Universities Scotland response to Scottish Government Consultation on a Higher Education Governance Bill

Executive Summary

Overview: best practice in governance for a successful autonomous sector

Scotland's university sector is committed to continual improvement of institutional governance, to ensure that is effective, inclusive, transparent and accountable. This has very recently been further modernised, through development and implementation of a new Scottish code of good higher education governance. Structures that reflect principles of good governance are vital in order to protect the autonomy that has made Scotland's higher education a global success story and to ensure the accountability that gives government and stakeholders confidence in our institutions.

We would welcome constructive and detailed discussions of legislative change where historic legislation is an obstacle to this commitment. In particular, we would welcome detailed exploration of the development of a successor to the current role of the Privy Council in relation to Scottish higher education institutions.

However, we believe that elements of the Scottish Government's proposals need very careful reconsideration in the light of this consultation. We are particularly concerned that the following proposals, as expressed in the consultation paper, would be damaging to effective, inclusive, transparent and accountable governance:

- Proposed election of Chairs by an electorate other than the governing body itself, in a process where an unsuccessful candidacy will be a matter of public knowledge, and where a chair may be elected who does not have the confidence of the governing body.
- Appointment of members of governing bodies as 'representatives' of particular interest groups, contrary to the Nolan Committee principles of public life.

Our consultation response details the reasons why these proposals would be contrary to accepted standards of good governance and damaging to the effectiveness of higher education governance and therefore to the effectiveness of the Scottish higher education sector.

There are other proposals in the consultation paper that appear unnecessary as matters for legislation, for instance on the title of the executive head of the institution or reference to 'exploration of new ideas' in the statutory requirement about academic freedom. We also do not see the need for legislation about the role and composition of universities' academic boards or senates, which are internal matters for universities and their staff. We would welcome further discussion with Scottish Government about these proposals.

At the level of general principle, we are concerned that the Scottish Government is proposing to legislate about matters which are properly for autonomous charitable institutions to manage, and doing so without evidence that the proposals would bring benefit.

Overall, we would welcome detailed discussion with Scottish Government about the appropriate scope of this proposed legislation, and the ways in which continual improvement of governance should be achieved by non-legislative means. In that context, we look forward to the scheduled revision of the Scottish Code of Good HE Governance in 2016, in a way that includes a range of stakeholder perspectives.

Inclusiveness, accountability and transparency: the current framework

Universities are committed to the highest standards of inclusive and effective governance. Key features of this include:

- election of students, staff and alumni to serve on governing bodies;
- a diverse range of around 200 independent members, bringing expertise and perspectives from experience outside the university including from the public, private and third sectors.

University governance has just been modernised through the new Scottish Code of Good Higher Education Governance. For instance, this enhances the role of students and staff in relation to:

- appointment of the Chair of the governing body, independent governing body members and the Principal;
- appraisal of the Chair and Principal.

The new code also requires institutions to be committed to equality and diversity in their governance. Since the code came into force:

- 5 out of 6 new appointments of Chairs are women
- 42% of new appointments of independent governing body members are women.

In each case, these are appointments of the best person for the role.

The Scottish Parliament has very recently reaffirmed in the Post-16 Education (Scotland) Act 2013 that the higher education sector is responsible for maintaining its own high standards of governance, subject to oversight by the Scottish Funding Council (SFC). Compliance with the new code demonstrates adherence to these high standards. The code is a 'live' document that will be revised progressively in the light of developing best practice: the contribution of staff and student stakeholder groups to this will be valuable.

Scottish Government proposals

Universities Scotland is committed to supporting autonomous institutions to make the strongest possible contribution to Scotland's social justice and economic growth. We support modern, transparent and accountable governance that takes the 'long view' of institutions' success while being agile in response to opportunities to grow their contribution. We believe Scottish Government policy should support that commitment.

We are concerned that a range of the proposals in the consultation paper are inconsistent with this commitment to the effective and transparent governance of autonomous institutions. For instance:

- Is it right for the Scottish Parliament to legislate about the internal organisation of autonomous charities? The Parliament decided not to in 2013.
- Is there a policy need for the proposals? For instance, processes for the selection of chairs of governing bodies have just been modernised, introducing a more consistent approach across the sector, so the need for further action is unclear.
- What happens to Rectors? Will Rectors, who have been elected as champions of the student interest, be replaced by elected Chairs with corporate responsibility for the governance of the university? Or will Rectors and elected Chairs have roles that conflict?

- Will the proposals damage universities' ability to attract a wider diversity of candidates to chair governing bodies? A requirement to stand for open adversarial election (with a failed candidacy being public knowledge) is likely to narrow rather than broaden the field of candidates.
- Will the proposals disempower the chair of the governing body and reduce accountability by severing the link between Chair and governing body? A chair chosen by an electorate other than the governing body may not have the governing body's confidence, nor the authority of the governing body to hold management to account.
- Are the proposals consistent with accepted standards of good governance? It is a central principle of good governance across the public, private and third sectors that the members of a governing body are selected to take responsibility for the good governance of the institution, not to represent interest groups. The proposal to have statutory representation of trade unions is inconsistent with this principle. It also reduces the existing democratic ability for all staff to elect members of governing bodies.
- Why should the composition and role of internal bodies within universities, e.g. senates or academic boards, be a matter for government policy?

Conclusion

The issues raised by the Scottish Government's consultation paper are in some cases quite complex, so our consultation response is necessarily long. It is submitted in a genuine spirit of constructiveness, to help inform policy decisions that support the university sector's contribution to Scotland's success. We urge extremely careful thought by the Scottish Government about the policy choices to make in the light of this consultation response.

Universities Scotland, January 2015

Introduction

About Universities Scotland

Universities Scotland is the representative body for Scotland's nineteen higher education institutions. Its member institutions are highly diverse. They are the sixteen universities, including the Open University in Scotland, and three specialist higher education institutions: Glasgow School of Art, the Royal Conservatoire of Scotland and SRUC (Scotland's Rural College). The constitutional foundations of these institutions is as varied as their ages – from two years to 601 years old, in their current forms. Three were established by papal bull, five by royal charter, five through the Further and Higher Education (Scotland) Act 1992 and one by Privy Council consent in 2006. A further four are companies limited by guarantee.

Higher Education is recognised by the Scottish Government as one of the key sectors of the Scottish economy. It contributes around £6.7 billion annually to the economy (GVA), a return of well over 6 pounds for each pound of core public funding, and makes vital contributions to social mobility and to Scotland's cultural life. This success is built on the autonomy of institutions to employ their expert judgment and invest for the future in an ever-changing global context. It also rests on the diversity of the sector, each institution making its own particular contribution to Scotland's world-class research base and working with particular industries to facilitate innovation and supply vital skills.

