Dear Sir or Madam

Higher Education Governance (Scotland) Bill

I write on behalf of the Business Committee of the General Council of the University of St Andrews.

The founding mission of the General Council is to consider any matter affecting the well-being of the University and make representations on it. The General Council is independent of the executive arm of the University. It presently has over 40,000 members, some 98 per cent of them graduates of the University, who automatically became members on graduation. The Business Committee, which is largely elected by General Council, organises General Council’s business.

Following the last General Council meeting in June, over 200 members have recently written to the Education and Culture Committee, communicating their opposition to the above Bill. This response is an unprecedented expression of the views of General Council members and demonstrates the strength of their feeling on this matter.

Now, we, as the Business Committee, present our own comments on the Bill.

Preface

Although the Bill covers all Higher Education Institutions (HEIs) and not just universities, the comments we make in this letter are mostly to do with universities – universities in general and our University of St Andrews in particular. Much of the terminology we use is therefore of our university, rather than the more generic language of the HEIs, as contained in the Bill.

1. There is no need for this Bill
As the Royal Society of Edinburgh cogently reported in the consultation that preceded the Bill, no compelling case has been made for new legislation. Universities are already signed up to the Scottish Code of Higher Education Governance, which came into being in 2013 and which is due to be reviewed in 2016. Universities’ funding from the Scottish Funding Council depends on adherence to the Code, which means that universities are well motivated to comply with it. An interim review in 2014 found that good progress was being made in achieving compliance.

- It seems somewhat perverse to replace the Code, which is being followed voluntarily, by an Act, which will be imposed on unwilling universities. The stated aims of the Code (transparency, accountability and diversity) are virtually identical to those of the Bill.

2. **The Bill will reduce Universities’ autonomy and individuality**

- Provisions to prescribe the composition of university courts and academic senates and the method of appointing chairs of courts will unnecessarily fetter freedom of action and will prevent universities from pursuing their individual goals. The Bill explicitly states that one of its aims is to embed a level of consistency across the institutions”. The success of Scottish universities, not least St Andrews, in punching well above their weight in a global marketplace is due to their ability to run their own affairs and an agility in developing their own unique character and strategies. Expecting all universities (let alone all higher education institutes) to conform to the same model will homogenise (and therefore reduce) their market appeal and stifle enterprise.

3. **The quality of governance will suffer**

- The Bill is an enabling bill, allowing future changes to universities’ governance to be made by Government regulation, rather than subjecting them to the scrutiny and safeguards involved in an Act of Parliament. This Bill, which is going through a parliamentary process, is, in our view, significantly flawed. Regulations, which will not undergo the same level of open scrutiny, may therefore be expected to contain even more deficiencies.

4. **Academic freedom is at risk from Government involvement**

- The Bill’s new definition of academic freedom is not fully explained. In the change from “must have regard to the desirability of ensuring academic freedom of relevant persons” to “must aim to uphold the academic freedom of all relevant persons”, the reason for the apparent increased obligation on a university is far from clear.
- Academic freedom is a cardinal principle of all universities. Without it, the selection on merit of staff and students and the quality of teaching, research and degrees are all suspect. Through its reduction of university autonomy and an increase in government control, this Bill is bound to have some effect in restricting academic freedom. If a future government were to be tempted to introduce further regulations (which this Bill makes possible), for whatever purpose, academic freedom could be at even greater risk.

5. **University courts will operate less, not more, effectively**
- The proposed competitive election of chairs of court is likely to lead to divisions among court members and a diminution in respect for the chair. This could be made worse if the chair is imposed on the court by the vote of a constituency that is wholly or partly outwith the membership of the court.
- A university is a registered charity and court members are trustees. By law, trustees of a charity must act in the best interests of the charity. The Bill calls for two court members to be nominated from academic and support staff members by trades unions representing those staff. Since the accepted function of trades unions is to act for their members, their representatives on court may find themselves with a conflict of interests.
- In some universities, eg St Andrews, only a minority of staff belong to unions. To reserve two staff positions on Court for trades unions would therefore show bias towards trades unions, and would be unrepresentative of the will of the staff.

