The EIS supports the view that HEIs should be autonomous bodies, and that they should be self-governing setting their own missions and strategies. The EIS believes that HEIs should be institutions of learning and knowledge, built on an education ethos with academic affairs being the responsibility of Academic Boards supported by collegiate management structures and an effective governing body. This view is not realisable due to the excessive power of university managements and a necessary step to achieving this vision is the reform of university governing bodies as set out in the HE Governance Bill.

The failure of effective governance oversight at the former Edinburgh College of Art led to it being taken over by the University of Edinburgh. There was a governance-senior manager issue at Abertay University a few years ago. The Scottish FE sector had a similar governance structure to the HE sector until the Post-16 Education Act (2013). A significant number of issues and governance/management failures arose in the college sector from that autonomous model of college governance, such as Adam Smith College, Stow College, James Watt College, Edinburgh College etc. The HE governance structure used in colleges until Post-16 Education Act also led to large salaries and large severance payments that were authorised by

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3 Ibid (final paragraph)
4 i.e. Senates or equivalent bodies
remuneration committees of college governing bodies. It is worth noting that the current model of university governance also authorises large salaries and severances for some.

The HE sector as a whole was unwilling to meet Government aspirations on ‘Widening Access’ willingly and it required statutory widening access agreements\(^5\) to facilitate this.

The principle of any Institution that receives public money needs to account for the use for that money, is neither new nor progressive. Furthermore, the accountability for a specific sum of money should not be conflated with accountability for the HEI as a whole, which is solely in the hands of the HEI’s governing body.

2. The extent to which the Bill

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

The EIS believes that many of the failures of university and college\(^6\) governance in recent times was due to the marginalisation of staff and students on Governing Bodies. This marginalisation led to staff and students being less able to scrutinise plans put forward by senior management at governing body meetings, which was also compounded by an increase in the number of senior managers attending court in an *ex officio* capacity.

The Bill sets out compositional changes to HEI governing bodies that should lead to more effective scrutiny, as the compositional balance of governing bodies will alter slightly to include a more informed membership in terms of their day-to-day knowledge of the HEI and its workings. Furthermore, the change in composition should add members that may not be aligned to the senior management team of the HEI. This should prevent ‘groupthink’ and encourage a more robust debate.

The Bill would give Ministers the authority to issue regulations for the appointment of chairs of HEI governing bodies - which will lead to elected chairs. The EIS welcomes this authority. The EIS is keen that elected chairs actually carry out the role of chair – which is not the case of several rectors. The EIS is against simply having elected figureheads as the EIS is keen to ensure that elected chairs actually chair the governing bodies and their meetings. There is some concern that whilst all rectors may have the legal right to chair meeting, the actual chairing is often carried out by another person of the governing body.

One of the reasons where there is insufficient oversight of senior management teams is the perception that the people who are appointed as chairs or that actually chair governing body meetings are closely aligned with senior management teams. The Bill will establish the principle of elected chairs and set out Ministers’ role in this. It is important to note that whilst several universities have elected rectors, very few rectors chair governing body meetings. The establishment of elected chairs will therefore be new and different to existing practice. The principle of elections for rectors at the older HEIs does not seem to have undermined HE governance. The EIS is not against referring to an elected chair as a ‘rector’.

The additional student and staff representatives (the latter from recognised trade unions) to the governing body is welcomed by the EIS. Universities are made up of students and staff and therefore raising their representation at governing bodies is a common sense proposal. These representatives should bring additional experiences from a ‘bottom up’ view which together with their deep knowledge of the Institution as a whole should bring improved scrutiny of decisions.

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\(^5\) Post 16 Education Act (2013)
\(^6\) Ibid
These improvements to governance that are set out in the Bill should improve the scrutiny capability of governing bodies and may restore a fairer balance in power between governing bodies and senior management teams. Universities Scotland\(^7\) has reinforced this view by their campaigning on this issue.

The aspiration to achieve a greater separation between the academic affairs of the HEI and the management of the HEIs by improving changes to academic boards is welcome.

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

The effect of the Bill is to replace parts of existing legislation and thus get consistency across the sector on appointing chairs of governing bodies. There is legislation in place now regarding how rectors should be elected in the ancient universities and that they have the legal right to chair meetings, although the EIS understands that this is rarely exercised. The Bill does not meaningfully reduce autonomy for ancient universities in the view of the EIS and will simply bring the rest of the sector into alignment with the ancient universities.

Any theoretical loss of autonomy that arises from the Bill is offset by the potential for greater scrutiny, which leads to HEIs exercising their autonomy more effectively.

The Bill would lead to HEIs remaining as autonomous bodies that are only accountable to themselves. Universities Scotland has claimed that the Bill could lead to the recategorisation of HEIs as public bodies leading to the potential loss of charitable status and fewer philanthropic bequests. The EIS does not believe that the Bill brings increased control to the government that would lead to recategorisation. Colleges were reclassified by the ONS in 2010 from the private sector to the public sector due to Ministerial control over college borrowing. This reclassification has not lead to colleges losing their charitable status. The EIS believes that Universities Scotland’s claims are simply supporting the personal interests of principals, some of whom may not welcome the additional scrutiny brought about by the Bill.

The changes proposed for academic boards makes them less susceptible to management pressures driven by internal and external factors. The EIS believes that these changes will make the HEIs more autonomous in terms of their academic affairs.