Background

Universities Scotland shares the Scottish Government's commitment to higher education governance that is effective, inclusive, accountable and up to date. The last year has seen significant change to ensure this outcome, improving on already high standards through a new Scottish Code of Good Higher Education Governance and increasing accountability through the Scottish Funding Council (SFC). These arrangements are only newly in place, with some changes still in progress, and they allow for the further development of standards of governance, should the further evolution of best practice standards require continued evolution of the Code. This new system was carefully designed, after exceptionally wide consultation, to ensure the highest standards of governance while accommodating the diversity of the sector and protecting the institutional autonomy that is the foundation of the sector's global success.

Higher education governance has long surpassed most other sectors in its inclusiveness and the democratic elements of its governance: governing bodies have included elected staff and students for at least 50 years. Nonetheless, when the new Code of Governance was launched, our institutions embraced this opportunity for further enhancement. Collectively, the sector made over 350 changes to governance arrangements in response to the Code. Among other improvements, the Code:

- ensures direct involvement of staff and students in the appointment of Principals, Chairs and independent governing body members;

- enhances the role of staff and students in the appraisal of Principals and Chairs;

- requires an open process for the appointment of Chairs and independent governing body members, including advertisement and interview on the basis of an agreed job description and skills specification;

- clarifies the relationship between Chairs and Rectors;

- allows for the remuneration of Chairs, subject to charities law;

- clarifies the role of Principals as chief executives, in line with the SFC's Financial Memorandum;

- increases the transparency of governing body business.

The Code was developed in the context of the Post-16 Education (Scotland) Act 2013. Through this Act, parliament reaffirmed the principle that the governance of higher education institutions should be regulated at arm's length, not by government directly but through the requirement for the SFC to require compliance with principles of good governance. The SFC recognises the Code as embodying these principles. Therefore, compliance with the Code is a condition of public funding for higher education institutions.

An evaluation of institutions' actions to implement the Code has been produced by the Committee of the Chairs of Scottish Higher Education Institutions (CSC) and is available here: http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2014/11/Scottish-Code-of-Good-HE-Governance-ONE-YEAR-ON-final-4NOVEMBER.pdf

In parallel, higher education governing bodies have engaged in significant work to improve the diversity of their membership. Working with external bodies such as the Equality Challenge Unit and the Equality and Human Rights Commission, the sector is developing and sharing innovative practices and all governing bodies have developed clear policies and goals in this area. Early results suggest significant success: five of the last six appointments to the position of Chair and 42% of governing body members appointed over the last year are women.

Universities Scotland fully supports the principle that institutions in receipt of public funding should be accountable for their uses of these funds. In the case of higher education, this is one part of a complex funding landscape which institutions lever successfully to produce the best possible outcomes for Scotland: core public funding is 42.9% of the sector's income. Nonetheless, Scottish universities are held properly accountable for their exercise of their responsibilities – recent research enumerated over 550 lines of reporting to government and other external agencies. These include the SFC's extensive requirements on governance.

Legislation on the details of governance arrangements for autonomous charitable institutions is a highly unusual step and requires specific and significant justification. Given the recent and substantial enhancements made to higher education governance, we can see no evidence for a need to take such measures in this sector. On the contrary, we believe that on any objective measures higher education governance exceeds that of other sectors in its standards of inclusion, accountability, openness and the intensity of ongoing work to improve the diversity of governing body members.

The government's consultation proposes legislation in a many areas already covered by the Code, including several cases where the proposed outcome is already achieved through the Code. There are other areas in which the sector would welcome detailed dialogue with the Scottish Government and other relevant stakeholders to establish appropriate and carefully formulated improvements to current arrangements. In particular, the sector recognises that there is room for improvement in the system for approving changes to institutional governance arrangements, which in many cases currently operates through the Privy Council. This is a complex area that requires careful attention to the diversity of the sector and the desired outcomes of transparency and efficiency, while maintaining suitable protections against politicisation. Expertise held within the sector will be crucial to developing coherent and effective solutions in this area.

Our response

The response set out below considers each section of the consultation in turn, setting out in detail where the aims of the consultation are already met by the Code of Governance and other existing arrangements, and where the sector would welcome further dialogue with the government towards carefully formulated further improvements.

It also stresses fundamental principles of good governance which must be protected for the benefit of all stakeholders and to ensure the conditions necessary for our institutions to continue to provide one of Scotland's global success stories.

Section A: Privy Council

Existing arrangements

As noted in the consultation paper, the Privy Council plays an important role in university governance. As a formal body of advisers to the Monarch, in relation to Scottish higher education, it is the first point of application for ancient and chartered universities that wish to make changes to their governance arrangements. Ancient universities therefore apply to the Privy Council Office (PCO) when they wish to introduce new Ordinances; chartered universities when they wish to amend their Charters or Statutes. The Privy Council also issues Orders of Council, instruments of governance which, subject to the approval of the Scottish Parliament, are used to regulate post-92 universities and small specialist institutions.

We note that the consultation paper sets out that the functions of the Scottish Universities Committee are usually discharged by three of its members, namely the Lord Advocate, the First Minister and the Lord President of the Court of Session. For accuracy, the full membership of the Scottish Universities Committee as prescribed in s9 of the Universities (Scotland) Act 1889 includes the Rectors and Chancellors of Scottish Universities in the event that any of them are members of the Privy Council. This points to the complexity of the current statutory arrangements.

Proposal for the functions of the Privy Council to approve changes to governance instruments and amend statutes to be transferred to a new committee

The proposal for change rests on enhancement to the efficiency and effectiveness of processes for alterations to the governance of individual HEIs.

Universities Scotland would welcome the opportunity to explore in detail the design of a successor to the current role of the Privy Council in relation to Scottish higher education institutions, based on systemic analysis of how a better regime can be built rather than simply on transfer of the Privy Council's role to a new Scottish committee.

While the existing arrangements provide independent and authoritative scrutiny of proposed governance changes, we believe that there is merit in exploring alternative models which might:

- secure appropriate levels of independence in decision-making;
- provide for greater delegation of decision-making to institutions themselves; and
- enhance transparency of process.

This is a complex area and we believe that any change will require careful and due consideration of appropriate change. The consultation document does not set out detailed proposals. We note, for instance, that it does not specify the potential role of the Scottish Parliament in scrutinising the work of a new Scottish Committee of the Privy Council. The consultation also does not set out the ways in which the whole system for considering changes to institutions' statutes and ordinances may be made more efficient, with less 'second guessing' of institutions' proposals.

