Finance Committee
Higher Education (Governance) Scotland Bill
Submission from the Committee of Scottish Chairs

Introductory Comments
We are writing as the Chairs of the governing bodies of Scotland's universities. We think it essential that the Finance Committee is made aware of significant concerns we have regarding aspects of the Higher Education Governance Bill.

The Governance Bill proposes an increase in the level of control Scottish Ministers will exercise over Scotland's universities. As a general approach, we think this is unwise, and that it will constrain the dynamism and ambition that have made Scotland's universities one of the nation's great successes. However, the specific issue we wish to raise with the Finance Committee is the prospect that increased Ministerial control will lead to the universities being reclassified by the Office of National Statistics (ONS) as 'Central Government'. Should this happen, it would have dramatic adverse consequences. It would:

- prevent universities from retaining annual operating surpluses;
- place a severe restriction on their ability to borrow funds;
- reduce their ability to enter into commercial partnerships; and
- put at risk their status as independent charitable bodies, with negative tax consequences and the likelihood of reduced philanthropic support.

Taken together, these developments would:

- remove the incentive for universities to engage in entrepreneurial activity;
- put Scotland's universities at a competitive disadvantage when compared with those in the Rest of the UK; and
- have a catastrophic impact on universities' infrastructure development plans, which are principally funded by annual revenue surpluses, and which rely also on borrowing and on philanthropic support.

The Government has provided no explanation of why it considers that additional Ministerial powers are desirable. Nor have these proposals been the subject of any public discussion. They were not included in the Consultation on this Bill and indeed they contradict the statement made in that consultation by the Cabinet Secretary for Education, that 'for universities to be successful ... they need to be autonomous institutions', and that 'The Scottish Government does not want to increase Ministerial control over universities.'
We have set out our concerns in more detail below, responding to the questions asked in the Committee's Call for Evidence.

Consultation

1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

3. Did you have sufficient time to contribute to the consultation exercise?

All Scottish universities took part in the consultation exercise, responding to the issues the Government raised through its consultation paper. However, the universities have had no opportunity to date to comment on important matters that were not included in the consultation but which now form part of the Bill.

The detailed assumptions contained in the financial memorandum were not the subject of consultation.

More significantly, the Bill proposes that government Ministers take new powers on themselves covering fundamental aspects of university governance. These could have a serious detrimental impact on University finances. They did not form part of the consultation: indeed the proposals are in direct contradiction to statements made in the Ministerial Foreword to the consultation paper.

The areas in which increased Ministerial powers are proposed are:

- deciding on the process for appointing Chairs of University governing bodies, on the remuneration to be paid to Chairs and on their terms of office;
- deciding on the composition of universities' governing bodies; and
- deciding on the composition of the internal academic boards that have responsibilities relating to universities' curriculum and academic standards.

The significance of the proposed new Ministerial powers is that they may lead to the Office of National Statistics reclassifying Scotland's universities from 'Non-profit Institutions Serving Households' to 'Central Government', a move that would have a very severe detrimental impact on the financial health of the universities, and on their contribution to the nation's economic and social wellbeing.

Costs

4. If the Bill has any financial implications for your organisation, do you believe they have been accurately reflected in the FM. If not, please provide details?

As stated above, the most significant financial implication will arise if the Office of National Statistics (ONS) determines that the changes proposed by the Bill - when added to the requirements placed on Scottish universities by Outcome Agreements and
by the Post-16 Education Act - should result in their being reclassified as 'Central Government'. ONS recently reclassified Scotland's Further Education Colleges as a result of high levels of Ministerial influence. Just recently, it has made a similar decision in relation to the Aberdeen By-pass, and it is possible it will now reclassify Housing Associations in England as a result of increased Ministerial direction. A review of universities' classification is planned by the ONS, which will undoubtedly consider closely the terms of the Higher Education Governance Bill.

Reclassification has proved difficult for Scotland's Further Education Colleges. However, the impact would be a great deal more severe for the university sector, which has a much higher level of entrepreneurial activity. Reclassification would:

- prevent universities from retaining the annual operating surpluses which are essential to fund investment in the renewal and improvement of their estates;
- place a severe restriction on the universities' ability to borrow funds, bringing these within the constraints of public sector borrowing, and thus reducing investment in new and improved infrastructure;
- reduce universities' ability to enter into productive partnerships with commercial bodies because of the constraints associated with state aid; and
- put at risk the universities' status as independent charitable bodies. This could remove tax benefits they currently receive in areas such as rates relief and the funding of medical facilities. It could also have a severe impact on their philanthropic income, which currently stands at over £50M per annum. Philanthropic giving supports a range of infrastructure initiatives, and also scholarship opportunities, including for students from disadvantaged backgrounds.

An example of the possible impact of ONS reclassification is provided by the University of Glasgow. In February 2015 the University's governing body approved a campus estates strategy involving new capital investment of £450M over the next 10 years. The scale of the investment will clearly have a substantial impact on the economy of the city as well as on the success of the University. The funding strategy for that investment programme is not reliant on Government capital funding. £250M is to be funded by historic and future operating surpluses, £100M by new borrowing, £50M by philanthropic giving and £50M by property sales. Should the University be reclassified by the ONS then every penny of that funding strategy would be put at risk.

Given the severely detrimental financial impact which reclassification would have on the universities, and so on the Scottish economy, it would be very ill-advised for the Government to press ahead with the proposed legislation without having first obtained a categorical assurance from the ONS that the new Ministerial powers will not lead to universities being reclassified as 'Central Government.'

5. **Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?**
The Financial Memorandum does not address at all the possible impact of ONS reclassification. Its estimates of costs and savings focus therefore on implications of the Bill that, in financial terms, are relatively minor. Information received from several universities suggests that costs have been underestimated, and that there are no savings.

Universities may comment on the cost estimates in their individual returns. As Chairs, we can comment knowledgeable on the suggested cost of remunerating the Chair of a governing body. The Financial Memorandum estimates that this would be £3,072, based on 6 days’ work per year.

In fact, as every member of this committee can confirm, university chairs have much more demanding portfolios than can be addressed in 6 days per annum. The time commitment is at least one day per week, and in recent years has been greater than this.

A key proposal in the Higher Education Governance Bill is that Ministers will specify the method for appointing University Chairs. Regrettably, it appears from the Financial Memorandum that the Scottish Government does not understand the significance of this role and the time required to fulfil it.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

This is a question for each university to answer. It is likely that they can meet the administrative costs associated with this new legislation, but that their financial health would be seriously undermined by the consequences of ONS reclassification.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

No. The consequences of possible ONS reclassification and possible loss of charitable status are not considered in the FM.

Wider Issues

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these points?

As discussed above, the FM does not address the costs associated with possible ONS reclassification. Reclassification could arise as a consequence of the Bill, coming as it does on top of the additional Ministerial requirements made of universities through Outcome Agreements, and through the Post-16 Education Act. Alternatively,
reclassification might be a consequence of the secondary legislation for which the Bill makes provision.