Higher Education Governance (Scotland) Bill – Submission from Margaret Morton, Co-opted Member, The University Court, University of Glasgow

Submission to the Scottish Parliament's Education and Culture Committee

I write as a lay member of The University Court of The University of Glasgow for over five years, Chair of Estates Committee and a member of Finance Committee to express significant concern regarding the content and implications of the Higher Education Governance Bill. My background experience is across sectors, including as a partner in the commercial property department of a major Scottish law firm and as Head of Fundraising at Barnardo’s Scotland.

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

I do not believe there are existing problems with higher education governance, in particular around modernity, inclusion and accountability, which require legislation.

1. Universities are required to review governance regularly to ensure governance is accountable, effective, inclusive, and relevant to changing times. This includes an annual review of compliance with the Scottish Code of Good HE Governance and a five yearly externally facilitated review of the governing body's effectiveness.

2. Governing bodies are accountable: to Scottish Government through the financial memorandum and outcome agreements, which require compliance with the Scottish Code of Good HE Governance as a condition of funding from the Scottish Funding Council; to the University community, which is strongly represented on the governing body; and to the wider community. Wider community engagement has been seen at Glasgow, for example, in the extensive consultation the University's governing body has undertaken on the Campus Estates Strategy.

3. Governing bodies are inclusive and modern. At Glasgow, for example, the Court includes independent lay governors drawn from a wide range of backgrounds from across the public, private and not-for-profit sectors and also internal members from across the University, including academic staff, support staff and students.

4. Governance is strong and is regularly reviewed. It is not clear from the Bill and its accompanying documents what the Scottish Government believes is wrong with higher education governance and why it feels a need to legislate in this area.
The extent to which the Bill

a will improve higher education, particularly in the areas above

b may alter the higher education sector's current level of autonomy

c may affect lines of autonomy between the Scottish Government, relevant public bodies and the higher education sector.

1. The proposals within the Bill will not improve university governance. Indeed, they present serious risks to the independence of universities and their ability to contribute to Scotland's future success.

2. Universities have a high degree of independence from the Scottish Government. This is important if they are to continue to be ambitious institutions that contribute strongly to Scotland's economy and society. In the Consultation Paper on the Bill, Government stated clearly that it understood the importance of university autonomy and said that it did not intend to increase Ministerial control. However, in direct contradiction to this, the Bill proposes a very substantial increase in Ministerial powers over universities.

3. The proposals, in Sections 8 and 13, to give a Scottish Government Minister power to determine the future composition of a university's governing body and academic board are alarming and would undermine the independence of universities.

4. A possible consequence of increased Ministerial powers is that Scotland's universities could become classified by the Office of National Statistics as 'Central Government' bodies and, as such, would be required to live within constraints in relation to annual public spending allocations and borrowing. This would seriously curtail entrepreneurial activities and reduce the benefit they bring to Scotland and their competitiveness with other UK universities.

5. At Glasgow, we have recently committed to a £450M programme of capital investment in the campus over the next ten years, which will also have a major impact on the economic wellbeing of the city. We are funding this largely through the University's own enterprise in generating private income and running annual surpluses retained for investment. This enterprise and investment would be jeopardised by the proposals in the Bill. The funding strategy for this investment is not reliant on Government capital funding: £250M is to be funded by historic and future operating surpluses; £100M by new borrowing; £50M by property sales; and £50M by philanthropic giving.
6. Universities’ status as independent charities could be threatened by an increase in Ministerial powers. Lost charitable status would have difficult financial consequences, including increased taxation and reduced/no philanthropic income.

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

I believe the current balance between legislative and non-legislative measures is correct. Legislation requires compliance with the principles in the Scottish Code of Good HE Governance. The Code is a well-considered document that establishes clear principles but allows for diversity of practice across a range of diverse institutions.

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

- To require higher education institutions to appoint a chair of their governing body in accordance with a process set out in regulations made by the Scottish Ministers
- To require HEIs to include various persons within the membership of their governing bodies
- To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons

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

1. At Glasgow, the governing body is currently in the process of recruiting its next Chair. In doing so, we are following the transparent, inclusive and robust process required by the Scottish Code of Good HE Governance. The job description was approved by the full governing body. The position has been advertised widely externally and the University has explicitly stated that it would like to invite candidates from a diverse range of backgrounds. The selection process will involve an interview panel including include lay members of Court, a member of academic staff and a student. It will make its recommendation to the full Court, a diverse body including staff, students, alumni and independent members, for decision.

2. It is important that the final decision on the appointment of the Chair is made by the governing body to ensure the appointee will have authority with the governing body and also so that, should the Chair fail to address the duties of the role effectively, the governing body will be in a position to terminate the appointment.

3. The proposal that a Minister should make detailed requirements regarding the composition of a governing body is inappropriate and fails to allow for the diversity of practice that currently exists, and should exist, across universities.
4. The inclusion of representatives of trade unions on universities’ governing bodies would constitute poor governance. Governing bodies currently include staff representatives, who have influence because they are chosen by the staff of the university. Trade union representatives would be chosen by unions to represent the interests of the trade union, which would be counter to good governance. It is of fundamental importance that all governing body members exercise their judgment in the best interests of the University and not as a representative of another body.

5. It is inappropriate for a Minister to determine the composition of a university's academic board or Senate whose responsibilities focus on core academic issues, such as curriculum and academic standards. This is a matter of internal governance.

Academic Freedom

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.

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 academic freedom be limited to their work within an institution, as opposed to views they may express outwith the institution.

Margaret Morton
3 September 2015