One area where efficiency may be increased is by legislating for an increased delegated capacity for institutions to make routine changes to their internal governance arrangements without reference to an external authority, e.g. in relation to:

- internal decision-making structures
- executive roles and responsibilities
- administrative policies and procedures.

We believe, therefore, that before any legislation is introduced (whether through a further HE Bill, or through broader legislation to enhance devolved powers to implement the Smith Commission recommendations) there is need for detailed analysis of:

- where enhancements might be made to existing systems of decision-making, including where decisions might be delegated to institutions themselves; and

- the creation of a new regime for consideration of changes which still require external scrutiny, securing the necessary levels of transparency and independence from politicisation. We would want to consider the potential role of existing regulators in this regime, including the Office of the Scottish Charities Regulator and the Scottish Funding Council.

- What role the Scottish Parliament should have in relation to subordinate legislation developed by higher education institutions.

Universities Scotland is committed a constructive approach to that discussion to identify where legislative change in this area might support the sector's good governance.

Section B: Academic freedom

The consultation sets out two measures:

- addition to the existing statutory definition of academic freedom through the addition of a specific reference to the encouragement of new ideas; and

- a statutory requirement on HEIs to adopt a statement on their implementation of the statutory protection of academic freedom and their presentation of it to the SFC.

Existing Arrangements

The consultation notes that the definition of academic freedom in the Further and Higher Education (Scotland) Act 2005 has served institutions well. Furthermore, the existing and detailed consideration of academic freedom by each of the academic communities in our diverse sector continues to be fit for purpose. Detailed policies on academic freedom are agreed between management and staff representatives at institutional level.

There is already a statutory basis, with SFC oversight, for the requirement for institutions to ensure the protection of the academic freedom of relevant staff in compliance with relevant legislation and its own governing instruments.

Proposed amendment to the existing statutory definition

The proposal in the consultation paper appears unnecessary.

There is no evidence that the existing statutory protection of academic freedom is in any way inhibiting the 'freedom to explore new ideas'. We therefore question whether there is any evidence that a revised definition is necessary.

Indeed, the continuing success of Scottish institutions in assessments of research quality, in winning research funding and in creating formal global partnerships is the output of a healthy academic environment committed to the exploration of new ideas.

As the consultation notes, the existing statutory definition is derived from the UNESCO recommendation concerning the Status of Higher Education Teaching Personnel.[1] There is no evidence that the recommendations in that document are not being fulfilled. Specifically:

- higher education teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching; and

- higher education teaching personnel have a right to carry out research work without any interference, or any suppression, in accordance with their professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics.

Academic freedom supports the recognised contribution of academic staff to global and local issues. Academic freedom has been central to Scottish universities' contribution to public debate on issues such as constitutional change and the ethics of technological advancement.

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[1] http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

The UNESCO recommendations link academic freedom to arrangements for institutional autonomy and accountability. It is in this context that we are concerned that the consultation places a reliance on legislation rather than the robust processes in place within institutions and their academic communities for determining the parameters of academic freedom. In short, this addition is unnecessary and risks undermining developed institutional processes.

The UNESCO recommendations also expresses principles of rights and freedoms alongside duties and responsibilities. The creation and operation of specific policy for academic freedom which gives effect to this balance, rightly takes place at the institutional level. This is already reflected in institutional governing instruments and individual contracts of employment.

Proposal for a new statutory requirement for the adoption of a statement on implementation

The consultation paper also explores the creation of a statutory requirement on HEIs to adopt a statement on their implementation of the statutory protection of academic freedom and their presentation of it to the SFC.

There already is such a requirement with an appropriate allocation of responsibilities which was confirmed in the 2013 Post-16 Education (Scotland) Act. Further legislation is unnecessary and would be confusing to the existing statutory arrangements.

Specifically, the new Scottish Code of Good HE Governance states as a Main Principle:

"Every Higher Education Institution shall be headed by an effective governing body, which is unambiguously and collectively responsible for overseeing the Institution's activities. In discharging its responsibilities it shall:

.....ensure the protection of the academic freedom of relevant staff in compliance with relevant legislation and its own governing instruments."

The SFC has identified the Code as the "principles of governance which appear to the Council to constitute good practice in relation to higher education institutions" under its powers under Section 2 of the Post-16 Education (Scotland) Act 2013.

The Council's Financial Memorandum (FM) with institutions specifies that:

"SFC requires the governing body to comply with the principles of good governance set out in the Scottish Code of Good HE Governance."

The FM sets out the formal relationship between the Council and higher education institutions and the requirements with which institutions must comply as a term and condition of grant from SFC. The FM also specifies that the Principal is accountable directly to SFC's Accountable Officer for the institution's proper use of funds deriving from the Scottish Ministers and its compliance with the requirements of the FM.

There is therefore already a statutory requirement on institutions to implement the 'statutory protection' and the SFC places a condition of grant on compliance with this and other aspects of the Code.

Section C: The role of the Principal

The consultation sets out three questions:

Do you agree that a provision to describe the head of the university as the 'chief executive officer' should be introduced in legislation?

If the role of the Principal is set out in legislation as chief executive officer do you agree that the working job title should continue to be 'Principal'?

If you do not agree, what do you think the head of the university should be called?

Existing arrangements

The job title chosen by institutions for their senior executive member of staff reflects their traditions and their reputations – for instance 'Director' is in common use in Scotland as an alternative to 'Principal'. The executive heads of universities also act in a capacity as 'Vice-Chancellor' for the purpose of awarding degrees.   The responsibility of the senior executive member of staff as 'chief executive officer' for the purposes of governance and accountability for public funds is set out very clearly in the Scottish HE governance code and in SFC requirements.

Proposal to describe the head of the university as the 'chief executive officer'

Universities Scotland sees no need for legislative standardisation of the job title of the executive heads of higher education institutions. This should be a matter for the diverse decisions of autonomous institutions. The job title of any staff member within an institution is a matter for that institution.

