Higher Education Governance (Scotland) Bill

Call for Evidence from Education and Culture Committee: University Court of University of Glasgow response

This response has been developed by a Working Group of the University Court, on behalf of the Court. The University Court welcomes the opportunity to give evidence. We have responded to the first four questions individually and have grouped together our response to the questions on academic freedom.

Founded in 1451, The University of Glasgow is a large institution with over 25,000 students and 7,000 staff. The University Court is a 25-member governing body with a majority independent membership; it also includes members from the following constituencies: the University Senate, the General Council (the graduate body), the Students’ Representative Council, employees (including provision for Trades Union nomination), and the City Council, together with the Principal, the Rector (elected by the students), and a nominee of the Chancellor. These constituencies have existed for many years, including since before the approval of the last substantive Ordinance in 1979 which introduced student and employee members, albeit that numbers from the various categories have been changed over the years. The Working Group included Senate, Students’ Representative Council, employee, General Council and other independent members.

1. What do you consider to be the existing problems (if any) with higher education governance, particularly around modernity, inclusion and accountability?

We do not consider that there are existing problems with Higher Education Governance. For many years (since the launch of the first Code of Good Higher Education Governance in 2004), governance arrangements have been compliant with a UK Code of Practice and, more recently, a Scottish Code has been developed introducing improvements particularly around diversity, inclusion and accountability. We believe that the Scottish Code has been effective resulting, e.g., in new measures to address gender equality, include staff and students in the appointment of Principals, Chairs of Courts and independent members as well as in the appraisal of performance of Principals and Chairs, and requiring Courts to commission externally-facilitated reviews of their effectiveness and publishing the outcomes. The Scottish Code is reviewed every three years (the next edition is due in 2016) thereby ensuring that it is readily and frequently kept up to date, and compliance with the principles which it sets out is a condition of funding from SFC.

The higher education sector in Scotland is diverse and one of the nation’s success stories. Important elements of that success have been a high degree of local autonomy and effective governance. The University of Glasgow has recently revised its governance arrangements, making changes to the membership of Court and establishing a Council of Senate to which significant powers of Senate are delegated. Throughout those changes we have sought to improve and modernise arrangements (e.g. ensuring a significantly majority of lay members of Court, filled by advertisement, and recognising that a 600+ member Senate is not a fit for purpose body to govern academic matters). We have made these changes to meet our needs – including to secure effective governance of our
ambitious estates strategy. We believe that exercising this autonomy is likely to be more effective than requiring compliance with a ‘one size fits all’ model.

2. The extent to which the Bill

a. will improve higher education, particularly in the areas above

b. may alter the higher education sector’s current level of autonomy

c. may affect lines of autonomy between the Scottish Government, relevant public bodies and the higher education sector.

It is difficult to see how the Bill will improve Higher Education. According to the Policy Memorandum, the Bill will strengthen existing governance in higher education but that is not evidenced and, indeed, the opposite may transpire depending on the detail yet to be developed concerning the regulation by Ministers. For example, were the procedure to appoint the Chair of the Court to involve an election from among the candidates deemed suitable for appointment as is exemplified in the Policy Memorandum our belief is that we would not attract the best candidates for the role and that, therefore, governance would be poorer.

The Bill proposes that Government Ministers take significant new powers to impose governance practice on universities regarding the appointment and remuneration of Chairs, and the composition of the governing body and of the academic board. These powers were not included in the Consultation. In giving these powers to Ministers, the Bill:

- will reduce the independence and diversity of the universities which has been a key plank in their contributing to a strong economy;
- may result in the Office of National Statistics determining that universities are arms of central government as with recent changes in Scotland’s FE sector. This change of status would have a dramatic and very harmful impact on relationships with business and entrepreneurial activity in universities and would remove our ability to generate surpluses to invest in our infrastructure;
- could compromise universities’ ability to attract philanthropic funds: while there is any uncertainty in universities’ status there are implications for funding from those bodies or individuals which are unable to support entities associated with central government. The University is currently progressing a £50m capital development at the Queen Elizabeth University Hospital of which £35m relates to funding of imaging facilities – in particular the Imaging Centre of Excellence (ICE), a unique facility in the UK with the ability to treat patients of all types including non-ambulant, acutely ill and ventilated patients. All of the £35m has been realised from external sources with Trust funding of over £5m leveraging the further sums from the Medical Research Council, UK Research Partnership Investment Fund and the European Regional Development Fund;
- opens the risk that future Ministers may use these powers in ways that may threaten the sector’s current ONS or charity status.
These aspects are clearly unintended as the Bill directly contradicts the Cabinet Secretary’s commitment - in the Governance consultation document - that ‘for universities to be successful ... they need to be autonomous institutions’ and that ‘The Scottish Government does not want to increase Ministerial control over universities’.

