



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION AND CULTURE COMMITTEE

Tuesday 6 October 2015



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**EDUCATION AND CULTURE COMMITTEE**

**23<sup>rd</sup> Meeting 2015, Session 4**

**CONVENER**

\*Stewart Maxwell (West Scotland) (SNP)

**DEPUTY CONVENER**

\*Mark Griffin (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)  
\*Colin Beattie (Midlothian North and Musselburgh) (SNP)  
\*Chic Brodie (South Scotland) (SNP)  
\*Gordon MacDonald (Edinburgh Pentlands) (SNP)  
\*Liam McArthur (Orkney Islands) (LD)  
\*John Pentland (Motherwell and Wishaw) (Lab)  
\*Mary Scanlon (Highlands and Islands) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Emily Beever (National Union of Students Scotland)  
Dame Jocelyn Bell Burnell (Royal Society of Edinburgh)  
Jennifer Craw (Robert Gordon University and Committee of Scottish Chairs)  
Ann Marie Dalton (Heriot-Watt University)  
Laura Duffy (Scottish Government)  
Ailsa Heine (Scottish Government)  
Robin McAlpine (Common Weal)  
Professor Sir Timothy O'Shea (University of Edinburgh)  
David Ross (Committee of Scottish Chairs)  
Mary Senior (University and College Union Scotland)  
Professor Jeffrey Sharkey (Royal Conservatoire of Scotland)  
Liz Smith (Mid Scotland and Fife) (Con)  
Stephen White (Scottish Government)

**CLERK TO THE COMMITTEE**

Terry Shevlin

**LOCATION**

The David Livingstone Room (CR6)



# Scottish Parliament

## Education and Culture Committee

*Tuesday 6 October 2015*

*[The Convener opened the meeting at 10:00]*

### Higher Education Governance (Scotland) Bill: Stage 1

**The Convener (Stewart Maxwell):** Good morning and welcome to the Education and Culture Committee's 23rd meeting in 2015. I remind everybody present to ensure that all electronic devices are switched off at all times, because they can interfere with the sound system. I would not like to have to give you a row in the middle of the meeting, so it would be helpful if you switched off devices now.

I welcome Liz Smith MSP, who has joined us for the first agenda item today, which is a round-table discussion on the Higher Education Governance (Scotland) Bill. We have no apologies from members. Unfortunately, Liam McArthur has been delayed on his flight from Orkney, but I am sure that he will join us soon. We have had apologies from Professor Ferdinand von Prondzynski, who is unable to be with us.

I will start with a few words on the process. The Higher Education Governance (Scotland) Bill contains few provisions—it is a relatively thin bill—but it has certainly generated a lot of comment and interest in the sector. We have published almost 300 submissions on our website, and I thank everybody who contributed. For the avoidance of doubt, and because a lot of people wanted to come along today, I assure everybody that all evidence—written and oral—is treated in equal measure and in the same way.

The purpose of today's meeting is to allow us to make progress on the main issues that arise from the bill, bearing in mind that there have so far been conflicting views, a number of which have been expressed outwith the committee. I hope that everybody will get the chance to clearly express their views on the bill this morning and to propose any changes that they see fit to suggest.

Participants were all notified in advance of a number of broad topics that we want to discuss. We will manage the session so that we go through those three areas, but they do not cover all the things that members and contributors will want to discuss. I hope to encourage free-flowing discussion and I am happy to take comments from

across the round table. I am also happy for contributors to question each other.

I am not sure whether both sides of the argument have been round the same table yet; this may be the first opportunity. If you want to discuss certain issues, by all means contribute. If you want to question someone else's submission or evidence, please do that as well. I will try to allow that as much as possible.

I start with the first general topic that we sent you in advance. Will the specific measures that are set out in the bill rectify the perceived weaknesses in higher education governance that have been identified by some participants who are here today and in some of the written evidence that has been sent to the committee? All those with an interest in the sector consider that HE institutions' governance arrangements should be fully effective. There is no argument about that, but there is some disagreement about how we move forward on the detail.

The submissions from a number of bodies, including HEIs, indicate that they are not clear on the problems that exist in HE governance that the bill seeks to address. However, others have clearly laid out that they believe that there are deficiencies in existing practice in a number of areas, such as transparency, democracy, and pay and diversity issues. There are a number of issues, on which I am sure that you have read the written evidence.

I ask those who perceive problems and difficulties to lay out why they think that that is the case, why they think that the bill should be taken forward, what they see as the merits—and perhaps some of the problems—of the bill and any changes that they would like to see in it.

I ask Mary Senior to start by outlining her views. I will then come to the National Union of Students, which is represented by Emily Beever, followed by the chairs and the universities, after which I will bring in members. I know that members are keen to ask questions, but I will bring in our guests first and let them lay out some of the groundwork for the discussion.

**Mary Senior (University and College Union Scotland):** Thank you for the opportunity to speak to the committee. For the University and College Union Scotland, the bill is about addressing a perceived disconnect between the staff and students and those at the top. It is about ensuring that decisions that universities make are scrutinised and that there is robust governance.

We are clear that universities are about education, learning, research, knowledge and knowledge exchange and that the people who are involved in those activities are staff and students. It is vital that they feel connected to the key

decisions and the strategy that the universities and higher education institutions are taking forward. That is why we support most of the recommendations in the bill.

We also supported the von Prondzynski report, which was the result of a thorough review of higher education governance in Scotland. The bill addresses a number of issues from that report, including the election of a chair of a governing body and ensuring that there is adequate staff, student and trade union representation on governing bodies. That will better enable staff and students to influence the decisions that come from the governing body and to have a say in how that moves forward.

**Emily Beever (National Union of Students Scotland):** I am delighted to be here to speak from the perspective of the NUS and to express our members' broad support for the bill. I will focus on the principles that we believe are behind the bill, and I hope that the conversation will move away from the hyperbole that has often been put out in the press in the past few weeks.

We would like to see more democracy, increased transparency and greater diversity on governing bodies, because we feel that those areas are lacking in governance. I echo what Mary Senior said; we believe that universities are academic communities and that the stakeholders in those communities are primarily staff and students. They should lead the discussions and decisions that take place in the institutions. That is why aspects of the bill such as elected chairs and other measures that we would like to be introduced—such as quotas for boards—are crucial to us. Our members support those proposals.

**The Convener:** Who from the university sector or the chairs would like to contribute?

**David Ross (Committee of Scottish Chairs):** I join my colleagues in thanking you for inviting us here. The Scottish chairs see this as a bill that is to some extent looking for issues that have been addressed. It is worth bearing it in mind that the code exercise of 2012 and 2013 to create the Scottish code of good higher education governance involved every university. It collected the views of students and staff and identified what they wanted good governance to look like. As a result, 94 per cent of universities already have two members of staff elected to their governing bodies, and 70 per cent already have two students on those bodies.

The danger is that the bill will set back the sector's on-going process of ensuring good governance, because it does not build on the good governance that already exists and it introduces

solutions that we think will damage aspects of good governance, such as accountability.

It might be entirely unintended, but the consequences of the bill will be bad for a sector that contributes £6 billion a year to the economy. In international league tables issued as recently as last week, five Scottish universities were in the top 200 and three were in the top 100 in the world. Good governance is required to achieve that level of success, so we believe that in saying that the bill carries dangers we are stating what is actually the case.

**Professor Jeffrey Sharkey (Royal Conservatoire of Scotland):** Thank you for letting me speak. I have really enjoyed coming to Scotland because of the huge support that the Government gives to higher education and culture, which is fairly unique in the world. The Royal Conservatoire of Scotland absolutely shares the intention of the bill and the goal that everyone is talking about—we want democratic governance and transparency.

The RCS is a small institution. Around the table we have one of the largest institutions, which has 50,000 students, and one of the smallest—the RCS—which has 1,000 students. The RCS has students on the governing board and I meet them regularly; they were involved in my appointment as principal. As an entire small institution, our submission has been that we feel that all concerns are listened to. We are a small enough institution that we can work within the code of good governance to suit the uniqueness of being small, whereas a law would require us to do some difficult manipulation to comply with it.

As a conservatoire, we are serving the democratic goals and intent very well, and we want to contribute to creativity and innovation as an arts leader.

**Professor Sir Timothy O'Shea (University of Edinburgh):** I thank the committee for inviting us. I am in a similar position to Professor Sharkey, in that I came back to Scotland because of the environment. I have experience of being in senior management in three major universities—the Open University, the University of London and the University of Edinburgh. The environment here has been positive and there has been a really good and productive partnership between the Scottish Government and the universities since devolution. One consequence of that is that I have served the German Government as part of its excellence initiative, which aims to give advice on how to improve its universities. I have also been deputy president of the French Government's investissement dans l'avenir commission, which had a similar purpose.

The partnership between the Scottish Government and the universities has resulted in innovation and creativity. In my university, 47 new companies were created just last year. The partnership has also resulted in international links, which have cultural and economic benefits.

It is hard to perceive the governance problem here. We have a good code of governance, which we are refining. On my university's governing body, I am in an environment with two students, five colleagues and three alumni. The anxiety in the university sector is that the bill could have serious unintended consequences. If the bill goes through in its current form, it will weaken not only the autonomy of Scottish universities but the perception of their autonomy.

As someone with a lot of international links, I find myself in the embarrassing position of getting letters from university presidents from other countries to commiserate with me. The discussion is not happening just in this room, and it is being observed around the world. The perception around the world is that the bill, if enacted, will reduce the autonomy of Scottish universities. In the University of Edinburgh's case, it will weaken the accountability of our vice-convenor.

We have a good dual model—we have a rector, who presides at the court and who is elected by all the staff and students, and we have a vice-convenor, who is appointed to the court through an open and transparent process. That dual model works enormously well. We have a historic and large senate, which is more than 400 years old. It has 737 members, with substantial student and non-professorial membership. It is highly effective. It promotes serious debates, and initiatives that come from the students and non-professorial staff go through our senate and are adopted. If the bill goes through, Edinburgh will be asked to disenfranchise and remove the democratic rights of five sixths of those who are on our senate.

The current partnership is a success story. Scotland has proportionately more universities in the top 200 in the world than any other country has. The University of Edinburgh does better than any German university. When one looks at the unintended consequences—obviously, they are unintended—one sees that they will undoubtedly damage the autonomy that is vital to success. The Organisation for Economic Co-operation and Development documents that are cited in the committee's briefing from the Scottish Parliament information centre are extremely clear on that point.

**Robin McAlpine (Common Weal):** The first thing that I want to say is that universities in Scotland are well managed. We should be clear that the issue is not about the quality of leadership or the staff. I have worked in the sector for 13

years, so I know that we are blessed with many good people.

The problem lies in the assumption that democratic debate in the system should take place only in a university's governing body and that, once there is a governing body, that is the only place where the future of the institution can be discussed. That is not helpful. Universities are generational institutions—they are run not for 10-year periods but for 100-year periods. We do not really have a mechanism that allows most staff and students a way to discuss the purpose, future and strategy of the university.

Personally, I think that we should go further than is suggested and that we should have a fully democratically or stakeholder-elected court. Then the discussion would be undertaken by the whole university, as a community, all the time. However, the bill will give an immediate focus when, in the electoral cycle, people stand as candidates to be the governor or the chair of the court of a university. In that process, people will be able to hear those candidates' views of the future. That will allow different views of the university's future to be discussed in an open forum with staff and students.

10:15

We have excellent managers and leaders in our universities, but we have seen in recent years that, with governance models that select too many people who are too similar, good people make bad decisions. There is little evidence to suggest that less diverse governance is better governance, whereas an enormous amount of research from around the world on organisational development suggests that diversity in governance is not only normal nowadays but helpful and good. It is particularly important to ensure that staff, who understand bits of the university better than managers do, have an automatic and steady role in the governance of the university.

We have to be clear about the difference between autonomy for a university from Government and autonomy of a small management group from everybody else. I do not see any way in which having a democratically elected element of the governance of a university and allowing the staff and students to decide how that democratic outcome occurs affects a university's autonomy. It might affect the autonomy of the senior management team, but it does not affect the university's autonomy.

I do not understand what the unintended consequences are. We already have elected leaders of university courts, and that works well. That approach should be systemised across the

university sector to create a focus for debate about what universities are now and will be.

**Ann Marie Dalton (Heriot-Watt University):**

Robin McAlpine made interesting points about the general direction of universities and perhaps the perceived lack of involvement. When we at Heriot-Watt University devised our most recent strategic plan, the process involved every student and all the staff of the university. Our student union was at the table on every occasion and there was a broad consultation on the values of the university and its vision and mission. The senate has a key role in hearing the voice of our academic colleagues on where they want to go in terms of excellence in learning, teaching and research.

Our university supports the code. We recently appointed a principal and a chair of court—both appointments were made after the code was published. Particularly with the appointment of the principal, we fully met the requirement of the code to consult and get the views of all members of staff and students of the university. We got excellent feedback from students and colleagues on the key issues for the university's direction. Students were not shy about expressing a view on where the future leader of the university should take it and on the vision, mission and delivery of that.

Universities are much more inclusive than is perhaps perceived. The code helps us in that respect and it requires us to be much more inclusive. There is a fantastic spirit and embracing of the code across the universities. My fellow secretaries have been working hard to ensure that we do that. Universities have always had an inclusive and collegiate nature—that underpins their existence. That is a day-to-day approach in our university.

**Dame Jocelyn Bell Burnell (Royal Society of Edinburgh):** I want to make it absolutely clear that I am not a university representative. I have been president of the Royal Society of Edinburgh since 6 October last year, so this is my anniversary.

I have had a number of relevant roles, but I will start with what I have not done. I have worked for the Open University in Scotland, but I have not otherwise been an employee of a Scottish university. I regard the Open University as a national university with a Scottish arm.

I have, however, been involved with universities in England, Ireland and the USA. I have held governance roles in three of them and been a staff member in one, on what they call the council court. I have also held a senior management role on another council, and I have appointed three vice-chancellors, one of them in a Scottish university. I have a strong international reputation. I am frequently invited to lecture abroad, receive awards and things like that.

I want to start by addressing some unintended consequences, which to me are really scary. Starting at about the time of the independence referendum, but picking up momentum now with this bill, when I am abroad I have found people saying to me, "What is happening to the Scottish university? What is the Government there doing?" The implication is that there is interference. There is also a not-quite-articulated implication that there is suppression of critical thought. That is not the word that you want to get abroad. It will be devastating for the Scottish National Party and for Scottish universities, but it is out there already and it is growing. So please, everybody, take care.