For the purposes of governance and accountability for public funds there is clarity that the head of the institution holds responsibilities as the 'Chief Executive Officer'. Specifically, the new Scottish Code of Good HE Governance states as a Main Principle:

Main Principle 5

Statement of Primary Responsibilities. *The governing body shall adopt a Statement of Primary Responsibilities which shall include provisions relating to:*

….appointing the Head of the Institution (the Principal) as chief executive officer of the Institution and putting in place suitable arrangements for monitoring his/her performance. Both the appointment and the monitoring of performance of the Principal shall include consultation with all members of the governing body;

Main Principle 8

The Head of the Institution. The Principal shall be responsible for providing the governing body with advice on the strategic direction of the Institution and for its management, and shall be the designated officer in respect of the use of Scottish Funding Council funds and compliance with that Funding Council's Financial Memorandum. The Principal shall be accountable to the governing body which shall make clear, and regularly review, the authority delegated to him/her as chief executive, having regard also to that conferred directly by the instruments of governance of the Institution.

The SFC has identified the Code as the "principles of governance which appear to the Council to constitute good practice in relation to higher education institutions" under its powers under Section 2 of the Post-16 Education (Scotland) Act 2013.

The Council's Financial Memorandum (FM) with institutions specifies:

3. In this document the term 'institution' is used in place of 'higher education institution'. The term 'chief executive officer' refers to an institution's Principal.

8*. Where SFC has concerns or insufficient information to provide the assurance required, it will, in the first instance, seek to resolve matters with the chief executive officer of the institution. Where this has not proved possible, or in the case of significant concerns, SFC's Accountable Officer will inform the chair of the governing body and the institution's chief executive officer in writing – and without delay – and will specify what action is required to address these concerns.*

18. As well as being accountable directly to the governing body for the proper conduct of the institution's affairs, the chief executive officer is also accountable directly to SFC's Accountable Officer for the institution's proper use of funds deriving from the Scottish Ministers and its compliance with the requirements of this FM.

19. The chief executive officer of the institution must inform SFC's Accountable Officer without delay of any circumstance that is having, or is likely to have, a significant adverse effect on the ability of the institution to deliver its education programmes, research and other related activity, including delivery of its Outcome Agreement with SFC. He or she must also notify SFC's Accountable Officer of any serious weakness, such as a significant and immediate threat to the institution's financial position, significant fraud or major accounting breakdown, or any material non-compliance with any requirement of this FM.

Therefore, for the purposes of governance and accountability for public funds, there is absolute clarity of the role of the head of the institution as "chief executive officer".

However, we do not believe that a required statutory definition of the executive head as 'Principal and Chief Executive Officer' would be consistent with the collegial values of Scottish universities. The 'Principal' title better captures the role as the senior member of a community of scholars and learners, which has a different values base from the 'Chief Executive Officer' role more commonly associated with purely commercial organisations.

Section D: Chairing of Governing Bodies

Existing arrangements: Consistent, open and inclusive selection procedures

Existing, recently modernised arrangements for appointing the Chair of a governing body already meet the stated aims of the consultation. When appointing a Chair, higher education institutions employ consistent, open and effective selection procedures that give a voice to key stakeholders. These procedures are laid down in the Code of Governance which is recognised by the SFC as the "principles of governance which appear to the Council to constitute good practice in relation to higher education institutions" as required by section 2 of the Post-16 Education (Scotland) Act 2013. As such, institutions are required to comply with them. The universal practices of higher education institutions in this area already exceed the standards of openness and inclusivity found in other sectors.

The stated aims of the consultation are therefore already met by current arrangements. Legislation in this area is not necessary, nor is it appropriate in principle. Legislation on such details of the governance arrangements of autonomous charitable institutions would be highly unusual and would therefore be justified only if there were evidence of serious problems with current arrangements. Given the sector's universal adoption of the highly progressive arrangements described above, it is hard to identify any reason for current concern over the process for selecting chairs of governing bodies – and none is provided in the consultation paper.

Not only the broad principles but also the great majority of the detailed proposals in the consultation document are already requirements in the Code of Governance and standard practice across the sector.

We are concerned the specific proposals in this section of the consultation paper that go beyond current best practice would seriously damage the robustness and effectiveness of governance e.g. by:

- reducing the diversity of candidates prepared to put themselves forward as candidates to chair governing bodies,
- reducing the authority of the Chair to hold senior management to account, and
- undermining the distinctive Scottish role of the Rector.

The requirements of the Code

The Code already requires a process of open advertisement and interview based on an agreed job description and direct student and staff involvement in this process. These requirements apply not only when appointing a Chair but also when appointing other independent members of the governing body. All of the bodies involved in this process – the Nominations Committee, the selection panel and the governing body itself – must have student and staff members. There are additional requirements for consultation with students and staff at other stages in the process.

The relevant passage in the Code of Governance is the following:

"*Appointments of the chair, and of members appointed by the governing body, shall be managed by a nominations committee, normally chaired by the chair of the governing body (except where the committee is managing the appointment of the chair's successor) and which includes at least one appointed staff member (that is a member of the staff of the Institution who has been elected or nominated and as a result serves on the governing body) and one student member of the governing body. To ensure rigorous and transparent procedures, the nominations committee shall prepare and*

publish written descriptions of the role and the capabilities desirable in a new member, based on a full evaluation of the balance of skills and experience of the governing body.

"When selecting a new chair, a full job specification including a description of the attributes and skills required, an assessment of the time commitment expected and the need for availability at unexpected times shall be produced. In developing such a job description arrangements shall be put in place to consult staff and students before it is finalised. The selection process shall include a formal interview of short-listed candidates.

When vacancies arise in the position of the chair, or in any of the members appointed by the governing body, they shall be widely publicised both within and outside the Institution. In doing so, specific reference should be made to the evaluation [of required skills] referred to at Principle 9 and also to the desirability of ensuring the diversity of the governing body's membership."

Scottish Code of Good HE Governance, Main Principle 11, p.5.

A number of higher education institutions have recently appointed chairs by this process. The remaining institutions are committed to doing so when making the next such appointment.

The relationship between Rectors and Chairs is clear

The consultation suggests that the existence of elected Rectors in some universities might constitute inconsistency in the appointment of Chairs across the sector.[2] However, in line with the Code of Governance, all of the universities concerned have clear written protocols that define the relationship between the Rector and the Chair (i.e. the senior lay member).

Where the Rector has the right to 'preside' at governing body meetings and chooses to exercise it, this responsibility is clearly distinguished from those of the Chair, which are assumed by another member (who may be known by another title; for example, Vice-convener or Senior Governor). This latter member is always appointed by the procedure laid down for appointing Chairs in the Code of Governance and assumes all of the leadership responsibilities associated with the position of Chair, including representing the collective voice of the governing body to management.

We have concern that the consultation proposal has not considered the implications for the role of the Rector fully. Similarly, the consultation has not considered the implications for the current statutory underpinning of the role of the Rector and the need for consequential amendment.

