Submission from Jim Wallace

Dear Mr. Shevlin,

Re: Higher Education Governance (Scotland) Bill – Call for Evidence

The following are my comments in response to the Education and Culture Committee’s invitation of views on the proposed Higher Education Governance Bill:

1. The proposals being put forward immediately reduce the autonomy of HEIs, with the potential for further Ministerial influence / control through future regulations:

(a) Membership of Governing Bodies

Representative membership is a key requirement for Governing Bodies. However, specification of the numbers to be appointed under the various categories and the power of modification of categories and numbers given to The Scottish Ministers, allied to the requirement in the Scottish Code of Good Higher Education Governance that governing bodies have a majority of independent members may restrict individual institutions ability to structure their governing bodies in the way best suited to them, while still ensuring fully representative membership. The policy memorandum (SP Bill 74 – PM) states that there is a goal to “embed a level of consistency across the institutions”: while not explicitly stated, is the eventual goal to use powers of modification to fully stipulate both categories and numbers of membership leading to all institutions having the same governing body structure?

While having a governing body of no more than 25 members is considered to be a benchmark of good practice, there may be an argument that a (much) smaller governing body than one of 25 members may allow for more effective governance: the proposed measures may not allow the necessary flexibility for institutions to choose to move in that direction.

(b) Chairing member of Governing Body

The Governing Body is responsible for appointment of its chairing member; this will take into consideration the role of the Rector, if appropriate, and of a “Senior Governor” or “Vice-Convener”.

From the Scottish Code of Good HE Governance “One Year Into Implementation”: “The involvement of staff, students and independent members in the processes of university governance goes beyond membership of the governing body with the new Code expecting a role for them in the appointment of the most senior individuals in university governance including the Principal, the Chair of the governing body and its independent members.” I believe that the process for appointment of a chairing member should continue to be the responsibility of the Governing Body itself. The Bill gives Scottish Ministers the power to regulate on the term of appointment and, among other means of selection, “criteria for selection” and “holding an election from among candidates”. There is no indication given in the Policy Memorandum of the nature of any regulations which might be introduced, but the presumption must be that they would reduce the autonomy of the Governing Bodies in the appointment of chairing members.
(c) Academic Boards

The Bill provides authority to the Scottish Ministers to determine, by regulation, the size, categories of membership and category numbers for the Academic Board.

The Executive Summary to the November 2104 “Consultation Paper on a Higher Education Governance Bill stated:

“The overarching aim is to strengthen governance in the higher education sector in Scotland, ensuring that it remains fit for purpose. The Scottish Government wants modern, democratic and accountable processes to inform governance arrangements in higher education institutions in Scotland. The aim of the legislative change that is proposed is not to increase Ministerial control over institutions, but to support them to develop and refine their own governance systems by introducing a limited number of new statutory measures aimed at embedding greater consistency of approach.” (One wonders why it was actually felt necessary to deny that there was an intent to increase Ministerial control.)

In his Ministerial Foreword to the Consultation Paper, Michael Russell MSP wrote, in describing the Scottish universities, “They are diverse organisations, characterised by a distinctive ethos with autonomy at the core”, having said previously “Scotland can be proud of its higher education system”. It would appear that the proposed Bill does not “support them (institutions) to develop and refine their own governance systems” but is precisely increasing Ministerial “control” in certain ways, in order to ensure the objective of “embedding greater consistency of approach” - which seems to mean an objective of uniform approach. Should the approach to governance not take the stated diversity into consideration?

2. The correct balance may not have been struck between legislative and non-legislative measures.

Again, quoting Michael Russell, “Existing governance structures, influenced by introduction of the new Scottish Code of Good HE Governance, have served our higher education institutions well enough, but I am confident that the system is capable of further improvement.”

From Lord Smith of Kelvin’s Preface to the Governance Code “One Year Into Implementation” it is clear that the Code is already having a positive impact.

In his letter of July 9, 2015 to Angela Constance, Cabinet Secretary for Education and Lifelong Learning, Stewart Maxwell, the Convener of your Committee, asked a number of probing questions on the Bill. Perhaps the responses Mr. Maxwell receives will allow the Committee to determine if the issues involved are such that legislation is required or if they are more appropriate subjects for discussion in the review of the Code of Good HE Governance which is to take place in 2016.

Yours sincerely,

Jim Wallace