Summary
The University of Edinburgh has deep concerns about the scope and provisions of the Higher Education Governance (Scotland) Bill.

The Bill as drafted would involve significant compliance costs for our University which we estimate at £79,500 in one-off costs and up to £125,000/year in annual recurring costs.

In addition, while we support the aim of the Scottish Government to create an inclusive, strong and sustainable economy, we do not think that there has been any compelling explanation of the problem that this particular Bill is seeking to address.

We are fully committed to ensuring that there is transparent and inclusive participation in the governance of the University. We are, however, extremely concerned that the proposed legislation opens up the real potential for a reduction in the ability of Universities to ensure academic freedom and act as a source of independent thinking.

We are dismayed that the proposed legislation could weaken the inclusiveness and effectiveness of our existing governance arrangements which ensure both a strong voice for staff and students and external, independent expertise in governing what is a large and complex organisation.

Response

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?

We submitted a response on the 30 January 2015 to The Scottish Government's Consultation Paper on a Higher Education Governance Bill. We stated the following:
We think that the matter of a Chair’s remuneration is probably best left to individual institutions to determine – certainly our own lay members are very clear that they would not want to be recompensed over and above expenses incurred as they see their contribution as a pro bono one; and we have had significant success in securing a good gender balance under the current arrangements. The detailed financial assumptions which now appear in the Financial Memorandum were not included in the consultation document and consequently this is our first opportunity to comment.

**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 organisation have been accurately reflected in the Financial Memorandum.

The estimated remuneration of the Chair severely underestimates the time that is required for this role. In the University of Edinburgh the Vice-Convener role requires around 8 hours/week (taking account of weekend and evening work) which, if remunerated, could cost from £27,144 to £125,000. £27,144 is based on the Scottish Government’s proposed day rate for NDPB Chairs (£522 per day), and £125,000 is based on KPMG’s proposed day rate for non-executive chairs of an organisation with our size of turnover. We cannot understand the basis for the time estimate in the Financial Memorandum of 6 days/year which appears to us to display a real lack of understanding of the depth and breadth of the commitments associated with this role to ensure good and robust governance.

In addition to the time commitment of our Vice-Convener, the University’s dual leadership structure also benefits from the contribution of the Rector. Elected by a constituency of all students and staff, the Rector presides at full Court meetings, chairs General Council and holds surgeries and public meetings for individual students. Neither the Rector nor the Vice-Convener claim remuneration for the time spent fulfilling these roles.
There are also significant costs associated with the wide array of constitutional and regulatory changes that would have to be taken to comply with the provisions of the Bill.

Implementing legislative change would require a significant amount of work to review, consult, amend and implement at least eight University ordinances. This includes engagement with the Privy Council, consultation with staff and stakeholders, legal and policy work. We estimate one-off costs of £79,500 for these processes and the legislative changes.

The costs associated with the Bill will have a direct opportunity cost, if met by the Higher Education sector, by diverting funds which have been provided for investment in education, research and innovation. While we have provided a best estimate of the immediate costs, this is likely to be a minimum impact and presumes that Scottish Government addresses significant delays in the approval processes for ordinances and other instruments.

**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?*

In addition to the above one-off and recurring costs, the Bill also poses real opportunity costs to us and to the Scottish economy by threatening our international academic standing.

Our University, currently 17th in the world in the QS ranking and 4th in the UK for research power, returns over £9 to the Scottish economy for every £1 of public funding invested. We recruit and develop the world’s most promising students and most outstanding staff and aim to be a truly global university benefiting society as a whole. We, however, are competing in an increasingly competitive environment internationally, where the gap is increasing between the truly world-leading Universities and the rest. Our ability to build on our strong track record, through international partnerships and collaborations, will be hampered by the uncertainty generated by this draft legislation around academic freedom, reduction in institutional autonomy and limited parliamentary scrutiny over enhanced Ministerial powers. The changes proposed will have real long-term financial consequences for the University and the Scottish economy in addition to immediate implementation costs.
A recent League of European Research Universities report directly relates the success of the UK Higher Education sector to the autonomy of its institutions. The UK Higher Education sector is seen as a role model in this regard by its European counterparts. The draft Bill is already being seen by Higher Education commentators as leading to reduced autonomy for Scottish Universities.

The Bill's wide ranging secondary powers are of significant and particular concern to us in this regard as they risk weakening rather than improving higher education governance. There has been a clear and well established understanding over many years in Scotland - and more broadly in the UK - on how best to balance the need for Universities to be accountable for the public resources that they receive while ensuring that they should be able to offer analysis and comment without fear or favour regardless of the political make-up of the Government of the day. The proposed new legislation breaks that convention, giving future Governments significant potential influence and control, without the safeguard of the same level of parliamentary scrutiny and public consultation.

The extent of the proposed powers to be exercised through secondary legislation are, in our opinion, constitutionally inappropriate and deeply concerning in this regard. Section 20 of the Bill proposes to give very broad powers to Scottish Ministers to amend (and indeed repeal) the whole or parts of the existing Universities (Scotland) Acts through secondary legislation. Sections 1, 8 and 13 also give wide powers to Ministers to enable future changes through secondary legislation which could significantly shift the balance of the relationship with the sector from one of accountability with autonomy to political direction; reducing autonomy and the ability of higher education institutions to ensure academic freedom. Section 14 contains a very broad power which provides Scottish Ministers with the power when making regulations ‘to make different provision for different purposes’. Overall, The Bill gives Ministers potentially very open ended powers that should properly be exercised by Parliament through primary legislation.