I also want to say a little about the Irish universities, because I believe that what has been proposed here is modelled on what happened in Ireland. The Scottish universities are fantastic. They lift Scotland in a way that is not seen in many countries. The Irish universities are a bit sad and muted. Trinity College Dublin has a fantastic history—full stop. The Irish universities are not lifting Ireland. I think that a lot of that is due to bad decisions that arose from curious governance arrangements. I would urge caution in that respect as well.

That is as much as I want to say at this point. There may be more when we come to the other questions.

**Jennifer Crow (Robert Gordon University and Committee of Scottish Chairs):** I am chair of Robert Gordon University in Aberdeen. I want to pick up on the issue of diversity. We share with other universities the view that a diverse governing body is effective and is something that we seek to achieve. Through the new code, we have made different commitments across the university—at RGU we have made a commitment to a 40 per cent gender balance on our governing board within the next two years.

That is challenging; we have an 18-member board of 12 independent members, four staff and two students. In our recent advertisement for new board members, we have taken steps to be very clear that we are seeking diversity. We have agreed to pay expenses to cover any costs or loss of earnings to ensure that we are more open to a wider range of governing board members.

With regard to our commitment to getting a diverse board and a diverse governing body, we share the view that a diverse body will support good governance in the future. That view is enshrined in the code and in the commitment that is shared across the university and higher education sector.

**The Convener:** Everyone has had a chance to speak at least once, apart from the committee members, so I will bring them in now.



**Gordon MacDonald (Edinburgh Pentlands) (SNP):** I want to ask about Mary Senior's point about the disconnect between staff and students and those at the top. In preparation for today's session, I had a look at one of the universities in my area and who was represented on a number of its committees. There are 10 committees, and four of them have no student or obvious staff representation; they are the audit, investment, remuneration and risk management committees.

I have three questions. First, why would there be no representation on those committees of staff or students, and is that typical of all higher education institutions? Secondly, should students and staff be represented on all committees?

My third question is more specific and is about remuneration committees. The committee of Scottish chairs issued a guidance note on the operation of remuneration committees. It says:

"Effective governance is vital to the success of Scotland's higher education institutions, and the remuneration committee is an important part of the governance framework."

The guidance note goes on to say:

"The reputation of higher education can be damaged by pay packages for senior staff that are perceived to be out of line with pay and conditions elsewhere."

The NUS highlighted that, on average, the relationship of the lowest-paid member of staff to the highest-paid member of staff was 16:1. I looked at the information for one institution, from the freedom of information request that it answered last year, and the ratio was 19.5:1. I looked at the progression in one year, from 2013 to 2014, and the number of staff went up by 1.4 per cent, but the number of staff being paid over £140,000 went up by 18 per cent. Is it acceptable for the pay ratio between the highest-paid and lowest-paid members of staff to be so high?

To summarise, my three questions are: why is there no representation of staff and students on all committees; should staff and students be represented on all committees; and is it acceptable to have a staff pay ratio of 20:1 between the lowest and highest paid?

**David Ross:** I am happy to address at least the first two, structural, questions.

I do not know which institution you are talking about, but it does not matter. The question of who is on what committees is one for the governing body, and there are staff and students on the governing body. In my own institution, there are six members of academic staff, three student representatives and two elected employee representatives. We became the last university in the United Kingdom to have a lay majority when the regulations were changed recently. There is a

broad spread of representation across governing bodies, and it is up to them.

There is a very good argument for not having too many members of the governing body on the audit committee. I regard my university's audit committee as the policeman. Its members are the people who look into what is happening and tell us about it. There is a balance to strike: remuneration committee members need to know enough about the university to understand how it works but, at the same time, they have to be sufficiently distanced from the university so that they are prepared to take a completely different view.

As for the investment committee, I do not know what it does. I chair the investment committee at my own institution, but the people who are on it are completely external to the university. They are professional fund managers, who provide expertise on investment matters. We report to the finance committee, which has staff and students on it.

It is very much a question for each individual university. The Scottish chairs take the view that the staff and students are and should be involved as fully as the governing body thinks is appropriate. That is what defines it.

On your second question, whether there should always be staff and students represented on committees as a matter of course, the answer has to be: what is the committee doing? We are looking for expertise. You will find that all the committees report to the governing body, on which there are staff and students.

On principals' pay, the reality is that the Scottish Further and Higher Education Funding Council imposes on us—the members of the governing body; not the university—the obligation of sustainability. That is covered in paragraph 17 of the financial memorandum. That imposes on us personally.

We have to run the institutions in the best way that we think we can. That means that there are people who are paid at different rates, and there are people who some members of the public think are paid too much, but we must fulfil our obligation of securing sustainability. As Professor O'Shea and others have pointed out, the evidence is that we are doing that. It would be quite wrong to impose some standard multiplier, which would reduce the accountability of the governing body for securing the sustainability of the institution.

**Ann Marie Dalton:** I can comment on the actual operation of remuneration committees. The code has really helped us: it has given us much more guidance about how remuneration committees should operate. For example, it is required that the chair of court no longer chairs the remuneration committee, and we have implemented that

requirement. It requires that we have a co-opted independent member who is not a member of court, who has the expertise in the area of reward, which David Ross referred to, and who can inform the decisions around the committee table.

The terms of reference of the remuneration committee are agreed annually by the court. There are of course data protection issues, which we must guard carefully. At least in my institution, the full court, including our staff and students, receives a report of the reward levels. Granted, that is in bands, but the court is fully informed of all the decisions of the committee.

In addition, pay in universities is really well publicised. A league table of vice-chancellors' pay appears every year in *Times Higher Education*. It is used as sensible benchmarking data by the Universities and Colleges Employers Association, which the whole sector uses.

10:30

All the salaries are openly displayed in our published accounts for everyone to be aware of. The new guidance from the committee of Scottish chairs has also been warmly welcomed. The guidance is very new—it is only a couple of months old—but we are well on the way to adopting that as well.

Governance is an area that evolves over time in all organisations, not just universities, and we are moving forward, particularly in opening up transparency around sensitive areas such as pay.

**Mary Senior:** Gordon MacDonald raised three good questions and helped to illustrate the disconnect that staff and students feel from those leading universities.

No one is questioning that Scottish universities are good—they are good. What we are saying is that they could be so much better if staff, students and trade unions were fully involved in how they operate.

A number of people have commented on the governance code, which has been introduced over a number of years. I remind the committee that trade unions and students were not involved in the initial stages—certainly in the drafting of the code. It was only when we gave evidence at this committee with Lord Smith and pointed out that anomaly that we got to meet those who were drafting the code. Again, we felt that there was a real disconnect.

As regards the reputation of the sector in Scotland, my colleagues in England, Wales and Northern Ireland look at Scotland with envy in relation to the commitment to education, the interest in governance and the fact that we have a

desire to do better. We see that as a very positive thing.

On principals' pay, we still have concerns about transparency. When a principal in Scotland can get a 13 per cent pay rise while staff get a 2 per cent pay rise and we have no explanation as to why they are getting 13 per cent when the rest of the staff are getting 2 per cent, that is a difficulty. In previous years, there was a case of a principal who got a 24 per cent pay rise while staff got a 1 per cent pay rise, and again we did not get an explanation as to why that was happening.

UCU does a regular freedom of information request to universities asking for the minutes of remuneration committee meetings to get a sense of why principals are being awarded the pay rises that they are. Scotland tends to do better than the rest of the United Kingdom, but it is still not great. Two thirds of Scottish universities refused to provide full details of the committee that set their principals' pay and four refused to send us the minutes. All we are asking for is an explanation of how decisions are made about the salaries of those at the top. It is important that that is looked at and scrutinised. That goes to the nub of why the bill is important.

**David Ross:** I have two points that I would like to correct. First, as the SPICe document on the matter reports, staff and students were represented on the working group on the code. I went to a meeting with the previous cabinet secretary, along with Alan Simpson, who sat on the von Prondzynski review panel, and Ewan Brown. The previous cabinet secretary suggested to us that we should have a rector or an ex-rector on the working group to represent staff or students. I understand that that is the basis on which SPICe made the correct comment that we had an ex-rector on the group—Simon Pepper, the former director of WWF Scotland, who had been a very successful rector at the University of St Andrews. We thought at that stage that we were proceeding as requested to ensure staff and student representation.

The other point that I would like to correct is that, when the code exercise was carried out and consultants went to every university, students and staff did not press to be on remuneration committees. In fact, a number of students said expressly that they did not want to be on remuneration committees.

**Emily Beever:** I am sorry, David, but that is just wrong, certainly from the examples that I have heard from members and from my own experience. We had been fighting for many years at Aberdeen for students and staff trade union members to be on remuneration committees. It was only in my last few days that I was granted observer status.

From being in that meeting—in that forum—I know that it is a very different atmosphere. As a participant, you have a very different ability to challenge and take part in the decision making than if you merely see a report that comes through the governing body. It is very difficult to challenge in those settings.

There are some great examples of best practice from colleagues here—Ann Marie Dalton and Jennifer Craw mentioned some—but it is worth noting that there are other examples of institutions that have just not implemented the self-regulatory measures in the code of good governance and, as a result, have failed to make the real, tangible changes that we wanted to see from the document. That is why we have reached the point of legislation.

**Robin McAlpine:** There have been improvements in the transparency of governance in recent years, and the ability to know why other people made a decision is useful, but that is only one of the three fundamental principles that are at the heart of the matter.

One of the other principles is diversity. From my recollection of 30 years in the university sector, I think that one of the problems is that people who are appointed to remuneration committees are almost always highly paid. We are talking about three people on £100,000-plus salaries being appointed to a committee to decide what another person's £100,000-plus salary should be. That involves one kind of person making one kind of decision.

Diversity enables people to have a discussion with others that is not about comparing what they think is normal, but about comparing what the institution as a whole thinks is normal, including staff and students. Year after year, there is dismay about some decisions that are made, and it never changes.

The other element is democracy. Let us say that a decision is bad. In the university as a whole, who is able to stop it? Who is able to say, "We don't think this is a good decision"? Is it only the university court—the governing body? It usually has a majority of lay members who are largely appointed, and if we profile them we will find that they are not low-paid people.

It is important to consider the range of principles that underpin good governance. Transparency is important, but so are diversity and some sense of something that is more than accountability—in such a large community, it is also about democracy and the ability to ask who, in the end, owns the university. Is it owned by its staff and its students, or is it owned by 20 people who are appointed to a committee without the wider university community having an automatic right to

a say on who the people who make the decisions are?

I say again that this is not about ill will. We have seen from the banking sector and a whole load of other sectors that, if we put a lot of people who come from exactly the same background in a room and ask them to make a decision, we can guess what decision they will make. Good decision making comes when people have to debate with people who come from different directions, but I know that students have been actively excluded from some controversial decisions in universities, and that is not good.

Students might be younger and not as experienced, but they are a key part of the university community and their voice is not an add-on. Their expertise may not have come from 50 years in the financial services sector, but they have a whole other kind of expertise—the expertise of what it is like to be a student in the institution and what they think its priorities should be, and that should be valued, too.

Voluntary consultation is not good enough. As we know, people consult when they want to and in the ways that they want to. If we do not empower diverse voices to have a say in how universities are shaped, they will continue to be shaped by a small, self-selecting group, and that is not healthy governance.

**Professor O'Shea:** I want to straightforwardly contradict Robin McAlpine. Our court has five elected staff, two elected students and three elected alumni on it, and it is presided over by a rector who is elected by our staff and students. That provides a route for all sorts of debate. When our senate meets and discusses a large thematic topic, all members of the university community are invited, regardless of their status and whether they are academics or not. It is a very open system.

I will give you some examples. We had a student-led campaign for the university to divest from fossil fuels, and there were differing opinions on that from those on the investment committee, those who are engaged in petrochemical engineering, and the students.

There were a series of debates. The senior vice-principal chaired a group that included academics who did research on fossil fuels and students. As a consequence, the university court ended up with a divestment from fossil fuels. That process was student led and highly participative.

When the Scottish Government announced its business pledge, our university said straight away that we would adopt all elements of it, including the living wage. Again, that was a broad-based position within the university.

Led by academics in our sciences areas, we have been working very hard on gender equality. A few days ago we were delighted that the University of Edinburgh as a whole became one of seven universities in Britain to be given Athena SWAN—scientific women’s academic network—silver status. The moves on gender equality, which started in science and engineering, and the move to divest from fossil fuels inevitably did not come from certain parts of the university—they came from some other parts.

Within the university, we have a number of fora for discussions, such as our senate, which has debates that allow the whole university community in; the open discussions that I have with all staff and students; and our annual court meetings, which all staff and students can address. Last year there were a number of very clear examples of that, such as when the university took the lead in divesting from fossil fuels. Who led that movement within the university? It was the students. We took the lead in gender equality. Who led that? To start with, it was our academics in chemistry.

We have those mechanisms. This is not rhetoric; those are tangible examples, which involved serious debates. It was not a straightforward case of someone saying, “Let’s work on gender equality in science” and everyone said, “Yes, let’s do that”, nor was it the case that someone said, “Let’s divest from fossil fuels” and the whole of the investment committee said, “Sure—if that’s what the students want, we’ll do it.” There were long, careful, participative debates, after which the university community as a whole said, “Right—we have divested from fossil fuels” and “Right—we’re going for gender equality, particularly in science and medicine.”

**Professor Sharkey:** I agree that universities should be held to account. There are a variety of ways that that continues to be done. For instance, we are hosting the widening access commission. We are really looking forward to coming up with innovative ways to get more young people engaged in drama, music and dance. We want to influence the schools curriculum, because that influences the kind of student that we can take and educate.

We absolutely agree about diversity and transparency, but one-size-fits-all legislation could actually be hurtful for a small institution such as ours. I mentioned the art forms represented on our small board. We have to make sure that the board can help lead us through troubled waters for cultural institutions and education institutions. We need expertise from the acting profession, music, dance and production. Indeed, we have members who are part of the Musicians’ Union, Equity and the Broadcasting Entertainment Cinematograph and Theatre Union. That is as important as

membership of some of the other unions that have been discussed here. We have good relationships with them, but if we had to create space for all of them on the board, we would not necessarily get some of the expertise that we need to function and flourish in the world. That is the bit that I am concerned about.

We need to be held to account. There are measures to do that, from our outcome agreements to the widening access commission, our coming to committees such as this one and the code of good governance, which has its review coming up. We would find challenging any legislation that tries to treat us all the same, given that the sector is so different.

