
5. **Further and Higher Education (Scotland) Bill**: the Committee will discuss issues for inclusion in its draft report on the Further and Higher Education (Scotland) Bill.

Stephen Imrie  
Clerk to the Committee  
Ext. 0131 348 5207
The following meeting papers are enclosed:

**Agenda Item 2**

Joint submission from the SFEFC and the SHEFC  
EC/S2/04/25/1

**Agenda Item 3**

Evidence submission from Skill Scotland  
EC/S2/04/25/2

Letter from Convener of the Equal Opportunities Committee  
EC/S2/04/25/3

**Agenda Item 4**

Arts in the Community approach and outline structure report  
EC/S2/04/25/4 (PRIVATE PAPER)

**Agenda Item 5**

Clerk’s note on issues for consideration in Stage 1 report  
EC/S2/04/25/5 (PRIVATE PAPER)
Further and Higher Education (Scotland) Bill: submission to the Scottish Parliament Enterprise and Culture Committee
Further and Higher Education (Scotland) Bill: written submission to the Scottish Parliament Enterprise and Culture Committee

Introduction

1 This paper is a joint submission from the Scottish Further Education Funding Council (SFEFC) and the Scottish Higher Education Funding Council (SHEFC) to the Scottish Parliament Enterprise and Culture Committee’s stage one scrutiny of the Further and Higher Education (Scotland) Bill. The purpose of the paper is to provide the Committee with the Councils’ views on the principles underpinning the Bill.

What should a new Council achieve?

2 The two Councils support the principle of a single funding council for further and higher education. Given the relatively small size of the two sectors - and the opportunities of size and scale in Scotland - it makes good sense to establish a single body that can take a strategic overview of further and higher education and develop coherent policies. We believe that this will be in the best interest of learners, who should be entitled to a coherent system of provision in Scotland.

3 The merger of the two Councils is also a logical step in a continuing process of development that is already leading to improved coherence. This has resulted in:

- the establishment of a single credit and qualifications framework for Scotland;
- improved arrangements for learner progression between further education and higher education; and
- new cross-sectoral developments that will benefit learners.

4 We believe that this process was also helped last year by the publication of the Councils’ first joint corporate plan. The plan describes the steps that the Councils - and the two sectors - are taking to contribute to the vision of an outstanding system of education, learning, training and research in Scotland.
What principles should underpin the Bill?

5 In our view, the merger Bill should provide a new enabling framework that allows the colleges and higher education institutions to contribute further to the vision for further and higher education. We believe that such a framework should be underpinned by the following broad principles:

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

These principles informed our response to the provisions contained in the earlier consultation on the draft Bill.

6 We welcome the revised Bill and believe that it is consistent with the principles that we have previously outlined. There are some technical issues of drafting which we have identified in the Bill and some areas where further clarification is sought - such as the scope of the new Council’s powers to fund activities in support of knowledge transfer and culture. We would intend to address these directly with the Scottish Executive, since they do not affect materially our view of the principles underpinning the Bill.
What challenges will the Bill create?

7 We are in no doubt that the Bill will now present the Council and the sectors with some important challenges, the most important of which we would suggest are to:

- **Maintain diversity:** Scotland benefits from a wide diversity of high quality provision in its further education colleges and higher education institutions. This puts the sector as a whole in an excellent position to respond to the many and changing educational, economic, social and other demands placed on it. An important challenge will be to ensure that we maintain this diversity - both between and within the two sectors - while maximising the opportunities for greater coherence in the way they work.

- **Fully implement a credit and qualification framework:** If a framework is to work effectively, we believe that its integrity and its relevance to learners and employers will need to be guaranteed. Given the importance that it will have to the development of the education system in Scotland - and the number of agencies that are involved in developing and implementing the framework - there is an argument that the primary duty to promote it should rest with Ministers.

- **Create an effective Council:** the new Council will have a much wider remit than either of the two existing Councils but no more members than either of the existing Councils. If it is to be effective, it will be essential that it has a diverse and balanced membership from both the public and private sector, with the appropriate range of skills, expertise and experience.