6. The future roles of Chancellor’s Assessor and Rector are uncertain

- The Chancellor’s Assessor enables the Chancellor to be kept well informed of the University’s affairs, thus enabling the Chancellor to carry out his or her duties (which include presiding over General Council meetings). The Assessor is appointed by the Chancellor and sits on Court. The Bill makes no mention of the role of Chancellor’s Assessor and this omission leaves the future of the role open to speculation.
- The role of Rector in its current form has existed in the four ancient universities for over 150 years and in Dundee for nearly 50 years. In St Andrews, the Rector presides over Court, but devolves the management of Court business to the Senior Governor. The Senior Governor also chairs Court when the Rector is not present. The Senior Governor, who is appointed by Court members, also fulfils the other duties expected of the chair of a modern institution. In its provisions concerning the role of chair of the governing body, the Bill makes no specific mention of the Rector or Senior Governor. It is unclear whether the Bill adequately recognises their distinctive roles.
- The Rector, who is elected by the student body, also plays an important part as an advocate of student interests. In St Andrews, over recent years, Rectors have brought fresh insights to Court and most have accomplished valuable initiatives. It is feared that, by removing the Rector’s right to preside over Court, an unwelcome consequence of the Bill would be to reduce the Rector’s role to a purely ceremonial one.

7. The consequential costs of the Bill have been substantially underestimated

- The Financial Memorandum suggests that any additional costs consequent on the Bill are those borne by HEIs in appointing and remunerating chairs of their governing bodies. These are relatively trivial: £8,000 per appointment and £3,000 per annum in remuneration (for 6 days’ work).
- The chair of any reputable institution is involved in far more than simply attending the meetings of the governing body. Best governance practice recommends that the roles of chair and chief executive should not be held by the same person. In St Andrews, the Senior Governor presides over meetings of Court in the Rector’s absence and, just as importantly, undertakes all the other responsibilities expected of a chair. This involves, for example,
ensuring that Court fulfils its objectives in a proper and effective manner, reviewing the performance of the Principal and convening various committees. The time requirement is far greater than 6 days a year.

- The Financial Memorandum ignores the heavy costs associated with changing ordinances through the Privy Council to accommodate the Bill’s provisions. In St Andrews, this is expected to take about two years and involve significant internal and external resources.

- There are grave concerns about the adverse impact that this Bill and, in particular, subsequent additional regulations could make on a university’s ability to raise funds. The increased Ministerial control may result in the Office of National Statistics (ONS) re-classifying universities as central government bodies and rendering them ineligible for some research grants and some funding for entrepreneurial activities. If charitable status were also to be lost, further damage would be done to the value of grants and donations. The Bill contains no safeguards against future regulations causing such changes in ONS classification.

- Increased government intervention and reduced university autonomy is likely to harm global competitiveness and relationships with funders. This is especially important in St Andrews, where the majority of funding comes from non-Government sources.

- There is a further risk that, if a university’s freedom is impaired, its academic reputation will suffer and its ability to return economic value will be reduced. St Andrews delivers £12 in benefit for every £1 it receives in government funding.

**Conclusion**

The Government has stated that the aim of the Bill is to promote transparency, accountability and inclusivity. We subscribe to these same aims, but this Bill will do little to advance them. Indeed, overall, we believe it will do harm to Scotland’s universities.

- Their autonomy will be weakened, they will lose their diversity and they may become vulnerable to political influence.
- Their academic reputation will suffer and, with it, their ability in a global market to attract the best students and staff and necessary funding.
- This will damage university finances and their contribution to local and national economies.

Furthermore, with the Scottish Code of Higher Education Governance proving successful, the Bill is unnecessary. **It should be withdrawn.**

Yours faithfully

D Graham Wynd
Convener