Higher Education Governance (Scotland) Bill: Submission from the University of St Andrews to the Scottish Parliament’s Finance Committee

Summary

The University of St Andrews is deeply concerned about the scope and provisions of the Higher Education Governance (Scotland) Bill. We support the Scottish Government’s aims of transparent and inclusive participation in higher education governance, but we do not believe that these will be furthered by the measures proposed in the Bill. On the contrary, the legislative proposals presented to Parliament would weaken the inclusiveness and effectiveness of existing governance arrangements.

The University of St Andrews has supported the implementation of the Scottish Code of Higher Education Governance, and believes that our governance arrangements are transparent and inclusive, ensuring a strong voice for staff and students, supported by independent external expertise and scrutiny. We do not believe that there has been any convincing explanation presented of what the problem is that this legislation is intended to address.

The proposals in the Bill would significantly undermine the autonomy and independence of Higher Education institutions, reducing Universities’ ability to act as sources of independent thinking, and putting at risk their international reputation for excellence and substantial contribution they make to Scotland’s economy. The Royal Society stated in their response to the consultation exercise that preceded the Bill, “Institutional autonomy and independence are fundamental principles that underpin the successful performance of Scotland’s HE sector. The proposals outline a level of governmental intervention that is entirely inappropriate for an autonomous sector”.

Specific Questions

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?

The University of St Andrews submitted a response in January 20151 to the Consultation Paper on a Higher Education Governance Bill. On the issue of remuneration of the Chair we stated, “The concept of public service for no reward enables university governance to be free of any conflicting loyalties. It may be necessary to put in place appropriate support, short of remuneration, for anyone who

wishes to take on the role. This may include appropriate care expenses for a family member and appropriate travel and accommodation expenses.”

It is already open to Universities to determine any arrangements to remunerate Chairs and/or reimburse expenses incurred. We are not aware of any pressure to introduce a standard approach, or any convincing evidence that this will deliver greater diversity.

**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.

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

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?

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?

We do not believe that the costs to our organization have been accurately reflected in the Financial Memorandum.

In particular, the estimated remuneration of the Chair severely underestimates the time that is required for this role. The Financial Memorandum assumes that the call on Chair’s time will be restricted to attending six meetings in the course of a year. This completely overlooks the substantial responsibilities of the Chair of the Court of a University outwith the formal meetings of Courts, and displays a real lack of understanding of the responsibilities of this role in ensuring robust, competent governance. The role of a Senior Governor involves work on a daily basis, including evenings and weekends. An overall time commitment totalling some 60 days would be a more realistic, but still conservative, estimate.

If remunerated at the Scottish Government's maximum daily fee rate for non-executive chairs of £528, set out in the Public Sector Pay Policy for Senior Appointments 2014-15, this would cost the University a minimum of £31,680 per year. Using commercial day rates for non-executive chairs of organisations of similar scale, the cost to the University of St Andrews could easily be in excess of £140,000 a year - equivalent to the places of 16 home students per year, or almost 70 over the course of the standard Scottish degree cycle.

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There are also significant costs associated with the wide range of constitutional and regulatory changes that would have to be taken to implement this legislative change. The Bill appears to take no account of the impact of the legislation on the existing legal framework within which Higher Education Institutions operate, assuming that this will be addressed by the individual institutions. The University of St Andrews has identified at least four ordinances that would have to be revised as a consequence. This would require significant work including formal consultation with staff and stakeholders, engagement of legal experts, and seeking agreement of the Privy Council. We estimate one-off costs of at least £50,000 associated with this.

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 costs?

The extent of the proposed powers to be exercised through secondary legislation risks introducing a dangerous level of political influence and control over Universities. Sections 1, 8 and 13 allow Ministers to enable future changes to the make up of University Courts and Senates through secondary legislation which could significantly institutional autonomy and jeopardise Universities’ ability to ensure academic freedom and act as sources of independent thinking. Section 14 appears to give Ministers a very broad and open ended power to “make different provision for different purposes”, which should properly be exercised by Parliament through primary legislation.

The risk of future costs resulting from this are threefold.

Firstly, there are real opportunity costs to the Scottish economy. Independent analysis has confirmed that the University of St Andrews delivers £12 in benefit for every £1 of Scottish Government funding invested\(^3\). Our ability to excel in a competitive global market depends on our academic reputation, both in terms of excellence in research and a world class learning and teaching experience. The uncertainty generated by this legislation, and the risk posed to the autonomy, can only damage the academic reputation of the HE sector in Scotland, and undermine our international competitiveness and our contribution to Scotland’s future economic growth.

Secondly, there is a risk that the legislative proposals in the Bill could put at risk the Charitable status of Universities. Although OSCR made general statements during the consultation exercise prior to the bill to the effect that the proposals at consultation stage did not give Ministers a power to direct or control HEIs, the Bill as introduced contains more sweeping powers, in particular the broad nature of powers.

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to make regulations. We hope that OSCR’s firm assurances will be sought that the Bill, and any regulations that could potentially be made under the powers given in the Bill, will not threaten the charitable status of Scottish HEIs.

Quite apart from the direct financial consequences of losing of charitable status, this could severely impact on our Development opportunities. As an independent charity, St Andrews brought in £3.2m in 2013/14 through this route, most of which was used directly to support the professorships and scholarships which are the lifeblood of the sector.

Thirdly, there is a risk that the Bill could jeopardise Scottish HEIs’ ONS classification as non-profit institutions serving households, and trigger a reclassification as a “central government entity” (as has now been given to Scottish FE colleges). This would have a severe impact on Universities’ ability to undertake entrepreneurial activities and access research funding. In 2013/14, for example, St Andrews recorded income of £12.4m relating to knowledge transfer, tied to SMEs, large businesses and other organisations excluding research councils.

Our ability to raise external funding, particularly from public sector sources, would also be put at risk since it may be deemed anti-competitive or State Aid – one example would be the recent Amber Infrastructure loan of £11m for our biomass plant, a central element of our strategic ambition to be carbon neutral for our energy supply.

In the recent successful move by Welsh FE colleges to move away from their recent reclassification as central government entities, two key areas that they addressed were the level of autonomy for colleges, including powers to make changes to their own instruments and articles of government; and the level of operational intervention by central government. We hope that a clear assurance will be provided that the proposed changes to be made by the Bill, and any regulations that could be potentially made under the powers given in the Bill, will not trigger a reclassification by ONS.

University of St Andrews
19 August 2015