**The Convener:** Are your concerns about the bill around the perceived lack of flexibility in the way that it would be implemented? In other words, you do not want something that is one size fits all, but if there was greater flexibility for institutions—

**Professor Sharkey:** That is among our concerns. To find a cultural leader, such as the leader of the Royal Scottish National Orchestra or the leader of the National Theatre of Scotland, we are identifying a small pool of people who have a sympathy to the culture and a way to lead it. Like the Glasgow School of Art, we are as much a cultural institution as an educational institution, so having an election would politicise, with a small p, the process. Would we get an actor, a musician or a dancer? It would take our eye off the ball in delivering on the creative and innovation agendas. It would be hard for us to be compliant with the law. It would make things more difficult.

**The Convener:** Therefore, what about having a fit-and-proper-person test, to use that loose description? In other words, what if there was a way of saying what kind of people we are looking for, and then people who fit the criteria could apply, as would happen with a job application?

**Professor Sharkey:** That might make it easier, but I would have to see the detail of what you are talking about.

**The Convener:** Sure. I just raised that as an issue.

10:45

**Mary Scanlon (Highlands and Islands) (Con):** I would like to raise three points that have already come up in discussion, not to go over what we have done, but to look forward.

Paragraph 13 of the policy memorandum states:

“the SFC must, when making a payment to an HEI, require that HEI to comply with principles of good governance which appear to the SFC to constitute good practice ... The SFC’s Financial Memorandum ... sets out

the requirements with which HEIs must comply as a term and condition of grant”.

Could all the issues that have been raised in the meeting not be part of the governance of the SFC in handing out the grants? Is there anything in the bill that cannot be included in the code of good governance? That is my first question.

Secondly, given that I have never been surrounded by so many learned people—I am not underestimating my MSP colleagues—I thought that I would take advantage of all the professorships around the room. Paragraph 63 of the policy memorandum states:

“The definition of academic freedom as expanded explicitly includes the freedom to develop and advance new ideas and innovative proposals.”

What is stopping you developing

“new ideas and innovative proposals”

at the moment? Will that be corrected by the bill?

I shall ask my final question while I have the floor.

**The Convener:** No. Can I bring—

**Mary Scanlon:** It is my final question; I need two seconds.

**The Convener:** I will bring you back in. Is your question very quick?

**Mary Scanlon:** Yes.

**The Convener:** Right. Okay.

**Mary Scanlon:** Can my learned friends explain section 20 of the bill? It states:

“The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.”

Can my learned friends tell me what that means? It seems to me that the Scottish ministers can just jolly well do what they like if the bill is passed.

I am finished. I will listen carefully to the answers.

**The Convener:** To be honest, I am surprised by your last question because, in my 13 years in the Parliament, ancillary regulations and provisions have been in every single bill that I have ever seen.

**Mary Scanlon:** Not those words.

**The Convener:** Yes, they have been.

**Mary Scanlon:** I do not think so.

**The Convener:** Who wants to answer Mary Scanlon’s questions? Does Mary Senior want to do so?

**Mary Senior:** Okay.

Many of the issues that we have raised are not in the code of good governance. It does not allow for elected chairs or trade union nominees on governing bodies, and it does not address strictly enough issues around remuneration committees. The bill takes a more holistic approach to really connect staff and students more effectively in respect of the governing body.

We are all saying that the sector is good, and I do not want to sit here and point out all the problems and difficulties that it has faced. I will give the committee just one example of how things could work in a positive way. The example is about the University of Aberdeen’s rector asserting her right to chair the court. The court faced a decision, because the senior management team wanted to make 150 compulsory redundancies. It wanted a very short window of a couple of weeks for a voluntary severance scheme and then wanted to move to compulsory redundancies. The rector enabled a full debate at the court, and the court said, “Hang on a minute—let’s pause and scrutinise these decisions.” The voluntary severance scheme was then extended and there was more consultation with the trade unions and students. We are now working that situation through rather than the court having made a drastic decision quickly without effective time to scrutinise.

That was because the rector, who does not always chair the court but asserted her right to do so on that occasion, took the chair, and staff and students who sat on the court were able to challenge a decision. The bill will allow more robust governance, scrutiny, transparency and accountability.

Your second question was on academic freedom. The bill will help to strengthen and give clarity to the definition of academic freedom. We have a good definition of that in Scotland from the Further and Higher Education (Scotland) Act 2005, but the bill will add to that by giving clarity to and strengthening the definition. The UCU has been asked on occasion to defend some of our members around questions of academic freedom. I think that the bill is a positive step forward.

**Liz Smith (Mid Scotland and Fife) (Con):** I will set out some issues that relate to the possible reclassification of the university structure. I was interested in what Dame Jocelyn Bell Burnell and Professor Sharkey said about the importance of the international dimension to our institutions, particularly those that might have great diversity.

Two weeks ago, Universities Scotland presented a case to the Finance Committee that there could be considerable detriment if universities were reclassified as public bodies. Its

workings suggested that the cost could come to close on £1 billion, which is a significant sum. The Scottish Government responded last night, but not with any accuracy on its workings, because it has not yet produced them.

Are the witnesses finding a concern from international sources that the proposed reclassification could affect not only the way in which you work but the funding of our top-class institutions?

**Dame Jocelyn Bell Burnell:** I cannot comment specifically on the funding. I have a concern that universities should not be classified as public bodies. Sure, they get some public funding but it is far better for universities if they are more independent and are not classified as public bodies. I think that that is all that I need to say at this point.

**The Convener:** Okay.

**Robin McAlpine:** I just want to clarify the public bodies point. I was public affairs manager for Universities Scotland for 13 years and we took legal advice and were told that universities have always been public bodies. They are not public sector bodies but are defined as public bodies. As far as I can gather, the entire basis of the claim about the public bodies proposal relates to whether universities would lose charitable status. I have been out of the country a lot in the past few weeks and might have missed something, but as far as I am aware that issue has been put to bed by the Office of the Scottish Charity Regulator.

**The Convener:** To be honest, Robin, I do not think that that is correct.

**Robin McAlpine:** Is it not? Okay.

**Liz Smith:** There are two completely separate issues. On the charitable status issue, Mr McAlpine is correct that OSCR has made a ruling that the public bodies proposal would probably have no effect on universities' charitable status. However, the proposed Office for National Statistics reclassification is a completely separate issue. There is great concern about what that reclassification would do, because it would make universities into public bodies of a different nature from what they are now. Universities Scotland presented to the Finance Committee a very articulate case and a detailed set of figures about the damage that that reclassification could do, and we heard from Professor Anton Muscatelli at the same committee what it could do to the University of Glasgow. I am sure that the university principals who are here today could say the same thing about their institutions.

If universities are concerned that their reclassification as public bodies would make them

financially unable to do what they can currently do, is that not a major concern with regard to the bill?

**The Convener:** Do those who have raised the issue of the ONS take any comfort from what Scottish Government officials said on the record at the Finance Committee? They said:

"we deem reclassification to be a low risk. However, if, as a result of a wider ONS review of universities, there were any risk of reclassification ... we would take what measures were required to ensure that universities were not reclassified ... there is absolutely no intention on the Government's part that reclassification would be an outcome; it is something that we would seek actively to avoid."—[*Official Report, Finance Committee*, 16 September 2015; c 16, 39.]

Do you take any comfort from those statements by Scottish Government officials?

**Mary Scanlon:** Excuse me, convener, but is that question for members?

**The Convener:** I am asking those from the sector what they think.

**David Ross:** You will be aware of the prospective project at the Western infirmary site in Glasgow, where we have 14 acres of contiguous ground and a £500 million investment programme. If we end up in limbo, which is what that suggestion would mean, that project will just stop dead. No one will deal with us, commercially or otherwise, if they do not know where we are. Therefore, I cannot take comfort from what Scottish Government officials have said.

**Gordon MacDonald:** I am just trying to understand the funding situation. The Scottish Parliament information centre's briefing on the bill, at annex 2, gives the main sources of funding for all 18 institutions. According to SPICe, total income is £3.2 billion, of which £2 billion comes from public sector grants and fees, £747 million comes from the private sector, £144 million comes from charities and £317 million is "Other income". In that range of funding streams, where is the danger that you perceive to the university sector, given that you get £2 billion in public sector grants and fees?

**David Ross:** May I follow up—

**The Convener:** I saw Professor O'Shea shaking his head earlier; do you want to come in?

**Professor O'Shea:** The danger at the moment is that, if the charitable status that we currently have, which allows us to deal with philanthropic support and to borrow, and which gives us a range of things—

**The Convener:** Sorry. Robin McAlpine made the point about the ONS and OSCR, and I think that Liz Smith quite rightly clarified that those are two separate issues and that OSCR has clarified the position. You have started to answer a

question about ONS reclassification with an answer about OSCR.

**Liz Smith:** May I just clarify something? This is on the record in the Finance Committee. In the Universities Scotland evidence to that committee, which I understand is now on the committee's website, there is a clear breakdown of all possible impacts of ONS reclassification. Last night, the Scottish Government put out a letter from Angela Constance to the convener of the Finance Committee to try to clarify the situation, but the letter does not contain details that answer the university sector's specific concerns about the sums, as set out in the letter from Universities Scotland. As I understand it, that is the issue that is causing anxiety in the sector, for exactly the reasons that David Ross set out and Anton Muscatelli set out in the Finance Committee, about certain projects in universities not being able to go ahead.

**The Convener:** Like you, I am trying to avoid mixing up OSCR and the charitable status stuff with ONS reclassification, because they are separate issues.

**Chic Brodie (South Scotland) (SNP):** I feel somewhat depressed that we are still in this situation of conflict. Change is a constant. I want to address a couple of issues. Yes, the universities need to be democratised. Having looked at levels of informed participation, I say to the unions and the students that democratisation is about harnessing the votes and input of all students and all members of staff. I say to the boards that we must consider who is appointed to boards. There must be a much more thorough appointments process and there must be a review of people who are appointed, so that it is not a case of Buggins's turn or appointing friends.

I have run companies in Europe. What conversations have chairs, students or unions had with European universities about how they are governed? That is my first question. Secondly, how do you communicate to the wider community your outcome agreements and strategies for what you are trying to do? Last week, we talked to university representatives about their international involvement and asked whether they take an equity share in their products, thereby generating increased funding, as happens at Stanford University, in California.

The perception is of a total lack of communication between the court and the students and staff at the level that there should be. I am not saying that there is no communication, but the communications should be such that there is total engagement. Clearly, the court must select its leader but, in any company, the board must go to the shareholders and tell them what the hell is going on. I do not see that happening. The

perception is of a bubble and that no one outside the bubble knows what is going on. If that is only a perception and an unfair reflection of the students, the unions and the board, then tell me that I am wrong. If I am not wrong, tell me what you are going to do to change the situation.

11:00

**Ann Marie Dalton:** First, I will address the Buggins's turn remark. I think that that practice has been left in the past by universities—it certainly has at my university. I have been there for five years and, before that, I served as secretary for 10 years at another university, and the practice has long since passed.

We have defined roles for our governing body members. The court and beyond—student and staff members—were consulted on what the chair's role should be. The entire community, including staff and students, were consulted on what the principal's role should be. We have a clearly defined skills matrix, which we publish on our website, against which we recruit our governors. We recruit using an open advertisement process. A few years ago, our diversity was not what we wanted it to be. At that time, less than 20 per cent of our court was female. Today the figure is 54 per cent. We should not forget that there are more protected characteristics than merely gender, which tends to be the focus, and we are rapidly moving on to look at the rest of the protected characteristics.

We should not underestimate the value of the effectiveness reviews, which are contained in the published code. The code requires universities to conduct full five-yearly externally facilitated reviews on the effectiveness of our court and senate and all their committees. The results must be published on our website and made available to all our stakeholders. We cannot conduct the reviews ourselves; we must bring in someone else to do them.

The review of effectiveness goes further. We are required to carry out a mid-point review and an annual assessment of the effectiveness of each court. We must discuss both of those with our students and staff and publish them across the university.

We have moved on an awful lot on the transparency of our appointments and on looking at how effective we are. Because the code and its requirements are relatively new, many universities will not have gone through the full cycle yet. However, given time, the sector will certainly demonstrate its commitment to looking at and improving the effectiveness of its governance.

**The Convener:** Before I bring in Professor Sharkey, I ask that he picks up Mary Scanlon's

question about the code of governance and its role.

**Professor Sharkey:** First, I will respond to Chic Brodie. We instituted an annual general meeting where any question can be asked. More to the point, we invite along external stakeholders—all the arts companies, for example—as well as our students and staff. The agenda is open. In my very first AGM, we started to talk about and lay the groundwork for a strategic planning process. We are a small institution so, over cups of tea and scones, we had groups of 20 talking about the institution's values and where we wanted to take it. If you came to our institution and perhaps others such as the Glasgow School of Art and, as we heard, Heriot-Watt University, you would feel that there was a lot of inclusion when thinking about the strategic direction and the steps that need to be taken. Frankly, I am going to need every staff member and student to be working in the same direction to lift up the arts for this country.

**The Convener:** What about Mary Scanlon's point about whether that can be dealt with through the code of governance?

**Mary Scanlon:** I asked about academic freedom and new ideas.

**Professor Sharkey:** That is related to what I have said. Measures are in place that can and do hold us to account. Our outcome agreement is debated and discussed at our academic board, which has a wide cross-section of staff and student representation. More could probably be done there, in constructive dialogue with higher education institutions.

**The Convener:** Before I bring in other members, I want us to move on slightly.

The cabinet secretary wrote to the committee recently to try to assuage some of the concerns that have been raised about the bill, and to outline where the bill could be amended to deal with some of those concerns. I am sure that witnesses will have seen that letter. Does it assuage any concerns? Does it give comfort that the cabinet secretary is already thinking about amendments that would deal with issues that have been raised?

On the other side of the coin, does it worry you—I am looking at Mary Senior and Emily Beever—that there may be changes that would water down the impact that you would like the bill to have? I will leave that for people to discuss.

Liam McArthur has been waiting to come in.

**Liam McArthur (Orkney Islands) (LD):** Thank you very much, convener. I apologise for my late arrival, which was due to travel disruption.

The reassurances in the letter are well intentioned, but from reading the submissions it

seems to me that the problem for those who have raised concerns is less the intent and more the scope of the bill's provisions. I would like confirmation on that point, particularly in relation to the ONS, which will look at the scope rather than simply the stated intent when it makes a judgment.

My other point is in relation to the genesis of the bill. Obviously, quite a lot has been made of the amount of public funding that our universities receive. The amounts vary enormously—as you would expect in a varied sector—but are significant for all universities. There are funding levers to achieve the outcomes that ministers and the Parliament want.

