Higher Education Governance (Scotland) Bill – Response to Education and Culture Committee

The Importance of independent governance in maximising the value of public sector investment

The principle of a responsible and autonomous education sector

The University of Strathclyde fully embraces transparent and independent governance of the sector as a positive driving force behind the University’s contribution to Scotland. The existing requirement that the majority of governors be independent of both the University community and of government delivers independent scrutiny, external challenge and protects academic freedom. We view this independence from government as a fundamental part of a university’s role within a modern democracy – the existence of controls to ensure the delivery of appropriate outcomes in return for public investment is balanced with responsible autonomy which allows universities the potential to undertake areas of research and teaching which represent the views, interests and intellectual breadth of society as a whole, and not only those of the government of the day.

The benefits responsible autonomy delivers for Strathclyde and for Scotland

This defining autonomy of our governing body and the associated freedom to operate has been central to the identification, pursuit and achievement of a number of significant recent developments at Strathclyde. With the freedom to pursue opportunities, in line with our strengths in teaching and research, Strathclyde is working in partnership with others to deliver educational, economic and employment benefits to Scotland. These include:

- The development of the University’s Technology and Innovation Centre which is transforming the way academics, business, industry and the public sector work in partnership. Bringing together researchers, businesses and the public sector, the work undertaken in TIC is focused on solutions to key challenges in areas of economic importance including energy, health, future cities and manufacturing – a key part of the University’s projected total economic impact of £1.4bn over the coming decade.
- Working with companies including GSK, Rolls Royce, Boeing and their suppliers in our centres of manufacturing excellence which, as part of a wider drive to increase our engagement with business and industry, have seen private sector investment in R&D at Strathclyde grow to over £10m per annum.
- Securing a greater role for Scotland and Scotland’s businesses in the National Physical Laboratory (NPL) through our role as a Strategic Partner of NPL which include advanced plans to bring a Scottish hub of the UK’s internationally renowned laboratory for measurement science to Glasgow with direct benefits to business sectors as diverse as healthcare, aerospace, manufacturing and energy.
- The ongoing internationalisation of the University which ensures our students are educated in an environment which prepares them for participation in the global economy, brings significant inward investment to Scotland and sows the seeds of Scotland’s future connections around the world.
- Combining excellence with equity and equality through taking in the largest cohort of SIMD 0-40 students of the Scottish research intensive institutions, working in partnership with industry and colleges to deliver the Engineering Academy - which simultaneously addresses industry skills needs and delivers a dedicated learning pathway from colleges to study at Strathclyde - and working in partnership with government to improve outcomes through the Centre for Looked After Children in Scotland (CELSIS).

In line with our commitment to independent challenge and scrutiny in pursuit of excellence we have embraced the Scottish Code of Good Higher Education Governance developed under the leadership of Strathclyde Chancellor Lord Smith of Kelvin. This has deepened and extended the participation of our staff and students in both our academic
and corporate governance and further extended the transparency of decision-making by the University’s governing body.

**Protecting current freedom to operate with responsible autonomy and independent scrutiny**

In common with other universities, Strathclyde recognises the responsibilities and expectations associated with the delivery of outcomes in return for public funds. Indeed, we go beyond this and are committed as a fundamental part of our mission to contribute to the development of society and the economy. As such, the Outcome Agreement process has assisted us in articulating our aspirations and contributions to the Scottish Funding Council, but as the bulleted list above makes clear, it is partnership work that defines our contribution to Scotland and is central to leveraging third party income to maximise the value of public investment in universities. It is the Bill’s potential impact on our ability to continue to undertake partnership work that our central to our concerns with the Bill as currently drafted.

**Potential ONS reclassification as public bodies**

Of greatest concern is the possibility that the Bill may lead the Office for National Statistics (ONS) to classify higher education institutions as public sector bodies. We are aware that the ONS plans to review the classification of higher education institutions in due course. In light of this we are concerned that the increased ministerial control outlined in the draft bill may lead to Scottish universities losing their independent status, a core component of academic freedom, through the bill’s proposals to give ministers the power to:

- Determine the mechanism for the selection of chairs of governing bodies
- Decide the length of office of chairs of governing bodies
- Set the remuneration of chairs of governing bodies
- Control the composition of institutions’ governing bodies
- Dictate the detailed internal structure of institutions, most notably the Senate or ‘academic board’