- **Protect Scotland’s research competitiveness:** Scotland’s economic and social success depends crucially on maintaining the international standing of the nation’s research base. A key challenge will be to protect and enhance Scotland’s competitiveness in research in the face of increased competition at the UK and international level. A first step for the new Council will be to ensure that its Research Committee has international authority by including on its membership leading researchers from both inside and outside Scotland who can offer independent, expert advice.
• **Secure collaboration:** Collaboration between the various agencies and bodies with a material interest in further and higher education will be essential if the policy objectives of the Bill are to be achieved. Achieving timely and effective collaboration will continue to be a challenge and this would be assisted if a reciprocal statutory duty to collaborate was placed on the range of other bodies that will be expected to work with the new Council.

**Our views on the revised Bill**

8 We believe that the revised Bill provides the new Council and the sectors with the ‘tools’ to develop the shared vision for further and higher education in Scotland. In particular, we welcome the following provisions in the Bill:

- the duty on the Council to secure **coherent provision** through fundable bodies (as a whole) of a high quality of FE and HE. The Councils reflected the concept of coherence in their joint corporate plan last year by introducing a key aim of achieving “a coherent system of well-led, innovative and responsive colleges and institutions.”

  There will be considerable discussion about what the term ‘coherent’ means in terms of provision. One interpretation is that it is the achievement of a system of provision across Scotland as a whole that best meets the needs of learners and potential learners within the resources available to the Council.

- the duty to have regard to: the **needs of learners and potential learners** in fundable bodies; **skills needs** in Scotland; the **economy and social and cultural issues** in Scotland. We believe that these duties are consistent with the long standing role that both Councils - and the colleges and higher education institutions that they fund - have played and underline the importance of further and higher education to Scotland’s well-being.

- the duty to secure that provision is made **for assessing and enhancing the quality of fundable further education and higher education**. We believe that assessment by itself does not provide high quality provision for learners and we therefore welcome the new duty on the enhancement of quality.
• a process for approving and modifying a list of fundable bodies. We believe that potential fundable bodies should meet certain threshold conditions in order to be considered for eligibility to receive funding from the new Council. These conditions should create a significantly high threshold for colleges and HE institutions to achieve and maintain in order to ensure that the needs of learners are sustained in the medium to longer term.

• the duty to have regard to the UK and institutional contexts in which fundable bodies operate. We welcome this new duty which ensures that the benefits that Scotland gains from the UK and international context in which many colleges and higher education institutions operate are taken into consideration formally. This is particularly important for higher education institutions as maintaining and enhancing Scotland’s reputation for high level teaching and research depends on attracting highly qualified individuals and financial resources - from both the public purse and the private sector - from both inside and outside Scotland.

Concluding remarks

9 We think that it is important to recognise that although - within the existing legislation - further education colleges and higher education institutions in Scotland have been very successful over the last decade or so, there will always be further opportunities for development. We believe that the merger Bill should provide an enabling framework that allows Ministers, the Council and the colleges and higher education institutions that it will fund to work together in clearly defined roles - and in a spirit of mature partnership - to take forward these opportunities. We are hopeful that the Bill - as now introduced in the Parliament - will allow this to happen.
Enterprise and Culture Committee

Meeting 16 November 2004

Further and Higher Education (Scotland) Bill Stage 1 Scrutiny:
Additional Evidence on Section 12: Persons with learning difficulties

Introduction

Members will recall that NUS Scotland raised during evidence concerns with Section 12 of the Bill which relates to persons with learning difficulties.

The Committee has also received a submission from Skill Scotland, the National Bureau for Students with Learning Disabilities, on the same subject. This is attached at Annex A.

Members should note that additional issues in relation to students with disabilities have been raised by the Equal Opportunities Committee. These are contained in a letter from the Convener of the Equal Opportunities Committee which is attached as paper EC/S2/04/25/3.

Recommendation

Members are invited to consider the submission from Skill Scotland.