Proposal to elect Chairs

As a matter of good governance, the governing body must select the Chair

The consultation proposals diverge from best practice in governance when suggesting that:

"The chair should ultimately be elected from a pool of shortlisted candidates who were successful at interview. The final stage of the selection process should be an election whereby the chair, selected from the aforementioned pool, would be elected by appropriate persons from within the university and potentially representatives of external stakeholders. In order to reflect the democratic ideal of

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[2] The universities with Rectors are the four ancient universities (Aberdeen, Edinburgh, Glasgow, St Andrews), the University of Dundee and the University of the Highlands and Islands (UHI). At the ancients and Dundee, Rectors are elected by the entire student body and, in the case of Edinburgh, university staff. The Rector of UHI is elected as Chair of the UHI Foundation and is therefore elected by the members of the Foundation, a wide-ranging stakeholder group that reflects UHI's unique constitution.

the sector, votes would be weighted to ensure that staff and students are effectively represented in the election process."

<u>The only body that is competent to elect or select the Chair is the governing body itself</u>. It is fundamental to good governance that the Chair should have the confidence of and be accountable to the governing body. This is both a key principle of good governance and essential in practice, to promote effective decision-making and oversight of management.

Current standard practice more than adequately meets the stated aims of the consultation, without threatening these principles of good governance. In accordance with the Code of Governance, governing bodies delegate the selection process to a panel, which must include student and staff members. Following the open and inclusive selection process described above, the governing body as a whole selects the new Chair. While this is normally a unanimous decision, it may be thought of as election. Crucially, it is a decision made by a body that necessarily includes those 'appropriate persons from within the university' referred to in the consultation document, including multiple staff and student members, as well as external stakeholders and independent voices.

The election of Chairs by any other electorate would risk the introduction of regular conflicts of interest and accountability. The idea that a governing body might have a choice of Chair imposed on it by another body raises the very real prospect of divisions between governing bodies and their Chairs and a danger of undue influence from particular interest groups. It is conceivable that a Chair could be elected on a platform of policies and assurances that the governing body judges to be clearly detrimental to the success and sustainability of the institution. Such a scenario would have the potential to paralyse the governance of the institution. In contrast, a decision made by the governing body as a whole promotes unified and constructive approach without stifling debate and prevents the situation in which one interest group is able to elect a chair in the face of direct opposition from another group.

For similar reasons, the proposal for externally elected Chairs would not increase accountability, but rather reduce it. When the governing body selects or elects the Chair, this creates a bond of mutual accountability. Without this bond, a governing body might seek to evade responsibility for its actions and decisions by attributing them to the Chair, or *vice versa*.

Relatedly, a Chair who lacked the confidence of the governing body and/or was plainly acting to the detriment of the institution would be more difficult to remove from office if this meant contradicting the choice of an external electorate. This brings the potential for protracted instability and long-term institutional damage.

The governing body in its capacity as an employer would also be placed in a position of conflict with the Chair if the Chair's electoral manifesto made unilateral commitments which the governing body believe to be contrary to responsible employment practice. It is important to note that a unified and independent governing body is key to regulating the influence of management as well as that of other stakeholder groups. It is therefore in the interests of all stakeholders to support the principle that the governing body should select the Chair and, in so doing, take responsibility for this selection.

A threat to the role of Rectors

Among the damaging effects of removing the choice of Chair from the governing body would be confusion over the role of the elected Rector in those institutions that have one. A Chair elected by any electorate other than the governing body would almost certainly have an overlapping electorate

with that of the Rector, leaving the Rector's position in danger of either redundancy or conflict with the Chair. This contrasts with the current clarity over the positions of Rector and Chair.

Discouraging a diverse pool of candidates

Universities are working to ensure that a wider diversity of candidates are attracted to serve as Chairs of governing bodies. The proposals to have a public election of candidates will have the opposite effect, limiting the field to candidates who are attracted to a public adversarial 'political' contest.

The introduction of public elections would be likely to discourage many able candidates for the post of Chair. Many highly qualified candidates may not be happy to engage in personal competition publicly with other candidates or to risk public failure in such a competition. This is why public appointments are private processes until the successful candidate is announced. The willingness to engage in a public electoral process should not be a qualification of acting as Chair of a governing body. It would be highly regrettable to narrow the pool of candidates for these reasons at a time when institutions are working hard, with notable recent success, to increase the diversity of Chairs of governing bodies. This is something that higher education institutions are already doing successfully, as demonstrated in the fact that 5 of the last 6 appointments to the position of Chair are women.

Comparable pilot schemes with health boards appear to have had precisely this effect of narrowing the field of candidates. These were abandoned by the Scottish Government in 2013 for this reason and because of very low electoral turnout. The conclusion drawn from these pilot schemes was that boards should concentrate on efforts to encourage a greater diversity of candidates. The (then) Cabinet Secretary for Health Alex Neil MSP commented at the time:

> "This pilot project was designed to ensure that the views of local people about their NHS are heard effectively, and to encourage them to be more involved in how the health service is run.

> "These pilots have demonstrated that the most effective approach was a pro-active approach from boards to advertising and recruiting to posts. I am confident that these new measures will help to increase public engagement and improve local accountability.

> "I have now asked health boards across Scotland to look at these pilots with a view to expanding their own recruitment process for health board members.

> "I am confident that these measures will help to increase public engagement and improve local accountability more effectively than when we tested direct elections as part of the pilot."[3]

A unique requirement, inconsistent with other sectors

A requirement for prospective Chairs to stand for open election would be unique to higher education. It is not found in any other sector, public or private. The consultation offers no justification for this exceptional status, which would be especially incongruous with the status of higher education institutions as autonomous charities. As noted above, comparable schemes have been piloted in the public sector and were abandoned in the light of experience.

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[3] http://www.bbc.co.uk/news/uk-scotland-scotland-politics-24857054

Arrangements for appointing Chairs in higher education already exceed those of other sectors in standards of openness and the breadth and depth of inclusion of stakeholder voices. These arrangements have been only recently modernised and were formulated with careful consideration of best practice in governance and recruitment.

Proposal to remunerate chairs

Existing arrangements, embodied in the Code of Governance, allow for the remuneration of governing body members, subject to certain important considerations, such as the need to be consistent with charities law. To date, this possibility has been exercised in only one case, reflecting the unique structure of the institution concerned, but it remains open for others to use in the future.