There is a threat of reputational damage—Tim O'Shea gave the example of divestment from use of fossil fuels. However cathartic that process might have been, the threat of reputational damage was probably very much in the minds of those who are responsible for making the decisions.

The committee should reach for legislative levers only when there is a demonstrable need to do so.

I am interested in following up on Chic Brodie's question about comparators—international, and not just from the UK—of governance, which could give us confidence that our world-class reputation can be safeguarded in this process.

I will also pick up on Mary Senior's point. Clearly there has been a challenge relating to academic freedom, and comfort may be sought. It would be interesting to know how many successful cases in relation to academic freedom have been brought and, therefore, whether we require additional clarification or tightening of the 2005 act that we are being asked to sanction through the bill.

**Jennifer Crow:** I cannot answer the European question, but Tim O'Shea can.

From a governance perspective, we support the view that legislation should be used where it is most important. A good code of governance and good accountability through outcome agreements should be the appropriate route to ensure, across the whole sector, that good governance can be demonstrated and that it is transparent, open, progressive and fit for purpose for a modern and successful Scottish higher education environment.

From the perspective on the bill of a board or a chair, one of the key issues regarding the election of chairs is how to hold the governing body to account. We sign up to the outcome agreement and take that responsibility very seriously. I, as chair, am responsible to my governing body. As a result of the code we now have an independent governor who assesses my performance annually. That assessment is discussed without my



presence. If I am not doing my job, if I am not accountable to the body and if it is believed that there is an issue, I do not continue in my role. There are checks and balances in the governance code, and there are checks and balances in terms of broader diversity and broader actions in the community.

The point about how much communication we do is interesting. At RGU, a lot of the communication is cascaded down through the senior leadership team, and we have student partnership agreements, but as a board we are small in number and probably not very visible across the whole body. We definitely could look at the idea of having of an AGM.

On legislation versus governance, we should have legislation where it is required. However, we would definitely support management by good governance through good outcome agreements and the holding to account of the governing body, in terms of continuing success within the sector.

**Professor O'Shea:** The question that Chic Brodie and Liam McArthur have asked about the attitude in continental Europe is a very good one. The University of Edinburgh is the one Scottish member of the League of European Research Universities, which comprises the top 21 universities in Europe. We are also a member of the Coimbra Group, which essentially comprises the European ancients, and of the European University Association, which comprises all the European universities. Documentation from LERU and the EUA shows unambiguous admiration for the current situation in the United Kingdom—the success of UK universities in comparison with universities in other parts of Europe is put down to our autonomy and our ability to operate. In some of the German Länder, for example, a university may borrow only with all sorts of inhibitions. From the European point of view, therefore, the explanation for why the UK and Scotland do so well brings us straight back to autonomy.

I also counsel against bringing in legislation that is not necessary. Mary Scanlon asked three very good questions to which she knew the answers—

**Mary Scanlon:** I did not get any answers, though.

**Professor O'Shea:** I will give you some very brief answers, in that case. You are quite right that it is very easy for the Scottish funding council to control universities through outcome agreements and conditions of grant, and academic freedom would not be altered by what is in the bill. However, on the key point that you raised, which was about the provision for secondary legislation, the choice that is before the committee of whether to hand far-reaching powers to some future minister of whose persuasion we know nothing is

what is causing the perception outwith Scotland that there is an attack on university autonomy.

I make a personal plea: given how well the partnership between the Scottish Government and the universities works, I ask the committee to pause on the bill. We have a very positive vector in the code of good governance, and we are very happy to come annually to the committee to report on further improvements. We acknowledge that we are not perfect, but we should look at the increase in student representation and open consultation. We would be very happy to document that for the committee annually, if you would just pause with this bill. It is unnecessary and too powerful: such legislation will be seen—correctly—as reducing the autonomy of Scottish universities.

**George Adam (Paisley) (SNP):** What I have been turning over in my head all this time is the fact that £1 billion of public money—or, at least, £1 billion from the SFC—is going into these organisations. We are therefore talking about the need for transparency and democracy and how we can move things forward in that respect. The universities might tell us, “There's nothing to see here. Everything is wonderful—we don't need to do anything else”, but someone from the outside looking in might, as Robin McAlpine has suggested, see what amounts almost to a network of people giving each other cricket-score salaries without any accountability for the public pound. What is wrong with universities actually representing the communities that they are in as well as the university community itself? What exactly is wrong with having such openness and transparency so that we can see what is going on? That would be a good way of collectively managing a university. Please correct me if I am totally wrong, but that looks like the way forward to me.

**Ann Marie Dalton:** The code is very helpful in this respect. I am sure that the chairs will not thank me for saying this, but the code makes it absolutely clear that the court and the chairs must take a lead role in engaging with all stakeholders in our local communities, with our students and with our staff. The code has given us that opportunity.

Coming back to the question that Tim O'Shea asked, do we need to legislate to take that further? No. Instead, we need time to demonstrate our full engagement with the range of stakeholders—with, of course, students and staff being right at the top of our list. You have heard about the inclusive nature of our governance; it is evolving, and I think that we can make evolve further.

11:15

**Dame Jocelyn Bell Burnell:** I suspect that I am the oldest person in the room and perhaps know some history. I may not look it; I am a lot older than I look. When granny was a young academic, vice-chancellors were paid typically 10 per cent more than the highest-paid professor. Then the Government said, “Your governing bodies are incestuous. Get some industrialists on board.” The universities got some industrialists in, and the industrialists said, “Hey, vice-chancellor—you’re running a £50 million business. In industry, if you ran a £50 million business your salary would be yea high,” so the vice-chancellors’ salaries went up. You cannot blame them for that, but it may have been an unintended consequence. That is the end of the history lesson.

The Royal Society of Edinburgh is particularly concerned about the enabling legislation, especially the items that are to be set out in regulations. As everybody round the table will know, that gives powers not only to SNP ministers, but to ministers of whatever colour of Government there may be in the future—Conservative, Labour, Liberal, Green, black, white or whatever—to do all sorts of things without parliamentary scrutiny. I think that that is a far bigger governance issue than anything to do with the universities in Scotland.

**The Convener:** For absolutely accuracy, I say that ministers cannot do that without coming to Parliament. Regulations would have to be brought to Parliament and agreed by Parliament, so ministers do not have absolute authority to change things willy-nilly, as they see fit. That is not how things operate. There would be parliamentary scrutiny of regulations and there would be a parliamentary vote on regulations. I just want to make that clear.

**Dame Jocelyn Bell Burnell:** Okay.

**Mary Senior:** There are some very good European examples, and I encourage the committee to bring Ferdinand von Prondzynski to a future meeting because he could speak about that in more detail. It is unfortunate that a family bereavement means that he cannot be here today.

On ONS reclassification of universities, no one wants that, so I encourage the committee to look at the trade union evidence from Unison, which addresses that point. There is a danger of sabre rattling on the issue, because although the sector receives a substantial amount of public money, it actually receives more money from other sources, which is one of the key issues related to ONS reclassification.

Part of the reason why it looks as though the bill will give significant powers to the Scottish ministers is that the cabinet secretary wanted the

sector—principals, chairs, trade unions and students—to be able to come together to seek consensus on how we can move forward on elected chairs. I wonder whether that being in the legislation, rather than the bill giving powers to the Scottish ministers, would give comfort to the people who are concerned about that.

Liam McArthur asked about academic freedom; I am not sure that I can talk in detail about cases that we have taken, because they usually end in mutual compromise agreements. It is more important to understand what academic freedom means, what underpins it and how it should play out in the university sector in what is a challenging time. New legislation to prevent people from being drawn into terrorism is coming in, and one area on which UCU has agreed strongly with Universities Scotland is around the importance of academic freedom in dealing in the university sector with issues such as the “prevent” legislation.

Tim O’Shea made his plea to the committee. I make an equally strong plea that the committee enable the legislation to go forward, because it can make a big difference to how institutions operate. It is important that we shine a light on some of the poorer decisions that universities have made. Edinburgh university is a great university, but questions have been asked about the proliferation of zero-hours contracts there that we saw a few years ago. That needed to be addressed.

Why are there questions about the campus of a university in Scotland and its looking to open new campuses in London? We think that all such questions could be more effectively scrutinised by the governing body with the involvement of elected staff, student and trade union nominees on court.

The bill is flexible: it recognises the diversity of the sector. Another problem area that I want to highlight is the situation that Edinburgh College of Art faced a number of years ago. It was a small specialised institution that was let down by poor governance. Fortunately, the University of Edinburgh was able to come in and pick up the pieces. Whatever their size or nature, all institutions need to have a collegiate approach to governance, which I think the bill can provide.

**Robin McAlpine:** The European University Association does a ranking of universities’ autonomy, and universities in Scotland and Britain as a whole have the most autonomy of universities anywhere in Europe, by quite a stretch. A tiny tweak that moved the system a tiny bit would leave them still as the most autonomous universities in Europe. If we are talking about international experience, it is important to look at the ivy league in America. The American universities have much more collegiate

governance systems, and I do not think that anyone would say that they are not successful.

There is a point that I really want to come back on. I cannot understand the ferocity with which some people oppose what is proposed. Tim O'Shea was right—the divestment campaign was a great example. That is a very good reason why we should ensure that it is a democratic right in every university for staff and students to be able to help the university. I think that that is a right; it is not something that should be given by a group of managers when they feel like it.

I stress the fact that there is a great deal of fascinating research being done around the world on what makes an effective modern organisation and what such an organisation's governance looks like. The same point keeps emerging again and again. When an organisation brings in the expertise of its stakeholders as a matter of right rather than as a matter of grace and favour or patronage, it gets better governance. It also gets a more diverse debate. The zero-hours contract example is an excellent one. That is an issue on which trade unions, staff and students might take a different view from managers. You will not find in any sector many forward-looking institutions that are not looking at new governance models that enable and empower their internal stakeholders, so I do not understand the level of resistance to the modest change that is proposed.

**David Ross:** In response to the question that was asked a moment ago, I want to deal with two points that have been raised. The convener is entirely right about the operation of the regulations and the powers, but possibly because of my vulgar previous trade as a corporate lawyer, I know that power can be exercised in a number of different ways.

Section 8 of the bill would allow the Scottish ministers to decide that there was to be a new category of member of court—someone who would be appointed by the Scottish ministers. They could determine that there were to be 15 such members. Under our arrangement with the Scottish funding council, we cannot have a court of more than 25 members. Therefore, the Scottish ministers could make regulations that said that an institution had to have 15 members of court appointed by them, so it would have to get 15 people off its court, which would give the Scottish ministers control.

However, my vulgar past tells me that the Scottish ministers would not have to do that; all that they would have to do would be to get the principal of Edinburgh university in a room and say, "Under section 8, we have the power to do that." You might tell me—I am happy to be guided by you—that that never happens in the world of politics, but my experience of life is that power can

be handled in a number of different ways. The theoretical power to do that is in the bill and it will not have to be exercised to have the effect that section 8 is intended to have.

**The Convener:** Okay. I will not comment on that, but it is an interesting view.

**Emily Beever:** I want to come back to George Adam's point about universities representing the communities that they are situated in. Tim O'Shea mentioned the five institutions in Scotland that are in the *Times Higher Education* top 200. It is worth noting that all five are the ancient universities, which use the elected chair model. That shows how that model can allow institutions to flourish.

It is worth noting that we are unconvinced about any pre-selection panels. We would push for open democracy for the chairs. We think that—short of what Professor Sharkey was saying—students and staff would choose someone who is capable, knowledgeable and interested in the institution, as they have done under the rectorial model for centuries. It is clear to us that, when the democratic system is in place, our institutions are better placed to make good decisions for the people's best interests—that is, staff and students and not the bottom line. Our universities are not businesses.

**Mark Griffin (Central Scotland) (Lab):** I support the general principles of the bill, but ONS reclassification is quickly becoming the key issue. Given the fear on the part of panel members around the financial implications of ONS reclassification, are any of you comfortable about legislation coming in in a situation in which there is a disparity between Universities Scotland, which says that reclassification is an amber-to-red risk, and Scottish Government officials, who deem it a low risk? What work needs to be done by the Scottish Government to allay the fears in the sector around ONS reclassification, which, as I say, is fast becoming the key issue for the legislation?

**Jennifer Crow:** If the question is whether we believe that the reclassification is a real risk, my answer is yes.

**The Convener:** I think the question was what can be done to allay that fear.

**Jennifer Crow:** There could be a pause, to clarify what the ONS considers independent autonomy looks like and how we preserve the right of universities to raise funds, connect with business and accept philanthropic gifts, and not become public bodies but instead retain their current status. Until we have absolute clarity on those positions, we can address what we understand is needed to drive good governance—transparency, modernisation and openness—through the code, which is due to be reviewed in

the next year, under a three-year review process. We can examine what issues are still outstanding in relation to the code and current practice, present that openly and transparently and continue to work on driving good governance through the code.

ONS reclassification is a real risk to the sector when it comes to future investment and success. As governing bodies, we absolutely have to take financial accountability into account. Our principals are accounting officers in relation to the Scottish funding council, and as chairs and boards, we are accountable for the financial sustainability of the organisations as a whole. The ONS reclassification of colleges as public bodies has had a severe impact on the further education sector, and it is not a risk that we can afford to take with the HE sector. We are too successful, and we are too important to the Scottish economy, to put the sector at risk. If the issue is one of governance, transparency and modernisation, can we address it through the review of the code? I ask that we take the ONS issue very seriously in relation to the financial risk to the sector's future success.

**David Ross:** I am not an economist but, as I understand it, the trouble is that the ONS will only decide when it has seen all the facts. That is why problems are arising in a number of cases. The ONS sits and waits until everything is clear, and then it says yes or no. There is no clearance procedure. You can talk to the Treasury—I do not know whether the Scottish Government has talked to the Treasury, but it has certainly not told us that it has done so—and you can get some informal guidance, but you will not get an answer. The ONS says, “We will look at it when it is settled.” Aside from the risks of reclassification itself, the bigger risk is that no one knows whether it will happen or not.

**Professor Sharkey:** I agree with my colleagues about the ONS—and they are more expert than I am. As Robin McAlpine mentioned, I recently came from an American university, Johns Hopkins University. I have to say that this is a much more enlightened country. No staff or students were formally part of the Hopkins board; in fact, the board was increasingly made up of hedge fund managers, who were helping the university to raise the \$4 billion that it wanted for its campaign. I celebrate the greater transparency here, and I would encourage us to use the code and the mechanisms that are in place already.

