Submission from Marion Hersh

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

A lack of accountability and transparency; lack of representation of black and ethnic minority and disabled people. Staff and students are insufficiently involved, where they should have the deciding voices. This has led or contributed to: (1) bad decision making e.g. proposals for large numbers of redundancies and even department closures at Dundee, Glasgow, Stirling, Aberdeen and Abertay; (2) a culture of bullying and intimidation; (3) capability management of disabled staff out of their jobs; (4) a lack of financial accountability with principals and senior management receiving very high pay increases while ordinary staff have seen their pay go down in real terms and their pensions reduced; (5) increasing managerialism and an associated devaluing of staff. Only 5 of 17 institutions asked by UCU to provide remuneration committee minutes and an explanation of the principal’s pay rise responded with full information. Previous elements of democracy have gradually been eroded with elected deans and heads of departments (where they existed) replaced by appointments and senior governors increasingly chairing court rather than rectors. In addition, not all institutions have rectors and at Dundee the rector has never had the right to chair court.

There are also a number of threats to academic freedom detailed in question 6.

2. The extent to which the Bill

(a) will improve higher education governance, particularly in the areas above

See later answers

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

In principle no, though this will depend on how the bill is implemented. Clearly attention will be required to ensuring that (1) HE institutions remain independent and ministers do not interfere in their running; (2) there is appropriate oversight to prevent abuses.

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

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.

If properly implemented no. However, monitoring should be used to ensure that democratic governance and oversight are strengthened while avoiding ministerial interference in institutions and maintaining independence.
3. Has the correct balance been struck between legislative and non-legislative measures? Are any further measures needed?

I would suggest that the legislative measures are a good start, but that their impact will need to be monitored. Further measures will probably be required in the future. There may also be a need to strengthen compliance procedures.

There is evidence that this process has already led to some improvements in governance, with an increase in the number of women chairs of court and many Scottish universities signing up as living wage employers.

**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

  Proposals for elected chairs of governing bodies are to be welcomed. Maximum accountability is maintained by election by all staff and students. They should be extended to elected chairs of departments, facilities, schools and colleges and to principals, who should have a cap on their salaries. A role for rectors elected by students in addition to student representatives should remain and extended to the universities that do not have one. This could include chairing the governing body if the elected chair is unable to do this.

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

  The inclusion of trade union and student representatives is particularly welcome and they will make a very valuable contribution. Other than that, I would suggest that: (1) trade union and student representatives should form the majority of the membership; (2) the role of business is reduced; (3) there is some representation of community organisations.

- To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons

  The proposals for diversity are welcomed, the restriction on size less so. Reducing the size would not necessarily increase attendance rates. Having a larger academic board is a way of involving a larger number of people in decision making. This is also something that should depend on the size and complexity of the institution.

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

**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”.

Any strengthening of the legal definition of academic freedom is to be welcomed, as are the explicit freedoms to develop and advance new ideas and innovative proposals. In practice doing this may be depending on the availability of funding, but I recognise that this is outwith this legislation.

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.

Any extension of academic freedom is to be welcomed. It would be useful to consider extending it to schools. The Westminster Prevent legislation makes the within the law provision problematical, since this directly attacks academic freedom. It is

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.

A number of proposals/threats to close departments and/or make staff redundant have been made on financial grounds and/or the perceived likely performance in the REF. Various factors, including perceptions of likely REF performance, affect internal allocations of funding. Perceptions about the REF pose a particular threat to departments perceived to be good on teaching and weak on research. A number of threatened and totally unjustified closures and redundancies have only been prevented by strong campaigns by UCU, students and the other campus unions. Better governance arrangements, including greater transparency and accountability, would hopefully avoid this. This would be further strengthened by giving the majority of governing bodies to trade union and student representatives

The Bill states that academic freedom is to be exercised “within the law”.

Some of the ways in which Westminster legislation inappropriately restrict academic freedom are dealt with in point 6.

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.

Increasing pressure to publish and obtain grant income and perform at an unrealistically high level put pressures on individuals which affect both academic freedom and research ethics. There are associated pressures to be careful about criticising funders and engage in discourse that potential funders may disagree with. Some areas of knowledge operate gate keeping mechanisms which make it more
difficult for new and more controversial topics to be published. There is also some gatekeeping of research carried out by individuals from minority groups and on women's, black, disabled and LGBT amongst other issues. The so-called research excellence framework (REF) also threatens academic freedom. The Trinity College policy on academic freedom annexed in the von Prondzynski report useful lists a number of threats to academic freedom, including strategic planning, particular of research; moves from a collegiate to a hierarchical governance model; research performance measurement with resource allocation based on meeting productivity targets; and fixed term contracts. Also these factors are present, often to an increasing extent. Academic freedom also affects teaching with regard to, for instance, content, presentation and assessment. It is threatened by, for instance, the increasing tendency to standardisation.

Westminster so-called anti-terrorist legislation, particularly prevent, poses a particular threat to academic freedom. For instance, the British Library has decided not to host the Taliban archive due to being advised by lawyers that some of the material would contravene the UK Terrorism Act 2006. It is to be hoped that the Scottish Government will ensure that the protections to academic freedom are sufficiently robust to avoid this type of problem.

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?"

Academic freedom should be understood and implemented as widely as possible. Even in a purely work context, individuals do not just work within an institution. They attend conferences, collaborate in projects nationally and internationally, act as external examiners and consultants and carry out other activities outwith their institutions. This all needs to be covered. In addition, academics are often seen as experts, public figures and opinion leaders and may therefore be asked or decide to express their views on a wide range of issues, often drawing on their academic expertise to do so. A recent example is the referendum. In that case institutions generally supported high profile individuals against outside pressures, but this will not necessarily always be the case and it is therefore essential that they have legal protection. This protection should also be extended to cover all HE staff not just academics.

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