Higher Education Governance (Scotland) Bill: Evidence from the University of Edinburgh to the Education and Culture Committee

Summary

The University of Edinburgh has deep concerns about the scope and provisions of the Higher Education Governance (Scotland) Bill.

We support the aim of the Scottish Government to create an inclusive, strong and sustainable economy and we are committed to ensuring that there is transparent and inclusive participation in the governance of the University.

We are very concerned, however, that the proposed legislation opens up the real potential for a reduction in the ability of Universities to ensure academic freedom and act as a source of independent thinking.

We are dismayed that the proposed legislation could weaken the inclusiveness and effectiveness of our existing governance arrangements which ensure both a strong voice for staff and students and external, independent expertise in governing what is a large and complex organisation.

We do not think that there has been any compelling explanation of what the problem is that needs to be fixed here.

Overall there appears to have been no obvious recognition of the very different size and shape of Universities within Scotland. The proposed uniform (apparently arbitrary) upper limit on Senate membership is just one example of an apparent lack of recognition of the very different sizes of higher education institutions in Scotland.

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

The new Scottish Code of Good HE Governance has only recently been introduced (in July 2013) and we have reviewed and refined our approach to ensure full compliance.

Our system of governance is working well, providing appropriate oversight and assurance for a University which is currently 17th in the world; returns over £9 to the Scottish economy for every £1 of public funding invested; has a strong track record of widening participation (with over half of our Scottish students coming from widening participation backgrounds and offering a wide range of open, free online courses); and is a committed fair employer (we are the first University in Scotland to sign up to the Scottish Government’s Business Pledge). We pay scrupulous attention to continuing to ensure robust, open and transparent governance of our institution. We recognise our accountabilities to our wide range of stakeholders, within and beyond the University community.

We do not think that there has been any evidenced argument of the benefit to Scotland of the further changes proposed in this draft legislation. The new Scottish Code of Good HE Governance takes an appropriate principles-based approach and all
higher education institutions have an obligation to either comply or explain. This seems much more appropriate than the prescriptive ‘one-size fits all’ approach proposed in the Bill, given the wide diversity in size and shape of higher education institutions in Scotland.

**Question 2 – The extent to which the Bill (a) will improve higher education governance, particularly in the areas above; (b) may alter the higher education sector’s current level of autonomy; (c) may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector.**

We think that the Bill would weaken higher education governance. We are particularly concerned that it would reduce Universities’ autonomy and ability to ensure academic freedom and act as a source of independent thinking.

There has been a clear and well established understanding over many years in Scotland - and more broadly in the UK - on how best to balance the need for Universities to be accountable for the public resources that they receive while ensuring that they should be able to offer analysis and comment without fear or favour regardless of the political make-up of the Government of the day. The proposed new legislation breaks that convention, giving future Governments significant potential influence and control, without the safeguard of the same level of parliamentary scrutiny and public consultation. This is not only of deep concern in itself, but also poses a threat to Universities’ classification by the Office for National Statistics which would have severe adverse consequences on our ability to contribute to Scotland’s economy and society and on our wider global mission.

The extent of the proposed powers to be exercised through secondary legislation are, in our opinion, constitutionally inappropriate and deeply concerning in this regard. Sections 1, 8, 13 and 20 give wide powers to Ministers to enable future changes through secondary legislation which could significantly shift the balance, reducing the autonomy and ability of higher education institutions to ensure academic freedom. Section 14 provides Scottish Ministers with the broad power when making regulations ‘to make different provision for different purposes’. The Bill gives Ministers potentially very open ended powers that should properly be exercised by Parliament through primary legislation.

The Robbins report (Cmd 2154), made a thorough examination of the importance of ensuring appropriate institutional autonomy to guarantee academic autonomy and noted that: ‘a system that aims at the maximum of independence compatible with the necessary degree of public control is a good in itself, as reflecting the ultimate values of a free society...we do not regard such freedom as a privilege but rather as a necessary condition for the proper discharge of the higher academic functions’. The UK Higher Education sector is seen as a role model in this regard by its European counterparts.

The draft Bill is already being seen by Higher Education commentators as leading to reduced autonomy for Scottish Universities. This threatens our ability to attract and retain world class talent. The individual’s academic freedom depends not only upon specific recognition of his or her intellectual liberty, but also upon the collective and institutional independence of the institution within which that individual freedom is protected and nourished. This Bill threatens the ability of higher education institutions to provide that environment in Scotland. We are competing in an increasingly competitive environment internationally, where the gap is increasing between the truly
world-leading Universities and the rest. Our ability to build on our strong track record, through international partnerships and collaborations, will be hampered by the uncertainty generated by this draft legislation around academic freedom, reduction in institutional autonomy and limited parliamentary scrutiny over enhanced Ministerial powers.