Governing bodies are aware of the potential benefits of remunerating Chairs, but also conscious of a number of related concerns with which these must be balanced. These include the potential erosion of the public service ethos that attracts many people to governing body membership and the potential for a significant symbolic imbalance between the chair and other governing body members[4], which could adversely affect the unity of the governing body. The unpaid nature of independent governing body membership is also often seen an important facet of the distinction between governors and the executive.

Nonetheless, the possibility to offer Chairs remuneration remains available to governing bodies, should its use as a tool to encourage diversity be required in the future. Legislation in this area is therefore not required.

Summary
- Current practices required by the Code of Governance meet all of the consultation's aims by ensuring an open and rigorous process based on best practice in both governance and recruitment, in which staff and students are effectively represented.

- Crucially, these current practices also ensure that the Chair is appointed with the confidence of the whole governing body, based on its members' expert assessment – from their diverse perspectives and backgrounds – of which candidate best meets the skills and experience criteria.

- Current arrangements also ensure coherence between the roles of Rector and Chair, which would be threatened by any move to elect Chairs from a wider constituency.

- The proposals risk disempowering the chair of the governing body and reducing accountability by severing the link between Chair and governing body. A chair chosen by an electorate other than the governing body may not have the governing body's confidence, nor the authority of the governing body to hold management to account. This could paralyse university governance.

- The requirement to undergo, and potentially lose, an adversarial public electoral process would likely discourage many well qualified candidates for the position of Chair and so narrow the pool of candidates at a time when institutions are working successfully to expand it and so increase their diversity.

- The remuneration of Chairs is already provided for through the Code of Governance.

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[4] Though the Code provides e.g. for payment of compensation for loss of earnings, or remuneration of care costs, in order to attract a wider diversity of candidates for governing body membership.

Section E: Membership of Governing Bodies

Existing arrangements: Inclusive governance

Existing arrangements for membership of governing bodies are characterised by inclusivity and effectiveness, drawing membership from a range of interests, perspectives and expertise.

The precise composition of the governing bodies in each of Scotland's higher education institutions varies, as is to be expected of a highly diverse set of autonomous institutions, but all share certain features that place them among the most inclusive, open and democratic governing bodies in any sector. In line with the Code of Governance, and building on a long tradition of inclusive governance, all include:

- student members;

- multiple staff members, academic and non-academic; and

- independent members, often drawn from key external stakeholders, including industries that are relevant as research partners and employers of graduates.

Many institutions also have designated places on the governing body for alumni, reflecting the size and particular historical role of alumni organisations at these institutions. It is also common to find other alumni in governing bodies, beyond these designated positions.

Across the sector, nearly a third of all governing body members (32%) are students, staff or designated alumni governors.

Student and staff members of the governing body are democratically elected or, in some cases, appointed by the Academic Board. They are full members of the governing body and are involved in all aspects of governance (other than where material conflicts of interest exist, as is the case with all governing body members). Additionally, the Code specifically requires that they should be involved in a number of key processes, including the appraisal of Chairs' and Principals' performance and the appointment of Chairs, Principals and independent governing body members.

The Code requires that independent members should be the majority of the governing body. All of Scotland's higher education institutions meet this requirement or, in a small number of cases, are working towards doing so. This part of the Code reflects the importance of the independent members' role, which brings an impartial perspective and particular skills, both of which are required to enable robust and well informed scrutiny of institutions' strategic decisions and financial management. The Code requires that the appointment of independent members is guided by "a full evaluation of the balance of skills, attributes and experience required for membership of the governing body" and by policies and goals for equality and diversity.

Independent membership is also a way for a university to connect with a wide group of stakeholders beyond the immediate university community. Independent members typically include senior figures from industries with which the institution interacts, as partners in innovation and as major employers of graduates, as well as others drawn from a wide range of backgrounds within the public, private and third sectors. They make their various important contributions on a voluntary basis (although provision exists in the Code for possible remuneration, were this felt to be appropriate in particular circumstances, and expenses are paid so that no one need be disadvantaged by governing body membership). Many independent governors cite a desire to give

something back to a particular institution or to higher education in general and to ensure that students have the best possible experience and leave university well equipped for employment.

An open and inclusive process for appointing independent members is also required by the Code of Governance and followed by all institutions: independent members are selected by an open process of advertisement and interview on the basis of agreed and published skills requirements. This is overseen by a Nominations Committee which includes student and staff members. In addition to appointed independent members, a number of institutions' governing bodies have designated places for senior members of the local authority, providing an additional external perspective.

Given this strong position, we can see no evidence of a need for legislation to meet the stated aims of the consultation. We are also concerned that legislation may fall outside devolved competence insofar as it affects Royal Charters and companies' articles of association.

The essential role of governing body members

It is a fundamental principle of good governance that the governing body is a unitary body and that its members act only in the interests of the institution, not on behalf of any other interest group to which they may happen to belong. The 7 Nolan Principles of public life[5], for example, require holders of public office to act solely in terms of the public interest, to act in a way which does not place them under obligations to other parties and conflicts of interest, and require the exercise of objectivity, making decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

This is not only good governance in principle; it is also required by the Code of Governance and by the charities' regulator,[6] university governing body members being charity trustees. The inclusive nature of higher education governance is designed to bring a broad range of relevant perspectives, skills and experience to the governing body. It is not intended – and not allowed – to introduce 'representation' of any group.

Membership of a governing body as a representative of an interest group could easily create intrinsic conflicts of interest, given the potentially contrasting responsibilities to act in the interests of the institution and also in accordance with the views and desires of the represented group. Such conflicts may hamper decision-making and also place unreasonable expectations on the individual concerned.

Proposal to introduce trade union representation to governing bodies

Universities value the contributions of trade unions, to which 27 per cent of employees belong. All institutions maintain established structures for regular engagement with relevant unions. All but two institutions have recognition arrangements with particular unions, engage with them regularly through joint liaison committees (or equivalents) and discuss a wide range of issues with them both within and beyond these structures. Those without formal recognition arrangements also engage regularly with relevant unions, on an informal basis. This is in addition to the national negotiating framework for pay in higher education (the New Joint Negotiating Committee for Higher Education Staff), which brings together all relevant unions and the Universities and Colleges Employers Association. These are the appropriate structures for close engagement with the trade union sides,

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[5] https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2
[6]
http://www.oscr.org.uk/media/1571/Guidance%20for%20Charity%20Trustees%20updated%20Sept%202010.pdf

in forums where issues can be discussed frankly from the respective perspectives of management and the trade union side, without either party being placed in a conflict of interest.

