Finance Committee
Higher Education (Governance) Scotland Bill
Submission from Queen Margaret University

PREFACE

Queen Margaret University welcomes the opportunity to respond to the Call for Evidence issued by the Scottish Parliament’s Finance Committee on the Higher Education Governance (Scotland) Bill, introduced in the Scottish Parliament by the Scottish Government on 16 June 2015.

We note that the Committee has invited organisations and individuals to submit written evidence setting out their views on the financial implications of the Higher Education Governance (Scotland) Bill. The estimated financial implications of the Bill are set out in its accompanying Financial Memorandum (FM).

As the Financial Memorandum sets out the principal purpose of the Bill is to: “enable a framework of higher education governance that is more modern, inclusive and accountable”, we consider it appropriate to preface our response to the specific questions posed in the consultation with broader views on the overall purpose of the Bill. These views are set out in detail in our submission to the Call for Evidence issued by the Education and Culture Committee of the Scottish Parliament.

Our primary concern, set out clearly in our response to the draft Bill, remains that Scottish Ministers consider it appropriate to legislate on the internal organisation of autonomous charities. We remain concerned about the underlying presumption that there needs to be consistency of approach within the sector and that further change requires to be driven by statutory measures. We consider that the Bill, as drafted currently, represents a fundamental shift in the relationship between Ministers and autonomous higher education institutions, with Ministers exercising considerable power through secondary legislation to decide the categories of composition of governing bodies, the manner of appointment and conditions of service. These are not matters on which the Scottish Government sought views during the Bill consultation.

Having considered in detail the Higher Education Bill as introduced, we remain concerned about the assumptions concerning existing governance arrangements within the sector, and about the impact and cost of the proposals. We consider that, while the Financial Memorandum attempts to calculate the direct costs to Universities of the proposals, it does not address the wider financial implications of the Bill. This includes the implications of any threat to HEI’s charitable status, and the costs of arising from action required under any secondary legislation.

These concerns are addressed directly below in our responses to the Committee’s specific questions.
Response

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

Queen Margaret University provided a detailed response to the Consultation on a Higher Education Governance Bill. The consultation exercise did not set out any financial assumptions, but rather, invited respondents to comment, within Annex D, on ‘the potential costs or savings that ‘may occur as a result of the proposals for the Bill’, and on ‘any increase or reduction in the burden of regulation for any sector’. The University did not provide comments at Annex D.

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, the University had sufficient time to contribute to the consultation exercise.

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.

We do not believe that the financial implications for Queen Margaret University, and for the Higher Education sector within Scotland generally, have been reflected accurately in the FM. For details, please see our response set out below under ‘Consolidated Response – supporting information’.

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

We do not consider that the estimated costs and savings set out in the FM are reasonable and accurate. For details, please see our response set out below under ‘Consolidated Response – supporting information’.

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?

For details, please see our response set out below under ‘Consolidated Response – supporting information’.

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?
For details, please see our response set out below under ‘Consolidated Response – supporting information’.

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?**

We do not believe that the FM reasonably captures any costs associated with the Bill, and that there are other costs that will be incurred. For details, please see our response set out below under ‘Consolidated Response – supporting information’.

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?**

We do believe that there will be future costs associated with the Bill. For details, please see our response set out below under ‘Consolidated Response – supporting information’.

**CONSOLIDATED RESPONSE – SUPPORTING INFORMATION**

Having considered in detail the Higher Education Bill as introduced, we are concerned about the impact and cost of the proposals. We consider that, while the Financial Memorandum attempts to calculate the direct costs to Universities of the proposals, it does not address the wider financial implications of the Bill. This includes the implications of any threat to HEI’s charitable status arising from increased Ministerial powers, and the additional costs arising from action required under secondary legislation.

We share the concern of others in the sector that increased Ministerial control will lead to universities being reclassified by the Office of National Statistics (ONS) as ‘Central Government’. We consider too that there is significant opportunity costs involved in individual universities across the sector engaging in what is likely to be a complicated and lengthy process for amending their governing instruments.

*Impact of new powers for Ministers*

We consider that, in determining the composition of governing bodies, academic boards and senates, which are part of universities’ autonomous self-regulation, the Bill affords to Ministers substantial new powers that fundamentally change institutions’ constitutional status. Such powers have the potential to change institutions’ charitable status as explained below, and the potential for Universities to be reclassified as ‘central government’ by the Office of National Statistics.

The Office of the Scottish Charity Regulator (OSCR) sets out a number of indicators that organisations must meet to pass its ‘charity test’. One of the indicators that may disqualify an organisation from charity status is the extent of Ministerial control. Such control may include:

- Power to add to or amend the powers given to boards of management;
- Consent/ approval required in relation to making a material change in the constitution;
• Consent/approval required to make a change to the constitution.