**Ann Marie Dalton:** Mary Senior had a couple of concerns about staffing issues and ensuring that the staff voice is heard. All universities in the UK, and especially here in Scotland, have access to a very good mechanism, which is the joint negotiating committee. It covers management and

involves the recognised trade unions in every university. We have an opportunity to bring greater transparency to the work of the joint negotiating committee and the issues that are emerging there. We have done some work around that, although at a higher level in the university. It is a fantastic mechanism.

Sure, there will be crises of governance from time to time because universities, like all organisations, are run by people and, therefore, there will always be conflict. When conflict arises, if we have appropriate structures in place, governance can be a mechanism through which issues are raised earlier and brought to the governing body's attention if need be.

We can make further improvements, even outwith the code, that would enhance governance.

11:30

**Mary Senior:** This relates to a topic that we will discuss later, but I will raise the point now. I urge the committee to examine the Scottish Government's working together review, which the Government set up in 2014 with the Scottish Trades Union Congress. The review had an independent chair—Jim Mather—and on it were three employers, three trade union nominees and an academic adviser. The review considered the relationship in the workplace between trade unions and employers—how they interact. In recommendation 24, the review made a really important recommendation that all public sector bodies should have a workplace trade union nominee on their board. As I see it, the provision in the bill on that represents the higher education sector coming into line with that important recommendation by the independent working together review.

I will also quickly answer Mark Griffin's point about the ONS and how we can move the issue forward. We should iron out any drafting issues and then, as a sector, get round the table and work out the mechanism for electing chairs, so that the bill does not say, “Scottish ministers will do X, Y and Z,” but sets out a structure and framework for electing chairs to which the sector can agree.

**The Convener:** We will deal with trade union reps and elected chairs in a second. Liz Smith and Liam McArthur want to come in. Please be brief.

**Liz Smith:** Mr McAlpine, twice this morning you have said that bad decisions had been made. Will you give us examples of bad decisions that have in any way undermined the educational experience of our students, held back the institutions and, therefore, held back our international standing?

**Robin McAlpine:** I am very hesitant to focus here on individual decisions in individual institutions. Let me give you a category of decision that has been made a number of times: universities deciding that their fundamental purpose will rapidly and substantially change. I am trying not to name a university—

**Liz Smith:** I am just interested—

**Robin McAlpine:** —but what you—

**Liz Smith:** Excuse me one minute. The bill tries to address concerns about governance arrangements—that is its intention. If we are going to enact it, I am interested in finding out what evidence there is that the current system of governance has specific problems. You said twice that bad decisions had been made. I would like to know what those bad decisions were that in some way undermined the students' educational experience, held back the institutions and held back our international reputation.

**Robin McAlpine:** A big and very radical decision about the future of the University of Strathclyde and the arts students at the university was made in an extremely short time. We will not know for a generation or two whether that was the right decision—universities are generational institutions. The decision was made too quickly and without discussion. I do not know whether it was the wrong decision. The difficulty is that universities' reputations and positions do not change overnight. It can be many years later before we find that moving away from a broad-based model to a narrow-based model of subject provision in an individual institution harms that university.

There is no question but that there is a lack of trust among the public on leadership salaries, so it is a trust issue as well. Another key point is that a governance role is not just a watchdog role. That is where there has been a bit of a difficulty with accountability. Good governance drives good thinking. It is not just about preventing bad decisions but about creating what I might call a gene pool of people who can inject positive thinking into a university. It is not just a deficit model; good governance brings new ideas, perspectives and talent into an organisation. That is a key part of what we should consider.

**Liz Smith:** Has that been held back? If we look at the league tables, an ordinary member of the public would wonder what on earth we are doing because it looks as though Scottish universities are doing exceptionally well.

**Robin McAlpine:** An ordinary member of the public would wonder why having one democratically elected member of a university board is such a problem. You should be careful not to ignore the sense that universities are seen

in society as organisations that are rather out of democratic control.

You have sitting here a group of managers who represent the leadership of the universities and who have staff and students who are saying, "We do not think that this is working for us". That has got to be listened to.

**Liz Smith:** Would you agree—

**The Convener:** Liz, I am sorry but I asked you to be brief. Other members want to come in and there are still some subjects that we have to cover in the time available. I apologise, but I have to interrupt.

Does Liam McArthur have a brief question?

**Liam McArthur:** David Ross picked up the point. OSCR will helpfully give us guidance, but the ONS will not. That is the quandary that we are in on the ONS reclassification.

**The Convener:** Thanks for that brief comment.

I apologise for interrupting, but it is important that we tackle head on the issue of trade union representatives being on the boards. There is also, of course, the direct question of elected chairs, which we have skirted round. From what I have seen, that is one of the most difficult questions to get agreement on. I want to go round the table on that issue.

The committee has had evidence from the university sector, for example, which raised objections to the proposal on trade union representatives, saying that they would represent a sectoral interest, effectively.

The Scottish Government's policy memorandum says:

"trade union representatives . . . would be required to act in the best interest of the HEI, as opposed to any individual constituency which nominated them".

In other words, although they would come from that sector, they would have to operate in the best interests of the institution.

Can anybody explain to me what the problem is with trade union representatives or others being involved in the way that has been suggested in the bill?

**David Ross:** On our court, we have the immediate past president of the UCU, and his predecessor was a previous senior official of UCU.

From our perspective the issue is the idea that one size fits all. The staff representative is directly elected by all the staff and the union runs the election; anyone can stand and anyone can vote. To my mind, that is one of the unintended consequences of the bill. Our system takes away the issue of conflicts of interest, because the

constituency is the whole staff. That is a neat way of ensuring employee representation, as opposed to the nominated approach, which seems less democratic.

I am happy to say publicly that Dave Anderson is a very valued member of our court, as was his predecessor. I do not think that any of us has an issue with trade union members being on the governing body. However, it is hugely important that they are clearly there in a representative capacity for the whole staff, not for a narrower interest, which could lead to the accusation—or concern—that there would be a conflict of interest.

**Ann Marie Dalton:** In our institution, the proposal could disenfranchise a large proportion of the community. On our court, we have three staff members: two must be academic staff and one must be professional service staff.

We are a highly international university. The elections for those posts are open to all our colleagues across the world, including in our campuses in Dubai and Malaysia. Trade unions are not permitted in Dubai. Therefore, the current process of someone coming forward and being elected by the entire staff body means that they represent the views of all our staff across the world. That is a very important point: a large percentage of our staff would be disenfranchised if that—

**The Convener:** Mary Senior looks as if she wants to come in on that point.

**Mary Senior:** Ann Marie Dalton raises another important issue around governance, in that we have campuses in places where human rights barely exist and trade unions are not recognised. I do not think that that is a good reason not to have trade union nominees on elected bodies. It raises the issue of how we scrutinise decisions to open campuses in far-away places that have a very poor track record on human rights.

I also want to make a point about what David Ross said. The union does not run the election for the staff seat on the court at the University of Glasgow. The union puts forward nominations for that seat and, in the past couple of years, we have been successful in getting the trade union candidate elected, but that does not always happen. Initially—

**Jennifer Crow:** That is the point: this is a democratic choice. The staff have a democratic right to elect from their own body.

**Mary Senior:** The bill provides for staff nominees and trade union nominees. We are quite offended that Universities Scotland seems to be suggesting that trade unions and trade union representatives cannot adhere to Nolan principles. We can.

Just because students, staff and trade unions have a stake in the organisation does not mean that they are not interested in the success of that organisation. The working together review indicates that trade unions bring an authentic and genuine perspective from the coalface on what works and what does not. Their experience and expertise are invaluable. Trade unions are democratic organisations. Our members and representatives are elected to posts in institutions. To say that there is a democratic deficit does not sit well with us.

As the working together review recognises, trade unions get support for and training, advice and guidance on their duties on the boards of institutions or public bodies. The review report makes a progressive recommendation that is in stark contrast to the attack on trade unions that we are seeing from the Westminster Government in the Trade Union Bill. The recommendation is very important and I urge the committee to support it.

**The Convener:** As no one else wants to comment on trade union representatives, I will move on to my second question.

There is disagreement around the table and in the sector on elected chairs. The intention is clearly to have elected chairs, and a number of comments have been made in the press and in the evidence that we have received about that and, in particular, the possible effect on rectors. I want to hear your opinions about that part of the bill because it is important and many people have strong views about it. Who wants to kick off?

**Emily Beever:** Whether you call them rectors or elected chairs, the principle is the same, and we should have the position not just in our ancient institutions but across all institutions in Scotland. It is worth while and it reflects the principles that we seem to be agreed on, in that we want more democracy and we want our institutions and their governing bodies to reflect their communities and main stakeholders.

I am uncertain about where the hesitancy has come from. This great Scottish tradition has existed for centuries and it has functioned very well. I am sure that Tim O'Shea, whose institution has a rector, would agree with that. The rectors whom I have spoken to—Steve Morrison from Edinburgh, Maggie Chapman from Aberdeen and Catherine Stihler from St Andrews—all support the rolling out of the principle of rectors to all institutions, rather than rectors just being used by the ancients.

**David Ross:** Speaking first of all on behalf of the students of the University of Glasgow, who are not members of NUS, I know that they are deeply concerned about the continuing lack of clarity over what is intended for rectors. That is a legitimate

concern. They value greatly the fact that someone is elected to the governing body whose sole role is to represent students.

For the avoidance of doubt, it is important to make it clear that the way in which rectors operate—there are four varieties of rector in Scotland at only six universities—is not what the bill proposes. Each of the institutions has someone like me—if not better than me. I am the convener of the court of the University of Glasgow; Edinburgh has a vice-convener; and St Andrews and, I think, Aberdeen have a senior governor. They are like me, in that they are the principal's line manager and are responsible for carrying out their own duties. That is what the bill wants to elect.

However, there is a serious risk that the proposal will weaken the governing body and strengthen management. With all due respect, in this city we have seen some fairly spectacular circumstances in which senior management in the financial services sector have not been subject to proper control. If I am elected by an outside body, I will have conflicting loyalties to the staff and the students. At the moment, I have a job to do. I am appointed by the court and if it does not like what I do, it can get rid of me. I am sure that you know Professor Muscatelli and that he is a polite man. When I go to talk to him, he listens to me because I speak for the court and because it wants me to speak for it. If that does not happen, the governing body will be weakened and management will be strengthened, and that is bad for governance.

11:45

**Professor O'Shea:** The Universities (Scotland) Act 1858 established what is more or less the common form of the University of Edinburgh senate as well as the post of rector. In the more than 150 years since, we have refined both models. Our senate is now more democratic and inclusive, and the bill would damage that. We also have a very particular and extremely successful dual model with a presiding rector, who is elected by all the staff and students and who performs a very key ombudsperson function and leadership function at the court's big meetings, and a working vice-convener, who gives us the accountability that is absolutely necessary for an organisation with expenditure of more than £800 million a year.

You need democracy and accountability, and the current system is, as Emily Beever has kindly pointed out, very well regarded not only by the students and staff but by the different bodies that fund us. We therefore find it extremely unhelpful to have a bill that proposes a simplification that might damage the democratic aspect of how we lead our court, damage accountability or, indeed, damage both.

I plead with the committee to pause on the bill. We have good systems in Scotland, and they can be refined; indeed, they are being refined through the code of governance. Simple changes to 19 HEIs that are so diverse will inevitably result in damage, and the bill as introduced would damage the democratic nature of the University of Edinburgh senate and the combination of democracy and accountability that we have in our court.

**Professor Sharkey:** We believe that we have a highly functioning representative democracy. The students and staff who are elected by the staff and student bodies very clearly participate in any search for a new chair; indeed, they did so in the search for me. I had a really detailed grilling by the head of the student union, who had also arranged for me to meet the whole student body. However, there was no open election as part of that process, and the proposal for a very open election with an as-yet undefined electorate could keep us from getting some of the finest candidates that we are seeking. We want to beat the National Theatre of Scotland, the Royal Scottish National Orchestra and so on to get the kind of chair who can really advance the arts for Scotland, but our worry is that because the process might become too competitive, open and exposed, compared with the representative democracy that we have at the moment, such people might not apply for those posts.

**Robin McAlpine:** There is an important difference between democracy, where you have a right to decide, and consultation, where you have a right to voice an opinion. I know that it is unfair to pick up on points that people have made, but I do not think that you should see the interests of staff and the interests of students in terms of a conflict of interest in the running of a university; instead, those should be seen as being at its very heart.

A university is not a private institution that is completely removed from its community. It is a conceptual thing; in most organisations, you can identify an "owner"—and I put that in inverted commas—or a group the institution is run on behalf of. One difficulty is that, in the move from a more collegiate to a more executive-run model that has taken place over the past 30 or 40 years in many universities—though not all; there are variations—a division has emerged between those who represent the ownership of that university and its wider community and, in turn, that community's ability to make decisions about and to shape the university.

I would go further—I would love to see us move towards having democratic universities that are communities that make collective decisions. I think that that will be the future for an awful lot of organisations in the public realm. We are in an era

in which people expect to be treated as members of a community who are capable of shaping it. As a first step, therefore, there needs to be an election. I really worry about the idea that a small group of people—and they alone—know better than everyone else and can decide who would be a good person to run a university; in fact, that is the kind of model that has caused problems in the financial services sector, and I think that it is dangerous here.

People could be put off, but there could well be many thousands of people out there who could do a phenomenally good and really inspirational job in an institution. They might not be selected by the sector's committees, but because they have a vision or a real sense of what they want to do in an institution, they might come forward and inspire support from the staff and students, and they might get in. I suspect that, for every person who might be lost because they do not want to take part in a democratic election, there will be hundreds of others who would be able to do a wonderful job for institutions. However, they will never be considered for that role at the moment. That is one of the problems of mistaking stakeholder consultation for democracy: if you do not have any route in for people, you greatly close off your pool. That is one of the difficulties that we are facing.

**Emily Beever:** Robin McAlpine has already mentioned this, but I want to ask David Ross a direct question about his comment that if he had been elected by staff and students rather than the court, he would have had conflicting views. What exactly would those views be?

**David Ross:** First of all, I should paint the background by pointing out that my court has—I suspect—the widest representation of staff and students in Scotland.

The difficulty is that my responsibility as convener of the court is to the court, not to those who elected me. With all due respect, those of us in the ancient universities who regularly see—and hugely enjoy—rectorial elections understand the environment in which they take place. My point is that I have only one loyalty, which is to the people who appointed me to do what I am doing. They hold me to account, and they can get rid of me. If I were to be elected in some other way, there would be no such connection. The governing body would be weakened, because it would be divided. The chair would have responsibilities to a range of hugely important stakeholders, and the body itself would not have the chair that it wanted to appoint. Weakened governing bodies are legendary for their inability to produce good governance, and that is my concern.

