The following constitutes RGU’s response to the questions posed by the Education and Culture Committee:

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

   The Board agreed with the theme of the review of HE Governance conducted in 2012, i.e. that openness, transparency and inclusiveness in an appropriate manner were important and strengthened confidence amongst staff, students and stakeholders. The Board responded positively to the *Scottish Code of Good HE Governance* (which had been recommended in the 2012 Review) and moved quickly to review and where appropriate revise its governance arrangements in a comprehensive implementation for the Code. Some examples of changes made include:

   - Students as members on the Nominations Committee (a staff member has been on the Committee for some time).
   - Reinforcing the Board’s commitment to diversity, notably in setting targets for gender balance.
   - Agreeing a mechanism whereby payment/expenses can be made to Board members as a means of strengthening inclusivity.
   - The introduction of an open and transparent recruitment process for the position of Chair.

   In responding to the *Code* it is considered that key aspects of modernity, inclusion and accountability have been addressed.

2. **The extent to which the Bill**

   (a) **Will improve higher education governance particularly in the areas above**

      As indicated in 1 above in responding positively to the *Scottish Code of Good HE Governance* the Board is of the opinion that it has in turn addressed key aspects of modernity, inclusion and accountability.

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

      Several aspects of the Bill provide for the Scottish Ministers to exercise significant new legislative and executive powers in relation to key elements of university governance; the appointment and remuneration of Chairs, the composition of the university governing body and the composition of the academic boards.

      We are concerned that any extension of effective Ministerial control may lead the *Office of National Statistics (ONS)* to reclassify Scottish universities to the general government sector under the European System of Accounts (ESA2010). Were such a threat to the university’s autonomy to materialise, it would impact on the university’s financial management and impact on its ability to retain annual operating surpluses, borrow funds for investment and increase income through commercialisation activities at a time of increasing financial constraint in the public sector.
A further concern to the Board is the unintended consequences of the new powers, which could potentially jeopardise the university’s charitable status. Were this to occur, it would have negative implications for tax and the ability to raise philanthropic funding to support investment and student academic scholarships.

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

The Bill does not itself set out the legal substance of the proposed governance arrangements, but rather leaves it to ministerial regulation, thereby opening up the possibility of future changes to governance based on decisions that are not subject to public scrutiny or debate and compromising institutional autonomy.

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

There is an existing balance in terms of legislative and non-legislative measures. There is already substantial legislative provision, including Section 45 of the Further and Higher Education (Scotland) Act 1992, which gives the Privy Council wide-ranging powers to make provision for the constitution of the governing bodies of HEIs (and which established RGU’s current governance arrangements in 2006). The principal non-legislative measure is now the Scottish Code of Good HE Governance, which is nonetheless a mandatory requirement of the existing Financial Memorandum between Scottish HEIs and the Scottish Funding Council (clause 17 of part 1 and clause 3 of part 2 of the Financial Memorandum refer).

As noted above, the proposed Bill would vest significant new powers in the Scottish Ministers, including the ability to modify primary legislation by Order. Such powers, whilst expedient at Westminster, would undermine the Scottish Parliament’s own legislative competence and deprive legislation adopted in future of the extensive parliamentary and public scrutiny it deserves. The Board is extremely concerned, therefore, that the Bill, as drafted, raises fundamental issues about autonomy and institutions’ roles in public life independent of Government: these were not matters which were part of the Scottish Government’s consultation.

4. **Please provide views on the merit of each of the following proposals:**

- **To require higher education institutions to appoint the Chair of their governing body in accordance with the process set out in regulations made by the Scottish Ministers.**

The procedures laid down in the Scottish Code are recognised by SFC as “the principles of governance which appear to constitute good practice in relation to higher education institutions”. The changes made with the introduction of the Scottish Code require every institution to follow transparent and open selection processes for its Chair. The university has adopted these processes, which include open recruitment and the inclusion of a student and staff member on its Nominations Committee.

It is important that the Chair of governing body has the confidence of that body, and is in a position of authority with the governing body and the university’s executive officers. There is concern that the proposal to appoint a Chair of the governing body in accordance with a process set out in regulations made by the Scottish Ministers is not consistent with principles of good governance and would potentially reduce the accountability of the Chair to the governing body.
• **To require HEIs to include various persons within the membership of their governing bodies.**

There is concern that the requirement to expand governing body membership prescriptively could have negative consequences on the balance of skills and responsibilities of the governing body. While the university values the contribution of trade unions it is not supportive of 'reserved’ spaces on the Board for such a constituency. A process whereby trade unions might be encouraged to put forward members for selection, who would then be subject to election by the academic and non-academic staff of the university as a whole, would seem to be a more acceptable/appropriate position.

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

With regard to Academic Boards, the Board does not consider it appropriate to legislate for a particular size of Academic Board across Scotland and believes that its composition should be flexible and able to adapt to the dynamic external environment in which individual universities operate.

5-7. **Views on the proposed strengthening of the current legal definition of Academic Freedom?**

The Board notes that there has been a strengthening in the obligation on universities in respect of Academic Freedom which was not included in the consultation paper. It is also suggested that there is a disjunction between the purported enhancement of Academic Freedom and the increased Ministerial control proposed for institutions – again this is an issue of institutional autonomy.

In conclusion, the Board of Governors of RGU seeks to comply with the highest standards of governance and will continue to do so. It considers that these proposed new powers, with greater Ministerial control, are unnecessary to maintain and enhance those standards of governance. The powers are disproportionate and lacking in the specificity required to allow appropriate ongoing parliamentary and public scrutiny, and may damage the highest standards that they are ostensibly aimed at securing.

30 August 2015