HIGHER EDUCATION GOVERNANCE (SCOTLAND) BILL

Submission of written responses to the call for evidence issued by the Education and Culture Committee of the Scottish Parliament.

Introduction

SRUC, Scotland’s Rural College, leads the way in delivering agricultural and rural research, education and consulting to rural communities. It is a company limited by guarantee and a registered Scottish Charity whose principal purpose is to advance education, science, research and environmental protection and rural improvement in the rural and land-based sectors, both domestically and internationally. SRUC, although having higher education status, is unique in the HE sector as it also delivers a significant amount of further education, research and commercial consultancy to students and clients.

Response to the call for evidence

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

   The HE sector has invested significant time and effort into improving accountability and promoting inclusion through the preparation and adoption of the Scottish Code of Good HE Governance (the “Code”).

   The Code is reflective of the diversity of governance in the HE sector and has sufficient flexibility to allow institutions, regardless of size, to comply with the main principles without imposing rigidity, unworkable structures and additional resource requirements on them.

   Compliance with the Code is a condition of the funding of SRUC by the Scottish Further and Higher Education Council (the “SFC”).

   The Code was only introduced in August 2013 and it is still developing and improving. In the two years since it was introduced it has improved the inclusion of students and staff in the governance of institutions and increased transparency of the activity of HEIs, for example, with the specific requirement for the publication of Board and Committee papers.

   As part of its routine annual governance review process, SRUC has recently completed a full governance review to ensure fitness for purpose and to provide confirmation to the Board that it is compliant with the principles contained in the Scottish Code of Good HE Governance. The annual review process is used to ensure that the composition of the Board of Directors and the structure of its main Board
Committees have the appropriate mix of skills to be able to respond effectively to business needs whilst continuing to represent the interests of students, staff and stakeholders.

Having completed the review of governance, SRUC remains committed to good governance in the delivery of all aspects of its activity. The Code has been particularly helpful as a frame of reference and will continue to be so as it develops and is reviewed by the HE Sector. Also of assistance has been the Scottish Government’s promotion of gender balance on Boards which SRUC is committed to working towards achieving.

2. The extent to which the Bill

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

SRUC is concerned that the Bill does not take into account the diversity in organisational structure or the breadth of activity undertaken by HEIs and that it is seeking to impose a restrictive, “one-size fits all” governance which would not be appropriate to all institutions. We do not believe that it will achieve an improvement in governance, but instead might create a conflict between the Chairman and the Board of directors.

SRUC is a small, specialist institution offering further education, higher education, skills training, research and consultancy to the agricultural and rural sectors. SRUC is a private company limited by guarantee, registered in Scotland and has charitable status. As a limited company, the governing body of SRUC is a Board of Directors, and they are collectively responsible for the oversight of the management and regulation of the company. The Board of Directors are appointed in accordance with the Company’s Articles of Association and in accordance with the provisions of the Companies Acts. As SRUC is a registered charity, they are also trustees.

The Board of Directors ensures that SRUC complies with the provisions of the UK Corporate Governance Code 2014 published by the Financial Reporting Council in so far as they are applicable to a company limited by guarantee. In addition the Board of Directors ensures that SRUC complies with the provision of the Code.

Although a higher educational and research institution a major part of SRUC’s activity, and a crucial source of its funding, is commercial and the directors who sit on the Board of Directors require to be of sufficient calibre to effectively supervise and guide that important part of the business. Only 35% of SRUC’s activity is the delivery of education (and of that approximately 20% is Higher Education and 15% Further Education).

Following completion of its governance review, SRUC therefore believes that it has now reached a point where its governance, which is unique to it in the HE sector, is fit for purpose and that it now needs time to establish and function before being further changed. The annual review and reflection on governance which SRUC undertakes allows SRUC to ensure that it continues to be effective, inclusive and accountable to students, staff and stakeholders.
In recruiting Board members SRUC selects those with the necessary skill sets to oversee both the educational and the commercial activity. If the Bill is enacted as published then there is a real risk that the membership of the SRUC Board would, by virtue of having to include specific categories of members, no longer have the necessary breadth, depth and variety of skills which the Board requires to successfully operate and fulfil its role as governing body.

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

The Bill if enacted as drafted will inevitably alter the level of autonomy with which the sector and SRUC currently operate. The imposition of prescribed categories of Board member, who are appointed ex officio rather than on merit, will impede the ability of the SRUC Board to effectively run the business (particularly the 80% of activity which is not concerned with Higher Education), creating a Board which is not fit for purpose and which is too large for the efficient running of the organisation.

Only 20% of SRUC’s activity relates to HE and this should be considered alongside the relative size and significance of SRUC’s non-academic activities, within and beyond Scotland – i.e. commercial, consulting, livestock health schemes, veterinary services, etc. They comprise the majority of SRUC and are critical to its future, and provide further evidence of our genuinely unique configuration and mix of activities.

SRUC needs a governance model that is appropriate for all of its business and to meet legal obligations the Board of Directors of SRUC operates within company legislation, ensuring compliance with the UK Corporate Governance Code 2014. The Board also ensures that SRUC is compliant with the Scottish Code of Good HE Governance. It has undertaken annual reviews of its governance to ensure that it has a board of directors which is the appropriate size for the size of the organisation. Those reviews also ensure that the board has members possessing the relevant mix of skills and experience to oversee effectively the direction of the business.

The Bill does not take into account the vast differences in sizes between HEIs and will require significant additional resource to manage recruitment of Board members and to service the requirements such a large Board will have.