Such a reclassification seems possible with these proposals adding to the existing powers exercised through funding, the Financial Memorandum and the Outcome Agreement process. This is of deep concern to the University as it would severely curtail our ability to operate in partnership with others in order to deliver benefit for Scotland and maximise the value of public investment. In particular it would severely restrict or curtail our ability to:

- Enter into partnership and joint ventures with businesses and charities in order to undertake R&D and promote innovation.
- Continue our investment in campus modernisation since we would be unable to retain surpluses generated from non-government funded activities for this purpose, would be unlikely to receive the levels of philanthropic support we enjoy as a wholly independent charity and our capacity to borrow money would be restricted.
- Compete effectively with universities based elsewhere in the UK
- Compare financial performance with universities elsewhere in the UK, with potential implications for participation in/comparability of performance in the Research Excellence Framework, due to the requirement to follow a different accounting code and financial year pattern

With such restrictions in place it is difficult to determine how the partnership work outlined at the opening of this submission or the modernisation of our campus could be taken forward effectively.

**Charitable status**

Related to the potential reclassification of universities as public bodies are a range of issues arising from the Bill’s potential impact on our status as a charitable body. Charity law makes clear that charities are bodies independent of government and will fail the charity test if their constitution expressly permits Scottish Ministers to direct or otherwise control their activities. The Bill gives Ministers significantly more power over institutions than the original proposals, including significant control over the governing body, its chair and the academic board outlined in the previous section. Whilst it is unclear whether the provision in the draft Bill would amount to sufficient control to call
into questions universities’ charitable status, the manner in which these powers could be used by future ministers may yet call into question their charitable status. Were this status to be lost, it would lead to a range of impacts including:

- Loss of 80% relief on non-domestic rates (worth £2.6m in the most recent year)
- A requirement to pay corporation tax on any surplus at a rate of 20% thereby significantly reducing our ability to invest in our campus and infrastructure
- Loss or severe restriction of philanthropic income (currently ~£1.5M per annum) as donors are unlikely to risk their donations being recovered into central government funds at the financial year end
- Loss of R&D income from charities

**Additional specific considerations**

In addition to these fundamental concerns about the role independent universities play in society and the potential for the Bill to impact upon these, we have a number of more detailed concerns, which are summarised as follows:

- It is important for the preservation of academic freedom that universities’ governance arrangements retain the current balance in which universities are held to account for their delivery in return for public funds, but remain at arms-length from government with SFC providing oversight and scrutiny of public funds. In light of the significant shifts toward direct ministerial control contained in the Bill, this is put at risk.
- The Bill will change the University Court’s current position as the ultimate constituency for the selection or election of its Convenor and Members. This is central to ensuring the governing body’s confidence in the chair and to ensure both the Convenor and Members have the skills and experience and ability to provide effective and appropriate challenge to the University’s executive. This would be at risk were the chairperson to be elected by a constituency other than the governing body itself as proposed in the Bill. Mechanisms to ensure appropriate and representative appointments already exist including well established open and transparent nominations processes, with fixed terms of office and the ability for the Court to remove the Convenor and to determine any remuneration for its members.
- The impact of the proposals to define additional Court members may have on our ability to effectively manage the representation of both genders and other protected characteristics – whilst we have 50-50 female-male representation amongst our appointed lay members those posts already filled by elected nominees (senators, students) and external bodies (local council, graduates association) are overwhelmingly occupied by men.
- The Bill’s proposal of creating positions reserved for trade union representatives will have the effect of disenfranchising the majority of staff who are not trade union members, particularly administrative and operational staff. This will have the effect of reducing democratic engagement of staff with the University’s governing body rather than enhancing it. Trade unions’ participation in our existing electoral processes is welcomed, but in the most recent staff election to Court (2015) a trade union representative stood, but was not the electorate’s chosen nomination.
- Related to this, the Governing instruments of the University make clear that all members of Court members are expected to make collective decisions in the interest of the University as a whole and not act as representatives of any constituency which may elect them (the latter appears to be the assumption in the Bill). Given the specific mandates Union reps hold to act for their members it is unclear how potential conflicts of interest could be overcome.
- The Bill provides an unacceptable level of power to ministers in Sections 8 and Section 20 which empower ministers to undertake further reform of the sector or to change the process of appointment without parliamentary scrutiny, an approach which was not made plain in the government’s initial consultation.