The purpose of this letter is to provide the Education and Culture Committee my views on the proposals affecting Scottish Universities outlined in the above mention Bill.

I strongly feel that the current governance arrangements are highly effective and fit for purpose and I do not see the need for legislation at present. Universities are implementing the principles codified in the recently published Code of Higher Education Governance which is delivering the key objectives of the Bill. Therefore further change is premature.

Universities are autonomous bodies and have been the success story in Scotland for centuries and are the envy of the world. It is crucial that they remain autonomous academic institutions and free and free from political interference.

Scottish Universities regularly appear in the ‘top 100 world league’ and this is a great achievement for a country with only 5 million people. Most universities in Commonwealth Countries (especially in South Asia) have governance structures similar to our Institutions. As the old saying goes ‘if it ain’t broke don’t fix it’!

I have quite a few concerns relating to the Bill which I want to highlight.

- The arrangements for appointing chairpersons are already fair, transparent and accountable. Appointments go through rigorous processes and Courts (governing bodies) are fully involved in the process and ultimately make appointments. The calibre of candidates is high and having a more ‘public appointment’ type process involving an election, would reduce the number and quality of candidates.

- Universities are autonomous bodies with their own corporate plans. A ‘straitjacket’ approach is likely to jeopardise this autonomy and academic freedom. Government already exercises significant influence over Scottish Universities through outcome agreements and ring fencing of funding. Introducing more Government control would impact upon their financial position due to being prevented from making surpluses; limit the ability to engage with commercial partners and entrepreneurial activity. It could also impact adversely on their charitable status and make them less attractive for philanthropic activity due to a change in taxation rules. If such changes were introduced they would disadvantage the Scottish Universities sector compared to other UK Universities.

My serious reservations are mentioned in more detail below.

**My responses to the Committee’s specific questions**

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

   I do not have any concerns with higher education governance. As I have mentioned above universities are already implementing the recently introduced Code of Good Governance and there is clear guidance from the Committee of University Chairs. The sector needs stability and not change to ensure the Code is fully embedded.
Autonomy and academic freedom is fundamental to the success of all UK Universities as it allows them to directly respond to their students’ needs and to engage fully with the professions, industry and other parts of the national and international economy, including other universities and colleges. Governance already has a strong focus on inclusion and accountability through the requirement to include a wide range of independent members, staff and students on governing bodies and to have in place appropriate policies regarding equality and diversity.

2. The extent to which the Bill

(a) will improve higher education governance, particularly in the areas above

I am not convinced that the levels of remuneration for chairpersons outlined in the Bill will bring a wider range of candidates forward. Universities already reimburse out of pocket expenses and financial reward is not a motivating factor for candidates. Attracting candidates from less financially rewarded backgrounds is a positive feature, but there is no guarantee that providing remuneration for the post will have this effect. Justices of the Peace are not remunerated and there is no evidence to suggest that candidates from poorer backgrounds are put off because of the lack of remuneration.

Diversity is a key aim of Courts and the Code and Public Sector Equality Duty are seen as sufficient to support institutions in this objective, with no requirement for further legislation.

Ministers claim that the Bill will assist in the creation of ‘an inclusive, strong and sustainable economy by enabling more transparent and inclusive participation in higher education governance’. However they have not provided evidence that the current system is not working. I would strongly argue that governance is already transparent and inclusive.

In terms of accountability, there are clear divisions of duties chairpersons, Principals and Courts. I am concerned that the proposed ministerial regulation for chairperson appointments could reduce the effectiveness of Courts by damaging the relationship that the chairperson has with her/his governing body.

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

Autonomy and academic freedom is the key to our universities success as it enables them to formulate their own mission and strategies appropriate and relevant to their particular range of students and communities as well as enabling them to provide a distinctive offer to commercial and professional organisations in terms of partnership, entrepreneurial activity and innovation. Universities are not, nor should they be, clones. Their diversity adds value to the sector and therefore attempting to have a ‘one size fits all’ approach to governance would be damaging.

I feel that stakeholder engagement could be adversely affected by a perceived element of political involvement if the proposals are implemented.

(c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector
The lines of accountability at present between Universities, public bodies and the Government and are clear and there are checks and balances to ensure that governance is handled appropriately. If a political dimension is introduced into the appointment of university chairpersons this could lead to divisions between sections of the Court which would ultimately damage institutions.

Universities are currently able to hold surpluses – which are vital for development, in particular with capital projects that are critical to attracting staff and students – and engage in diversification of income and work streams as well as philanthropic activity. It could have considerable financial implications if institutions are no longer able to engage in this kind of activity due to changes in their status. I have strong concern that, following the introduction of the Post-16 Education (Scotland) Act, where there has been increasing centralisation of the Scottish Further Education (colleges) sector, this Bill could result in greater control and centralisation of the university sector which would diminish the overall strength and value in the current sector.

Universities are not public sector bodies and reclassifying them as public sector bodies would have unintended consequences. For example they would not be able to generate /hold surpluses. Financial statements of public sector bodies are consolidated into the Scottish Government’s financial statements and ultimately into the UK’s financial statements. This would mean that the Scottish Government would be responsible for future liabilities (e.g. pension fund deficits) of universities. I cannot see how universities would be able to satisfy OSCAR’s charity test if they are controlled by Ministers.

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

I do not see a compelling case for legislation on university governance. The Bill presents a range of legislative measures, many of which are already included in the Code of Governance and therefore being implemented. Given that the Code was recently introduced, I would be interested to hear what analysis has been done on the impact of this Code and if any shortcomings have been identified which require new legislation of this kind.

