I am responding to the call for evidence from Scottish Parliament’s Education and Culture Committee on the Higher Education Governance (Scotland) Bill currently before the Scottish Parliament in my capacity as Chancellor of Queen Margaret University (QMU). I have held that honoured position for 8 years, during which time I have been struck by the diversity, entrepreneurialism, and quality of the Scottish HE sector. I fear that those very qualities have the potential to be undermined by this unnecessary piece of legislation.

I share and fully endorse the concerns about the Bill as they have been set out in the submissions from Queen Margaret University to the Education and Culture Committee and to the Finance Committee of the Scottish Parliament.

I do not intend to repeat each of those concerns in this submission but to highlight two aspects in particular:

• the manner in which the Bill seeks to interfere with the internal organisation of autonomous charitable institutions,

• the potential impact of the extension of Ministerial power on the charitable status and classification of Universities.

On the first of these concerns, the Bill seeks to mandate, or provide Ministers with significant power to determine, the internal organisation of autonomous higher education institutions. This relates to matters of no less concern than the composition of the governing body, the manner of appointment of members and the appointment of the Chair and related conditions of service.

At first sight the intent behind the Bill to establish a framework of higher education governance that is more modern, inclusive and accountable, is admirable. The difficulty is that, to date, no attempt has been made to set out where the deficit or deficiency lies currently in terms of accountability and transparency of HE governance arrangements. Scottish Universities are, without exception, fully compliant with the requirements of the Scottish Code of Good Higher Education Governance which has been designed to promote and ensure such accountability and transparency.
With respect to creating greater uniformity in governance arrangements, it is for institutions themselves to determine what open and accountable arrangements are best suited to their specific needs. A uniform approach, mandated by statute, has the potential to undermine effective governance by restricting institutions’ flexibility to respond to changing needs.

On the matter of governing body membership, a central principle of good governance is that members act in the interests of the corporate body and are selected on the basis that they are accountable for the good governance of the institution, rather than for representing the interests of specific groups. The need to act in the overall interests of the Universities is also a requirement of charity law. The proposals set out in the Bill, with the emphasis of ‘representative’ constituencies would appear to undermine this central principle.

Specifically, the Bill sets out a number of requirements, including staff trade union representatives and alumni representatives. A number of these requirements are already accommodated within my own University’s current Order of Council, including 2 persons elected by staff and 2 persons appointed by nomination of the Students’ Union. The concern is that the addition of specific categories of governing body membership, prescribed in legislation, would result in my University being required to change its governing instrument in order to be compliant. This would likely result in the University’s governing body membership having to be increased beyond the maximum of 25 members prescribed by the Scottish Code of Good Higher Education Governance, or, alternatively, in other classes of staff membership being reviewed. The latter would likely have the effect of disenfranchising significant numbers of staff who currently elect not to be represented by a trade union.

This represents a risk to the effective governance of Scottish Universities and a departure from accepted best practice in terms of the size and composition of governing bodies, with no clear need established for these proposals during the consultation for the Bill.

The extension of Ministerial powers implied by the draft Bill has the potential to constrain the entrepreneurialism of Universities by depriving them of their Charitable status, and, potentially, by promoting their reclassification by the Office of National Statistics (ONS) as ‘central government’.
The particular circumstances under which the above could arise has been set out clearly in the Universities Scotland submission to the Finance Committee of the Scottish Parliament, and separately by Queen Margaret University in its submission.

I am fearful that any such development would be highly detrimental to the financial health and to the entrepreneurial capacity of Scottish Universities, depriving them of their ability to retain annual operating surpluses, restricting their ability to borrow funds, and putting at risk their charitable status and accompanying tax status.

I would resist strongly any legislation that has the potential to put Scotland's universities at a competitive disadvantage when compared with those in the Rest of the UK.

Overall, the proposals set out in the Bill have the potential to create significant risks to effective governance within Scottish universities, and to their financial health and entrepreneurial capacity. I am not persuaded that the case has been made in terms of any value that would be added to current HE governance arrangements.

Sir Tom Farmer CVO CBE KCSG DL, Chancellor of Queen Margaret University

Thursday 3rd September, 2015.