Submission from Nigel Lindsay

Higher Education Governance (Scotland) Bill

1. I am grateful to the Education and Culture Committee of the Scottish Parliament for the opportunity to offer evidence on this Bill. I do so as a taxpayer who is happy to support the excellent work done by Scottish universities, and who wants to see those Universities remaining free to develop and expand their work, each in its own way, and without the imposition of a central model.

2. Scottish Universities have built an extraordinary reputation for excellence over many decades and, in some cases, centuries. That excellence has been enhanced by the record of Scottish Universities in providing education not just to an elite but to all who can be shown to benefit from it.

3. Scottish Universities are not a homogeneous group, and each has its own characteristics. The “one-size-fits-all” approach of the Bill is inappropriate and likely to cause harm to the work, reputation, and functioning of Scottish Universities.

4. Within Scotland there are several sub-groups of universities. The ancient universities have worldwide reputations; the new universities are carving out niches for themselves within narrower subject ranges, and others such as Strathclyde and Dundee have developed specialisms of international importance. The different types of work done by the different universities require different forms of governance.

5. It is not clear what perceived deficiency in current governance arrangements the proposed Bill seeks to remedy. There has been no obvious public unease over the present diverse governance arrangements. A desire to standardize may lie behind the present proposals – if so, it should be resisted. It can be clearly seen in many other contexts that replacing local diversity with centralised standard practice has been a recipe for harm.

6. The present governance arrangements of the four ancient universities seem to me to represent a careful balance between the various interests involved in developing and maintaining a community of learning. They inhibit the pursuit of self-interest by academic staff by putting a student representative (the Rector) in the chair of the Court, and they balance other interests neatly and fairly. They include a “non-executive” function in the form of graduate representatives who can offer the advice of a critical friend when needed, and they represent the interests of non-academic staff effectively. There is no demand or need for change to these arrangements.

7. The proposal in the Bill to increase Ministerial control will fundamentally change the relationship between the state and the universities, to the detriment of both. It will lead to a loss of autonomy by universities, which is
likely to endanger their charitable status and their ability to secure further funding from donors.

8. The provisions of the Bill increase Ministerial control in a way that was not articulated in the consultation, and run contrary to the Scottish Government’s previous statements that it respected the principle of university autonomy and did not wish to increase Ministerial control.

I ask the Committee to take note of the points I have made in the eight preceding paragraphs, as general matters. I ask the Committee to take the view that the Bill seeks to address a problem that is imagined rather than real, that it will cause financial and reputational damage to the university sector in Scotland, and that it is not fit for purpose. In relation to the Committee’s specific questions, I offer the following responses.

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 consider that there are any serious problems with higher education governance in Scotland. Universities now have to comply with the Scottish Code of Good HE Governance as a condition of funding. There is no need for further legislation.

2. The extent to which the Bill

(a) will improve higher education governance
(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

- The proposals introduce Ministerial control over the internal governance of charitable organisations. They thus fundamentally erode the principle of institutional autonomy. The Bill endangers the future competitiveness of Scottish universities.
- The proposals would fundamentally change the relationship between State and institution, and subdue the role of universities in a democratic society.
- The ‘one size fits all’ approach of the Bill disregards the rich diversity of our universities, which is a valuable and positive feature of Scottish life.
- Some of the proposals, in particular for the appointment of Chairs by election rather than by the governing body and for trade union membership of governing bodies, contradict widely accepted principles of good governance.

3. Has the correct balance been struck between legislative and non-legislative measures? Are any further measures needed?
• No – all necessary measures have already been enacted through the Scottish Code of Good HE Governance. The Bill is needlessly prescriptive which renders it more difficult for universities to adapt to changing governance needs.

• **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

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

• **Chair:** The role of Chair is of fundamental importance to the effectiveness of a governing body. As such, appropriate that the governing body should appoint the individual responsible for its leadership.

• It is troubling that the Bill has taken forward this proposal despite 78% opposition in the consultation and without specifying the detail to enable proper scrutiny at Stage 1 of the Bill.

• **Composition:** It is inappropriate for Ministers to prescribe the composition of the board of what is an autonomous charity. While it is heartening that the Bill recognises the valuable contribution made to governing bodies by alumni, no case has been made for the proposal that Ministers should determine the number of such members

• I am concerned that the proposals on composition have been taken forward despite 67% opposition in the consultation.

• **Academic Boards:** As with the composition of governing bodies, it is important that each academic community is able to determine the size and composition of its academic board (Senate) that reflects their respective academic structures and character.
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”.

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.

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 (within the law) is of course a fundamental value of academic communities. However, I believe that the existing definition and statutory protections are adequate, and I have not seen any convincing evidence to the contrary.

   - I believe that the provisions of the Bill represent a clear threat to academic freedom, by seeking to replace university autonomy with closer Ministerial control. Government control over academic institutions has a baleful history, and should not be pursued.

I ask the Committee to take note of my evidence on the Bill. I invite it to conclude that the Bill is likely to do more harm than good, and that it should therefore be withdrawn.

Nigel Lindsay