The University of Glasgow estates strategy, recently approved by Court and covering the 10 years to 2025, includes capital investment of £450m which comprises £250m in historic and future operating surpluses, £100m borrowing, £50m philanthropic support and £50m property sales. Were the University to be reclassified as an arm of central government, that would immediately have a severe adverse impact on our ability to implement our strategy because of the inability to retain surpluses, the impact on philanthropic giving and restrictions on borrowing.

3. Has the correct balance been struck between legislative and non-legislative measures? Are any further measures needed?

The Bill in its current form places significant new powers in the hands of ministers with the consequent risks as set out in our response to Question 2 above. Moreover, much of the detail of how the Bill will be implemented is missing, yet to be determined.

We believe that good University governance is best promoted through the Code of Practice which requires principles of governance to be observed, and compliance with which is a condition of funding from SFC, but which recognises diversity in the sector and requires that institutions observe the principles in a manner that reflects their distinct missions, cultures and needs at any point in time. Fundamentally we believe that legislation is not required to further good University governance: we can evidence this by the improvements we have introduced over recent years.

4. The Bill proposes a number of specific changes to higher education governance:

- To require higher education institutions to appoint a chair of their governing body in accordance with a process set out in regulations made by the Scottish Ministers
- To require HEIs to include various persons within the membership of their governing bodies
- To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons

Please provide your views on the merit of each of these proposals.

Each of these proposals involves a prescriptive approach taken by a Minister which consequently reduces the independence and diversity of the Higher Education Institutions. Moreover, the proposals may compromise the status of the institutions as bodies independent of Government – with colossal financial implications – and the exercise of discretionary powers by future Ministers could affect their charity status.
In addition, in specifying the composition of the governing body and the academic board, there is a risk that this Bill undermines the principles of good governance which include acting in the best interests of the institution. Were the member to be mandated by their constituency to represent the latter’s interests this would be a backward step.

We believe that the higher education institutions themselves are best placed to decide the process for appointing the Chair of their governing body, and the memberships of both their governing body and academic board. We cite our recent experience as evidence of that: we are currently seeking to appoint a Chair of Court through a robust process of advertisement leading to appointment; we have reduced the member numbers of certain constituencies to allow us to have a clear external membership on Court, appointing members with the right skills to enable us to meet our strategic needs; and we have established a fit for purpose Council of Senate with a balance of members reflecting our academic needs and of a size that enables us to effectively conduct our business. We believe that there is no need for a legislative approach to be taken as there already exists a robust approach for promoting good governance through the Code of Good Practice with which institutions are already required to comply as a condition of SFC funding.

Role of the Rector

The final point we would draw to the Committee’s attention is that the schedule of legislative amendments accompanying the Bill involves removing the right of students at the ancient universities to elect a Rector to preside at meetings of the governing body. This is a development that was not proposed in the Consultation, and is not discussed – or even referred to in any detail – at any point in the paperwork accompanying the Bill.

For members’ information we include as an Appendix to this Call the Court’s responses under these headings to the original Consultation which elaborate on the concerns expressed here.

Academic Freedom

Please provide your views on the following:

5. The likely practical effect of these provisions, for example, whether there are any areas of teaching, learning or research that will be particularly enhanced.

6. Are there likely to be any significant constraints - other than legal constraints - on academic freedom? For example, the particular ethos within an institution; funding pressures; institutions policies on equality and diversity, etc.

7. Are the situations in which relevant persons can exercise their academic freedom clear? For example, should academic freedom be limited to their work within an institution, as opposed to views they may express outwith the institution.

The law currently requires all HEIs to have regard to the desirability of ensuring academic freedom. The new Bill proposes a longer definition of academic freedom than currently appears in the 2005 Act: we have no issue with the addition of developing and advancing new ideas or innovative proposals per se but this is caveated by the requirement that HEIs ‘must aim to ensure’ academic
freedom, whereas the current legislation says that they 'must have regard to the desirability of ensuring' academic freedom'.

It is difficult to see what the Government is trying to achieve through these new words. One potential consequence of the new wording would appear to be to undermine the role of the governing body in the determination of institutional strategy which we believe is not what was intended. What we mean by that is that academic freedom as newly defined could be seen to be permitting staff e.g. to pursue research in any academic area, contrary to a more focussed strategy (and efficient use of resource) approved by the governing body.

It is of concern to us that the Government’s stated intention is to strengthen an obligation on the universities when it has not explained what impact this strengthened obligation would have, and why the new obligation is more desirable than the old.
Appendix

Extracts from response to Consultation Paper on Higher Education Governance Bill

Preliminary Comments from University Court of the University of Glasgow:

The University Court (‘the Court’) welcomes the opportunity to contribute to the consultation.

