Submission to the Scottish Parliament’s Education and Culture Committee on the Higher Education Governance (Scotland) Bill

Introduction

Abertay University welcomes the opportunity to submit views to the Committee on the Higher Education Governance (Scotland) Bill.

According to the Policy Memorandum, the principal objective of the Bill “is to enable a framework of higher education governance that is more modern, inclusive and accountable. It will strengthen existing governance in the higher education sector in Scotland, ensuring it remains fit for purpose”.

Abertay University considers that the proposals in the Bill will neither strengthen the governance of the University, nor improve accountability. As has been acknowledged by the Scottish Government, higher education institutions (HEIs) are autonomous bodies. That has been the key to their success, but has not prevented their working hard over the years to ensure that they are at the forefront of good governance practice as this has developed within the public and private sectors. Compliance with the Scottish Code of Good HE Governance (‘the Code’), published in 2013, is regarded by the Scottish Funding Council as indicative of good governance and has been accepted as a condition of grant. The Code is reflective of current best practice as contained in relevant publications covering both the private and public sectors in Scotland and more widely in the UK, and when it was adopted by all Scottish HEIs, those institutions committed to regular review. The first such review is planned for 2016.

A report in 2014 (‘Scottish Code of Good HE Governance One year into implementation’) showed that most institutions were by then compliant - or were moving towards full compliance - with the requirements of the Code and with its Guiding Principles. Abertay University is therefore surprised that the Scottish Government is proposing at this early stage, before the Code has properly been given a chance to bed down, and in advance of the 2016 planned review, to introduce legislation and associated regulations - the need for which has not been justified by any evidence of failure of governance or performance by Scotland’s HEIs.

Abertay’s position is that the proposals in the Bill are not evidence-based, are unnecessary, and represent an unprecedented political entry into the internal affairs of Scotland’s HEIs. This not only cuts across the long-cherished principle of university autonomy, but is also the thin end of a wedge which is capable of exploitation for partisan political purposes in the future, and which, if so exploited, risks irreparable damage to a jewel in Scotland’s crown, the stewardship of which has served our nation well over many years.

That said, and recognising that having come this far the Scottish Government will be unwilling to change course, we urge the Committee to consider very carefully those aspects of the proposals which are of greatest concern to Scotland’s HEIs. We therefore note here that Abertay University agrees with the concerns raised by the Committee of Scottish Chairs, Universities Scotland, and others. We note in particular the potential unintended consequences and future risks with regard to ONS classification, charity law and costs, which have been raised.
1. **What do you consider to be the existing problems (if any) with higher education governance, particularly around modernity, inclusion and accountability?**

Since the introduction of the Code in 2013, we consider that the perceived problems for the Higher Education sector as a whole have been addressed, or are being addressed. Abertay University believes strongly that governing bodies should comprise members with a diverse set of personal characteristics - to reflect so far as possible the community from which the University draws its staff and students, and to provide a variety of voices. The University notes that attracting candidates for governing bodies which fully reflect the diversity of Scottish life is challenging, as it is for non-departmental public bodies (NDPBs), including Health Boards, and all areas of public service. Abertay University is not deterred by the challenge and will continue to work hard to ensure that its governing body is as representative of the community it serves as it can be. The proposed legislation will do nothing to make meeting this challenge easier.

The report *Scottish Code of Good HE Governance: One year into implementation* (2014) showed that HEIs in Scotland were modernising their governance arrangements to enhance diversity, transparency and inclusion and had been doing so for some time. It is important to note that good governance in HEIs did not suddenly begin either with the *Report of the Review of Higher Education Governance in Scotland* in 2012 or the adoption of the Code in 2013. For example, when Abertay University appointed its current Principal in 2011/2012 (before the publication of the Code), our staff and student governors were full members of the selection and appointment panel and, more broadly, staff members - including union officers - had the opportunity to be involved in the specification of the role. Many were able to meet, through focus groups, all the shortlisted candidates - providing formal feedback to the selection panel. Abertay University also conducted a full external effectiveness review in 2011/12 and already plans to do so again in 2016/17.