In our original response, we stated that this would appear to have implications for any legislation that provides for Scottish Ministers prescribing changes to an institution’s constitutions, including appointments. While we note that the Office of the Scottish Charity Regulator (OSCR) commented on the Scottish Government’s consultation proposals, we consider that the Bill as published provides Ministers with significantly more power over institutions than was suggested in the consultation.

The loss of charitable status would result in HIEs losing their entitlement to 80% relief from non-domestic rates. We consider that loss of charitable status would also severely prejudice institutions’ capacity to access philanthropic funding, currently worth around £53 million a year. Donors are highly unlikely to wish to support institutions which do not have charitable status.

Equally, reclassification by the ONS, would jeopardise Universities’ status as independent charitable bodies, with negative tax consequences and the likelihood of reduced philanthropic support. Such re-designation would prevent universities from retaining annual operating surpluses, place restrictions on their ability to borrow funds and reduce their ability to enter into commercial partnerships.

As part of its deliberations, we would ask the Finance Committee to consider what further advice the Scottish Government has taken from OSCR on this matter i.e. beyond the original consultation, and what opinion has been offered by OSCR?

Recruitment of the Chair

On the matter of Recruitment of the Chair, we note the estimated costs attributed to this exercise as set out in the Financial Memorandum that supports the Bill. We do not recognise the basis on which such costs for other bodies and individuals have been calculated. We consider that the costs attributed are a significant under-estimate.

The Financial Memorandum suggests that the ‘potential selection of candidates for chair might involve open advertisement and selection of candidates based on suitability for the role of chair’ (emphasis added). Such transparency is a requirement under the Scottish Code.

While we accept the approximate costs attributed to reimbursement of candidates’ reasonable interview expenses, we do not accept the costs attributed to external advertisement and to the management of the appointment process.

The Financial Memorandum states that the cost of recruitment is approximately £3000 in staff costs and £2000 in external publicity costs for recruitment of a Chair on a four year recruitment cycle for the Chair.

The recruitment cycle for the Chair at QMU is three years, rather than the four suggested in the Financial Memorandum, with equivalent costs being incurred within that 3 year cycle depending on whether or not an incumbent Chair’s term is extended by the Court.

Our experience is that the cost of placing a modest advertisement within a national Scottish newspaper is of the order of at least £5000. In addition to the costs of paid advertisement, there are costs attributable to staff time in managing the recruitment and appointment process.
By way of illustration, the current process for appointing the Chair of Queen Margaret University is overseen by the Nominations Committee under powers delegated by the University Court. The Nominations Committee, which includes Court lay members, staff and student members, shortlists and interviews candidates, before selecting a preferred candidate and making recommendation for approval by the Court. As far as is practicable, this process is managed so as to dovetail with the ordinary schedule of Court and Committee meetings. This minimizes the cost in terms of members’ time and other expenses.

We anticipate that, were the University required to conduct a wider election for the position of Chair, depending on the composition and size of the electorate, and the process for nomination and election, then this would represent significant additional cost in terms of staff resource. In particular, the staff time required to publicise the election, obtain nominations, arrange ballot papers, verify and count votes and address any issues arising from process would be significantly greater than that currently involved in such recruitment. Without knowing the specific detail of the proposals, it is difficult to quantify the full extent of the additional cost to the University.

Remuneration of Chairs

On the matter of remuneration of Chairs, we would reiterate the view that we set out in our response to the consultation, which is that governing body membership carries a strong public service ethos which is an important motivating factor for those who participate. Remunerating Chairs risks the erosion of this ethos. Remuneration of the Chair alone would also create a significant symbolic imbalance between the chair and other governing body members, which could adversely affect the unity of the governing body.

The unpaid nature of governing body membership is an important facet of the distinction between governors and the executive. Under existing arrangements, financial considerations should not be a bar to any potential candidates for the position of chair, because expenses available to governing body member can include any lost earnings and childcare costs incurred as a result of governing body membership.

Importantly however, we consider that remuneration of the Chair is problematic in relation to charities law.

Governing body members of HEIs are charity trustees. The Charities and Trustee Investment (Scotland) Act 2005 makes clear that trustees should be remunerated only in exceptional circumstances, usually for providing some service other than serving on the governing body. We note too that, in relation to remuneration of the Chair, the 2005 Charities Act under Section 67 states that a charity trustee must not be remunerated from charity assets unless certain conditions are met.

We do not consider that this important aspect has been addressed in the published draft Bill or in the supporting guidance. Again, while we note that the Office of the Scottish Charity Regulator commented on the Scottish Government’s consultation proposals, we would ask that the Finance Committee consider what further advice the Scottish Government has taken from OSCR on this matter beyond the original consultation, and what opinion has been offered by OSCR.