**Emily Beever:** I am sure that, as a sector, we could come to some conclusion on a mechanism of accountability in that respect.

**The Convener:** I must apologise but, unfortunately, I am going to have to draw the discussion to a close. I know that we have a lot of stuff to discuss, but I have to consider the time and the fact that we have to take evidence from another panel. All I can say is that although we have already received a lot of written evidence, if you wish to add to the views that have been expressed, you can send your comments to the committee. I am sure that we will be delighted to receive them.

I thank everyone for giving up their time to come along. I briefly suspend the meeting.

11:52

*Meeting suspended.*

11:58

*On resuming—*

**The Convener:** We will now take evidence on the bill from Scottish Government officials. I welcome to the committee Laura Duffy, Stephen White and Ailsa Heine. We will go straight to questions.

**George Adam:** Good morning. My first question is about the governance and autonomy of the institutions. In the previous session there was much talk about how we should go forward. Does the Scottish Government feel that universities are sufficiently modern, inclusive and accountable?

**Stephen White (Scottish Government):** The Scottish Government is very appreciative of Scotland's excellent universities. We are aware that governance has been improved by the code following the review of higher education governance in Scotland that was led by Professor von Prondzynski. However, it would be fair to say that the ministers feel that there is room for improvement in terms of greater inclusivity and transparency, so that every voice on campus can be heard equally.

**George Adam:** You say "every voice". In general, though, no process is set out so that people can see how it would work. What are the current thoughts on governance?

**Stephen White:** Do you mean on elected chairs specifically?

**George Adam:** In general, yes. How would the constituency for that work out?

**Stephen White:** Do you mean the franchise of election for an elected chair?



**George Adam:** Yes.

**Stephen White:** Perhaps I can answer your question with a brief explanation of why section 1 reads as it does. When the consultation was launched in late 2014 or early 2015, the Government set out plans to have chairs elected, after a selection process to establish that the candidates could fulfil the requirements of the role. There was quite a lot of comment, and lots of people in the university sector opposed the proposal, as you heard from the previous panel.

Even the groups that were positive about the proposal did not agree on the format or the franchise. That is what led to section 1 being about a power for ministers, but as soon as that approach was proposed a dialogue about franchise started with all stakeholders. That dialogue is on-going, and I think that the cabinet secretary said in her letter to the committee that, on the basis of that dialogue, she is minded to consider a stage 2 amendment to provide for a single model.

I hope that that answers your question, because that is the situation at the moment, in practical terms.

**George Adam:** That is fine.

**Liz Smith:** I draw Stephen White's attention to the discussions that took place at the meeting of the Finance Committee two weeks ago. What advice did you take about the possible reclassification of universities?

**Stephen White:** I was at the Finance Committee's meeting, so I am happy to answer your questions—I might paraphrase answers that I gave to that committee, which are on the record. By "advice", do you mean advice that is external to the Scottish Government?

**Liz Smith:** Yes.

**Stephen White:** The Scottish Government did not take advice from outwith the Government. There was a summation of advice from colleagues across different departments of Government. I think that that is what I said two weeks ago, although those were not my exact words.

**Liz Smith:** Why did you not take clear legal advice from outside the Scottish Government?

**Stephen White:** In considering the "European system of accounts: ESA 2010" guidance on the indicators of control, we thought that our internal analysis was sufficient. Specifically on how the ONS works—my finance colleague Kerry Twyman, who was at the Finance Committee meeting, is not here—I can say that the ONS is not the sort of organisation that one engages with to work through the detail. As I think that David Ross said, the ONS looks at things at the end of the process;

getting it to look at early plans would not be a conventional way to engage with it.

I repeat what I said to the Finance Committee. The internal analysis concluded that the bill's provisions complied with the indicators of control and that risk was not advanced by the bill.

**Liz Smith:** Given that the ONS will not rule until all the facts are on the table, how do you respond to the comments from Universities Scotland, which has taken and published legal advice that there is significant risk?

**Stephen White:** Universities Scotland has been kind enough to share the advice, which is quite new, and we will consider it. It is not for one person such as me to respect such an opinion, but consideration of such matters is part of the bill process. As Ms Constance said in her letter to the Finance Committee, which I understand has been shared with this committee, the Government takes a slightly different view on the quantum of risk and considers that the bill does not advance risk beyond what existed before. I think that the Finance Committee had a detailed discussion about that.

**Liz Smith:** Mr White, I hope that you understand that there are very serious concerns about the loss of money and the detriment to the sector that could be the impact of ONS reclassification. In her letter yesterday, Angela Constance did not address those concerns. Given the issue's potential significance, is it not a bit odd that the Scottish Government has not gone into detail, taking outside advice, on exactly what numbers we might be talking about?

**Stephen White:** There is no suggestion that Universities Scotland's comments will be taken lightly. They will be taken extremely seriously. We have a close relationship with Universities Scotland on a number of higher education policy areas, so that is a given.

As I said to Mr Baker in the Finance Committee, the Scottish Government has not analysed potential numbers because its assessment is that the numbers would be theoretical because the risk itself is not substantial. The idea that we would do a detailed analysis of numbers when we do not think that the risk is substantial—

**Liz Smith:** Sorry—how are you coming to the conclusion that the risk is probably not substantial?

**Stephen White:** The basis of that analysis was a consideration of all the indicators of control in the European system of accounts guidance that the ONS uses to make its determinations. It is not an empirical science; it is a risk analysis. It is not a binary thing with yes or no answers; it is our assessment of the risk.

**Liz Smith:** With £1 billion at stake? It is a very serious concern that there has not been the amount of discussion that would be expected about the possible effects of a bill such as this one, which has huge implications for the very successful education sector. It looks as though the Scottish Government has not done its homework very well.

**Stephen White:** It is for ministers to consider your comments.

**Liam McArthur:** Does the risk analysis that you have undertaken factor in ministerial intent, or does it look solely at the scope of the bill provisions? We have had reassurances from the cabinet secretary, as Liz Smith indicated, which suggests that there is recognition of a potential risk. However, whatever reassurances an individual minister gives, they are unrelated to the scope of the provisions in the bill that we are being asked to consider.

**Stephen White:** Again, on some of the material that the Finance Committee raised, we certainly have an open mind. Ministers are looking at all the evidence, written and oral, on how modification of certain of the regulation-making powers might address that risk. I think that I am right in saying that Professor Muscatelli indicated in his oral evidence to the Finance Committee that an examination of those sections to pare back—those are my words, not his—any feature that might suggest that there was a heightening of risk would be helpful.

**Mark Griffin:** In giving evidence to the Finance Committee, a Scottish Government official said about the ONS reclassification:

“we deem reclassification to be a low risk.”—[*Official Report, Finance Committee*, 16 September 2015; c 46.]

Universities Scotland said that reclassification was an “amber to red” risk. In your opinion, why is there that difference of opinion as to the level of risk?

**Stephen White:** It is an extremely serious issue, so it is certainly not about my opinion; it is about the opinion of the Government. The Government’s assessment was squarely focused on the indicators of control that are used by the ONS to make its determinations. I will not paraphrase all of what is a very detailed document, but it has a great emphasis on direct control of appointments—people on or people off. The bill is about processes—it is about the how, not the who. People are not placed on or taken off through the bill provisions. The bill is about consistent, transparent and inclusive processes.

**Mark Griffin:** The Government has come to the conclusion, after going through that process, that the risk of reclassification is low. Do you think that

Universities Scotland went through a different process from that of the Government?

**Stephen White:** No, absolutely not. Universities Scotland has looked at all the same indicators of control. It might say that it has looked at them differently or more thoroughly—I do not know. However, it has looked at exactly the same material. I am not a risk manager, but risk is not an exact science. Some people will see a heightened risk where others looking at the same material will see a more modest risk. I do not want to put it in a nutshell for convenience, but Universities Scotland seems to have a different opinion and it is simply the opinion that it holds.

**Mark Griffin:** Has the cabinet secretary or have Government officials met Universities Scotland to discuss that difference of opinion and to find out what different emphasis Universities Scotland might be putting on different risks?

**Stephen White:** To answer your question honestly and directly, we have lots of meetings with Universities Scotland and we have talked about models of elected chair as part of the dialogue that I spoke about earlier; the ONS question has come up, but I do not think that there has been a meeting at which it has been the only agenda item. It is something that we talk about all the time. We exchange materials. Universities Scotland was kind enough to share with us very swiftly the legal advice that it had sourced. We appreciated sight of that.

**Mark Griffin:** But the issue of ONS reclassification has been discussed between the Government and Universities Scotland.

**Stephen White:** It has certainly been discussed between officials. I cannot remember whether the cabinet secretary has met Universities Scotland about it.

**Chic Brodie:** Good morning. I want to ask about the appointment of the chair of the governing body, which, of course, is a contentious issue. I ask the questions partly as devil’s advocate and partly as someone who has been a lay member of the court of the University of St Andrews and who has chaired several organisations. The Government has stated that it has

“no intention of politicising the office of elected chair or being involved in the appointment process. It is our intention that the franchise for the electoral process would not expand beyond the community within each HEI”.

That is nonsense, is it not? As you will have heard, each member’s appointment to a governing body is subject to a rigorous interview and adoption process involving staff and students. How is someone going to be elected as chair if their views run counter to those of the court?

**Stephen White:** I start by clarifying that the evidence base for that concept comes from the review of higher education governance in Scotland, which was chaired by Professor von Prondzynski. The review's recommendation on elected chairs inspired how the Government's consultation on that issue was framed. As I have said, I was not part of the von Prondzynski review, but I read the report in recent days to prepare for today. The idea was that a selection element was required in order that the person who took up the role could perform the duties—

**Chic Brodie:** Selection by whom?

**Stephen White:** By a representative cross-section of people in the university coming together to make that decision.

**Chic Brodie:** What cross-section of people?

**Stephen White:** Academic staff, lay members, students—

**Chic Brodie:** If that is the case, there should be no priority—either all or none should do it.

**Stephen White:** In practical terms, committees are often put together to source a chair. Therefore, the idea is just about making sure that that committee, which would be a smaller unit of the overall court, would be representative.

**Chic Brodie:** I am still unsure. In my experience, the chair of a private company, organisation or association has to carry, or at least ameliorate, the wider decisions of the body that they represent. It is a very difficult position. Selection by a cross-section of people would make the job more difficult in that the chair would be unable to carry the majority of the body with them. Although the Government says that it has

“no intention of politicising the office”,

that is exactly what happens with an election process, is it not?

**Stephen White:** I am not sure whether I have answered your question, because I am not sure that I understood the initial one correctly. Perhaps I could explain the process and you could home in on the bit that is most helpful.

In summary, the von Prondzynski review suggested that there be a selection and an election element. The franchise of the election element was writ quite broadly. There was even a suggestion that it might extend outwith the university community and include people in the local community or local authority representatives—I am not sure about that. The Government clarified in the consultation that the franchise—who would get to vote for the chair—would not be outwith the university community. In practice, one option might be the governing body itself. However, others might disagree and say that

it should be all staff and students. Those are two examples of potential electorates who would vote after a selection period.

The selection period was felt to be important by a cross-sector panel. Without that, I suppose that the process would be opened up to the risk that candidates who may not be able to carry out the duties would find themselves in that role. I do not know whether that answers your question, but I am happy to expand on it if it does not.

**Chic Brodie:** I think that I understand. However, it does not answer—for those who have been there—the practicalities of how difficult such a role is.

On the selection element, where does the wider public interest and involvement lie?

**Stephen White:** This is virgin territory in the sense that the bill does not make any provision for that. However, universities have many ways to communicate with the public beyond that process. We are concerned that there is an element of reform in the internal governance. Universities provide annual reports, business plans and so on. The bill does not want to prescribe how universities communicate with the outside world or communicate their successes. It is about the internal organisation of the institution—

12:15

**Chic Brodie:** Forgive me, but are you telling me that the chair of the governing body of a major university with international experience will work only internally rather than represent the governing body and the university to the public?

**Stephen White:** No, of course not. I must be honest: I am not sure that I fully understood your initial question, although I am trying my best to answer it.

I would expect the chair of any university to be an ambassador and a great exponent of its values both internally and externally in order to help the university to thrive and succeed. I would hope that the candidates who come forward will accept the prudence of selection and would be delighted to be elected by whichever franchise the legislation provides for.

As I said, I must make a partial apology, as I did not understand the initial question.

**Chic Brodie:** I move to my last question. It has been suggested that an amendment to replace section 1 might be lodged at stage 2. What might be in that amendment?

**Stephen White:** As I said to another member, that is still under active discussion with all stakeholders: universities and other higher education institutions, unions and students. The

amendment would replace the regulation-making power and map out the structure of selection and election, and it would also comment on the franchise.

The current section 1 provides illustrative elements of what could appear in regulations, and some of those elements may not appear in the amendment. The amendment will mainly include the absolute staples such as how selection would work and what the franchise for the election would be. The aim is to provide for a model that is as consensual as possible. That is why the discussions are constant; they have been very active since June, and indeed before then, inspired by the consultation.

**Chic Brodie:** Is it not the case that consensus would best be arrived at by choosing the chairman or chairwoman from the body that they chair?

**Stephen White:** So you support a franchise of the governance body.

**Chic Brodie:** I am playing devil's advocate—I want to hear your views.

**Stephen White:** The Government wants to facilitate as consensual a model as possible. It would rather have everyone agree on the model than simply stipulate one. Obviously the dialogue cannot go on for ever, and it is incumbent on partners to talk to Government and reach a consensus.

**Liam McArthur:** I am intrigued. There is agreement that our universities are genuinely world class, as you accepted in response to George Adam's initial question. I think that we would all accept, however, that that is not a reason to rest on the laurels. There may well be improvements that we should seek to make to governance, whether that is through legislation or by other means.

Can you point, in either Professor von Prondzynski's report or work that the Scottish Government has done, to the international comparators on governance that have informed the decisions in drafting the bill? What is the nirvana that we are trying to reach in terms of good university governance that will safeguard and enhance the reputation and performance of our universities internationally?

**Stephen White:** That is a very good question. I cannot offer much on the international perspective. The von Prondzynski review was the inspiration for the consultation that led to the bill. The review took a great deal of evidence, and I seem to remember that there was an international element, although I do not remember how large that was. Perhaps colleagues will know.

