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

The University of Dundee has a strong record of adhering to recognised standards of governance as set out by the CUC Code on Higher Education Governance, the Scottish Code of Good HE Governance (‘the Scottish Code’) and other guidance on best practice. For instance, the University regularly reviews the effectiveness of Court, most recently in 2014, has multiple staff members elected to the Court, has provision for two elected student members and has an open process for the appointment of the Chair of Court and Principal which mandates the inclusion of staff and student members on appointment panels.

The University accepts that challenges remain in achieving a more diverse membership of Courts but it must be recognised that this is a common challenge across many boards in the private and public sector. Importantly, the University is making progress on this issue consistent with the principles set out in the Scottish Code which has resulted in a more diverse membership after recent appointments.

More generally, the Bill seeks to impose uniformity in relation to the membership of the sector’s governing bodies. This approach does not take into account the diversity of the Scottish higher education sector and consequently fails to recognise that similarly diverse existing governance arrangements are appropriate and to be expected.

2(a) The extent to which the Bill will improve higher education governance, particularly in the areas above

The University does not believe that Bill will ultimately improve higher education governance.

It is an established principle of good governance that members of the governing body act in the best interest of the institution as a whole, and therefore they do not act as if they are mandated by or representatives of other bodies but as individuals working to a common purpose in support of the strategic objectives and best interests of the institution.

In terms of embedding equality, the Scottish Code requires that institutions’ governing bodies provide a public statement setting out their strategy and aims in relation to ensuring equality and diversity in their membership. Given that as a result of powers contained in the 2013 Act, the Scottish Funding Council now requires institutions to comply with the Code, such statements must be provided and will be open to public scrutiny. The University believes that at the present time, there is no need to legislate on the matter of equality on governing bodies until such time as it is clear that the introduction of the Scottish Code has not achieved appropriate levels of progress in this area.
2(b) The extent to which the Bill may alter the higher education sector’s current level of autonomy

The University is deeply concerned that the Bill and associated powers for Ministers will adversely affect institutional autonomy.

The University is concerned that the pre-legislative consultation did not include reference to new powers for government ministers to proscribe the composition of governing bodies. As a point of principle, the use of subordinate legislation or Ministerial directions to decide what categories of person should be on governing bodies, how they should be appointed and their conditions of service raises fundamental issues about institutional autonomy.

Furthermore, the University is concerned that the use of subordinate legislation by Ministers may lead the Office for National Statistics to classify higher education institutions as public sector bodies, a situation which has already occurred in the college sector as a result of greater ministerial influence permitted under the Post 16 Education Act. The reclassification of the University as a public sector body would have a profound adverse impact by significantly restricting the financial freedom of the institution and placing at risk the University’s relationships with philanthropic organisations and our ability to have an impact, through knowledge exchange and collaboration, on innovative business growth in Scotland.

Furthermore if the University was reclassified as a public sector body the institution would not meet the Scottish charity test as defined in in the Charities and Trustee Investment (Scotland) Act 2005. At a financial level, charitable status is essential to institutions’ solvency and would further limit the University’s capacity to access philanthropic funding as donors are highly unlikely to wish to support institutions who are no longer charities.

2(c) The extent to which the Bill may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector

Since 2013 there have been clear lines of accountability with regards to higher education governance, with the Scottish Funding Council responsible for ensuring that the higher education sector maintains acceptable standards of governance, as evidenced by compliance with the 2013 Scottish Code. The long-standing existence of the Financial Memorandum between institutions and the Funding Council and the more recent development of Outcome Agreements already provide clear and appropriate levels of accountability between the Scottish Government, Funding Council and institutions for the public money universities receive.

The University believes that the measures contained within the Bill will fundamentally alter these lines of accountability and will see the sector become directly accountable to the Scottish government.

As noted above, the University is concerned that the Bill will affect its position as an independent organisation and could ultimately result in the university being considered as a public body.

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

The University believes that there is no need for any of the legislative provisions of the Bill and is concerned that a number of the legislative measures will serve to weaken, rather than strengthen
current governance arrangements. Indeed, it is clear that certain of the proposals in the Bill run counter to well-established principles of what constitutes best practice in corporate governance. We would be more content to allow the sector to engage with the government on non-legislative methods of ensuring good governance across the sector. Examples of such measures would be institutional reviews of effectiveness and continued implementation of the 2013 Scottish Code.

4. Specific proposals:

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

The University is concerned that the process of appointing the Chair of Court is to be determined by Scottish Ministers, as this introduces the potential for political interference in the operation of our universities.

The University of Dundee does not support the option to open up the shortlist of candidates for the chair to an election process. The University believes that the most effective way of ensuring an appropriately skilled chair is appointed is to subject all candidates (both internal and external) to a rigorous application and selection process, involving external advertisement and interview before an appropriately balanced panel of the Court, which includes staff and student members. To append an election to this process runs the risk of undermining the rigour of that process as well as potentially turning the appointment of one of the most important roles in a University into a popularity contest or one based on personal agendas, campaigns or mandates. The University is concerned that it may very well also deter potential, highly qualified candidates from applying.

To require HEIs to include various persons within the membership of their governing bodies

The University would urge caution in the use of the word ‘representative’. The Scottish Code recognises the need for governing bodies to include staff, students and graduates as well as lay members in the membership of governing bodies. The University of Dundee has provision for two student members, seven elected staff members and two graduates within the formal composition of its Court. In addition a further three graduates of the University are lay members of the Court. In terms of staff membership, the Senate elects four assessors from amongst its number, the Academic Council (which comprises all academic and administrative staff) elects two assessors, and the remaining staff member is elected by the clerical, manual and technical staff. The University considers this to be a significant and appropriate level of staff membership on Court.

The University does not support the direct nomination of members of Court by campus unions. It should be noted that two of the current members on Court are each active members of their respective unions, one academic and one non-academic, and indeed there has been a long history of candidates with union backgrounds standing for, and being elected to, the Court. Nevertheless, the University believes that staff should be able to determine for themselves who from the staff they wish to be their assessors on the governing body, rather than a ‘ring-fenced’ nomination being made by the relevant trades unions. The proposal appears to the University to give preferential treatment to particular sections of staff within the institution and it would also appear to vitiate the democratic principles that the consultation document elsewhere seeks to espouse.
To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons.

The University believes this proposal further increases the level of external interference in the operations of Scotland’s universities and is unnecessary. However, the University has at no point had a Senate membership that exceeded 120 people and has recently reduced the membership of its Senate to a maximum of 50 individuals.

5. Academic freedom

It is unclear to us that the proposals in relation to academic freedom do anything to strengthen or enhance those protections within the law that are currently in operation. Since there is already a legal duty on institutions as well as one often embedded in their governing instruments, it is unclear what additionality is achieved by requiring that a statement on academic freedom should be a condition of grant. Many chartered universities have a statement on academic freedom in their statutes or ordinances, indeed the University of Dundee has even approved the text of an ordinance which sets out a procedure for investigating claims from members of staff who believe their academic freedom has been infringed. The University believes that the right to ‘explore new ideas’ is implicit in the current wording of its own provisions, but has no strong objection to introducing enhanced wording.

One aspect, however, which must be borne in mind is that institutions must be free to determine their own academic strategies, which may also include decisions on the fields of research or teaching to pursue. Any statement on academic freedom should be so worded to allow institutions to manage staff and their performance in line with the strategic objectives of the University.

Institutions should not be compelled to provide resource to support all and any research carried out by their staff; the crucial point is that institutions should not be able to curtail research or discriminate against staff merely on the basis that the institution does not like the outcomes of the research or they are controversial.