As I have already mentioned, autonomy and academic freedom is at the heart of Universities. Any attempt by Ministers to impose consistency on a very diverse sector made up of autonomous bodies is a recipe for disaster. I am concerned that the increase in control that Ministers wish to introduce would adversely affect institutional autonomy and academic freedom. The system works effectively and in a timely manner. It would seem to me that adding a further layer of legislative complexity and duplication is unnecessary.

If good governance could be achieved through legislation then all of the developing countries in the world would have excellent governance.

Specific proposals

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

I am seriously concerned about the proposed power of Ministers to engage with the appointment of chairpersons of universities and the impact such powers could have to
exert control over a university. This would undermine institution autonomy and academic freedom.

I strongly believe that increasing the number of candidates, in particular from diverse backgrounds, is important and should be the aim of any good governance arrangement. However, there is a real concern that introducing an election process for the appointment of chairpersons could result in a reduced, rather than an increased, number of applications. Many candidates will be concerned that an election element would lead to failed candidacy becoming public knowledge and this is something that should be considered by the government. I would not put my name forward for election to any post.

The Government experimented with elements of elections in NHS boards and this did not improve governance of NHS boards or broaden the diversity of board members and the scheme was abandoned in 2013.

- **To require HEIs to include various persons within the membership of their governing bodies**

I welcome social partnership and the involvement of a wide range of stakeholders in Courts, but I am confident that this is currently in place and is reflected within the Code of Governance.

The Code of Governance expressly states that charity trustees should act impartially for the institution’s good and exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency. It would be essential that if governing members were to be representatives of specific interest groups that they understood that their role as a governor and a charity trustee would be to act for the good governance of the institution and not simply as a representative of their particular group which could result in a conflict of interests. This is a real concern for institutions and it remains unclear in the bill how this governance tension would be addressed.

It should be noted that Code requires members ‘not to act individually, or as representatives of a constituency or in informal groupings’ and indicates that ‘… Members nominated by particular constituencies should not act as if delegated by the group they represent. No member may be bound, when speaking or voting, by mandates given to him/her by others, except when acting under approved arrangements as a proxy for another member of the governing body’. This is in direct conflict with the Bill; I would like to know how Ministers intend to deal with this issue. Indeed, the Nolan Principles of Public Life require office holders to act in terms of the public interest, not under obligation of other parties or conflict of interest and to be objective, impartial and make decisions without bias.

While there may be value in seeking alumni to join the Court, and indeed alumni often apply to serve on courts of institutions where they engaged with their own higher education, it is not necessary to legislate for such membership. Equally it may not always be possible to secure the services of an alumnus who also has the requisite skills and attributes to fill a particular skills gap in any given vacancy at a given point in time which might leave a governing body inquorate under these proposals. It should be for individual universities to determine the specific membership requirements of its governing body taking into account the needs of the institution and the balance of skills and attributes across the existing court membership.

- **To require HEIs to ensure that their Academic Boards are comprised of no more than 120 people, and include various persons**
Universities are diverse autonomous bodies with academic freedom and vary considerably and therefore their Senates (academic boards) reflect this. There is also a degree of flexibility which allows institutions to co-opt experts aligned to their mission. Attempting to introduce consistency across the board removes institutional autonomy and is not considered to be acceptable and would limit the ability of Courts to be responsive and adaptable for the benefit of their own institution. It would be more appropriate to ensure that institutions should be able to set their own numbers.

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

**Academic freedom**

The Bill also proposes to replace the current legal definition of academic freedom “with a view to strengthening it and making explicit the freedom to develop and advance new ideas and innovative proposals”.

While the other provisions in the Bill only focus on higher education institutions, this provision will apply to publicly-funded colleges and all higher education institutions (collectively known as post-16 education bodies). Post-16 education bodies are to uphold the academic freedom (within the law) of all relevant persons i.e. those engaged in teaching, the provision of learning or research.

Academic freedom is central to the ethos of universities. It has been a principle in Scotland for centuries and is seen as a key success factor as it enables flexibility, diversity and the ability to decide individually how to provide the high quality provision appropriate to the relevant market in terms of educating students, undertaking research, innovation and knowledge exchange. Therefore, the proposal to require universities to adopt a statement on their implementation of the statutory protection of academic freedom is unnecessary and potentially confusing.

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. The Bill states that academic freedom is to be exercised “within the law”.

   Academic freedom is already covered in statutory instruments and contracts of employment and therefore providing a further layer of governance will not be helpful. I cannot identify any area that would be particularly enhanced by additional legislation.

   The Bill is trying to replace the rigorous academic processes that are in place within universities as part of their autonomy and accountability. The Scottish Funding Council’s Financial Memorandum also provides statutory requirements on institutions to implement ‘statutory protection’ and place a condition of grant on compliance with this, in addition to other elements, of the Code.

6. Are there are 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.

   All universities have a desire to foster academic freedom and this is built into many of their processes. The area of difficulty may be when including post-16 provision as those
providing higher education in a further education (colleges) context are not governed in the same way as universities.

I am concerned concern that legislation could undermine existing institutional processes that foster academic freedom.

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 out with the institution?"

I would expect to be clear that the views being expressed were those of the individual, rather than of the university, but this is the case at present, and therefore changing the definition unnecessary. It may be helpful to clarify the position and make it expressly clear that individuals exercising their academic freedom are doing so on their own behalf, and not representing their university, but this has not been an issue so far.

Yours faithfully

Asif A. Haseeb