Alex Neil
Convener
Further and Higher Education (Scotland) Bill

Skill Scotland: National Bureau for Students with Disabilities raises these two issues as areas that need addressed within the above bill to ensure that disabled people are fully included in the future shape of further and higher education in Scotland. These are:

1. Funding for places at colleges outwith Scotland

Background
Further education colleges used to be run by local authorities. When these were taken out of local authority control in 1992, responsibility for funding for students to attend college was given to the Scottish Further Education Funding Council (SFEFC). SFEFC pays the fees for Scottish students to attend further education courses at college in Scotland.

However, funding for students to attend college outwith Scotland has remained at the discretion of the local authority. This includes any student who wants to attend college elsewhere e.g. some dance and drama students, as well as some disabled people.

Some disabled people who have complex needs choose to attend residential colleges that specialise in support and learning for people with different kinds of impairments. There are no such colleges within Scotland, and so these students have to travel to England or Wales to access this type of opportunity. Therefore, they can only get funding for fees for this purpose from their local authority.

The issue
Skill Scotland regularly has enquiries from young people (or their parents) who cannot get funding for fees or transport from their local authority to attend college outwith Scotland. This situation causes a small number of families considerable stress and frustration.

There is no consistency amongst local authorities around policies on meeting the cost of fees at specialist colleges. Research carried out by the Scottish Executive showed that out of the 29 local authorities who responded to the survey, 14 local authorities have a general policy of not funding students to attend further education at all. This same research concluded that ‘It is perhaps questionable whether or not such an activity ought to be carried out by local authorities.’
The current exclusion of these particular learners from national student funding is an anomaly that urgently needs changed. It is only when funding for these students is held by those with direct responsibility for all other student funding and support provision, that impetus will be afforded to ensure that adequate provision is planned for and delivered.

Proposal
Responsibility for funding for students to attend colleges outwith Scotland should rest with Scottish Ministers.

2. Requirement to have regard for people with additional support needs

Background
The draft bill states that the Funding Council should have regard to the requirements of people who have a learning difficulty, defined as significantly greater difficulty in learning than the majority of other people of the same age.

The issue
The term ‘learning difficulty’ is very narrow and excludes many people who do not have any difficulty in learning if they have the additional support that they need. ‘Learning difficulty’ does not reflect the whole spectrum of different needs that learners may have that can lead to barriers to education if not provided for. In addition, this term takes a backward step from the Disability Discrimination Act which requires aids and services to be provided for disabled students if they are disadvantaged – disabled students encompass a much broader group of students than those with learning difficulties.

The draft Bill therefore uses a term which is no longer an accurate reflection of the current responsibilities or approach to supporting learners in further and higher education in Scotland.

Proposal
To use the broader term of ‘additional support needs’ would reflect the Beattie report and consequent work. It would reflect the work to build inclusive learning environments that is already underway in colleges and universities. Proposed changes by the Council to funding for students who need additional support in further education (ELS and Group 18 funding) would also chime well with such a needs-led approach.

The Additional Support for Learning (Scotland) Act states that schools should provide the additional support that is required by pupils in order to learn. This will
broaden the definition of those whom schools should provide for, and is a positive statement about making school education inclusive of all. The ASL Act changes the arrangements to smooth young people’s transition from school to college or university. Therefore, to use the same broad definition in further and higher education would encourage a more joined-up approach at transition. It must also be noted that proposed changes to policies around 14-16 year olds attending college would benefit from shared understanding of provision for those who need additional support to learn.

If Scotland is to be a place where ‘people have the chance to learn, irrespective of their background or current personal circumstances’, one of the five goals of the Lifelong Learning Strategy for Scotland, there must be a commitment to provide the support to make this a reality. The Council should therefore be required to have regard to those who additional support needs, to make the learning fit the learner.

Conclusion
The Council should be required to have regard for persons who have additional support needs. The definition of additional support should be similar to that of the Additional Support for Learning (Scotland) Act i.e. additional support means ‘provision which is additional to, or otherwise different from, the educational provision generally provided by’ fundable bodies.
In the course of preliminary evidence taking as part of its Disability Inquiry, the Equal Opportunities Committee has heard specific issues raised in relation to the Further and Higher Education (Scotland) Bill. The Committee agreed at its meeting of 5 October 2004, that I should write to you to inform you of these concerns, in order that we might reassure those giving evidence that the issues faced by disabled people who wish to study are fully factored into your Committee’s Stage 1 deliberations.