The Bill does not add extra accountability for the HE sector to the Government, nor does it change the nature of that accountability. Any potential reduction in autonomy caused by the Bill does not undermine the fundamental nature of HEIs as autonomous bodies, but the Bill should enable greater scrutiny. Greater scrutiny is in the interests of governing body itself and should improve governance.

It should also be noted that Outcome Agreements and Widening Access Agreements for the Post-16 Education Act (2013) were also introduced by the Government that in the view of the EIS will influence HEI research, learning, strategic targets and priorities to a greater extent than the HE Governance Bill.

**c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector**

The main line of accountability between the Scottish Parliament and HEIs runs via the Scottish Funding Council and then Ministers and seems predominantly to do with the public money spent on the HE sector. The Scottish Parliament spends over £1Bn per annum on learning and research, with additional monies on student fees, research grants, student grants/loans, capital etc.

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\(^7\) [http://www.universities-scotland.ac.uk/index.php?page=about-us](http://www.universities-scotland.ac.uk/index.php?page=about-us) “Universities Scotland essentially works for the Principals or Directors of Scotland’s 19 higher education institutions.”
With the possible exception of one or two Scottish HEIs, all HEIs are dependent on Scottish Parliament funding for survival in their current form. The Scottish Parliament is dependent on the HE sector to deliver degrees and post-graduate qualifications to students in Scotland. The HE sector is also perceived as one of Scotland’s international successes and the Government has been keen to associate itself with that success and to enable further success. The relationship between the Scottish Government and HE sector is thus complex and mutually beneficial.

The Management and Governance parts of the HE sector have generally reacted negatively to the provisions outlined in the Bill. The EIS believes that there are two main reasons for this; firstly the Bill acknowledges that in practice HEI autonomy is in the gift of the Scottish Government and secondly the Bill makes changes to the established way of doing things which has generally favoured senior university managers and allowed chairs (or at least those that chair governing body meetings) to be generally selected from within.

The Bill may have generated tensions between parts of the HE sector and the Government but it does not change the nature of the lines of accountability the HE sector has to Government Ministers, or the degree of accountability.

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

It is too early to speculate as to whether the right balance has been achieved between legislative and non-legislative measures. Non-legislative measures, such as the Code, have had some positive impact but it has been very limited and controlled by the HE sector’s management and governance elites – not participatory and not transparent.

Academic Freedom

The EIS welcomes the statutory duty for HEIs to maintain academic freedom and for it to be extended to colleges in the FE sector.

The EIS does believe that the Bill strengthens the academic freedom of staff within fundable bodies. The 2005 Further & Higher Education Act stated that “A fundable body must have regard to the desirability of ensuring the academic freedom of relevant persons...”, whilst the Bill states that “A post-16 education body must aim to— uphold the academic freedom of all relevant persons...”

There is likely to be limited practical effect of these enhanced provisions although some lecturers and researchers may be reassured by their adoption. It will allow teachers to continue to explore a range of ideas with students and for research to continue into areas which some people object.

The Bill’s caveat that academic freedom is to be exercised “within the law” reflects the content of the 2005 Act, albeit the “within the law” was in parenthesis. To some extent this caveat is inevitable, since fundable bodies cannot be exempt to the laws of the land. There is a danger that some academic freedom may be limited or frustrated by those claiming that the ideas being explored are outwith the law – e.g. incite racial hatred or that HEI support for academics working within some contentious areas of work may be limited by a fear that such a claim may be made.

There are likely to be many significant constraints on academic freedom arising from other pressures, such as avoiding negative publicity e.g. academics exploring the causes of current behaviours in conflict zones may be misrepresented as being apologists for ideas most people find unpalatable. The duty to promote
equality in the workplace should not come into conflict with any exploration of ideas that cover different races.

**Academic Freedom and Views Expressed Outwith the Institution**

The EIS believes that the freedom to expression is a fundamental human right and that all staff should have the right to lawfully express their personal views outwith their work without fear of detriment or discrimination at work.

The EIS does not believe that academic freedom is the vehicle for ensuring that staff have the freedom to express their views outwith the tertiary institution, since this right should be wider than academic staff. The EIS recognises that there will be occasions when the distinction between work and private capacity may be difficult to judge for some academics that also campaign in their fields. However, the EIS is clear that all people have the right to express their views within the bounds of the law without fear of discrimination.

**Summary**

The EIS supports the Bill as a progressive piece of legislation that will deliver welcome improvements in the way that Scotland’s higher education institutions are governed. The Bill will improve the composition of governing bodies by having additional staff (via the trade unions) and student representatives and by ensuring the election of all chairs of governing bodies. These elections will be more open and transparent than existing practices and will help to ensure that all HEIs operate to similar standards. The EIS also welcomes the Bill’s provisions on academic boards, supports the principle that academic affairs should primarily be the responsibility of these boards, and agrees that they should be made up of mainly elected staff and students. The EIS does not believe that the Bill reduces university autonomy or that it will lead to the reclassification of HEIs as public bodies. The EIS supports the Bill’s provisions on academic boards and the principle that academic affairs should be primarily the responsibility of such boards and that they should be made up of mainly elected staff and students. The EIS also supports the changes to academic freedom which it sees as a minor improvement.