Submission from EP Gray

HIGHER EDUCATION GOVERNANCE (SCOTLAND) BILL – AS INTRODUCED JUNE 2015 – CALL FOR EVIDENCE

What the Committee would like your views on

The Committee’s role at Stage 1 of the parliamentary process is to report to the Parliament on the general principles of the Bill – that is, on its overall purpose.

The Committee invites you to answer some or all of the questions/issues below to help it in scrutinising the Bill and in reporting to the Parliament. If possible, please provide specific and practical examples in your response. There is no obligation to answer all of the questions.

<table>
<thead>
<tr>
<th>The Committee’s questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. What do you consider to be the existing problems (if any) with higher education governance, particularly around modernity, inclusion and accountability?</td>
</tr>
<tr>
<td>2. The extent to which the Bill (a) will improve higher education governance, particularly in the areas above</td>
</tr>
<tr>
<td>(b) may alter the higher education sector’s current level of autonomy</td>
</tr>
</tbody>
</table>
(c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector

By leaving the selection process for Chair as vague as it is, and putting the detail in Regulations, even though there has to be consultation, opens the potential for more political intervention in the appointment of Chairs. HEI’s should be allowed to be independent of the government of the day.

Under Section 8, Scottish ministers can modify the composition of the governing body, without further consultation, again opening the possibility of politicisation of the governing body, or imposing changes which are not in the best long term interests of the HEI.

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.

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

The legislation as worded would appear to allow Scottish Ministers a lot of flexibility to make future changes as to how a Chair is appointed, for how long they sit and how the governing body is constituted/appointed/selected. The legislation should be more precise, and allow less flexibility for Scottish ministers, even with further consultation, otherwise HEI’s could become impacted by short term political changes. In addition it could undermine their position as Charitable Bodies, impacting significantly on funding and in their business partnerships.

Specific proposals

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

4. The Bill proposes a number of specific changes to higher education governance

a) 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

Depending on the outcome of further consultation, Chairs could become a political appointment rather than an open and fair selection, which could damage the independence of the HEI’s. (and their charitable status)

b) To require HEIs to include various persons within the membership of their governing bodies

• There should not be a category of ‘nominated trade union member’ on the membership of the governing body. Nomination is not a democratic method of selection and not all
university staff are union members. This is discriminatory and could politicise the governing body which may lead to decisions being made on political bias rather than what is best for the institution.
- There should continue to be at least one elected staff member from both the academic and the support side.
- The original draft of the bill gave the HEI a choice of 1 or 2 alumni members. This should be reinstated to allow the HEI flexibility in how they constitute their governing body. These members should be elected rather than nominated, otherwise selection may not be open to all.
- As the composition of the governing bodies is under the control of the regulations set by the Scottish Minister, rather than under legislation, there is a risk that changes could be imposed which would not match the Scottish Code of Good HE Governance, leaving the HEI's unable to match both.

<table>
<thead>
<tr>
<th>c)</th>
<th>To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons (including a minimum of 10% student representation).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The size of the academic boards should be left to the individual HEI. In most HEI's there is already an agreed level of student participation.</td>
</tr>
</tbody>
</table>

**Academic Freedom**

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 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?*

Please use the adjacent space to provide any other brief comment(s) you wish to make in relation to the Bill.

By moving the detail of the appointments of Chair and Governors from Legislation to Regulations, the HEI’s are at risk of future politicisation of appointments with minimal consultation, restricting the ability of HEI’s to make the best decisions for their organisation. Given their significance to both the Scottish Economy and the current excellent reputation of the Scottish HEI’s, this should be a matter for debate at Parliament, not just at the discretion of a Minister,