Submission from Kenneth W.M. Cochran

I am writing in response to the call for evidence on the proposed Higher Education Governance (Scotland) Bill

My comments are in italics.

You have asked for responses to the following ...

1. What do you consider to be the existing problems (if any) with higher education governance, particularly around modernity, inclusion and accountability?

Higher education governance in Scotland is healthy, mature, and developing in measured progression. The recent Scottish Code of Good Higher Education Governance (‘the Code’) has gone a long way to promote ‘modernity, inclusion and accountability’. The Code has barely been given time to effect its changes when legislation is proposed to trump it. The bill is unnecessary as its aims could be more easily achieved through further incremental developments to the Code. The Code already has a ‘comply or explain’ ethos with distinct implications for funding if it is not observed. It should be given longer to prove its worth. I am not aware of any evidence of problems in HE Governance which cannot be addressed by the Code and which require intrusive legislation.

2. The extent to which the Bill (a) will improve higher education governance, particularly in the areas above

The Bill will be a retrograde step, enforcing a one-size fits all structure on Scottish Higher Education. For instance, legislating that trade unions get to nominate two members to a university court 4(1)(c&d) in addition to two selected by other staff in 4(1)(b) will be disproportionate in institutions where few members of staff belong to a trade union. This should at least be adjusted in proportion to trade union representation in a higher education establishment. Of course Section 8 gives ministers cart blanche to alter all of Section 4 at their sole discretion; thus Section 4 is essentially worthless and leaves governing bodies open to politically motivated (re)construction – a further threat to the stability, reputation and autonomy of higher education establishments.

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

The Bill can only decrease the sector’s autonomy and international reputation. By giving ministers broad powers to interfere, it opens up the sector to the political manipulation of whichever party is in power at a given time in Holyrood. This will be detrimental to private/corporate sourced research investment, Scottish Higher Education’s international reputation, and will reduce the credibility of the independence from political manipulation of university research findings. Our chief rival institutions in the United States have complete autonomy in their governance (within US business and employment law)

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

By placing universities effectively under control of government ministers, the accountability of their courts as charity trustees to act solely in the interests of the charity will be compromised.

3. Has the correct balance been struck between legislative and non-legislative measures? Are any further measures needed?
NO! non-legislative measures, such as the Code, should be given more time to evolve. My earlier comments that legislation is not needed at all, still stand. It is mildly encouraging to note that the bill has been softened since the initial proposals for consultation. What is proposed seems to have greater flexibility as enabling legislation – however being more flexible has the drawback of being prone to political ministerial manipulation by the party in power at a given time.

Specific proposals
The Bill proposes a number of specific changes to higher education governance:

- 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. This too is open to political manipulation. The greatest drawback is that the chair appointed may not have the confidence of the court. Currently courts appoint their senior governor. This ensures that the chair has the respect and confidence of court. It would be an intolerable position for a chair to be appointed who was fundamentally at odds with the views of a majority of court. By opening the possibility that a chair, appointed from outwith the governing body would also be paid, opens the possibility that he/she may be considered financially indebted to an electorate rather than to the other trustees of the charity. This is an incredible conflict of interest.

- To require HEIs to include various persons within the membership of their governing bodies. The requirement to have two trade union members would be disproportionate in an institution where trade unions do not represent a significant number of staff. Trades union members should stand for election in the same categories as for non-trade union represented staff. As universities have a major impact on their local communities, there should be stakeholder representation from the local community. In the event of insufficient candidates for a post coming forward to force an election, (Sections 5(4) and 11(4)), an election should still be held with an option to ‘re-open nominations’. This will prevent ‘elected unopposed’ members with no mandate taking office AND give a candidate who is elected unopposed confidence that he/she has the support of their electorate.

- To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons in their academic boards / senates. The size of an academic board should be left to the institution. Where an academic board is large, it is common practice to delegate some areas of responsibility to smaller sub-committees.

4. Please provide your views on the merit of each of these proposals. See Above.

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”.

Academic freedom does not need redefinition. The proposed bill attempts this but does not specify any resulting implications for good HE governance.

6. Are there are 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.

Yes – opinions will always vary on controversial topics. The important thing is to ensure that people are not discriminated against because of their beliefs, so long as these are expressed within the law. However this does not require a redefinition of academic freedom. Academic freedom is significantly compromised when politicians are able to pressure university staff to comment in favour of their political views as happened last year when the then First Minister applied pressure to the Principal of the University of St Andrews to ‘clarify’ comments on Independence. This would be even worse if ministers had controlling regulatory power over universities.

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?”

The proposed tinkering with the definition of academic freedom does little to bring clarity, especially in the light of the greater threats of political interference.

Finally may I add my whole hearted support to the Royal Society of Edinburgh’s advice paper (15-01 of February 2015) which so clearly articulates the problems with the proposed legislation.

I hope these comments are helpful to you.

Sincerely,
Kenneth W.M. Cochran  B.Sc. 1979