Whilst these valued structures are in place for engagement, for the reasons of good governance set out above, we do not believe that 'representation' by trade unions, or any other interest group, on governing bodies is appropriate. Union members and officials are of course welcome to stand for election to the governing body as staff members and often do: across the 18 governing bodies in Scotland, at least 16 serving governing body members are union office bearers (or were when they joined the governing body) and many others are active union members. With respect to principles of good governance, this democratic election of staff governors is quite different to the appointment of members with the specific function of representing their unions.

The proposal to designate places on governing bodies for union representatives would diminish the democratic basis of higher education governance, by introducing individuals whose role would be to provide the staff perspective, but who had not been elected by all relevant staff. It would also contravene the fundamental principle that no governing body member should act as a representative of an interest group.

Trade unionists nominated to governing bodies as representatives of their trade union would find themselves in a fundamentally conflicted personal position, with a conflict between their corporate responsibility as members of the governing body and their representative responsibility to act in accordance with a trade union mandate which may be opposed to the policies of the governing body. This intrinsic conflict of interest was one of the fundamental difficulties with the late 1970s experiments with the appointment of trade union representatives to the boards of public corporations.

In some institutions, this imposition on employees' democratic choice would be further exacerbated, since the introduction of designated union governors would have to be accommodated by reducing the existing number of staff members who are elected by the whole staff group. This would be required in order to meet the recommendation of the Code and the von Prondzynski Review that governing bodies should have a maximum of 25 members without contravening the requirement for the majority of governing body members to be external and independent.

The consultation document does not explain why higher education institutions in particular should be subject to a unique legislative requirement to reserve governing body places for trade union representatives. We note that the new further education governance code, which was formulated with the involvement of union representatives and the Scottish Government, makes no such requirement. This exceptional status is particularly puzzling given that higher education governance already features progressive arrangements to guarantee the inclusion of staff governors, which far exceed those of most other sectors and are backed by the SFC's requirement to comply with the Code of Governance as a condition of funding.

To introduce a requirement for trade union representation in higher education governing bodies would also be at odds with good practice in an international context. Such requirements are extremely rare anywhere in the world, reflecting recognised principles of good governance. Moreover, the international direction of travel is the opposite one: for example, Ireland removed obligatory union involvement in higher education governing bodies in 1997.

In summary, the higher education sector is an enthusiastic champion of employee involvement in governance. There is no deficit in employee involvement that would be met by the proposal to introduce designated trade union places in governing bodies. On the contrary, implementing this

proposal would have outcomes that are opposed to the consultation's stated aims of fostering democratic and effective governance.

Proposals to require two student governors and up to two alumni members

All Scotland's HEIs are committed the principle of student inclusion in governing bodies.

- All Scottish universities have governing body members who are students.

- Many already have two student governing body members (11 out of 19 institutions).

- Student governors are often office holders of the students association.

  - In contrast to the minority staff membership of trade unions, all matriculated students of an institution have the right to vote for the office holders of their respective students associations, so this constitutes open and democratic selection of these governing body members.

- Eight institutions have designated places for alumni in their governing bodies. This reflects the diverse constitutional arrangements of the different institutions in the sector and the particular historical status of some alumni organisations.

Clear and up to date requirements on governing body membership, agreed by the Scottish Funding Council, are in place in the form of the Scottish Code of Good HE Governance, and all institutions comply with these standards. These include the requirement that governing bodies include students and that they are involved in numerous key processes, as noted above.

We know of no principled reasons either to accept or reject the proposal that each governing body should include two student members. As noted above, more than half of our governing bodies already do. However, we do not see this as a matter for legislation. The precise composition of the governing bodies of diverse autonomous charitable institutions is best left to those institutions, especially where clear and up to date standards of governance exist and are enforced by the sector's regulator. With such a system in place, it is in the interests of all stakeholders that the diversity and autonomy of the sector should be respected, as recognised in the consultation document itself.

Similarly, there is no principle of good governance that would either demand or rule out a requirement for alumni governors (indeed, the consultation document offers no rationale for this proposal). However, we note that in some institutions such a requirement could place an artificial constraint on the field of well qualified candidates for governing body membership and, as such, could hamper efforts to enhance the diversity of governing bodies, as well as potentially precluding the appointment of appropriately skilled individuals. We also note that the addition of alumni governors would in some cases expand the governing body beyond the recommended limit of 25 members, thus requiring the removal of other governors to compensate. Given that there is also a requirement to the majority of members to be independent, in some cases this might of necessity lead to a reduction in employee governors.

Embedding the principle of equality

We are committed to monitoring and improving the diversity of governing bodies. Higher education governing bodies are currently comparable with other sectors for gender balance, with 32 per cent female members, but our ambition is to be at the forefront of change towards equality.

We are especially keen that attention also be paid to other dimensions of equality and diversity. For example, Abertay University and the Universities of St Andrews and Edinburgh are three out of just 32 institutions nationwide currently participating in ECU's trial Race Equality Charter Mark.

Institutions are continuing to take a multi-angle approach in championing equality and diversity, including providing advice and guidance to constituencies with members elected to governing bodies (including student associations and academic boards), supporting and developing equality initiatives embedded in the academic career track (e.g. Athena Swan, Race Equality Charter Mark, LGBT Charter Mark), and ongoing work with the Equality Challenge Unit to develop best practice in supporting gender equality for governing bodies.

The Code of Governance requires all higher education institutions to have policies and goals regarding the equality and diversity of the governing body, and institutions' leaders are keen to drive the pace of progress.

Alongside this, extensive efforts are being made across the sector to expand the pool of applicants for independent governing body positions:

- Targeted advertising of vacancies, public emphasis on diversity and equality goals and active approaches to under-represented communities are all common practice.

- The Chairs of governing bodies (as the CSC) are engaged in joint work with the Equality Challenge Unit, an independent sector body, to develop new guidance on best practice in this area.

- The sector is also consulting with the Equality and Human Rights Commission to ensure that the best practices and processes are employed.

- Three Scottish Universities are currently participating in the ECU's first trial of the Race Equality Charter Mark

Efforts to date have had positive results:

- 5 of the most recent 6 chair appointments and 42% of independent governing body members appointed in the last year are women.

Responsibility for the diversity and balance of governing bodies is shared, thanks to the inclusive and democratic nature of higher education governance. Institutions have no control over the personal characteristics of governors who are freely elected by staff or students or alumni organisations, or appointed as staff governors by the Academic Board. Other governing body members may be appointed by external organisations, such as local authorities. In total, over a third of governing members across the sector are appointed by bodies others than the governing body itself. Institutions and governing bodies do have some control over the appointment of independent members, but students and staff have a role to play here also, as every Appointments Committee includes student and staff members.

