HE Governance (Scotland) Bill Consultation:

Response on behalf of the Council of Senate of the University of Glasgow

September 2015

Questions raised by the Education and Culture Committee:

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

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 is part of a wider package of recent reforms to higher education governance, including the development of a Scottish Code of Good Higher Education Governance.

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

Response:

A key challenge for the University of Glasgow Senate derives directly from the 1858 Universities (Scotland) Act, notably the membership of Senate of all professors of the University ex officio. The subsequent growth of the University, and corresponding increase in the number of elected members, means that Senate now has a membership of c. 600. One feature of our constitution, therefore, is that only a minority of members is elected but, additionally, there are practical consequences for the agility of the senior academic body of the University, and also our ability to convene a quorate meeting. The quorum is also established in primary legislation and is one-third of the total membership. We welcome those aspects of the Bill that address these difficulties, while noting that the University has already taken steps to do so itself, through the establishment of a Council of Senate, the composition and remit of which corresponds very closely with those proposed for academic boards in the Bill. (The Council’s composition also includes 12 [=10%] student members, whereas our Senate has no student members.)

The power of ministers to set and vary regulations concerning constitutional features – the procedure for the appointment of the Chair of the governing body and the composition of the governing body and academic board – albeit subject to consultation with the universities, constitutes an incursion into institutional autonomy. In our response to the consultation on the draft Bill in January 2015, we argued that, beyond broad principles, matters of detail should be determined by institutions internally, where the expertise and competencies lie.

Related to the last point is the fact that the University of Glasgow established its Council of Senate – and was able to do so in order to modernise its academic governance despite the constraints of current legislation - but wished to retain the full, much larger Senate. As we noted in our January 2015 response, in establishing the Council of Senate, the University has taken significant steps in
finding means of meeting the expectations of contemporary good governance, while simultaneously maintaining traditions that are key parts of our identity and distinctiveness as a research-led global university. There are many variations in the configurations of the senior academic bodies at UK universities and a number have senates larger than Glasgow’s. These include LSE and UCL, as well as the University of Edinburgh. Such constitutional features of leading centres of academic excellence reflect the richness and diversity of institutional cultures and are reflective of their distinctive missions. Senate provides the University of Glasgow with a single body composed of the entire community of senior scholars and we would wish to retain that historic and, importantly, collegial, feature of our institutional identity. The breadth of Senate membership helps ensure that the academic voice is heard and that fully informed decisions are taken. An additional feature particular to Glasgow is the position of the Clerk of Senate, which has been maintained for almost three hundred years. This elected, senior role plays a key leadership part in the oversight of academic policy and practice across the University, and thus remains critical to the integrity of our academic governance. Again, provided broad principles are expressed in legislation, we argue that there is no need for the level of uniformity that would be brought about by the Bill.

We very much regret that the proposal to establish the academic board as the final arbiter on academic matters has not been pursued in the Bill. We note in this regard that current legislation establishes that the decisions of academic boards are already subject to review by the governing bodies of the ancient universities, and also the account given in the policy memorandum of the decision not to pursue this matter in the Bill in light of the responsibilities of charities’ trustees. In our submission to the earlier consultation, we argued that academic boards should be the final arbiter on academic matters: it is with the academic board that the expertise and competencies lie for taking major academic decisions on which academic standards rest. Universities are large and complex organisations that should be managed on the basis of transparency and accountability and through a balanced system of governance. A system of checks and balances and separation of powers is common in comparable contexts and confirmation of the principle that the academic board/senate must remain the final arbiter in academic matters would help ensure good governance in the HE sector. Removal of this provision exposes academic freedom to risk and potentially reduces the scope for HEIs to balance academic against other interests in accordance with their role as bodies serving the public interest.

With respect to the balance between legislative and non-legislative measures, we also argue below for the Act to include provision for representation of the academic board on the governing body.

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 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

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

In our response to the earlier consultation, we expressed our support for the appointment of the Chair of the governing body as the culmination of a transparent process involving selection criteria and interviewing.

We note the proposed composition of governing bodies includes two members elected by staff, one member of academic staff appointed by a trade union recognised in relation to academic staff and that the institution may make its own prescriptions for the appointment of other governing body members. Under the terms of an Ordinance of the University of Glasgow there is provision for six members of our Senate to be members of our Court (governing body). However, this provision would be subject to variation, whether by ministerial regulation or a revision of the Ordinance. Given that the core and defining activities of HEIs are academic, we believe that there should be provision in the Act for representation by the academic board/senate as a matter of principle to ensure that academic interests are fully represented. If detail is prescribed in the Act, we argue that a 25-member governing body should include six members of the academic board.

As noted above, the University of Glasgow has established a Council of Senate (formally, a committee of Senate) which conforms closely to the proposals concerning the size and composition of academic boards. We would argue that it is important that the composition of academic boards includes - and we have provision for this on our Senate and Council of Senate - vice-principals/equivalents so that they are accountable to the academic board, subject to the provision as expressed in the draft Act for a clear elected majority on the board.

Academic freedom

The Bill will also 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.

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”.

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.

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?”
Response:

The 2012 review of HE Governance chaired by Professor von Prondzynski recommended as a model for legislation concerning academic freedom Section 14 of the Irish Universities Act 1997:

*A member of the academic staff ... shall have the freedom, within the law, in his or her teaching, research and any other activities in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions, and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom.*

If the definition of academic freedom needs to be elaborated in law, we would argue that the Irish Act captures the issues well.

There are likely to be restraints other than legal constraints on academic freedom; transparent institutional governance demonstrates that freedom is preserved. The testing as well as proposing of ideas is the core business of the academy; provided employment and career are not prejudiced, facing a degree of institutional scepticism may be inevitable. Academic freedom must apply to views expressed outwith the institution as well as within, provided that the view or action is not itself illegal.