

**Higher Education Governance (Scotland) Bill**  
**Universities Scotland's evidence to the Scottish Parliament Finance Committee:**

Universities Scotland welcomes the opportunity to contribute evidence on the potential financial implications of the HE Governance Bill.<sup>1</sup> We would welcome the opportunity to supplement this with oral evidence.

### **Summary**

Universities Scotland has concerns that the Financial Memorandum contains underestimates of costs facing higher education institutions (HEIs) as a result of the Bill's provisions.

However, our more fundamental financial concerns are that the Bill:

- Substantially increases the risk that the Office for National Statistics may reclassify higher education institutions as part of the public sector, and
- May create a risk to institutions' charitable status.

The realisation of either of these risks would have far-reaching financial implications for HEIs and their contribution to Scotland.

### **ONS classification**

The Bill significantly raises the risk of reclassification of universities by the Office of National Statistics (ONS), from 'Non-profit Institutions Serving Households' to Central Government entities.

ONS's programme already includes an intention to review the classification of higher education institutions. Their classification decisions are informed by factors including the extent of government control and influence over an institution. In Universities Scotland's view, the Bill heightens the risk of institutions' reclassification through the additional controls it hands to Ministers. These include:

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

ONS are likely to look at these in cumulation with the existing framework of control of institutions by government and its agencies, including detailed Ministerial guidance on the priorities for the higher education sector's public funding, the Outcome Agreements framework to give effect to that, and the statutory requirement to observe the higher education governance code governance code as a condition of grant.

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<sup>1</sup> Universities Scotland is the representative body for Scotland's 19 higher education institutions (HEIs). In this document, we use the term 'universities' as shorthand for all of our members, which include three specialist institutions (the Glasgow School of Art, the Royal Conservatoire of Scotland and SRUC) as well as 16 universities.

ONS reclassification that would mean universities “will be treated as part of central Government for financial purposes”. These are the Auditor General’s words, used in connection with the parallel reclassification of Scotland’s further education colleges.<sup>2</sup> Other recent examples of adverse ONS reclassification include Scottish Futures Trust funding for the Aberdeen western peripheral route, and ONS’s current consideration of whether to reclassify housing associations in England as a result of increased Ministerial control.

In practical terms, ONS reclassification would leave universities facing:

- The loss of incentive to earn entrepreneurial income;
- restrictions on borrowing;
- the inability to create surpluses and invest them in improved facilities;
- the loss of philanthropic income, currently worth c.£53m a year; and
- a major reduction of partnership with the private sector.

These sources of funding currently support the great majority of the university sector’s c.£370m per year infrastructural investments, which are crucial to the sector’s success in a highly competitive global context; for example, producing best-in-UK results in the 2014 Research Excellence Framework for both the quality and impact of research and generating £1.3 billion export earnings annually. 65 per cent of the sector’s income (c.£2 billion) and over three quarters of its capital investments derive from sources other than Scottish Funding Council grants. Without the financial tools and the autonomy to invest strategically in this way, universities would inevitably have to reduce their levels of activity and investment, with significant implications for their ability to deliver on Scottish Government priorities, such as skills provision, innovation, and social mobility.

### **Charitable status**

Universities Scotland is also concerned that the increased levels of Ministerial control may put institutions’ charitable status at risk.

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

At a financial level, charitable status is essential to institutions’ solvency. Loss of charitable status would, in particular, mean that institutions lost their entitlement to 80% relief from non-domestic rates. This was estimated in 2008 as being worth £27m per year.

Loss of charitable status would also severely prejudice institutions’ capacity to access philanthropic funding, currently worth around £53 million a year. Donors are highly unlikely to wish to support institutions who are no longer charities.

Charitable status is also an essential part of HEIs’ identity and mission.

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<sup>2</sup> [http://www.audit-scotland.gov.uk/docs/central/2015/nr\\_150402\\_scotlands\\_colleges.pdf](http://www.audit-scotland.gov.uk/docs/central/2015/nr_150402_scotlands_colleges.pdf)

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

We took part in the pre-legislative consultation exercise. This consultation document contained no detail on financial assumptions. We limited our comments in this area to the notion of improved efficiency in the section on the Privy Council (which was dropped from the Bill).

2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the FM?

N/A

3. Did you have sufficient time to contribute to the consultation exercise?

Yes. However, we note that some highly significant elements of the Bill, concerning new ministerial powers, were not included in the consultation. There was therefore no opportunity to respond to these proposals.

4. If the Bill has any financial implications for your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

The Bill has financial implications for Universities Scotland's member institutions. Most types of additional expenditure are identified in the FM, but not all. We believe the costs have been underestimated in almost all cases. For details, see below.

5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

No savings are identified in the FM and we do not expect there to be any. All of the provisions in the Bill that have practical consequences create additional complexity and new administrative and/or financial burdens, relative to existing governance arrangements.