Importantly, we reject completely the basis on which the remuneration of the Chair has been calculated, and in particular the number of days attributed to undertaking the role.
We are currently in the process of recruiting for a new Chair. In setting out for applicants the requirements of the role, we have stated that the time commitment will vary from week to week, but the likely overall time commitment required is approximately 50 days per year. In breaking down those 50 days, we have provided for the full Court meeting on at least 6 occasions per academic year, including a two-day Away Day on campus in the Spring.

The Chair is required to Chair or attend meetings of Committees of Court throughout the year, and to meet occasionally with Court members on an individual basis. Currently, the Chair of Court convenes the Nominations Committee, and is in membership of the Finance and Estates Committee and the Senior Management Remuneration Committee. There is background reading associated with each of these meetings. The Chair of Court is also expected to be available to provide informal support to the Principal and Vice-Chancellor, the University Secretary and members of Court. In addition to the requirements set out above, the Chair is expected to attend events held by the University, including the annual graduation ceremony in early July, professorial lectures, social and celebratory events.

In summary, were the costs to Queen University calculated on the basis of the daily rate set out in the consultation, the remuneration of the Chair would be of the order of some £26k, not including reimbursement of reasonable expenses.

**Future costs eg arising through secondary legislation**

We have concerns around the costs arising from the practical implications of the proposals as they impact of current governance arrangements of HEIs in Scotland.

The governance of higher education institutions is defined in various governance instruments that have the force of law. For Queen Margaret University, that includes the Queen Margaret University Order of Council, approved by the Privy Council, and the University’s Articles of Association governing its activities as a company limited by guarantee.

We consider that the provisions of the Bill are in conflict with these instruments, such instruments having made provision for the membership and conduct of governing bodies and academic boards/ senates which is different from that set out in the Bill.

In the case of Queen Margaret University, it would be arithmetically impossible for it to comply with the requirements proposed by the legislation while adhering to the requirements contained within the University’s statutory instrument and within the Scottish Code ie that governing bodies should have no more than 25 members, with an independent majority. The Bill sets out specific requirements in terms of representatives of particular constituencies (Section 4 refers). A number of those requirements are already accommodated within the University’s current Order of Council, including 2 persons elected by staff and 2 persons appointed by nomination of the Students’ Union.

The University is in the final stages of securing Privy Council and parliamentary approval for a proposed amendment to its Order of Council which would accommodate whatever regulation is introduced concerning the process for appointing the Chair. However, other stated requirements would not be accommodated, including provision for two persons appointed by Trade Unions and two persons appointed by being nominated by a graduates’ association. Importantly, the requirement for four additional specific constituencies within the composition of the Court would impact on the balance of lay and ex officio membership and on the maximum permissible members on the Court. Were the Bill to pass into legislation in its current form, the University Court would need to consider
either increasing its total membership (in breach of the Scottish Code), or reviewing the other current categories of staff membership.

Any such change is likely to involve the University in seeking the approval of the Privy Council for further revision and amendment to its governing instrument.

We would ask the Committee to note that the process of securing Privy Council and Scottish Government approval for a relatively straightforward amendment to the University’s Order of Council, to bring it in line with the Scottish Code, has taken some 16 months. This process commenced in June 2014, and the amendment is due to commence in late September 2015. Securing the necessary approval involved commissioning of legal advice, the equivalent of 5-6 days of university administrative time to oversee the process, as well as consideration of draft amendments by senior staff and the University Court at various stages of the approval process. The changes required by the Bill would be more substantial for the University than the amendments currently being progressed, and as such, would likely incur higher administrative and staff time costs than the current amendment.

As stated above, it is likely that several, if not most, governing bodies will require to seek similar amendment to their governing instruments, which has implications for the cost of the Bill in terms of secondary legislation, those costs being borne in part by the Scottish Government and by the Universities in terms of legal costs and costs of administrative and senior officer days. There are implications also for time allocated for Parliamentary scrutiny. We consider that none of these costs have been factored into the Financial Memorandum that accompanies the Bill.

Beyond the requirement to amend the University Order of Council, there will a requirement for amendments to the Court Standing Orders which will require additional staff time to review, draft and implement.

Finally, the Bill makes provision for a revised statement of Academic Freedom. Before the proposed changes to the definition of academic freedom were suggested, the University, in order to comply with the Scottish Code of Good Higher Education Governance, established an academic freedom working group to develop a statement of academic freedom. This group consisted of 7 academic and professional services staff members. While the same level of work would not be required to update the statement of academic freedom to take account of the proposed definition, we would expect that the University Senate would reconvene the group, with the resulting implications for staff time.

None of the above includes the opportunity costs of engaging in a complicated and lengthy process of revision to the University’s governance arrangements.

Irene Hynd
University Secretary
21 August 2015