The University of Stirling shares the Scottish Government's commitment to good governance of higher education institutions, wide access to university based on ability regardless of socio-economic background, and efficient provision which meets learners' needs. However we do not share the view that legislation is required to enable these principles to be exercised effectively within institutions. Universities are already robustly accountable to the Scottish Ministers via the Scottish Funding Council - and through multiple lines of accountability to other funders and regulators such as the Quality Assurance Agency - for the appropriate and efficient use of public funds. The Scottish Ministers already have the power to influence the use and distribution of these funds and achieve the policy intentions of the Bill through their guidance to the Scottish Funding Council and the SFC's conditions of grant. The introduction of Outcome Agreements between the SFC and Scottish HEIs has added another layer of accountability and has introduced further control over the use of public funds. We are concerned that legislation containing broad ranging and often unspecific provision relating to governance, management access and provision may give future administrations powers which are susceptible to different interpretations and application.

We have strong concerns about the scope of particular proposals within the Bill, specifically their potential to impact on the autonomy of universities to deliver their own missions. It has long been recognised – and supported by international evidence, as cited in the Universities Scotland response - that the autonomous status of UK HEIs, free from direct political control, is a fundamental component of our great success. At a time when other nations are removing political control to allow increased autonomy and greater entrepreneurism in the global HE market, it would seem to be a retrograde step to introduce a legislative framework which restricts the flexibility and autonomy of universities in Scotland to respond in an increasingly competitive and changing Higher Education environment.

Whilst our strong preference is not to introduce new legislation, we support the response from Universities Scotland on behalf of its members, which proposes a number of amendments to the Bill in order to better define the respective roles of Ministers, the Scottish Funding Council and individual institutions. We also strongly support the principle of responsible autonomy within universities which is a central component of the Universities Scotland response.

However, we wish to emphasise and elaborate on a number of points, as set out in the remainder of this response.
Section 2: Higher education institutions - good governance

We have always been fully supportive of benefits of robust corporate governance. As a matter of course, we ensure that our governance functions operate consistently with accepted best practice, as developed by experienced University Chairs and set out in the CUC Governance Code of Practice and General Principles (updated 2009). For example, we recently carried out a review of Court effectiveness, and a comprehensive review of our entire committee structure. Both reviews resulted in enhancements designed to improve the effectiveness, efficiency and transparency of our governance functions. We believe that universities are capable of effective self-reflection, and legislation should not be required.

Whilst we accept that universities should comply wherever appropriate with the forthcoming Scottish Code of HE Governance, we strongly believe that it should not be the role of Ministers to determine what constitutes effective HEI governance in an autonomous sector. A framework for governance prescribed by legislation would undermine and fail to respect the significant diversity between Scottish universities.

It is our strong view that the reference to 'management' in this provision is inappropriate and should be removed. There is a clear distinction between governance, which is concerned with accountability and scrutiny of management decision making, and management, which is concerned with overseeing agreed strategic direction and operational activity. It is for the governing bodies and chiefly the senior managers of universities to determine how the institution should be managed. Introducing Ministerial control over the management of institutions would further diminish universities’ responsible autonomy, and would create an additional burdensome and bureaucratic framework which would further hamper the effective and efficient operation of HEIs.

Section 3: Widening access to fundable higher education

The University of Stirling is committed to widening access. Our Principal – along with the Principals of all Scottish HEIs – publicly expressed this commitment in the recent publication 'Delivering for Scotland: University Outcome Agreements 2012-13’ http://www.universities-scotland.ac.uk/uploads/OutcomeAgreementsSummary-final.pdf Our Outcome Agreement 2012-13 further demonstrates this commitment.

However, we are concerned about the scope of the provisions in this section of the Bill, particularly in relation to the role of Ministers in specifying the nature of a widening access agreement. Ministers already have the power to guide the SFC on the scope of widening access provisions through its annual guidance. There should be no need to introduce specific legislation on this matter.

As currently drafted, the Bill could be interpreted as giving Ministers the power to specify the content of a widening access agreement for a particular institution, which would be directly contrary to the principle of responsible autonomy. We do not agree that Ministers should be able to impose terms and conditions to achieve particular
outcomes in relation to widening access, because such requirements could contradict and jeopardise other legitimate strategic aims of universities.

Universities are already required to produce Outcome Agreements through a process of negotiation with the SFC as a condition of grant, and these already include provisions relating to widening access. There is therefore no need to introduce legislation to create a separate agreement focusing specifically on widening access. It is important to note that the Outcome Agreements are developed by negotiation between universities and the HEIs, and are intended to take account of the diverse nature of universities and their varying missions and strategic goals. Their content is therefore not – and must not – be prescribed by the SFC or Ministers.

**Section 4: Fee cap: students liable for higher education fees**

We are broadly content with the policy and content of this section of the Bill. However, it is worth noting that university governing bodies continually review their fees policies in light of external market influences, and would not be likely to support a fee structure which would have the effect of discouraging students from applying. We note and endorse Universities Scotland’s proposal to amend this section of the Bill to ensure that institutions would not be compelled to restrict their fees for Welsh-domiciled students to the maximum fee charged by Welsh universities for these students.

**Section 14: Review of further and higher education**

We are concerned that the provisions as drafted are not consistent with the principle of responsible autonomy. The SFC already has the ability to adjust the allocation of funded places in a way which is informed by discussions with institutions on the coherence of provision, and the allocation of funded places is communicated to institutions in the annual letter of grant. Further, Ministers already have the power to guide the SFC on issues relating to the coherence of provision through its annual letter of guidance. It is therefore not clear why additional legislation is required in this area.

This section of the Bill appears to assume that universities’ academic provision is or should be developed specifically in response to the needs of undergraduate Scottish and EU learners. It fails to take account of the fact that universities provide educational opportunities to a wide range of students from diverse markets, many of whom pay fees for that education and are not funded by the Scottish Government e.g. rest of UK, overseas and TPG students. The autonomy of universities to design their courses to meet the demands of their diverse learner markets must be protected. We do not agree that Ministers and the SFC should be able to have a role in determining this wider provision.

In particular:

14(2)(a): We do not believe it is the SFC’s responsibility to decide on the number of fundable higher education institutions. These are autonomous institutions, and as long
as they meet the criteria and conditions of grant for funding by the Council they should be eligible for receipt of funding.

14(2)(c): We consider that it is the responsibility of individual institutions to decide what 'types of programmes of learning or courses of education' to provide. It is the role of the Academic Council/Senate of each institution to determine the scope of academic provision.

14(6): In relation to HEIs, any report by the Council on a review of the provision of higher education should be to the governing bodies of the institutions concerned, not to the Scottish Ministers since Ministers are not responsible for academic provision by autonomous institutions.

Section 15: Duty to provide information to Skills Development Scotland

We note the provision in section 15 to allow Ministers to introduce secondary legislation that will impose a legal duty on relevant bodies to share data with Skills Development Scotland on all young people between the ages of 16 and 24 moving through the learning system to identify those who have disengaged with, or may be at risk of, disengaging with, learning or training. We understand that this provision is not intended to apply to universities. We suggest that this aspect of the Bill is amended to clarify the bodies to which this provision will apply, and to explicitly state that the governing bodies of higher education institutions will be exempt.