I write as a member of the General Council of the University of St Andrews to express my deep concern and reservations with regard to The Higher Education Governance (Scotland) Bill and to request that it is withdrawn.

My concerns are as follows:

1. No evidence has been provided of serious and systematic deficiencies in the governance of Scotland’s higher education institutions to merit additional government influence and control that will undermine the autonomy of the sector.
2. The proposed regulation places an additional administrative and financial burden on higher education institutions with no clear governance benefit, and puts in place requirements that in practice would be contrary to good and accountable governance principles.
3. Additional government influence runs undesirable fiscal risks; these may result in significantly increasing the financial burden on the Scottish Government of financing the higher education sector and erode the benefits delivered to the national economy.
4. There is no demonstrable need to redefine academic freedom, as this is already a statutory obligation.

Need for additional government oversight

It is understandable that the Scottish Government and Parliament seek to ensure the highest standards of governance within the higher education sector. The Scottish Code of Good Higher Education Governance has prompted ongoing review and modernisation of governance in the sector in a way which permits each institution to retain autonomy and adopt governance principles which best reflect its own constitution. In the absence of demonstrable evidence of significant governance failures I struggle to understand the value of imposing additional homogenising legislation. I fear that unjustified government intervention will at best weaken existing good practise and at worst undermine the ability of institutions to attract the best students, academic staff and research funding.

Membership and Leadership of Governing Bodies

The Bill’s proposals with regard to membership of institutions governing bodies do not take into account the fact that members of these governing bodies are charity trustees and bound at all times to put the interests of the charity before their own interests, or those of any other person or organisation. It is entirely inappropriate, and contrary to best governance practice, to prescribe representation from specific interest groups, especially if this may put members in conflict with their primary function within the institution.
Competent leadership of the governing bodies is essential to their proper function. To achieve this the chair must have the confidence and support of the membership. The Bill’s proposal that the chair should be appointed by a wider constituency than the membership of the governing body may seriously jeopardise this confidence and is in opposition to current understanding of good governance practice. It is akin to legislating that the First Minister should not be nominated by Parliament. The proposals as framed additionally risk unnecessary politicisation of these roles and may promote short-term interests un-aligned with those of the institution. In the case of those governed by the Universities (Scotland) Acts from 1858 the proposals are less democratic and accountable than those processes already in place. I also question whether this proposal is in accordance with the OSCR’s regulations for charity governance.

I can see no demonstration that the Bill’s proposals in relation to these functions would contribute to enhanced transparency and democratic accountability and worse could result in outcomes that seriously undermine the operational effectiveness and ultimately the international standing of globally recognised institutions.

**Fiscal Impact**

The proposals in the Bill additionally risk unintended financial consequences. I believe that in the case of St Andrews, less than 25% of its annual revenue comes from the Scottish Funding Council. Additional legislation may be viewed as imposing undue government influence with the consequence that the Scottish higher education institutions, which are currently independent, are brought on to the Government’s balance sheet. This risks deterring or indeed rendering impossible other important sources of income including research grants, enterprise initiatives and endowments. It may also jeopardise the institutions charitable status. This would consequently put an additional financial burden on the Government to maintain the higher education sector.

**Academic Freedom**

The principle of academic freedom is already a statutory obligation. Introducing a requirement to ‘explore new ideas’ seems tautological in the context of institutions whose priorities are education and research.

In the absence of any evidence of poor governance there is neither need nor justification for additional government intervention. This Bill at best imposes a costly administrative burden and at worst undermines the principles of academic autonomy, weakens internationally recognised institutions and undermines their fiscal stability. I therefore request that it is withdrawn.

Jennifer Murray
September 2015