This shared responsibility is one reason why we do not support a strict quota-based approach to equality and diversity: we are concerned that this could amount to a significant constraint on the democratic choices of those who elect governing body members. We also concur with the position of the Equality and Human Rights Commission that a change from positive action to positive discrimination, while potentially justified, would be a nationally significant policy shift which should

follow from a wider debate across society and, if it is to be effected, should not be introduced piecemeal, targeting governing bodies alone.

Equality and diversity issues encompass more than gender balance, critically important though this is. While higher education governing bodies are committed to achieving effective gender balance, we are concerned that strict quotas on gender could have the perverse effect of hampering efforts to increase the diversity of governing bodies in other ways.

In conclusion, the higher education sector is fully committed to increasing the diversity of governing body members and is working extensively on this. We believe that positive action remains the appropriate means through which to achieve this, unless and until an open national debate determines a broader move towards positive discrimination. The evidence is that our current efforts are bringing success on gender balance and we are keen that attention also be paid to other dimensions of equality and diversity.

Section F: Composition of academic boards and appointment of members

Existing arrangements

Academic Authority and Effectiveness

Academic Boards (or Senates) play a crucial role in the governance of Scotland's higher education institutions. It is critical to institutional success and sustainability that academic staff both lead and shape the form of the highest academic authority autonomously within a University. Every University in Scotland offers a unique provision to the community which requires a bespoke and progressive Senate/Academic Board enabled to lead, advise on and champion academic matters within the institution.

The composition and remit of the academic board or senate is a matter for the internal regulation of universities as autonomous charitable bodies, and not an appropriate subject for government policy-making.

This is not an appropriate area in which to promote 'consistency of approach'. Scottish higher education institutions vary in scale from less than 120 to over 3400 academic staff[7] and are highly diverse in their missions and academic activities. In this context, the proposal for a 'national standard size of academic board' has no obvious rationale and would only hamper appropriate forms of academic leadership on academic matters.

Current position

The current Scottish Code of Good HE Governance requires all institutions to undertake regular Senate effectiveness reviews, alongside periodic external reviews to ensure high quality academic governance is in place at all times.

Main Principle 16 states:

"The governing body shall keep its effectiveness under annual review. Normally not less than every five years, it shall undertake an externally-facilitated evaluation of its own effectiveness, and that of its committees, and ensure that a parallel review is undertaken of the senate/academic board and its committees. Effectiveness shall be assessed both against the Statement of Primary Responsibilities and compliance with this Code. The governing body shall, where necessary, revise its structure or processes, and shall require the senate/academic board of its Institution to revise its structure and processes accordingly."

This is standard practice across the sector: every institution has reported (November 2014) that this requirement is either now embedded into their processes or it is under review with a means to implementation.

Scottish Government proposals for academic boards/ senates: general

If there is to be further consideration of the role and composition of senates/ academic boards, this should be addressed through the scheduled review of the Scottish Code of Good HE governance, in a way that involves a range of stakeholder perspectives. This is not an appropriate subject for legislation about the internal academic affairs of autonomous institutions.

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[7] Full time equivalents in academic year 2012/13. Source: Higher Education Statistics Agency.

Senate/ academic board as 'final arbiter on academic matters'

Moreover, the proposal in the consultation paper is based on a fundamental misunderstanding of the role of the academic board/ senate.

Scottish Universities have a proud history of strong and effective academic governance led by academics, for academics, at the heart of word-leading education and research provision. Under the Universities (Scotland) Act 1889 the role of the Senate is defined as to 'superintend and regulate the teaching and discipline of the University' subject to clear oversight by the Court (i.e. the governing body). Furthermore, the Universities (Scotland) Act 1966 provides (Part II) that all Resolutions (affecting the academic shape of a University) are Resolutions of the Court. It also (Part III) reaffirms the right of Court, per the 1889 Act, to review all decisions of Senate.

The consultation document states that:

"We firstly propose that, in line with existing legislation applying to the ancient universities, the academic board should be the final arbiter on academic matters in all institutions."

We are concerned that this statement misunderstands the current statute and practice. It is crucial to good governance that there should, unambiguously, be a single governing body and that the relationship between the governing body and the academic board should be clear. We are also concerned that the consultation does not point to the strong membership link between the academic board and the governing body. Academic boards are very well represented across all the governing bodies in Scotland: 25% of all non-independent governing body members in Scotland are academic board members, ensuring that academic matters are at the forefront of the governing body's decision-making.

Ultimately, the governing body must take the final responsibility for decisions about the institution's range of academic provision and for the allocation of resources to academic units. The proposal in the consultation paper will inevitably lead to muddled responsibility and accountability for these critical strategic decisions.

Membership

The composition of academic boards reflects the diversity of missions across the sector and the dynamic external environment in which Universities operate. Size and composition naturally vary dependent on the size and mission scope of the institution and reflect changes with time in order to be fully democratic, inclusive and responsive.

A key strength of current academic board structure is the flexibility to co-opt necessary expertise tailored to the institutional mission. For example, Glasgow Caledonian's Senate includes the Director of Graduate School with expertise on postgraduate research issues, and the Vice Principal of City of Glasgow College, a key articulation partner for the University. Other members such as the directors of professional services are included in a non-voting capacity in order to provide specialist advice to the Senate where needed.

Scottish HEIs are currently able to make changes to their academic boards as required within the provision of current legislation. For example, both the University of Aberdeen and the University of Dundee have in recent years substantially changed the composition of Senate following respective external effectiveness reviews. The University of Glasgow has recently made changes to create Senate structures best suited to the institution and responsive to academic need. The University of Edinburgh has one of the largest Senates and this body has recently expressed a clear desire to

maintain the current structure. Much of the detailed Senate business is completed through smaller Senate committees, tailored to the current needs of the institution. The freedom to make such changes in the future may be unhelpfully curtailed by legislation which takes a 'one size fits all' approach.

As illustrated clearly through these examples, legislating on the size and composition of academic boards would unhelpfully restrict the responsiveness of the academic board and the ability of academics to adapt their own governance arrangements to meet the unique and changing needs of diverse institutions. Where potential change could usefully enhance the sector's academic governance provision is by enabling institutions to make these changes as required through an efficient and transparent process. For the ancient universities, such changes to academic boards require approval by the Privy Council, a process which can be protracted. There is scope, as noted above and in our recent submission to the Smith commission, for the role of the Privy Council to be devolved to Scotland, and directly to institutions for smaller internal changes.