Response

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

The Court of Edinburgh Napier University responded to the consultation on a higher education governance bill published by the Scottish Government in November 2014. That response did not specifically comment on the financial assumptions made as these were not explicit in the proposals and to the extent that the proposals had implicit financial implications these appeared to be minor relative to the scale of the University's operations.

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

Not applicable.

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

Yes.

Costs

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

There are potential financial implications for Edinburgh Napier University which are not reflected in the FM and which were not evident from the proposals which Scottish Ministers consulted upon.

These arise from proposals for delegated powers in relation to the process for appointing chairing members of governing bodies and their remuneration; and in relation to determining the membership of governing bodies and academic boards. These provisions in sections 1, 2, 8 and 13 of the Bill, supplemented by section 20 would increase the level of control which Scottish Ministers can exercise over higher education institutions and provide for the level of control to be further increased without recourse to primary legislation in future.
The question therefore arises as to whether increased control of the sector by Scottish Ministers following enactment of the Bill as introduced or through the subsequent use of delegated powers would cause the Office of National Statistics (ONS) to reclassify higher education institutions as central government bodies or cause institutions to fail the Scottish charity test under the terms of section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005.

Reclassification as a central government body by ONS would have a profound financial impact on Edinburgh Napier University, on our ability to develop an optimum investment strategy and on the nature of the business we could undertake. For example, our recent £75m investment in the renewal and upgrading of our estate at the Sighthill and Merchiston campuses was funded 60% through commercial borrowing, 13% by disposal of property and 27% from accumulated reserves. ONS reclassification would all but rule out an investment strategy of this kind, reducing our ability to use our resources efficiently to provide an excellent and modern experience for our students and make a positive impact on our local economy.

ONS reclassification would also restrict the commercial activity the University could engage in because of inflexible budgetary controls and would make us less attractive to philanthropic donors who tend not to give to government bodies. These are examples of activities through which the University leverages the public funding we receive to add value and economic impact at home and overseas.

I note that there is no indication in the FM that the risk to ONS classification has been considered or reassurances sought on the question.

I note the steps which have been taken to moderate the impact on Scottish colleges of reclassification with effect from April 2014. These have been limited in scope, primarily providing some partial and transitional protection of reserves accumulated prior to the change.

Loss of charitable status would result in a cost to Edinburgh Napier University from lost tax exemptions. I recognise that Scottish Ministers have the power to dis-apply section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005.

The reasons for taking the delegated powers in sections 1, 2, 8 and 13 of the Bill set out in the Delegated Powers Memorandum appear weak. They refer to a level of detail which might be required, to a hypothetical need to make prompt changes and to respond to changes in future practice. However, there is an existing legislative framework under the Further and Higher Education (Scotland) Act 1992 through which the governance arrangements of Edinburgh Napier University can be changed. The Post-16 Education (Scotland) Act 2013 already requires institutions to comply with any principles of governance which appear to the Scottish Funding Council to constitute good practice in relation to higher education institutions. I am
unaware of any historic precedent of a circumstance requiring sudden change of higher education governance arrangements. The notion that regulations to be brought forward in due course might include a “considerable level of detail” simply highlights the risk that such regulations could lead to a change in status which would damage higher education institutions financially.

I also note that the Policy Memorandum suggests at paragraph 33 that the framework nature of section 1 of the Bill arises at least in part from an absence of consensus at the time the Bill was introduced.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

In addition to the financial risk identified under question 4, I note that where costs are identified in the FM they sometimes appear to be under-estimated. For example, on the last occasion on which Edinburgh Napier University recruited a new Chair, advertising costs amounted to around £5,000 with total recruitment costs including staff time about double that. The position was advertised indicating a time commitment of forty days per annum rather than the six days used as the basis for estimating the cost of remunerating chairing members. The indicative time commitment for chairing members in the FM is unrealistic.

There will be some additional costs to Edinburgh Napier of establishing and providing ongoing support for a graduates’ association to comply with section 4(1)(f). There may also be costs associated with seeking amendments to the University’s founding Order of Council in order to comply with both legislation and good practice, particularly in relation to maintaining a clear lay majority on the governing body.

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?

I agree that Edinburgh Napier University should be able to meet the direct costs of provisions which are on the face of the Bill. The financial risks identified under question 4 are our main concern.

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, for the reasons set out above.
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?

And

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 costs?

There may be costs associated with subordinate legislation, as the delegated powers proposals within the Bill are wide ranging, in addition to potential costs associated with changes in status arising from the creation of those powers as set out above.