**Laura Duffy (Scottish Government):** As I understand it, the von Prondzynski review took

evidence from Scotland and across the UK and from Europe and America.

**Stephen White:** Liam McArthur used the word "nirvana", but I do not think that the plan is to emulate any perfect model. The ambition is to move on with a modest set of proposals—others would disagree with that description—to improve the transparency, inclusivity and modernity of governance, rather than being inspired by a bar that has been spotted elsewhere.

**Liam McArthur:** Presumably, the sector would see its benchmarks as not necessarily being in the rest of Scotland or in the UK. The comparators are international. If we are drawing on the experience of other universities, one would hope that the experience on which we draw comes from universities that are performing better than universities in Scotland are at present. I would have thought that it would be easier to identify those international models than appears to have been the case.

There is nothing on that in the policy memorandum or in the materials with which we have been presented by the Scottish Parliament information centre. There is no indication of what exactly we are seeking to emulate.

**Stephen White:** In reading the von Prondzynski review last night I noticed that it said that it took a great deal of evidence on board when the review was conducted; it was published in 2012. What the review found was that quite a low level of research had been conducted on higher education governance issues. The way the report was written seemed to suggest that the review group was a bit surprised by that.

That is not a direct answer to the international question, but I do not think that there is a great deal of reflection in evidence or a huge evidence base, in relative terms, about higher education governance. There has not been a great deal of consideration of the international picture in assembling the bill—I could say that.

**Mary Scanlon:** I was interested to hear about the Government's consensual model. I congratulate you on the consensus; I have never heard every single higher education institution in Scotland being as consensual as they are in their opposition to this bill. Why you are going on a collision course at this point in time I do not know.

On governance, what did OSCR say when you discussed your approach to the forthcoming regulations within the bill and further regulations? What was OSCR's response when you discussed that with them?

**Stephen White:** I have not taken forward any discussions with OSCR—

**Mary Scanlon:** You have not discussed it with OSCR.

**Stephen White:** Could I finish answering the question?

You asked me specifically, if I understood the question, whether we had discussed with OSCR the use of regulation-making powers, rather than the bill in general. Is that correct?

**Mary Scanlon:** Have you discussed your proposed approach to regulations with OSCR?

**Stephen White:** Are you asking about in all sections or—

**Mary Scanlon:** In all sections, and the powers in the bill that will be forthcoming—future powers.

**Stephen White:** No, we have not discussed that with OSCR yet. We—

**Mary Scanlon:** You have not done that?

**Stephen White:** The bill is only at stage 1; it is in an early part of its consideration. To have a substantial discussion about how subsequent secondary legislative powers might be used with OSCR now—

**Mary Scanlon:** I think that I might be the only one sitting round the table who was actually on the committee in this Parliament that set up the Office of the Scottish Charity Regulator. I remember from 10 years ago—people from all parties will remember—that if there was anything anywhere near ministerial diktat or policy interference in an organisation, it could no longer be a charity; it would no longer have that status.

OSCR has been cautious in its approach and was able to talk to us, although unfortunately you were unable to talk to it. OSCR stated:

“Should such regulations be made when the Bill is enacted we would have to consider whether taken together with the existing provisions”—

plus ministers’ wide power to make further regulations—

“these amounted to ministerial control.”

There is huge uncertainty there. OSCR found time to give us advice and I am disappointed that you have not managed to find time to discuss the bill with OSCR.

**Stephen White:** I would like to be helpful, but to come back on that—

**Mary Scanlon:** I would like to be helpful, too.

**Stephen White:** Ultimately, I am not a minister. I can talk about the official engagement that we have had with OSCR, and we talked to OSCR after the bill was introduced and before evidence was submitted to the committee. I think that that was covered earlier. I note the passage that you

read out. OSCR has reserved the right—entirely correctly, because it has only considered what is on the face of the bill—to revisit its position depending on how the secondary legislative powers are used.

It is certainly the case that the Scottish Government will have a dialogue with OSCR in using the secondary legislative powers. All that I am saying, in being honest, is that there has not been an early discussion yet but there certainly will be a discussion; there would not be any taking forward of secondary powers without consulting an important stakeholder such as OSCR.

**Mary Scanlon:** OSCR is a wee bit more than an important stakeholder, but I will leave that one there.

I want to look at the Scottish Government’s powers to make regulations in particular in sections 14 and 20 of the bill. Section 14 says that regulations

“may make different provision for different purposes”,

and section 20 says:

“The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient”

in the future.

The Scottish Government’s letter to the committee said:

“In general, the powers for Scottish Ministers ... are intended to future proof the content of the Bill”.

I think that the words “minor adjustment” were used. Could that not be done under the Scottish funding council code of governance, which is to be reviewed next year? It is barely over a year old, so why do we need legislation? Any further amendments or changes could be done next year in the code of governance. Why, in the consultations, were the provisions intended only as future proofing?

**Stephen White:** I will try to answer the various elements of that. The Government has noted the strong opinions of many colleagues in the sector about the secondary legislation powers and what, in their view, they mean for the advancement of Government control.

**Mary Scanlon:** It is everyone’s view.

**Stephen White:** The Government has no intention of having any direct control of or influence over the functioning of institutions. My legal colleagues could provide a view on this, but the various powers are quite standard to future proof legislation and, in fact, were all intended in that way.

However, specific views have been taken on different sections. It is fair to say that the cabinet secretary is open-minded about listening to all the oral and written evidence on how modification of those sections might be helpful.

I was in the public gallery earlier and I listened to the discussion. On the SFC question, I suppose that, theoretically, if the sector at large and the authors of the code were happy to have elected chairs, trade union representatives and staff and student representatives as staples of the code, there could perhaps be a profitable dialogue about changing the code. However, given people's strong views against those Government plans being in the bill, I do not imagine that they would want them to be in the code.

I am trying to be helpful, so correct me if I am wrong but, on the consultation, I think that you are picking up the fact that certain colleagues, such as David Ross in the submission of the committee of Scottish chairs, have said that the powers were not consulted on in January or in late 2014. That was a policy consultation and the bill developed from it. The secondary legislative powers came out of that preparation. I go back to the first point that I made, which is that the powers were intended to future proof the bill. There is no ulterior motive behind them, but the strength of feeling and the comments are clear. As I said, the cabinet secretary is open-minded about considering those views and how they might influence the provisions.

**Mary Scanlon:** As we are running short of time, I will not take up more of it by referring to individual sections, but the bill constantly says that the Government "may by regulations" do this and that. I have circled the phrase five times, just on one page. The Government "may by regulations" do a huge number of things. Does the Government regret going a step too far and being on this collision course with our higher education institutions? Do I pick up from what you say that the Government is minded to make significant amendments and perhaps pause, take stock and just take a step back and listen to what is being said?

**Stephen White:** I can certainly be confident that the Government is open-minded about making amendments, but the earlier part of your point is not for an official to answer.

**Liz Smith:** I seek clarification on a matter. Mr White, as I understand it, there is scope to change the constitutions of certain universities, which, by definition, involves Government control. Is that correct?

**Stephen White:** The OSCR submission went into that in some detail. I think that it proposes that there would be alteration to the ancient universities' constitutions, but it then went a layer

below that and said that the bill's provisions do not jeopardise the charitable—

**Liz Smith:** My point of clarification is whether it is your understanding, as an official, that, by definition, changes would be made to the constitutions of certain universities and that therefore the Government could be seen to further its control. Is that correct?

**Stephen White:** I will ask Ailsa Heine to come in here, particularly on the first part of that question.

**Ailsa Heine (Scottish Government):** The bill sets out the minimum requirements for certain aspects of the bodies, which will form part of the constitution. The Government already has a role in approving changes to higher education institutions through the existing legislation, under the 1992 act or—

12:30

**Liz Smith:** Will the bill increase that role?

**Ailsa Heine:** It is not fair to say that it will increase it; it is just adding to it—

**Liz Smith:** If it is adding to it, it is increasing it.

**The Convener:** Can I clarify the point? The OSCR written submission says:

"In terms of the older universities where Part 1 would form part of their constitutions, our view is that when taken together these provisions in the Bill do not amount to the existence of Ministerial control in a way that would cause the older universities to breach section 7(4) (b) of the 2005 Act."

**Stephen White:** That is the part that sprung to mind when I was asked the question.

**Mary Scanlon:** The point is that the ancient universities have different constitutions from the more modern universities. The part of OSCR's written submission that the convener read out applies to the ancient universities, not the more modern ones.

**Stephen White:** OSCR did not comment on any constitutional alterations to the others.

**Mary Scanlon:** We are looking at all the universities.

**Gordon MacDonald:** I will ask the witnesses about the composition of governing bodies. The code of good governance specifies that lay members should make up a majority of the governing board and that governing bodies should not normally exceed 25 members.

The bill suggests that up to eight members should be co-opted or elected onto the board, coming from staff, students, trade unions and alumni. Is there anything in the bill that determines a minimum or maximum governing body size? I

am not sure how the 25 figure in the code of good governance was arrived at. Does anything in the bill limit the governing body size?

**Stephen White:** I will give an interpretation. The 25 figure was adopted by the code's authors, then subsequently adopted—I use the word “adopted” but it is not a legal term—by the Scottish funding council. It was part of the terms and conditions of grant that institutions—fundable bodies—were to abide by, in terms of the code. The 25 figure has that status.

I know that lots of your written evidence and some of your oral evidence has said that it would be difficult to accommodate the eight members that you referred to and keep the lay majority, but that was what the von Prondzynski review suggested. However, I should say that that was before the code, which was published the year after the von Prondzynski review, so that comment is probably not relevant.

The eight members could be accommodated. That is not my opinion; it is the summation of the Government opinion.

The 25 figure could be changed. I would not present a case for changing it, but it could be changed. The Scottish funding council would come to a decision about any change to the code; it would not just endorse the code once on the condition that it would never change. Indeed, I believe that there is going to be a review next year.

I would not have the audacity to start making personal suggestions about court sizes, but the figure is not immovable. Slight changes could be made to accommodate what the bill will provide for.

I apologise—my error. The code was published a year after the 2012 review, so the review would not have talked about the code.

**Gordon MacDonald:** Much of the bill is about diversity and changing the make-up of the governing bodies. On the existing code, NUS Scotland said in its evidence:

“On the issue of wider diversity only 40% of institutions had set targets for increasing the wider equality and diversity of their governing bodies, and only 30% were issuing regular reports on progress on equality and diversity targets with regards to governing body membership.”

We have the code of good governance, but it appears, from the NUS evidence, that many universities are failing to comply with it. Is there anything in the bill that will address diversity in governing bodies?

**Stephen White:** The intention of the governing body composition provisions is that a community will lead the institution and the inclusivity and

representative nature of that will have a percussive effect on the way in which the whole institution runs. The bill does not make specific commentary on, for example, gender—I am not a lawyer, but I do not think that it can, because that is not within the competence of the Scottish Parliament—but the aim is to achieve a percussive effect with a representative, fair and inclusive profile leading the organisation whose conversations will lead to consideration of these areas as a mainstay of the business of the institution.

**Mark Griffin:** I have some questions that lead on from that about the composition of the academic board. The committee wrote to the Government, asking about the requirement to ensure that at least 10 per cent of the membership of academic boards is students, and we received a written answer. Over and above that, can you set out the tangible ways in which an increase in the number of students on academic boards will improve the work of the boards and academic quality throughout higher education institutions?

**Stephen White:** I hope not to give too simplistic an answer, but I think that the presence of students could only enrich the academic conversation. I cannot catalogue tangible changes in the way in which an academic board would run—I am not on one and never have been—but I refer again to the percussive effect of having a more representative conversation in such a forum.

**Mark Griffin:** Okay. Universities have expressed concerns about the size of the academic boards. Do you have any comments to make on the evidence that we have received from the University of St Andrews and the University of Aberdeen? The University of St Andrews talks about disbanding its academic council and replacing it with a reformed senate. The University of Aberdeen flags up how it fears the loss of crucial input from ex officio members. How can the Government address the sector's concerns about the size of the academic boards?

**Stephen White:** Those comments have been noted and we are taking them into consideration at this stage in the bill's progress. The figure of 120 comes from the review of higher education governance in Scotland. It would not have been arrived at willy-nilly; I imagine that it was subject to lots of cross-sectoral dialogue and that many opinions were taken. Many academic boards probably have fewer than 120 members. However, certain institutions face a particular situation and they have made their views clear. I think that the Government would be open-minded about considering that evidence carefully. The figure of 120 comes from the review, which is the substantive evidence base that largely inspired all the provisions in the bill.

**Mark Griffin:** Will you take those comments away and consider possible amendments at stage 2 that would make the bill more flexible in order to meet those institutions' needs?

**Stephen White:** All that I can say today is that the comments will be respectfully considered along with the many other comments that have been collected in evidence. It will be for ministers to decide on any action.

**Liam McArthur:** My questions follow on from that and relate to the governing bodies and a number of other elements. At the round-table session that we had this morning, it was clear that the message from the sector is that a one-size-fits-all approach would be wholly inappropriate and would not reflect the diversity of the sector. The conundrum for us, in scrutinising the proposed legislation, is that legislation is not very good at making such distinctions and allowing for anything other than a one-size-fits-all approach. What assurance can you give the committee that, on this issue and on the other issues, the Scottish Government is alive to the real risks that are inherent in a one-size-fits-all approach for a sector that is as diverse as the Scottish HE sector?

**Stephen White:** It is a difficult question. If we think about why the bill is happening, the corollary is that there are risks in not making improvements because the governance arrangements are not ideal. Ailsa Heine might be able to address that question, because the bill provides the ability, through secondary legislation, to make different provision for different institutions.

**Ailsa Heine:** Yes, that would be possible, although not in relation to the composition of the governing body or the academic board, which has already been set out in the legislation. The powers to make regulation would mean that there is a possibility to make different provision for different purposes, which would apply in particular to section 1, on elected chairs, if that is to remain in the bill and be dealt with in regulation.

**Stephen White:** There is a point of debate and tension between those who say it is a one-size-fits-all approach and those who say that consistency, transparency and inclusivity are what is needed. The bill is not large, but several of its provisions are subject to quite a lot of discussion. The level of consistency relates to a limited number of matters. The matters that were not taken forward in the code, such as elected chairs and the composition of governing bodies as set out in the bill, link with what was in the original review report, to which the code also links. Therefore, there is not a great array of new standard features for the sector; rather, it is a focused series of measures in a focused bill.

