Submission from Professor Willy Maley

Dear Committee

I wish to comment specifically on the matter of Academic Boards.

It would indeed be unfortunate were the Charities and Trustee Investment (Scotland) Act 2005 to prove an impediment to democratic governance of our universities, some of which were founded while Scotland was an independent nation. I looked through the Charities and Trustee Investment (Scotland) Act 2005 – all 80 pages of it – and could not find the relevant phrase about court members being “collectively or corporately responsible for all the activities of the charity”.

I then checked against the Policy Memorandum and realised that this phrase actually comes from the Paragraph 3.9 of “Guidance for Charity Trustees” provided by the Office of the Scottish Charity Register (OSCR). The 16 Scottish university charities are all quite distinct as organisations from the other 23,935 charities registered in Scotland. Looking through that register I noted that of all the sixteen universities listed only Glasgow and the University of the West of Scotland have “Court” in their registered titles. Charities are very varied in their income and outcomes. Who would want to compare the £780,630,000 income of the University of Edinburgh with the £2 income of the Perth Academy War Memorial Bursary Trust? Are we really comparing like with like here? Our universities, ancient and modern, deserve better than this.

This Bill is really all about Higher Education Governance, and I would hope that better counsel could prevail in this instance. At the very least I would expect a reference to an Act in a Scottish Government document to be followed by a direct quotation from that Act. For example, I note that on p. 38 of the actual Act itself, under the heading “Charity trustees: general duties”, the law states that:

“(1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—
(a) seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
(b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
(c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee –
(i) put the interests of the charity before those of the other person”.

These strike me as sensible provisions. In this case “the interests of the charity” are the interests of the University, and since the business of the University is research and teaching it is essential that academic input is at least held in the highest regard.

If it does transpire that the provisions of the Charities and Trustee Investment (Scotland) Act 2005 do mitigate against the academic senate acting as final arbiter on all academic matters then the Act itself must be cited in support of such a conclusion. My own judgment – shared by many academics – is that Senate, the
academic body of the university is our parliament, our Holyrood, and should have the final say on all academic matters: the core business of the university, namely research and teaching.

Universities are not merely private institutions. Nor should their charitable status conceal the fact that they are largely publicly funded, and an integral part of the public sector. Indeed our Universities are civic institutions that are vital components of our public sphere and of a future democratic Scotland. From the outset of this consultation process it has been clear from statements by Professor Ferdinand von Prondzynski and former Education Secretary Mike Russell that universities, since they receive public funding, cannot behave like private companies. I sincerely hope that this latest loophole can be closed and that we can have the accountability, clarity and transparency in university governance that the von Prondzynski review promised.

Professor Willy Maley