Dear Committee members,

I provide my considerations to the proposed Bill from the position of businessman, as a tutor on governance for the Institute of Directors and as a member of a University Court.

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

There are no problems with inclusion, to the extent that the proposed Bill proposes a more restricted membership (for example by limiting staff representation to trade unions) than is currently in place. There is no problem with accountability as, at present, each institution has to report to charitable, regulatory and governmental bodies and its decision making processes are open for all stakeholders to observe. In terms of modernity the proposed Bill runs counter to a number of aspects of the most recent guidelines on good governance. In particular it implies that the Chair is the chair of the organisation rather than chair of the board (as chosen by the members of that board). By requiring the Chair to be appointed from a broad vote and providing the opportunity for Ministerial intervention it undermines the independence of the chair (one of the most critical elements of good governance). There are two issues of modernity that the proposed Bill does not address. Firstly, is that of the size of the governing body. There is not a single guideline that indicates that a governing body of 23+ provides a vehicle for good governance, in fact the best advice would be for a body of somewhere between 9-15. Second, is that of diversity. There can be no question that greater diversity enhances the quality of governance but, by focussing parts of the proposal on gender, the proposed Bill restricts the scope for governing bodies to exploit diversity in its broadest terms (for example ethnicity, nationality, employment experience, age, socio-economic categorisation etc).

2. The extent to which the Bill
(a) will improve higher education governance, particularly in the areas above
(b) may alter the higher education sector’s current level of autonomy
(c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector

(a) The proposed bill will not improve higher education governance, in fact it will make it worse. It gives the impression that the university governing body is a representative group – this runs against the basic principle of governance that a governing body has to collectively act in the interests of the organisation (be it company, charity or university)
(b) Given that the universities are recognised as one of the strengths of Scotland’s society and economy, founded on their autonomy, it seems bizarre to undermine that autonomy. The autonomy of universities (as with the judiciary) has been seen for centuries as the cornerstone of a civilised society. Does Scotland not want to be seen as such?
(c) The proposed Bill will only introduce antagonism and confusion between governing bodies and Ministers.

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

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
- 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
This whole Bill is completely unnecessary. It does not provide evidence that there is a problem that needs fixing.

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”.
   
   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.

Unnecessary. The main risk to academic freedom is the increasingly intrusive direction from the Scottish Government (via the SFC), which the proposed Bill only worsens.

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”.

I am very concerned that the proposed Bill will provide scope for Ministerial influence on the purpose, direction and, hence, academic content of the universities.

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.

   See above. If there is pressure on academic freedom it derives from governmental requirements for institutions to be financially sustainable (and quite rightly) which knocks on to academics need to seek a broader funding base (which may influence research, class sizes etc). This proposed Bill has no impact on this.

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?”

   - See more at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/90819.aspx#How to submit your views

   To take an example that is close to home. Given that, during the Scottish Independence debate, institutions encouraged academics to engage in the debate and to feel free to take whatever position they wished to take (both inside and outside the institution), it does seem rather ironic to ask this question as the only attempts to close down the debate, that I am aware of, emanated from government.

Yours

Mervyn Jones