An essential component of the Equal Opportunities Committee’s Disability Inquiry is to fully consider the barriers faced by disabled students across Scotland and how opportunities might be created or improved. It has been through this process that both of the points I draw to your attention have been brought to the attention of the Committee.

Firstly, the Disability Rights Commission in written and oral evidence (attached at Annex A to this letter) highlighted the need to increase the number of disabled students in higher and further education and to consider the current funding differences for students studying in Scotland and England. In addition, Skill Scotland has raised with the Committee concerns in relation to the funding for disabled students (attached at Annex B to this letter).

I understand that the Equal Opportunities Committee clerking team has raised this at official level and I now write to you formally to raise these matters in advance of final Stage 1 evidence taking.
I look forward to hearing from you.

Cathy Peattie MSP  
Convener  
Equal Opportunities Committee

Cc: Members of the Equal Opportunities Committee  
David Thomson, DCLO Equality Unit  
Committee Clerk  
DRC  
Skill Scotland
SUBMISSION FROM THE DISABILITY RIGHTS COMMISSION


The Disability Rights Commission (DRC) is an independent body, established by statute to eliminate the discrimination faced by disabled people and promote equality of opportunity. Our goal is a society where all disabled people can participate fully as equal citizens.

The DRC welcomes the Equal Opportunities Committee inquiry on disability, coming as it does at the same time as the UK Prime Minister’s Strategy Unit work on the life chances of disabled people, and believes that its findings could form the basis of a far-reaching policy agenda for disability and disabled people’s rights in a devolved Scotland.

This paper is intended to be open-ended rather than prescriptive, and to raise general areas of concern.

1. Disability in Scotland: Some Key Facts

Despite important shifts in public attitudes over recent years and, since the introduction of the Disability Discrimination Act 1995 (DDA), enforceable civil rights, disabled people in Scotland still routinely face barriers to their participation in society as equal citizens.

- There are an estimated 1 million disabled people in Scotland, about one in five of the population.
- More than two fifths (42%) of Scottish households with a disabled person have an income of £10,000 or less.
- The unemployment rate for disabled people is almost double that of non-disabled people.
- Disabled people are three times as likely to have no qualifications as non-disabled people. 34% of disabled people of working age have no qualifications.
- A fifth of disabled people in Scotland have experienced public harassment for a reason related to their disability.
- Only 2% of public appointments in Scotland are held by disabled people.
- There is overwhelming public support in Scotland for increased rights for disabled people; at the same time however, nearly a third of Scots still believe that a wheelchair user would not make a suitable teacher.
2. The Evolving Legislative Context

The Committee inquiry gets underway at the start of a period of major change in reserved disability discrimination law. At the same time, in Scotland a markedly different legislative and policy landscape is emerging in the field of disability equality. Although Equal Opportunities law is reserved to Westminster, The Scotland Act 1998 gives the devolved institutions in Scotland specific powers to encourage and promote equal opportunities. With equal opportunities therefore effectively straddling the reserved/devolved split, the committee will be anxious to ensure that it is familiar with the full range of reserved and devolved legislation, both passed and pending, which does or will have a bearing on disabled people’s right in Scotland.

- 1 October 2004 sees the final provisions covering employment and access to goods and services come into force. From that date, every organisation which provides a service to the public in Scotland, from corner shops to supermarket, local authorities, and hospitals, must take steps to remove physical barriers to access. At the same time, small businesses which are currently exempt from the employment provisions of the DDA will be covered, as will the uniformed (but not the armed) services.

- The Special Educational Needs and Disability Act 2001 (SENDA), which amends part IV of the DDA, makes it unlawful for schools and other educational institutions to discriminate for a reason related to a person’s disability. The Education (Disability Strategies and Pupils’ Educational Records) (Scotland) Act 2002 places a duty on education providers to remove, over time, barriers to communication and the curriculum. From September 2005, further and higher education institutions must take steps to remove physical barriers to access for disabled students.