2. **The extent to which the Bill; (a) will improve higher education governance, particularly in the areas above (b) may alter the higher education sector’s current level of autonomy ; (c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector**

The Bill will not improve higher education governance, and will do nothing to improve the learning of Scottish students, or the generation of research and innovation for the benefit of business, and of Scottish society more generally. Indeed, we note that no mention is made of prospects for improved governance – that is to say governance that helps the HEIs to do a better job – in the Bill itself, or in the consultation document that preceded it, or in the report by Professor von Prondzynski, on which the consultation was based – a surprising and disappointing omission.

The Code, together with existing legislation, including the Further and Higher Education (Scotland) Act, plus the Financial Memorandum and Outcome Agreement between Abertay University and the Scottish Further & Higher Education Funding Council, provide an appropriate framework for meeting the expectations of staff, students and external partners. This framework is sufficient incentive to governors to behave in an accountable manner, if any such incentive is required.
The governing body of Abertay University is acutely aware of, and committed to, its accountability to its students and their families for the quality of education and care they receive, to its employees for their working environment, fairness of treatment and opportunities for development, to the taxpayer for value for money, and to the community at large for the economic, social and cultural benefits that a successful university provides. We do not doubt that this is true of the sector as a whole. Individual governors and chairs are also acutely conscious of the personal reputational damage they risk if taken to task by the media - a very real “accountability” in itself. If justification for political involvement in the affairs of HEIs embodied in the Bill is to improve “accountability” we consider that it reflects on the part of the Bill’s proponents a disappointing lack of regard, if not respect, for the ‘voluntary service’ ethos among governors, a surprising lack of awareness of the impact of Scotland’s media on individuals unused to the rough and tumble of political life, and a strangely narrow view of how accountability should work in modern Scotland.

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

No, that balance is already there. Abertay University considers that the current balance - between existing legislation, financial and outcome agreements with their conditions of grant, plus the Scottish Code - is appropriate. As noted in the introduction we would be very concerned if the legislation and associated regulations led to unintended consequences or future risks relating to ONS classification or charitable status.

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

- To require higher education institutions to appoint the 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.

Appointment of Chair: – The Scottish Code already covers most of this so we consider that legislation and regulations are not required. The current principles and practices set by the Code include public advertisement and the inclusion of staff and student members of the governing body in the selection, nomination and appointment process. Given that compliance with the Scottish Code is a condition of grant, and given that it reflects best practice, Abertay University considers that it is already applying the process envisaged by the Bill.

More fundamentally, it is not appropriate that the method of appointing the chair of an autonomous charity should be determined by regulations made by Government.

The election of chair by a “wider constituency” – so far undefined - is inappropriate on grounds of both principle and practicality. The chair has to have the confidence of, and be
accountable to, his or her fellow governors. This is absolutely fundamental to good governance, as otherwise the governing body is unlikely to be able to function in a coherent way, providing challenge and, as appropriate, support to the Principal and other members of the senior team. It is this combination of effective challenge and contingent support that allows Scotland’s HEIs to deliver to their students and to Scottish society more generally.

Accountability to an external constituency, whatever that may be, cuts across this and undermines the effectiveness of the governing body. A chair cannot serve two masters or fulfil the role he or she must give to the governing body if he or she owes the appointment to external interests. Abertay University has no difficulty with the concept of an elected chair provided that it is the governing body members, comprising its students, staff, officers and a majority of independent members (whose appointment or election has itself been made involving staff and students) which determines the election. That is the only basis on which governors can have confidence in the chair, and vice versa.

At a practical level, the requirement for election by the “wider constituency” will deter good candidates from coming forward. Not everyone is comfortable with “campaigning” or with exposing themselves to rejection, and the risk is that those putting themselves forward will be drawn largely from the ranks of political activism.

