



PRESS RELEASE

FOR ATTENTION OF: education correspondents, news desks
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University principals ask the Scottish Government to stop and think about potentially damaging governance proposals in light of strong concern from civic Scotland

Business leaders, student associations and other independent commentators have added weight to the serious concern already expressed by university leaders at Scottish Government proposals to legislate on higher education governance.

The Scottish Government has published an analysis of the written responses to its consultation on higher education governance today (Thursday 9 April). Over 125 submissions have been made to the consultation from across the breadth of civic Scotland as well as from higher education institutions themselves and their student and staff unions.

A strong majority of the responses, including a great many of those received from outside of the higher education sector, raise cause for concern about some or all of the Scottish Government's proposals. The balance of such serious concerns must be reflected in the Scottish Government's response.

Reacting to the summary of responses, university leaders are asking the Scottish Government to stop and think; to work with universities to find ways forward that acknowledge these concerns.

The analysis of written responses, undertaken by The Research Shop on behalf of the Scottish Government, found:

- 91 per cent opposed to legislating to rename a university Principal as Chief Executive Officer (paragraph 1.15 in the report).
- 78 per cent opposed to the proposal to legislate that the selection process for the Chair of the governing body should culminate in an election by a group of representatives both internal and external to the university (paragraph 1.19).
- 67 per cent opposed to legislating to reserve seats for students, staff, alumni and trade union representatives (paragraph 1.34). *Staff and students are already represented on the governing bodies of all Scottish higher education institutions under existing governance arrangements. The proposal to ring-fence seats on the governing body for trade unions is new and does not represent current practice.*
- 91 per cent agreed that the position of Chair of the governing body should be selected through open and transparent process including external advertisement (paragraph 1.17-1.18). *This has been standard practice across the university sector since the introduction of the Scottish Code of Good HE Governance in 2013. Legislation is not required to deliver this.*

There are several recurring themes amongst the objections from civic Scotland, business leaders and some student associations, including:

- Concern at the lack of evidence presented for the need for change.
- A strong view that legislation is not the right course of action.
- Concerns that aspects of the proposals actually have the potential to weaken good governance, including a proposal which would sever the link of accountability between Chair and governing body.
- Concerns about the introduction of 'representatives' on governing bodies, eroding the principle that governors serve solely in the interest of the institution and creating potential conflicts of interest.
- Emphasis on the importance of university autonomy and concerns over the potential to politicise universities.

Extracts from the consultation responses from organisations outside of the university sector and student associations, as shown below, reveal the intensity of feeling and level of concern these proposals have provoked from within civic Scotland and parts of the student community in addition to that felt by university Principals and governing bodies.

Universities Scotland and every one of the 19 higher education institutions it represents is committed to good governance that is robustly transparent, inclusive, accountable and effective. As autonomous, charitable organisations higher education institutions should remain responsible for their governance mechanisms which already ensure the involvement of staff, students and wider university communities and have strong lines of accountability to Government and other funders.

Highly-prescriptive and badly planned legislation would be a damaging distraction from what universities really want to prioritise, which is their contribution to inclusive economic growth.

As stakeholder opinions are made clear, the Scottish Government should acknowledge the concerns raised and engage with university leaders and other stakeholders to determine a better way to progress our shared goal of excellent governance.

Responding to today's summary of the consultation responses, Professor Pete Downes, Convener of Universities Scotland and Principal at the University of Dundee, said:

"We need government urgently to engage with university leaders to find a way forward. The weight of consultation responses from civic Scotland and the level of concern expressed, on top of that already made clear by universities, mean that ministers need to pause and take stock.

"Universities are committed to promoting Scotland's inclusive economic growth and to workforce engagement. We have students and staff at the heart of our governance.

"We need ministers to reflect seriously on the wide range of evidence that says the proposals in the consultation paper will damage universities' contribution to Scotland's success. We would welcome close engagement with government on finding solutions that support transparent and effective governance."

Two proposals in the consultation paper seriously threaten to undermine the practice of good governance in the university sector.

- The proposal to elect the Chair may seem to reflect the democratic ideal on face value but it risks severing an essential link of accountability between the Chair and the governing body and weakening the role of all other members of the governing body.
- The proposal to introduce the concept of *representation* to governing body membership, with the addition of seats reserved for trade union representatives, threatens to erode the established principle of good governance that governing body members should serve in the interests of the institution, not in the specific sectional interest of those they represent.

Universities have strong and robust relationships with five recognised trade unions, which represent 26 per cent of staff, and engage and negotiate with unions on a range of issues through established mechanisms. Universities Scotland’s objection to trade union membership on the governing body in a *representative* capacity has no bearing on any other role played by trade unions within the university sector.