**Liam McArthur:** To take an example from this morning, accountability, transparency and participation in the Royal Conservatoire of Scotland will look very different, one would imagine, than it would in institutions such as the University of Edinburgh or the University of Glasgow. For those of us scrutinising a bill that seeks to legislate for things that we all would hope would be a feature of our university governance, the real risk is the unintended consequences, if it works in 80 or 90 per cent of cases, but is wholly inappropriate for the rest. The real dilemma is how we come up with a piece of legislation that does not result in unintended consequences, or that results in fully anticipated consequences that are deemed to be a price worth paying for the effect that there will be on the majority.

We should legislate only when that is the only means to achieve the desired outcome, and we seek an assurance from the Scottish Government on that. Clearly that is just as much a matter for the cabinet secretary—if not more so—as it is for you as Government officials, but do you understand the position that we find ourselves in?

**Stephen White:** I take on board everything that you have said and I am sure that the cabinet secretary will also take that on board as the bill progresses.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I would like to consider the roles of rectors. Various organisations have made submissions on the bill's impact on rectors, but I am finding it difficult to get a sense of what a rector's role is, because different bodies seem to have different job descriptions, for want of a better phrase. If the bill is passed, what exactly will be the role of a rector and of a chair? How will they complement each other?

**Stephen White:** That is a difficult question, because we are in the middle of what one might call a design discussion on how elected chairs will work, and the role of rectors is part of that. To answer that would mean jumping ahead and doing guesswork alone, as we are in an active discussion and I would not want to design something without taking everyone who we are talking to with us. However, I want to try to answer your question.

I cannot say today how it would work if there were to be two figures involved in the model. Rectors in different universities—we are talking about universities here, and not all higher education institutions are universities—have the legal right to preside in the university court. Ailsa Heine will correct me if I am wrong but, in general, in recent history, the chairing has been carried out by the vice-convenor or senior governor and the presiding at court has gone alongside that. Certain



rectors may have had more of an active role and others a lesser role.

The cabinet secretary has been clear and has insisted that there is absolutely no intention to abolish the role of rector, which is a respected institution in Scottish and university life. However, we are still in dialogue on the exact interaction in future. In the cabinet secretary's letter to the committee, she outlined the aim of having clarity on that at stage 2. If I were to say something now, while there is still discussion going on with stakeholders, it would be based on my estimate.

12:45

**Colin Beattie:** The cabinet secretary acknowledged the concerns about the role of rector. She said:

"we will seek to minimise, and consider removal, of any features of the model selected that could impinge on the role of rector."

However, there is no single role of rector, because there are different models.

**Stephen White:** Sure. I do not want to second guess your question, but I think that I can answer it. The specific issue at the nub of this would be that of the legal right to preside and chair the court. That is the specific feature that the cabinet secretary was referring to. As far as I understand, the principal concern among rectors is about any alteration to that feature of the rector's role. The cabinet secretary is very alive to those views and would seek to address them.

That is actually in the bill. The bill had to accommodate that, depending on what the model would be. There is a consequential amendment in one of the schedules to say that, under a certain model, the role of rector would be modified. However, as you say, the cabinet secretary has made it clear that it is not at all the Government's intention to undermine the role of rectors or abolish that post.

**Colin Beattie:** Does that mean that the role of rectors will stay individual to the institutions that they are currently with? In other words, there will not be one single definition of what a rector does.

**Stephen White:** There will be rectors, in a statutory sense, only in the institutions that already have them. Elected chairs could use the term "rector", but there is no legislation for rectors in all HEIs. The roles will stay, subject to the dialogue on what the final elected chairs model is, but there is no Government intention to alter the role in each of the ancient universities and Dundee, where there are rectors.

**Colin Beattie:** So the differences will remain individual to the institutions in which there are rectors.

**Stephen White:** Yes. The governing instruments of the ancients and Dundee will not be altered, so there will be variety in what the rectors do. It is a complicated issue, but the way in which statutory elected chairs would operate is still the subject of dialogue. Until that concludes, we will not know exactly how the model will operate in practice. However, there is no intention and no likelihood that there will be any interference with the detailed description of rector in each ancient university.

**Colin Beattie:** So, on that basis, the rector could still, if it is permitted within the model in a particular university, opt to chair the governing body.

**Stephen White:** That is quite possible but, as I say, we are still in the middle of the dialogue to frame the model. Theoretically, the regulations could be used in future should the bill become an act, but that dialogue is very active at the moment with the aim to frame an amendment at stage 2 for the model.

**Colin Beattie:** I am obviously concerned about the potential for a conflict between the role of the chair and the role of the rector, in terms of the rector's right to chair the governing body.

**Stephen White:** Yes, and I think that they would need to be very clear on that. At the moment, the rectors have the right to preside at court, but they do not often substantively carry out the role of chair in all institutions.

**Colin Beattie:** But they could.

**Stephen White:** Statutorily, they have that right at the moment.

**Colin Beattie:** It looks like there is still quite a bit of work to be done there.

**Stephen White:** Yes—I would not underestimate the dialogue that still needs to be had.

**Colin Beattie:** Okay.

**The Convener:** Can I follow up on that, Mr White? I thought that I was following it until near the end there, when you kind of lost me. I am now confused. I know that we are still in discussion and I accept that the situation is not finalised. Excuse me if I have got this completely wrong but, if we have elected chairs, how can a rector retain the right to chair? How does that operate?

**Stephen White:** Without in any way wanting to appear to be evasive in answering the question, we are in dialogue and are looking at some of those design complexities. Rectors have been very clear and vocal about their concerns about any adjustment to their role as set out in statute. We are picking through these issues of great detail, and the issue that you raise is one of the

issues that we are looking at. We are talking to stakeholders and are confident that a solution can be found. We are not unaware of the challenge that you present, and we are working to address it.

**The Convener:** I am sure that you are. I included in my question the caveat that you are still working through the detail, but I will be fascinated to find out how you square that particular circle. I cannot see how a compromise can be reached between the right of a rector to chair and having an elected chair.

**Stephen White:** I take what you say and note it carefully. It would be fair to say that we will keep in close touch with the committee on the issue.

**The Convener:** We will be fascinated to find out what the compromise is.

**Stephen White:** Mention has been made of work that would ideally lead to a stage 2 amendment. Given the timescale for the bill, it would be important to have close dialogue with the committee in the lead-up to that.

**The Convener:** That would be welcome; thank you.

**Mary Scanlon:** Earlier, I asked a question about academic freedom. According to the policy memorandum,

“The definition of academic freedom as expanded explicitly includes the freedom to develop and advance new ideas and innovative proposals.”

That is also mentioned in the explanatory notes. From the point of view of academic freedom and the freedom to express and bring forward new ideas, what will the bill do that is not happening already?

**Laura Duffy:** The bill seeks to clarify and strengthen the existing definition of academic freedom by being more explicit about what it includes.

**Mary Scanlon:** Could you be more explicit with me, then? There is no point in just telling me that the bill is more explicit. I would not have bothered asking the question if the bill had been explicit. Every higher education institution thinks that it is not explicit, and they are far smarter than I am. I am sorry, convener, but I find it quite insulting to be told that the bill is explicit. I am looking for an answer. What will happen as a result of the bill that does not happen now?

**The Convener:** Mary, you are quite right to challenge the response that was given, because—

**Mary Scanlon:** I would like an answer.

**The Convener:** Absolutely. I think that we should get an answer to the question about—

**Mary Scanlon:** I want to try and understand what the bill does.

**The Convener:** Yes, Mary—I am trying to be of assistance to you.

**Mary Scanlon:** Thank you.

**The Convener:** It is not a clear answer to say what has just been said but, at the same time, I would prefer it if you did not use some of the language that you have just used. I ask you to be a little bit cautious with your language. I would prefer it if you were not so challenging in some of your language to the witnesses.

**Mary Scanlon:** If I could just get an answer, that would be fine.

**The Convener:** That is what I am trying to get.

**Stephen White:** To go back to the question, I do not think that anyone would claim that the modest adjustment that is proposed is a huge advancement. I think that Mary Senior from the UCU said that it was a welcome enhancement.

There are two things that the bill does. Apart from the expansion of academic freedom to explore new ideas and to modernise things, there is a change—the comments on which we have read—whereby institutions must seek to aim to uphold academic freedom. I think that, previously, they had to aim to aspire to uphold it—that is paraphrasing. The bill provides for a strengthening of the duty on the institution to uphold academic freedom, and that has been welcomed by academics and others.

We are not talking about a quantum leap; it is a modest adjustment to the existing 2005 statutory definition. In addition, there is a slight strengthening of the expectation on the institution to uphold the academic freedom of its staff.

**Mary Scanlon:** Could you give me examples of higher education institutions in Scotland that have not been upholding academic freedom? I am struggling to understand why the modest enhancement is necessary. I know what your modest enhancement solution is, but I am not sure what the problem is.

**Stephen White:** I think that the committee's letter to the cabinet secretary, which she answered, asked whether we had any cases and we said, “No, we can't cite any individual specific cases.” However, the change to the law is not to address lots of unpleasant situations and strife in universities; it is just to make that modernised statement, influenced by the von Prondzynski review and what has been looked at in Ireland, which I think someone mentioned earlier. I would not claim that it is a quantum leap, but the important thing—and some of the institutions do not favour it at all—is to have the institution more

in the place of actively protecting and supporting academic freedom. Although it might not be important to some stakeholders, it seems to be quite important to quite a few.

**Liz Smith:** When international bodies and other institutions look at Scotland, they see our institutions as being at the absolute cutting edge of knowledge exchange, research and all kinds of developments in education; they see us as first class, which is reflected in the league tables. Why do we need legislation to allow universities to have new ideas?

**Stephen White:** The specific academic freedom is about the freedom for academics to express their new ideas. This is a protection of their academic freedom. It is not so much about the universities' reputation; it is to protect the individual academic's ability to expand—

**Liz Smith:** If it is not about academic reputation, what on earth is it about?

**Stephen White:** I think that it is about the protection of the individual academic. That part of the bill is not about advancing the corporate image of institutions; it is for a specific and different purpose. This is not answering the question that you have asked me, but I do not think that the provision will damage that image. It is a very modest advancement of the existing statutory description.

**Liz Smith:** Mrs Scanlon has just quoted to you the suggestion that there is something that needs to be done to enhance new ideas to do something a little bit differently. What is it that we need to do that we are not doing already?

**Stephen White:** That is a huge strategic question about the future direction of universities.

**Liz Smith:** It is at the heart of the bill, Mr White.

**Stephen White:** If I have picked up your question right, you are asking what are the new ideas that will further that success. That is a slightly different topic from what is in the bill. To be fair—and I am not trying to be evasive at all—you think that the bill jeopardises that future success. You are asking me what are the new ideas about advancing the higher education sector in a global sense, which I think is a different subject.

**Liz Smith:** Let us turn it around a little bit in that case. What is it in the current system that in some way prevents universities from doing what they would like to do to be at the cutting edge? What is wrong with the way in which we govern our universities that prevents certain things from happening to allow us to flourish even more than we are doing now?

**Stephen White:** Is that just through the prism of the academic freedom provisions?

**Liz Smith:** Correct.

**Stephen White:** I do not think there is anything stopping universities; the provision is about protecting the academic freedom of the individual academic in their work. It is individual focused, rather than institution focused, except in the sense that the institution must uphold the academic freedom of all the relevant persons that the bill sets out. This does not need to be said, but the Government is very appreciative of Scotland's excellent universities and often takes the opportunity to say it.

**Liam McArthur:** I am struggling to understand why we are being asked to put into legislation a protection of a freedom that does not appear to be under threat. As I said in relation to another bill that we are scrutinising at the moment, it just seems to be a solution searching for a problem.

**Ailsa Heine:** It is not a new provision in relation to academic freedom; it is amending a current provision in the Further and Higher Education (Scotland) Act 2005.

**Liam McArthur:** Okay. The 2005 act very properly sets out academic freedom and how it needs to be protected and safeguarded in our universities and colleges. I do not think that any of us has a problem with what is currently on the statute book. The issue is that we are being asked to put into further legislation a protection of a freedom when nobody can point to the immediate threat to that freedom.

**Stephen White:** What is in legislation is always a question for ministers, but the consultation threw up support for the provision or neutral views on it. That is set against some of the provisions that attracted support, very few neutral views or strong opposition. The stakeholder evidence that we gathered generally supported a modest expansion of the existing statutory definition of academic freedom. As I said in response to an earlier question, there is no quantum leap or radical reworking of the definition, and no one would claim that there is.

13:00

**The Convener:** The Scottish Council of Jewish Communities submitted evidence to us. You might be aware that incidents have been reported of mistreatment of Jewish students and academics. The council expressed concern about widening the statutory definition of academic freedom

“while not also imposing equivalent statutory responsibilities to protect those who may suffer detriment from careless or malicious use of that freedom.”

In other words, there is a duty of care to students in HEIs. What account has been taken of such incidents in your consideration of the changes that

you are proposing to the definition of academic freedom?

**Stephen White:** Are specific incidents indicated?

**The Convener:** Are you unaware of the incidents?

**Stephen White:** I am not aware of them in the context of a submission of evidence on the bill.

**The Convener:** It was the submission from the Scottish Council of Jewish Communities.

**Stephen White:** A very large number of submissions was received and we are still working our way through them. However, you have raised a serious issue, which will be taken seriously.

As I think the letter to the committee outlined, academic freedom does not give a person immunity from the criminal law. Institutions' duty of care and law enforcement override academic freedom when it strays into criminal activity; there is no free pass to break the equality laws, obscenity laws or whatever. I am not a lawyer, so Ailsa Heine might expand on that.

Our team is working on the written submissions, and I must be honest and say that I have not yet got to the one that you quoted. It sounds like we should scrutinise it very carefully, as it raises an extremely serious issue.

**The Convener:** Does Ailsa Heine want to add anything?

**Ailsa Heine:** As Stephen White said, academic freedom is not a free pass to do anything that we want; it is subject to legal sanctions.

**The Convener:** I am sure that, when Mr White gets the chance to read the submission—

**Stephen White:** I can say sincerely that that is a priority. It is just that we have had rather a large volume of submissions to go through.

**The Convener:** As have we.

Thank you for coming along this morning.

## Subordinate Legislation

### Scheduled Monuments and Listed Buildings (Miscellaneous Amendments) (Scotland) Regulations 2015 (SSI 2015/328)

13:02

**The Convener:** The next item on the agenda is consideration of subordinate legislation. As members have no comments on the regulations, does the committee agree to make no recommendation to the Parliament on them?

**Members** *indicated agreement.*

**The Convener:** Thank you. As agreed, we move into private for the next item.

13:02

*Meeting continued in private until 13:03.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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