**Membership of governing body:** Abertay’s governing body already includes two members elected by, and from among, all academic staff and all support staff. If we were required to add two members nominated by academic and other unions, we would be concerned regarding the ability of such members to work only in the interests of the University (points made by Universities Scotland and others); and we would either have to remove positions currently held by independent members or other categories of member such as those nominated by Senate as we cannot increase the overall size of the current governing body, which is already a maximum of 25, in accordance with the Code. If existing staff members are to be replaced by union nominees it is hard to see how this increases accountability and inclusiveness when fewer than half of Abertay University’s staff members are members of recognised trade unions.

This also prompts the question as to what other categories of interest group might then seek to be included in future changes to the regulations – for example, each subject discipline might seek to ensure that it could nominate a member. One could of course resist such pressure for a change in regulation (though it might be hard to articulate a principled reason to do so). But a more likely, and more immediate, reaction would be for governors coming from a different background (the professions, business, local government, and so on) to tend to act as representatives of those constituencies. In that way, governing bodies might become a forum in which special interests compete – at least to an extent – rather than purely focussing on supporting the university in its mission. This would be the antithesis of good governance. Overall, Abertay University considers that the current approach of having two membership positions that are open to all staff provides the most democratic structure.

With regard to the proposal to have two members nominated by “the graduate’s association”, we ask the Committee to note that Abertay University does not have such a formal entity and that there would be costs associated with establishing one, creating office bearers, and putting in a supporting infrastructure. This additional imposition of costs comes at a time when the Scottish Government will no doubt be asking the Scottish Funding Council as part of the 2016-17 Spending Review to consider options for reducing HE funding.
Abertay University’s current and preferred approach is to ensure that advertisements for vacancies on Court (our governing body) are circulated to our alumni. This approach is successful as demonstrated by the fact that four of our existing independent members are, in fact, Abertay alumni.

Membership of academic boards: The proposed cap on members of the academic board is not directly relevant to Abertay since we have fewer than 40 members. However, we consider it to be the right of each and every university to agree amongst its own community how many members its academic board might have, and what the balance of membership should be. Abertay University’s Senate (academic board) is currently undertaking a self-evaluation and is debating the type and number of members as part of determining as a community what role Senate should have and how we can ensure that we are being inclusive.

The composition and focus of a university’s academic board (or Senate) is at the very heart of what makes a university a university – quality of provision, academic standards, and the pursuit of knowledge and excellence. The integrity of the academic board sits alongside academic freedom as fundamental to the essence of what a university is. That the composition of such boards should be subject to political determination is a proposal that strikes at the core of HEIs’ autonomy, and sits uncomfortably alongside the Bill’s stated wish to safeguard academic freedom.

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.

There is no evidence that teaching, learning or research at Abertay University will be enhanced by these proposals. On the contrary, were the legislation to result in a change to the ONS classification or loss of charitable status immense damage would be done.

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.

Ability to comply with existing legislation in a variety of areas, including diversity would require to be reviewed. The impact on academic freedom would be zero as respect for such freedom is a sine qua non of acceptance as a governor of Abertay University. The legislation in this regard appears to be pointless.

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

Views based on academic research and discipline and held and expressed in that context are, in the opinion of Abertay University, entitled to be expressed in contributions to conferences, seminars, the media, and in a range of circumstances. Abertay University would expect that such freedom would be respected by the Scottish Parliament and by Government even if such views, if based on academic study and evidence, were not shared by the administration of the day and would not expose the institution concerned to any financial or other sanction.
Conclusion

Scotland’s HEIs are a success story. They meet the skills requirements of Scottish businesses and of the public sector, including the NHS, and they contribute to Scotland’s international reputation for innovation and learning. They punch above their weight in research, commercialisation and knowledge transfer and have been a crucial asset in our successful efforts over many years to win mobile inward investment. That they are autonomous institutions, free from political direction, is key to that success.

Scotland’s HEIs are not complacent. Where improvements to governance are required these will be made and the Code which came into force in 2013 is a sound basis on which to build.

The case for legislation of the kind proposed has not been made. It will do nothing to enhance the performance of Abertay University and has the potential to do much damage. We urge the Committee to consider very carefully how the Bill might be amended to reduce the risk that it poses.

Abertay University
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