- A new Disability Bill is expected to go through the Westminster Parliament before next year’s UK general election. It will address many of the gaps in the present DDA. Among its most important provisions will be a public sector duty to promote disability equality, similar to the race equality duty under the Race Relations Amendment Act 2000. It will also ensure that the DDA covers all functions of public authorities, and not simply service provision. The Bill will also give ministers the power, through regulation, to bring various modes of transport within the scope of the DDA. Given the very distinct transport challenges faced by Scotland, this is one of many areas which could impact in a different way in Scotland to the rest of UK.

- Several pieces of Scottish legislation, including the Housing Act 2001, the Local Government in Scotland Act 2003 and the NHS Reform Act 2004, place duties on the observance of equal opportunities on key public authorities. In areas such as housing, Scotland is leading the way for Westminster in helping disabled tenants make adaptations to
their homes. The Education (Additional Support for Learning) (Scotland) Act 2004 should, for the first time in Scotland, ensure that disabled children have a **positive entitlement to the educational support they require**, and the DRC hopes that the proposed education tribunals will be empowered to hear DDA education cases. Further legislation on transport, housing and planning has been announced or is expected in the 2003-2007 parliament.

### 3. Key Inquiry Themes/Questions

Below are some of the questions the committee may wish to consider as points of departure when tackling the inquiry’s three thematic areas.

- **Employment:** Given that the re-launched Framework for Economic Development in Scotland only mentions equality of opportunity twice, what does the committee propose to raise disability equality’s profile in the devolved lifelong learning agenda? Are Scotland’s devolved institutions ensuring that there is sufficient co-ordination between devolved enterprise and employment areas and reserved job and welfare initiatives? How is the committee defining work? What kinds of jobs are envisaged? Over 98% of businesses in Scotland are SMEs: what challenges does this raise in bedding in the October 2004 employment changes?

- **Post-16 Education:** how does the committee propose to increase the number of disabled students in higher and further education? How is the committee’s report likely to influence the proposed bill to amalgamate the further and higher education funding councils? What, given the difference in student finance arrangements north and south of the Border, can be done to close the gap in the numbers of disabled and non-disabled people who have no qualifications?

- **Participation in the Arts, Leisure and Civic Life:** What can the Parliament, Executive and Executive agencies and NDPBs do to build on the work of the European Year of Disabled People 2003 in raising the profile of disabled people in society? What barriers do disabled people still face in accessing the arts and sports, as participants, spectators or both? What can be done, through the public appointments system or by other means, to close the gap between the proportion of Scots who have a disability and the proportion of Scottish public appointments held by people with a disability? What needs to change structurally, and what mind sets need altered?

How will the committee’s inquiry develop and raise awareness of the disability equality agenda in Scotland? How will it address – and change – the attitudes of non-disabled Scots?
Equal Opportunities Committee, 21 Sept 2004, Official Report, Column 582

Bob Benson:

There are many issues to do with the immediacy of support that relates to individual requirements. That relates again to the point that disabled people are not a homogeneous group. Disabled people have a whole range of different needs and it is up to the education authorities and the FE and HE bodies to ensure that there is support. There might be an opportunity in the proposed FE and HE bill that is coming before the Scottish Parliament to consider some of those matters more closely in addition to issues to do with the merger of the further education and higher education funding bodies. There might be a legislative opportunity in Scotland.
Mhairi Snowden: I want to raise an issue that has become more urgent, as the Further and Higher Education (Scotland) Bill is going through at the moment. One of the things that we wanted that bill to include was choice for disabled people. At the moment, if a disabled person chooses to go to a college south of the border—which may be because there is a specialist college there—the funding comes via local authorities. Local authorities have only the discretion to fund; they do not have a duty to do so. Our concern is that that funding is on quite a different footing from the rest of student funding, which, as you know, is all nationalised, through the Student Awards Agency for Scotland or through the funding councils. Students can choose to go to university south of the border. Although disabled people make up a small group, that small group has real difficulties getting funding. We have had quite a lot of inquiries to our information service about it. I do not know whether the committee can do anything to affect the bill, but it is an opportunity that might be missed to get that sorted out.