Response

Please see below for the University of Strathclyde’s response to the nine questions raised by the Finance Committee as part of the scrutiny process for the Higher Education Governance (Scotland) Bill.

Consultation

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

The University of Strathclyde submitted a response to the Scottish Government’s consultation of January 2015. The sole financial-related question asked in the consultation was:

18. Would you welcome universities offering suitable remuneration for elected chairs?

To which the University replied:

*Remuneration of chairs is not unreasonable as this happens already in a wide range of other publicly and privately funded organisations. If this is taken forward, it would be necessary for the Scottish Government to make an appropriate adjustment to charities law to ensure that universities’ charitable status is not called into question (Scottish Government legislation makes clear that governors of charitable organisations are not to be remunerated).*

In addition, the University’s response to question 25 touched on some financial aspects:

25. Do you agree that the academic board should be the final arbiter on all academic matters in all HEIs?

*The University’s response depends on the precise definition of ‘academic matters’, which is not set out in the consultation document. The University’s Royal Charter states that the Senate is responsible for the ‘academic work’ of the University and it should be borne in mind that decisions which some may understand to be ‘academic’, for example the overall shape of the institution’s academic provision, may also require decision by Court about the institution’s strategy and resource allocation. The Court and the Principal as accountable officer are responsible for ensuring compliance with Government Policy and Scottish Funding Council conditions of grant which may also have academic objectives or implications. In some cases these will limit the Senate’s power to take decisions what some may regard as wholly academic matters (for example admission criteria and their differing application to individual social groups). Therefore, if the proposal intends a broad definition of ‘academic matters’ which would include resource allocation then the University would not support the proposal but if the proposal is clarified to a tighter definition akin to ‘academic work’ then the University is supportive.*
2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

No reference has been made to any possible conflict with charity legislation in the Financial Memorandum (see the response to question 4 below for more detail on this).

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.

The Financial Memorandum makes no mention of two areas of potentially major financial concerns:

i) Classification by the Office of National Statistics

We are extremely concerned that Bill may lead the Office for National Statistics to classify higher education institutions as public sector bodies, as has already happened to colleges. The reclassification of the University of Strathclyde as a public sector body would have a serious negative financial impact and a long-term impact on competitiveness with institutions in the rest of the UK and other countries.

The Bill’s proposals to increase Ministerial control over Scottish higher education institutions highlighted above and repeated here:

- Power to decide how people should become chairs of governing bodies
- Power to decide how long people should serve as chairs of governing bodies
- Power to determine the remuneration of chairs of governing bodies
- Power to determine the composition of institutions’ governing bodies
- Power to determine the internal structure of institutions, with particular regard to the composition of the academic board will be considered by the ONS together with the existing framework of control of institutions by government and its agencies, including the Outcome Agreements framework and the statutory requirement to observe the governance code as a condition of grant.

Adverse impacts of ONS reclassification would include:

- An end to the University’s entrepreneurial activity as it would be unable to retain surpluses generated through these activities – this is particularly important to the University of Strathclyde (awarded UK Entrepreneurial University of the Year 2013/14);
- Inhibition of the University of Strathclyde’s ability to enter joint ventures with business to promote innovation and to attract investment for research, KE, education and student employability;
- Severe restriction of the University’s capacity to borrow money to develop new infrastructure;
- An severe reduction in philanthropic support for the University, since donors do not typically give money to government bodies (our annual donor support has grown in recent years to approximately £3m p.a.)
• An end to the University’s status as an autonomous charitable body separate from the State.

ii) Possible conflicts with charity legislation and related taxation issues

As currently drafted, the Bill gives cause for concern about potential loss of charitable status for Scottish higher education institutions.

Section 7(1) of the Charities and Trustee Investment (Scotland) Act 2005 contains the Scottish charity test, supplemented by the definition of charitable purposes in section 7(2). However, section 7(4) provides that a body which meets the terms of the section 7(1) does not in fact meet the charity test if its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities.

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- Power to decide how people should become chairs of governing bodies
- Power to decide how long people should serve as chairs of governing bodies
- Power to determine the remuneration of chairs of governing bodies
- Power to determine the composition of institutions’ governing bodies
- Power to determine the internal structure of institutions, with particular regard to the composition of the academic board.

Charitable status is an essential part of the University of Strathclyde’s identity and mission – loss of this status would also lead to serious adverse financial impact for the University as it provides entitlement to 80% relief from non-domestic rates (worth £2.6m in the most recent year) and exemption from corporation tax (which would become payable on surplus (used for investment in our Estate and infrastructure) at a rate of 20%). The following explicit reference to the taxation benefits from our charitable status is made within our financial statements:

‘The University has charitable status and is recorded on the index of charities maintained by the Office of the Scottish Charity Regulator (Charity No. SC015263). The University is an exempt charity within the meaning of Part 1, Chapter 2, Section 7 of the Charities and Trustee Investment (Scotland) Act 2005, and is considered to pass the tests set out in Paragraph 1 of Schedule 6 to the Finance Act 2010 and therefore it meets the definition of a charitable company for UK Corporation tax purposes.

Accordingly, the University is potentially exempt from taxation in respect of income or capital gains received within categories covered by Section 287 of the Corporation Tax Act 2009 and Sections 471 and 478 – 488 of the Corporation Tax Act 2010 (formerly enacted in Section 505 of the Taxes Act 1988) or Section 256 of the Taxation of Chargeable Gains Act 1992 to the extent that such income or gains are applied to exclusively charitable purposes.’
5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

No, given the potential conflicts with charity legislation and potential reclassification by the Office of National Status we have set out above.

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?

Not if the University is reclassified as a public sector and no longer holds charitable status.

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, given the lack of analysis of potential conflicts with charity legislation and potential reclassification by the Office of National Status 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?

No, see answers above and if Scottish higher education institutions are classed as public sector bodies then any borrowing by the sector will be added to public borrowing.

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?

Yes, but the extent and scope of subordinate legislation has not been sufficiently detailed to allow an estimate to be made.