The Court believes that HE-specific legislation is not necessary for the reasons set out below, and in addition questions if legislation could in practical terms cover such a richly diverse sector. The Code of Good HE Governance (‘the Code’) already covers many of the areas in question and should be used as the framework for continuous improvement, rather than new legislation being introduced in the areas proposed. The Code has the benefit of being flexible and dynamic (including being open to relatively quick change if required), but is nevertheless formulated in the appropriate spirit to achieve continuous improvement in governance. Compliance with the Code, or provision of a satisfactory explanation about non-compliance, is a condition of funding, therefore it has force.

Chairing of Governing Bodies:

The consultation paper proposes an advertising/shortlisting process followed by an election of the ‘chair’ of the governing body by a ‘balanced and representative electorate’. The composition of the electorate is not further defined. The consultation paper does not fully define ‘chair’. Given the explanatory text in the consultation paper, the implication is that ‘chair’ means the person who in practical terms undertakes ‘day to day’ duties including responsibility for the leadership of Court, its effectiveness and its conduct; liaison with the Principal and members of the senior team; and representing the University at relevant meetings with external bodies and stakeholders.

However, it is unclear whether the statutory role of Rector in the ancient Universities has been fully considered in drafting the consultation. The Rector is the ‘ordinary president’ of Court in the ancient Universities and may ‘preside’ at meetings of Court with a deliberative and a casting vote. If the Rector were to be considered the governing body’s ‘chair’, then the electorate for that position (chair of Court) is already fixed, being prescribed originally in legislation and latterly by Ordinance: in both cases it is the student body. The proposal in the paper is that there be an open advertisement and interview process, followed by an election involving various stakeholders. The role of a (student-elected) Rector as president (chair) of Court could therefore effectively be abolished.

If, by ‘chair’, the consultation paper means the role undertaken in many institutions by a senior lay member of Court (referred to in this response as ‘Convener’), then the appointment of this person is already covered by the Code, involving a transparent process including advertisement and competitive selection and interview. However, it does not involve the final aspect of the proposed legislation, which is ‘election by a balanced and representative electorate’.

There are two existing roles (Reactor and Convener) that are both highly valued. The Rector is elected by the student body and provides an important channel to strengthen the student voice, which the Court would not wish to see diminished.
Within many Universities’ processes, there is already a commitment to openness in the appointment of the Convener through advertisement and recruitment. Rather than an election being needed, these processes might be further refined locally, e.g. by the Nominations Committee, which the Code already requires to include staff and students, possibly convened with more Court members present than would normally be the case and overseeing the appointment of the Convener.

An election process for Convener could politicise the position, potentially deterring some excellent candidates when what is needed is a person with the best possible skills and experience. For reasons of good governance, it is essential that governing bodies as a whole have the full confidence in the Convener: a politicised process via an election might negatively impact on this.

There is a reference in the consultation to possible remuneration of the chair. While noting the time and personal commitment required of such a role, and that subject to charity law this is already allowed, the Court is not supportive of this.

**Membership of Governing Bodies:**

In many universities, the Governing Body includes student, academic staff, support staff and alumni members, so, consistent with the consultation paper proposals, these are inclusive bodies. However, in the interests of democracy, and good governance, it is important that staff members of the governing body should be selected by all staff and not simply nominated by trade unions. Glasgow's governing body has benefited greatly over the years from the input of staff members who have also been members of a trade union. However, selection of Court members as representatives of a trade union would involve those members arguing the trade union's position, whenever relevant, in the course of Court business. This would be contrary to good governance, which requires that all members of Court act in the best interests of the University rather than of a constituency.

The Court questions the need for, and the practicality of, all governing bodies being required to be in the same format for these categories of members, given that the size of governing bodies varies across the sector. If necessary, the Code could be amended to make recommendations in these areas. On this basis, legislation is not necessary.

With respect to equality, the Court recognises the challenges involved and supports a commitment to achieving parity, while noting that with respect to many constituencies contributing to its membership, it cannot compel them to achieve gender equality.

**Composition of Academic Boards and appointment of Members:**

The proposal refers to a body that is very similar to this institution’s existing Council of Senate. Therefore, given that the University of Glasgow has been able to create such a body through its own internal processes, other institutions may also be able to act without the need for legislation. The proposal in the consultation paper also has implications for the future of the wider Senate at the older universities.

The size and diversity of the sector militates against the proposals in the consultation. If necessary, the Code - which already requires effectiveness reviews of such bodies - could be amended to make recommendations in this area. Legislation is therefore not necessary.