Higher Education Governance (Scotland) Bill.

Submission to the Scottish Parliament's Education and Culture Committee by the Committee of University Chairs (CUC)

We are writing as the representative body of Chairs of Universities in the UK. We think it important that the Education and Culture Committee is made aware of significant concerns we have regarding aspects of the Higher Education Governance Bill.

The Bill proposes that government ministers take new powers on themselves covering fundamental aspects of university governance. These could have a serious detrimental impact on University finances. They did not form part of the consultation; indeed the proposals are in direct contradiction to statements made in the Ministerial Foreword to the consultation paper.

The areas in which increased Ministerial powers are proposed are:
- deciding on the process for appointing Chairs of University governing bodies, on the remuneration to be paid to Chairs and on their terms of office;
- deciding on the composition of universities' governing bodies; and
- deciding on the composition of the internal academic boards that have responsibilities relating to universities' curriculum and academic standards.

The Bill raises fundamental issues about autonomy and institutions’ role as a force in public life independent of government. Our concerns arise from the fundamental change in institutions’ constitutional position which would result from Ministers taking powers, exercisable through secondary legislation, to decide what categories of person should be on governing bodies, how they should be appointed, and their conditions of service – and then be able to change all that at Ministers’ own initiative without limit on the category of person they may decide should be on governing bodies. These are not matters which the Scottish Government consulted about. Ministers are taking similar powers in relation to academic boards and senates, which are part of universities’ autonomous self-regulation as an academic community, and which will result in disenfranchisement of a significant number of academic staff. These major new powers for Ministers fundamentally change institutions’ constitutional status. They are contrary to previous assurances from this Scottish Government that they respect ‘responsible autonomy’. They could also give rise to significant political influence over universities which would be highly undesirable.

Financial sustainability, operational autonomy, appropriate governing structures and strong management and leadership capacities are key elements in order for universities to fulfil their multiple missions and respond to the current challenges in an increasingly complex and global environment. Diversification of missions and activities, financial strains caused by rising costs, new stakeholder demands, global competition and the global economic downturn all contribute to the increasing complexity of steering and managing universities. The
research evidence\(^1\) is clear that there is a direct correlation between the degree of autonomy a university has and its effectiveness and productivity. This is because autonomy and good governance encourages strategic visioning, innovation and flexibility, and enables decision-making and resource management free of bureaucracy and political control.

The Governance Bill proposes an increase in the level of control Scottish Ministers will exercise over Scotland's universities. As a general approach, we think this is unwise, and is not in the Scottish (or UK’s) national interest since it will constrain the dynamism and ambition that have made Scotland's universities one of the nation's great successes.

Given the success of Scottish Universities, we do not see the benefit but do see substantial risks in proceeding in this way. We believe that if there are any significant issues that need to be tackled in Scottish university governance, they would best be tackled by publishing Codes of Governance and sharing best practices that supports universities in their efforts to improve governance and management structures.

We also understand that there is a risk that the current proposals could lead to universities being reclassified by the Office of National Statistics (ONS) as 'Central Government'. Should this happen, it would have dramatic adverse consequences. It would:

- put at risk their status as independent charitable bodies, with negative tax consequences and the likelihood of reduced philanthropic support and call into question Scottish Universities ability to participate in various UK collaborative ventures;
- place a severe restriction on their ability to borrow funds;
- reduce their ability to enter into commercial partnerships.

CUC took part in the consultation exercise, responding to the issues the Government raised through its consultation paper. However, we have had no opportunity to date to comment on important matters that were not included in the consultation but which now form part of the Bill.

These proposals were not included in the Consultation on this Bill which the CUC participated in. Had they been included the CUC would have argued strongly against them.

We have also had the opportunity to see the detailed submissions being made by Universities Scotland and the Committee of Scottish Chairs and we endorse those.

CUC 20\(^{th}\) August 2015

\(^1\) The Governance And Performance Of Research Universities: Evidence From Europe And The U.S. Philippe Aghion Mathias Dewatripont Caroline M. Hoxby Andreu Mas-Colell André Sapir Working Paper 14851 CSC, 17.8.15