Submission  Mr Archie R. MacGregor

To whom it may concern,

As a member of the General Council of the University of St Andrews, I am writing today in opposition to the Higher Education Governance (Scotland) Bill.

Having read the Bill (henceforth referred to as “HEG”), I find that there is no justification provided in the introduction arguing why there needs to be government regulation of “the composition of and appointment to the governing bodies and academic boards of higher education institutions” or to “revise the provision about the academic freedom of various persons carrying out activities at higher education and certain other institutions.”

While the Policy Memorandum claims that HEG is designed to increase modernity and inclusivity in higher education institutions, I do not see how any of the provisions of the bill specifically “modernize” university governance, nor do I see an advantage in “inclusivity” as defined by the Scottish Ministers. If HEG is ultimately for the good of the universities, governance must be left in their hands, and the benefits of inclusivity must be determined according to what each university thinks best. Furthermore, if transparency and accountability are issues, it would perhaps be better to propose a bill requiring university governance procedures and bylaws to be published and accessible to the public; a much simpler solution, than HEG attempts.

I am further concerned by the notably vague language used regarding the nature of these changes in provisions, and the procedures by which regulations will be created, as well as the policy directions toward which these regulations will be aimed. “Modernization” is an inherently vague term which I do not find to be a valid policy goal.

I notice that HEG allows for Scottish Ministers to form regulations regarding “criteria for selection”, “interview of candidates” and “shortlisting of candidates” for chairing members of governing bodies; however, before these regulations can be formed the Scottish ministers “must consult each higher education institution to which the regulations relate”. This creates two problems.

Firstly, if the appointment of chairing members of a governing body is to be determined according to what is best for the university, and the university itself must
be consulted, why do the Ministers need to be involved at all? The university could just as easily, and with less hassle, form its own bylaws for the appointment of chairing members. Secondly, if each institution must be consulted, the promulgation of any new regulations would have to be tailored to each university (in which case there is no possibility of standardization, and government interference is pointless), or there would be constant argument because of the different needs and circumstances of each university, such that the consultations would be indefinite in length, and the regulations would not be enacted in anything like a timely manner. In the first case, the government is interfering needlessly and without benefit to itself or the universities, and in the second the government would likely find itself in the center of a firestorm of conflict in trying to standardize regulations regarding chairing members across different institutions.

HEG Part 1 Chapter 1 Section 3 (b) mentions that Ministers must also consult “other persons” they deem “appropriate”. This vague statement could be used to justify interference in university business from just about anyone.

In sum, HEG Part 1 Chapter 1 Sections 1 and 3 come across as either wastefully ineffectual, and/or blatantly manipulative of university governing bodies. The allowances which HEG gives Scottish Ministers to interfere with, and manipulate the composition of not only university governing bodies but also academic boards, is overwhelming.

HEG Part 1 Chapter 1 Section 4 provides an outline of the composition of university governing bodies; however, Part 1 Chapter 1 Section 8 gives the Ministers full power to modify the categories of membership in governing bodies, as well as the number of persons within those categories of membership. This can be used to allow the Ministers to tailor governing body composition to individual universities (something which the universities do for themselves now) and can also be used to allow the Scottish government to manipulate the membership of university governing bodies for its own policy directives.

The same authority is provided to the Scottish Ministers in regards to university academic boards.

In short, one must ask: is the Scottish government seeking what is best for the universities through regulating their governance, and if so, how do they claim to know what is best for an individual university above what that university’s own governing body claims? Unless the Scottish government can meaningfully argue that there is a significant reason for why it must interfere in university governance, I must conclude that the primary outcome (regardless of intent) will be to hinder the effective appointment and election of university officials, and put the freedom of university decisions ultimately in the hands of civil servants under the authority of
their political masters. This would mean that university governance would be under the constant sway and upheaval of changing political whims, and would ultimately result in the enslavement of academic freedom to the fads of current policy, and create a resultant loss of academic vigor, and quality research in Scotland’s great universities.

While the actual compositions of governing bodies and academic boards provided for in HEG do not seem to be unreasonable, my primary concern is the inclusion in HEG of the provisions allowing for Scottish Ministers to change these compositions at their whims. If HEG were simplified such that it simply required universities to maintain governing bodies and academic boards with a certain percentage of students, faculty, etc., I would not find HEG to be nearly so dangerous. (However, it would still be objectionable because of its attempt to standardize the composition of governing bodies and academic boards across the higher education spectrum without regard to the individual needs and circumstances of each institution.) What I find most disturbing about HEG is the allowance left to the Ministers to take a piece of legislation and rework it, nearly completely, by regulatory fiat.

Thank you for taking the time to consider this response. I look forward to hearing from you.

Yours faithfully,

Archie R. MacGregor