A new Code of governance, developed by the sector in wide consultation with staff and students at every higher education institution and introduced in 2013, has already delivered over 350 new actions across the sector over the last eighteen months. Elements of good governance, currently practiced by institutions, are not recognised in the Scottish Government consultation including the open and transparent recruitment process for the most senior role in university governance, that of the Chair, with publication of a job description and skills matrix. Staff and students sit on selection panels and have a role in both the appointment and appraisal of the Chair and of the Principal.

At the time the Code was launched a commitment was made to review its effectiveness in 2016. This will provide an inclusive opportunity to determine whether further change in governance is necessary and how it should be delivered.

Extracts from consultation responses

The extracts below are taken from submissions made directly to the Scottish Government as part of its consultation exercise and are published on the Scottish Government website. They can be found here:

<http://www.gov.scot/Publications/2015/03/5250/0>

Concern at the lack of evidence behind the proposals:

SCDI	<p><i>“The consultation document on a Higher Education Governance Bill does not demonstrate the need for introducing additional legislative change beyond the very recently established Scottish Code of Good HE Governance.”</i></p> <p><i>“...without evidence of academic freedom being suppressed in Scotland the appropriateness or need for this legislative amendment is questionable.”</i></p>
Royal Society of Edinburgh	<p><i>“The document offers no evidence or rationale for government intervention and no clear public policy objectives that legislation would aim to deliver.”</i></p>
Institute of Chartered Secretaries and administrators (ICSA)	<p><i>“The need to introduce legislative measures, at this point, to ensure these processes [open and transparent recruitment of the Chair] are adopted, however, requires further evidence.”</i></p>

CBI Scotland	<p><i>“Proposals to change the definition of academic freedom run contrary to principles of evidence-based decision making. There is no evidence that academic freedom is being impinged upon...”</i></p> <p><i>“There is clearly no evidence that, contrary to best practice, public election of chairs is beneficial.”</i></p> <p><i>“Proposals to restrict the ability of universities to operate in the way that is most appropriate to them should only be carried through where it is clear that existing procedures are ineffectual.”</i></p>
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A strong view that legislation is the not the right course of action:

Institute of Chartered Accountants Scotland (ICAS)	<i>“We are not convinced that sufficient evidence exists to support a legislative approach or that this more rules-based proposal on membership and composition of governing bodies/academic boards is the best means to achieve diversity on governing bodies/boards/committees.... Our preference is for a non-statutory approach.”</i>
Institute of Chartered Secretaries and administrators (ICSA)	<i>“Introducing legislation will undermine the intended impact of the governance code on improving governance within the sector holistically and reduce the benefits to be gained to one of mere compliance rather than of endogenous improvement for the general benefit of the organisation.”</i>
Glasgow University Students	<i>“We believe that new legislation is not necessary to achieve the outcomes in all the sections below. We believe that the Code of Good Higher Education Governance (the Code) addresses the issues raised within this consultation.... An institution led approach to governance change, rather than one which is externally imposed through legislation, is much more likely to ensure localised buy in and the associated culture change necessary to complement any structural changes thus ensuring sustainable change which goes beyond the tokenistic and is inclusive and transparent.”</i>
Royal Society of Edinburgh	<i>“...the proposals set out for a Higher Education Governance Bill are inappropriate, unnecessary and potentially counter to good governance. They risk undermining the current good relations between Scottish Government and the HE sector.”</i>
University of St Andrews Student Association	<p><i>“The consultation does not clearly identify the sources that it believes be a current threat to academic freedom. Legislating without clear cause risks inadvertently narrowing the scope of what is a complex and dynamic concept.”</i></p> <p><i>“This is emblematic of the flawed nature of this consultation; the Scottish Government has no place in dictating the titles of purportedly autonomous institutions.”</i></p>

Concerns that aspects of the proposals actually have the potential to weaken good governance, including the proposal to sever the link of accountability between Chair and governing body:

