Submission from Dr Brian Fenton

Response to The Higher Education Governance (Scotland) Bill (The Bill).

I have been an academic researcher and teacher for almost 40 years. I have worked in Scottish Universities, Institutes and a College. I am a member of the alumnus of two Scottish Universities. I have been and am an active member of academic Trade Unions (AUT (now UCU) and Prospect).

The role of Unions from a lay reps perspective

Many unions are now non-affiliated and will contain members belonging to all political parties. In each Institution, local reps are embedded in the work place as employees and are subject to the terms and conditions of their employers. They are members of staff elected every year to represent their members where they are organised to operate in an open and transparent way. It is their primary objective to ensure that their employers are successful, as this is the best way of making sure their member’s jobs are protected. However, it is also important that their reps can scrutinise an organisation’s major plans because this provides a test of their effectiveness by an independent group that also fully understands the nature of the business. TU reps in the workplace are also uniquely placed because they can call upon an independent full-time support network that can highlight potential legal or financial issues, which can save the organisation future financial losses or legal challenges. This relationship can work, but it is strongly influenced by the personal politics of individual senior managers. Their inclusion on boards provides a potentially important auditing point which would be best implemented by statute because it has become common for managers to completely bypass negotiations (proof can be provided). TU reps will be committed to processes of social justice including fair and transparent pay and equal opportunity, in line with the progressive views of the Scottish Government.

Trade Union Representation on Boards and other bodies

Trade Union reps will often be more knowledgeable of the business than external members of governing boards and entirely motivated to protect their organisations from mismanagement. Nonetheless, over the years there has been a decline in the use of effective consultation with TU. The inclusion of TU reps on the Boards would bring more transparency, but it does not appear to be applied to all bodies (e.g. Section 10 of the Bill). It is important that a level playing field is established between organisations undertaking research and teaching. As another example there is no provision in the Bill to make all Institutions and their Boards subject to Freedom of Information. At the moment Scottish Research Institutes receiving £millions of tax payer’s money operate a self-regulated process independent of oversight by the Information Commissioner.

Democratically elected Chairs and equal representation

The Chairman of a Board has an important role. However, this should not result in an autocracy where principles of democracy are ignored. The Chair should be supported through a voting process as outlined in Section 6 and 11 of the Bill.

Academic Freedom (Part 2, Section 19 and 26)
Academics should be able to express their views without interference from senior managers or Board members. However, it is equally important that academics have the freedom to report academic fraud by peers directly to the journals where the attempted fraud is taking place. This should be protected by whistleblowing provision. Evidence can be provided where intimidation and bullying have been used by administrators to prevent such disclosure.

I can also present evidence showing that members of some of the Scottish Institutes are being restricted in their academic freedom through gagging contracts. These now attempt to use redundancy payments as Deeds of Covenants to enforce their clauses. This seeks to maintain control over the work of academics after they have left, deliberately inhibiting their employment prospects (proof can be provided). This practice is against the principles of academic endeavour and the basic right not to be prevented from earning a living by your previous employer. The Education Committee should look into this practice and either justify it, or stop it, and for those who have been subject to gagging contracts by Scottish Institutions have their restrictions removed.

The evidence can be found freely on the internet in the templates for Settlement Agreements as part of the BBSRC staff code. These form the Terms and Conditions of staff in many Scottish Institutes because they have evolved over decades to be fine-tuned to fit employment in academic research. These T and C are theoretically negotiated centrally with TU reps at BBSRC HQ in Swindon. The Agreement pre May 2015 (#1) was based on a situation when an employee had been a potential problem (e.g. dismissed) and it offered the chance for both parties to save an employment tribunal. It provided for severance payment of up to six month’s pay, which would be fully taxable as it was not a contractual redundancy payment subject to a 30k tax free arrangement. However, a different agreement was used by a Scottish Institute during a mass redundancy situation (dating from October, 2014). The dates of the two documents verify that the one used in the Institute was before it had been agreed centrally and it contained many restrictive clauses. Evidence can be provided that Trade Unions were not consulted over these changes. It was used in a mass redundancy situation and sought to use contractual redundancy payments to create a post-employment controlling relationship, including severely restricting their academic freedom after employment. This agreement was designed by a Governing Board to fit with corporate and not academic values. In May 2015, the BBSRC settlement agreement changed (#2) to incorporate the restrictive covenants and it now also attempted to use contractual redundancy compensation to restrict the freedom of academics to talk about the work they carried out in an Institute (#2 section 10.2). The section suggests that the copyright belongs to the Institute, however this is wrong because the copyright of academic work is assigned to the journal. This is an example where HR managers have interfered in a process they do not understand, but seek to control. The use of redundancy compensation to enforce gagging contracts undermines the tax free nature of these payments. However, there is ambiguity in how the financial sections are laid out, implying that compensation has to be repaid in addition to severance payment. By comparing the versions it appears to be designed to be misleading through the use of headings. The contracts make no allowance for the legal requirement of state minimum compensation as they demand all money is repaid and their terms go beyond even the official secrets act (25 tears). The employer also seeks to behave as judge and jury, deciding itself if the
terms have been breached and then immediately making repayment a debt (#2 Section 6.1).

Research Institutes and Universities/Colleges share most of their sources of funding (Research Council, Scottish Government, Levy Boards, EU) yet the academic freedoms of staff within these organisations is currently very different. It is not clear there is any justification for restricting academic freedom post-employment in Scottish Institutes and this is clearly at odds with the intent of the Bill but it needs this evidence to take measures to modify this. The committee could seek to discover why such restrictive contracts are being used to block academic freedoms of some members of the academic community. It is normal practice for the authors of any academic work to continue to explain what they did without restriction. The academic community will hold them responsible and not the administrators of their Institutions.

I have further evidence of interference in academic processes which has already been provided to a member of the Scottish Parliament. This is particularly sensitive, but it would show the committee the levels of interference and manipulation of academic freedoms that can occur to further a few individuals. It can be made available on request.