There is also a not inconsiderable risk that the enactment of the Bill will lead to a reclassification of SRUC as a “central government entity” rather than as a “non-profit institution serving households” by the Office of National Statistics (the “ONS”) as the control of the institution might be seen to have passed from the Board of directors to the Scottish Ministers.

The Bill, if enacted as published, will pass the power to decide how the Chairman of SRUC should be appointed, how long that person should remain in office, the remuneration of the Chair and the composition of the Board of directors. In addition the Bill would pass power to the Scottish Ministers to make regulations to determine the internal structure of governance in SRUC, particularly in relation to the composition of the Academic Board.
The power given to the Scottish Ministers would be to make regulations in relation to the items listed above and there would be no Parliamentary scrutiny or debate of these regulations.

The cumulative effect of these regulations could give rise to the ONS reclassifying SRUC as a central government entity which would leave us facing restrictions on the ability to both create and to retain surpluses, materially impacting on our ability to invest in the future success of the institution. The reclassification would bring an end to our Infrastructure Strategy which is currently being implemented to use monies generated on asset disposal to fund our ten-year strategy to improve campus facilities and bolster our regional presence and educational delivery in Scotland.

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

The Scottish Parliament has previously decided that the SFC, rather than Ministers, should ensure that there is appropriate governance in HEIs and this is effected through compliance with the Code, a requirement of our SFC funding. There is in place a clear line of accountability between the SFC and SRUC for our compliance with the Code.

The introduction of the new powers will weaken that line of accountability, taking responsibility for ensuring effective governance from a neutral body to the Ministers, putting the institution at risk of political interference not just in our HE education but also in the 80% of our activity which is not directly related to HE education.

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.

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

As a company limited by guarantee SRUC operates in accordance with the provisions of the Companies Act 2006 and in compliance with the relevant provisions of the UK Corporate Governance Code published by the Financial Reporting Council. It should be noted that UK corporate governance is not subject to legislation but rather it is for companies to comply with regulations.

SRUC considers that this compliance with the relevant provisions of the UK Corporate Governance Code and the Scottish Code of Good Higher Education Governance is appropriate to the business model which SRUC operates.

Legislating in the manner proposed by the Bill does not allow for any flexibility in the operation of institutions nor allow them to respond to economic and business needs in a timely and efficient manner. SRUC believes that the continual evolution of the Code, responding to changes quickly and efficiently, is the best way to ensure that good
governance will continue to apply to all parts of our activity, educational and commercial.

Accountability for the expenditure of public funds is currently achieved through the Scottish Funding Council’s Financial Memorandum and the Outcome Agreement process. This allows for the funding and expenditure to be tailored to each individual HEI and will provide more transparency and accountability than the imposition of a large Board which lacks the necessary skill set to run the organisation.

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.

Appointment of Chair – SRUC is a company limited by guarantee and in terms of its Articles of Association it is for the directors of the company to appoint one of their number to the role of Chairman. It is particularly important for SRUC to ensure that the Chairman has the appropriate skills for the role and has the support and confidence of the other board members.

Given the unique nature of the mix of educational and commercial activity which SRUC has then the Chairman needs to have a strong understanding of the business. It is not clear how an appointment process which is not bespoke to an individual organisation could lead to the appointment of a Chair with the necessary skill to effectively run the business.

Membership – the rigid requirements to appoint specific members to the Board will impose on a small organisation a Board which is larger than is considered effective or appropriate for the size of the business. There is no guarantee that the members appointed in the manner set out in the Bill would have the independence, experience and necessary breadth of skills required to deliver informed scrutiny of the organisation at a non-executive level. There would therefore be a risk that the oversight of the management of the business would no longer be in accordance with the statutory requirements of the Companies Acts and Charities legislation.

Members appointed from specific interest groups would be at a greater risk of being conflicted on matters being considered by the Board than other non-executive directors and would require to be excluded from certain decision making processes.

The inflexibility of the Bill will cause difficulties for those institutions, such as SRUC, who recognise more than two Trade Unions and whose recognised Trade Unions are not
differentiated between academic and non-academic staff. SRUC also has a significant proportion of non-unionised staff.

SRUC does not have a graduate association. It is not clear whether it would require to set such an association up in order to allow the appointment of the Board members which the Bill requires. If SRUC were to have to set up such an association then this would require significant additional resource to establish and then run an association and at the present time SRUC does not have the resource to create such an association. If the Bill is enacted as drafted then SRUC would look to the Scottish Government to fund the establishment and running costs of an alumni association for SRUC.

**Academic Board** – SRUC has reviewed the composition and remit of its Academic Board and intends to embed the role of the Academic Board more closely into the structure of the organisation but with a membership of a size proportionate to the size of the organisation. The SRUC Academic Board has authority delegated to it by the SRUC Board of directors and acts to provide strategic guidance on academic matters to the Board. The Bill if enacted would permit Ministerial interference in the internal structures and operation of SRUC and therefore on academic matters within the organisation.

**Academic freedom**

SRUC supports the academic freedom of its staff and will continue to do so. Giving powers to Ministers to make regulations, which will not have been independently scrutinised by Parliament, could infringe on the autonomy of institutions and introduce a political dimension to decisions, impacting on the academic freedom currently enjoyed.

*SRUC appreciates the opportunity to present their views on the Bill to the Committee. If there are any questions about our response then please contact Helen Howden (Deputy Company Secretary) at helen.howden@sruc.ac.uk*

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