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

We do not think that the case has been made for the proposed legislative measures in the Bill (or any further legislative measures) at a time when important non-legislative measures – the new Scottish Code of Good HE Governance – have only recently been developed and implemented; and our existing governance is providing good, robust and open assurance and accountability.

Examples of the way in which we account for our stewardship of resources and set out our strategic direction are included in our substantial annual report and accounts (which includes a full corporate governance statement, risk assessment and social responsibility and sustainability report); in our annual review (which highlights key impacts and achievements); and in our Court webpages which include Court papers and minutes open to all.

**Question 4 – Please provide your views on the merits of each of the specific proposals on appointment of chair; inclusion of various persons within the membership of governing bodies; and requirements that academic boards should be comprised of no more than 120 people and include various persons.**

We do not agree with these proposals which do not appear to reflect an understanding of the extent of transparency and inclusivity that exists within our current governance arrangements or the diversity of size and shape of higher education institutions within Scotland.

Our Court already has representatives from our staff, students, alumni and the city as well as external independent members who bring a breadth and balance of skills and are appointed through an open and transparent process.

The proposal for a single elected Chair and to strip the Rector from long established rights to preside over Court does not recognise the fact that the University of Edinburgh has a different model which ensures an effective voice for staff and students in the governance of our institution.

Our dual model of leadership combines a Rector, directly elected by the students and staff of the University, who presides over meetings of Court; and a Vice-Convener, whose role is similar to that of chair of institution, appointed by Court through an open and transparent recruitment process. This dual model works well for us, ensuring both a strong voice for staff and students and external, independent expertise in governing a large and complex organisation. The proposals would require institutions such as ours to run two parallel electoral processes for these roles – reducing our ability to be able to access (through a full, transparent appointment process) the depth of skills and experience that we need for the governance of a global university of our size and breadth.
The proposals appear to significantly underestimate the onerous nature of these roles. The University of Edinburgh’s dual leadership model requires some 8 hours/week, including weekend and evening work, for the Vice-Convener in addition to the time spent by the Rector in presiding at full Court meetings, chairing General Council and holding surgeries and public meetings for individual students. Neither the Rector nor the Vice-Convener claim remuneration for the time spent fulfilling these roles. We cannot understand the basis for the time estimate in the Financial Memorandum of 6 days/year which appears to us to display a real lack of understanding of the depth and breadth of the commitments associated with this role to ensure good and robust governance.

Our large and inclusive Senate is managed effectively through a tried and tested approach which includes committee structures focusing on key aspects of Senate’s work. This ensures our Senate can both provide a forum for wide engagement with our professorial and student body while ensuring effective decision-making. We are therefore concerned to see the proposed (apparently arbitrary) upper limit of 120 on the numbers of our colleagues who would be able to participate in future meetings of our Senate. This would strip hundreds of our professors of their existing rights as members of our Senate to no obvious benefit to our institution.

In each of the above provisions, the case has not been made that one size fits all. Our institution is a large one (with 13,000 staff and 35,000 students and includes individual Schools which are larger than some whole higher education institutions in Scotland). We have developed tried and tested mechanisms for ensuring appropriate voice and engagement for an institution of our size and history and accounting for its activities and stewardship of resources.

These proposed legislative provisions break with the understanding established in the Universities (Scotland) Acts to date that has respected the diversity of Universities in Scotland. The Bill represents an unwarranted move towards standardisation which does not properly take account of the appropriate diversity of size, shape and focus that exists within the sector.

**Question 5-7: Academic Freedom – please provide your views on the likely practical effect of these provisions; any significant constraints; and whether the situations in which relevant persons can exercise their academic freedom are clear.**

We find it perplexing that, while the Bill purports to strengthen academic freedom through making explicit the freedom to develop and advance new ideas and innovative proposals, it poses a serious potential threat to higher education institutions’ very ability to protect such freedoms. As discussed in the answer to question 2, the scope of the proposed secondary legislation is particularly troubling in this regard. The specific proposal to extend the definition of academic freedom is, in our view, unnecessary and unlikely to strengthen further what is already a core value for the University of Edinburgh.

**Conclusion**

We are committed to making a significant, sustainable and socially responsible contribution to Scotland, the UK and the world, promoting health, economic growth and cultural wellbeing. We are very concerned that the proposed provisions in the Bill would weaken rather than strengthen our ability to deliver on this in an increasingly competitive international environment.