Dundee University Students' Association (DUSA)	<i>“Concerns must be raised as to what happens if the elected Chair does not perform their role well. Currently the Court could remove the Chair but would this still be the case if it was an elected position? A Court Chair must be respected by the body which they chair and if this is not the case then a</i>
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	<i>university's governing body could be mired in issues and problems. There needs to be a simple way for Court's to remove or request the removal of an elected Chair."</i>
SCDI	<i>"The governing body must have confidence in the selection [of Chair], and if they do not agree that the chosen candidate has the requisite skills or is the best choice this could diminish the Chair's ability to effectively control the agenda and hold the governing body to account. This may also impact diversity issues, limiting positions to those willing to stand and campaign in an election process as opposed to best able to chair the governing body."</i>
CBI Scotland	<i>"...the code reflects the need for mutual accountability between chair and governing body by making the governing body solely responsible for the selection of the chair. This is best practice because it ensures the chair reflects the governing body's wishes, rather than those of another electorate. A change that moves away from this practice, such as that suggested in the current proposals, would be contrary to effective governance and to the long-term health of our universities."</i>
Royal Society of Edinburgh	<i>"The governing body could already be reasonably described as a 'balanced and representative electorate' including senior management, staff, students and lay members, all of whom are obliged to act in the best interests of the institution. Any electorate broader than this may involve people with either a very temporary stake in the university or others with clear vested interests."</i>
Turcan Connell Legal firm	<i>"It is not clear to us that the process which is suggested for the appointment of chairs of governing bodies will in itself produce genuine benefits to individual institutions or to the sector as a whole."</i>

Emphasis on the importance of university autonomy and concerns over the potential to politicise universities:

QMU Students' Union	<i>"Students seemed weary of too much government involvement"</i> <i>"The risk of opening elections too widely would be the politicisation of the post."</i> <i>"...it was felt that universities should be given more control over this instead of just a government-down policy."</i>
SCDI	<i>"...there are wider implications which must be considered relating to the appropriateness of Scottish Parliament legislating on the governance arrangements of autonomous institutions."</i> <i>"University autonomy is an important concept which has allowed this continuing success on the international stage. It has supported the development of strong partnerships with businesses, and has been a driver for the development of the world-leading university sector in Scotland."</i>
Royal Society of Edinburgh	<i>"The proposals outline a level of governmental intervention that is entirely inappropriate for an autonomous sector."</i>
CBI Scotland	<i>"the supervision of universities should not be party-political."</i>

University of St Andrews Student Association	<i>"Despite its overtures, this consultation ... sets a dangerous precedent for a centralisation of control in a sector that has thrived an autonomy and diversity of institutions."</i>
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Concerns about the introduction of 'representatives' on governing bodies, eroding the principle that governors serve solely in the interest of the institution and creating potential conflicts of interest:

CBI	<i>"Further, members of the governing body must be impartial, and operate in the best interests of the institution as a whole – they should not be there to represent specific parties or interest groups."</i>
SCDI	<i>"...introducing representatives of interests groups with narrower interests than the collective wellbeing of the institution may create conflicts of interest and place strain on the good governance of the institution as well as on the member elected to fulfil the expectations of their specific interest group."</i>
Institute of Chartered Accountants Scotland (ICAS)	<i>"We are not convinced that sufficient evidence exists to support a legislative approach or that this more rules-based proposal on membership and composition of governing bodies/academic boards is the best means to achieve diversity on governing bodies/boards/committees."</i>
Institute of Chartered Secretaries and administrators (ICSA)	<i>"We are concerned that introducing legislation that provides places for eight new members of the governing body is that in doing so its decision-making ability will be diminished and potential or actual conflicts of interest will increase. Both of these developments can adversely impact the work of the organisation and the public's perception and trust in the way it is governed."</i>
Turcan Connell Legal firm	<i>"Prescribed membership of governing bodies set out in legislation is more likely to run counter to a proper balance of skills and does not in our view promote good governance."</i> <i>"It is not possible for charity trustees to fulfil their legal duties to put the interests of the charity first and to avoid conflicts of interest, if they are also expected to represent the constituency responsible for electing or appointing them."</i>
University of St Andrews Student Association	<i>"...it is important to recognise that in their capacity as trustees, these individuals are by law not acting on behalf of nor answerable to a constituency or electorate but rather responsible for the overall welfare and interest of the institution."</i>
Dundee University Students' Association (DUSA)	<i>"We also have concerns as to specifying that a certain number of the staff need to be members of staff unions... in practicality what would happen if union membership drops considerably (a minority of staff are union members in most institutions already). In our experience an open election for all staff allows union and non-union members a chance to stand, and both are elected and perform equally well on Court."</i>

ENDS

Further information

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Notes

- The analysis of written responses undertaken by The Research Shop on behalf of the Scottish Government and published by the Scottish Government on 9 April can be found here: <http://www.gov.scot/Publications/2015/04/4961/downloads>
- The analysis of written responses states that 125 submissions were received (page 1). 107 are published on the Scottish Government's website.
- The full list of responses to the Scottish Government's consultation on legislation for HE governance can be found here: <http://www.gov.scot/Publications/2015/03/5250/0> The extracts used above are taken directly from submissions to this consultation and can be found, in full, at the link above.
- Universities Scotland's response to the consultation can be found here: <http://www.universities-scotland.ac.uk/uploads/HE%20consultation%20-%20US%20response.pdf>