I am submitting this response to the Committee’s Call for Evidence on the Higher Education (Scotland) Bill as an elected member of the Court of the University of Glasgow. The response reflects not only my experience as a governor of the University but also my experience of, and responsibility for, governance in a variety of other fields, namely as Secretary to the Post office; Company Secretary of Girobank plc; governor of St George’s Hospital Medical School University of London; trustee of the Industry and Parliament Trust; Chair of the Glasgow City Heritage Trust and of the Scottish Council for Learning Disability. The views expressed below are confined to those areas where that experience is directly relevant.

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

In my view, there are no problems with higher education governance which require or justify this legislation. That is not to say that the institutions are perfect but rather that mechanisms already exist for ensuring best practice - the Scottish Code of Good HE Governance for example, which has already made a significant impact on HE governance. Compliance with the Code is a condition of public funding and therefore an important lever.

Similarly, it is difficult to see what specific problems of accountability the legislation is seeking to address. HE institutions are already accountable to Government through Outcome Agreements and to their own community through elected governors representing academic staff, support staff, students, and alumni. And at Glasgow, the presence of a city councillor on Court provides an avenue of accountability to the wider community.

So far as inclusivity is concerned, the governing bodies already include a wide variety of those who could be described as stakeholders. At Glasgow, the Court includes members of academic staff, support staff, students, the graduate body (the General Council) the local community (a Glasgow City Councillor) and a number of independent members with business experience in both the public and private sectors. It is not clear how the Bill’s provisions would improve this existing and effective practice.
2. 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.

It is unlikely that the Bill will improve higher education, since its focus is governance and governance alone cannot do that. And insofar as it deals with governance, it is likely in my view to do more harm to higher education than good, for the reasons set out below.

The Consultation Paper on the Bill stated that the Government did not want to increase Ministerial control over Higher Education Institutions. Unfortunately, the effect of Clauses 4, 8 and 13 is to do precisely that, and therefore alter the current level of autonomy significantly.

The consequences of this increased level of Ministerial control could have a direct and serious effect on the institutions which would affect their ability to provide even their current level of investment in higher education:

- First, the control exercisable under these provisions could lead the Office for National Statistics to classify the institutions as central government bodies. This would both impact on their funding options, as retaining surpluses for future investment would no longer be possible, and cause their borrowing to be counted against Government debt. It would prejudice the entrepreneurial activity which has brought considerable financial and reputational advantage to Scotland, by restricting funding and making private sector partners more difficult to find.

- Second, there is a risk that the proposed level of control could cast doubt on the institutions’ charitable status. At worst, this could have significant tax implications and even if the doubt were slight, it would be sufficient to prevent investment by e.g. foundations whose constitution permitted lending only to charities.

As a member of the Glasgow University Court, I have a particular concern that these two issues could put at risk the planned £450m investment in campus development which will have a major impact on both the University and the city, for that money will only be secure if the University has access to private funding and retained surpluses.

In addition to the potential financial implications, the perception of universities as a department of government would do reputational harm here and abroad, where the independence of the higher education sector is prized - and evidenced by the number of foreign students coming to study here and contributing to the economy by doing so.
In my view, these factors together raise the possibility that the Bill’s proposals could result in damage to higher education in Scotland, by affecting both investment in, and the reputation of, the institutions.

3. Has the correct balance been struck between legislative and non-legislative measures? Are any further measures needed?
My views on this question are covered by the answer to Question 1 above.

4. The Bill proposes a number of specific changes to higher education governance:
   - to require HEIs to appoint a chair of their governing body in accordance with a process set out in regulations made by 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.

The provisions in the Bill relating to the membership of governing bodies, and in particular to the appointment of a chairing member, give me serious concern, both as a governor of the University of Glasgow and in the light of my wider experience.

It is not possible to give a definitive view on the provisions for the appointment of a chairing member as these are to be specified at a later date in regulations - in itself, a surprising provision given the central role of the Chair in any system of governance. In my experience, the personality and attributes of a Chair are key to the effective functioning of any organisation, as is the confidence the governing body places in her or him. A robust, transparent, and widely acceptable appointment process is therefore essential. This is, I believe, well illustrated by the recruitment process for a new Chair presently underway at Glasgow, where the job description has been agreed by the Court, the job widely advertised, and the interview panel will include a member of the academic staff and a student; the panel’s recommendation will be put to the full Court for decision. This process follows that set out in the existing Governance Code, and would seem to cover all that should be required.

So far as membership of the governing body is concerned, the Bill’s prescriptive approach to specifying its composition:
   - increases the risk that HEIs will be perceived as a department of government, with the consequences set out above;
   - reduces the existing flexibility of governing bodies to recruit members of differing skills and experience as circumstances change, and to meet each institution’s particular needs;
fails to recognise explicitly the importance of academic staff on the governing body other than through a trade union nomination (thus incidentally disenfranchising the many academic staff who are not union members)

Further, it is not clear how the inclusion of two Trade Union nominees, in addition to existing staff representatives, will improve governance. Governing bodies already include staff members who represent staff interests, and it is difficult to see what other interests Trade Union nominees could have which would be consistent with their role as charity trustees of the HEI.

**Conclusion**

It is my view that this legislation is unnecessary, as the areas it covers are already covered by the Scottish Code of Good HE Governance.

The Bill in its present form carries significant risk for the future financial health and reputation of the Scottish HE sector.

It is hoped that the result of the Committee’s Call for Evidence will be a conclusion that further reflection is needed on the requirement for legislation, and how the unspecified problems the Bill seeks to address might best be met without it.

Morag Macdonald Simpson CBE
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