#### **Underestimated costs notably include:**

- *The cost of remuneration of the Chair*

These costs are calculated on the erroneous premise that 'reasonable remuneration' would require payment only for attending meetings. We note that the motivation for the proposal to remunerate Chairs is understood to be the encouragement of diverse candidates for the role. It is highly unlikely that qualified individuals would be influenced by remuneration at six days per year for a role that demands a great deal more commitment on a regular basis (especially given that expenses for childcare, etc., are already paid).

More realistic calculations of time devoted to chairing an HEI's governing body, as evidenced by advertisements for the role at several institutions, stand at around 50 days per year (and in some cases more). The most conservative estimate would be 30 days a year. On this basis, even assuming the FM's conservative estimate of a daily rate, the cost would be in a range of £276,480 - £460,800, meaning that **the FM underestimates this cost by at least £220,000 and realistically around £400,000.**

- *Advertising costs for recruitment of the Chair* (an existing cost covered in the FM)

On the basis of institutions' own experience, these costs are underestimated by £4,000 - £8,000 per institution, meaning that **the FM underestimates the sector-level cost by at least £72,000 and up to £144,000.**

- *Likely costs of running elections for Chairs*

Contrary to the assumption of the FM, it may not be possible to run such elections using low-cost ICT solutions without disenfranchising some constituencies. Even if online solutions were possible, such elections would involve set-up costs. HEIs have often outsourced comparable elections to ensure independence, efficiency and full and fair opportunities to participate. Realistic costs are difficult to estimate, especially as the nature of the proposed election is not known, but the evidence of comparable exercises suggests costs of £1,000 - £3,000 at some or all institutions, even if an electronic-only system is used (hence up to £54,000 overall, where the FM expects 'minimal' cost) and around £7,000 where postal ballots are also used, meaning up to £126,000 at sector level.

**The following costs are not addressed in the FM:**

- *The cost to HEIs of administering changes to HEIs' governing instruments*

The FM makes a reasonable estimation of the cost, in staff time, to the Scottish Government of administering changes to HEI governing instruments. However, the FM makes no corresponding estimation of the cost, in staff time, of the administration needed with all 19 HEIs to change governing instruments.

In making amendments for compliance with the Code and other recent changes, HEIs have often experienced protracted processes to make such changes through the Scottish Government and Privy Council. The precise impact is difficult to estimate; one HEI suggests **the equivalent of at least one full-time senior member of staff for one year would be required** to deal with all the required changes.

It is important to note that the cost of such changes to comply with the Bill would follow extensive work at all institutions since July 2013 to ensure compliance with the Code of Governance. If an alternative to the Privy Council is to be explored in the future, the sector faces the prospect of a still further extended period of upheaval in governance. At all stages, this is a significant draw on staff time and resources, with corresponding opportunity costs. This is a high price to pay, given that even the strongest advocacy for reform has not been presented as a reaction to any notable problem.

- *Staff time devoted to appointments processes, especially Chair appointments*

Staff involvement in these processes includes a significant time commitment for several senior managers. Since the Bill's effect would be to complicate appointment processes in multiple ways, the cost in terms of staff time is likely to rise significantly further.

- *Legal fees incurred for necessary professional advice on changes to HEIs' governing instruments*

Again, this is difficult to estimate accurately, but it is likely to be a substantial five-figure sum.

- *Setting up new appointment processes for categories of governing body member that some or all institutions currently do not have.*

For some institutions, this is likely to involve the establishment of a formal graduates' association appropriate for the role of electing or nominating governing body members. It is difficult to give precise costs for creating and maintaining such processes in the absence of further detail.

6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

If ONS reclassification results, some of universities' most important sources of finance will be cut off. This would no longer be simply a question of 'meeting costs' but a critical change to operational capabilities. Regarding other costs, higher education institutions will have no choice but to find the required resources from existing budgets. While the sums involved are relatively modest in the context of HEIs' broader activities, they are big enough to have real operational impacts. It is important to note that this diversion of resources would carry opportunity costs and would come at a time of existing budgetary restriction, when HEIs are working hard to deliver efficiencies across their operations.

7. Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Given that the tendency to underestimate costs is in some cases based on erroneous underlying assumptions and some costs are not included, we believe that the margins of uncertainty have not been understood or stated accurately.

#### **Wider Issues**

8. Do you believe that the FM reasonably captures any costs associated with the Bill? If not, which other costs might be incurred and by whom?
9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

Given the powers that the Bill would grant to ministers to vary significant areas of HEIs' governance, it is certainly possible that the Bill could generate future costs, as a result of further ministerial intervention and any consequent changes to HEIs' governing instruments and/or processes.

Consideration should also be given to the potentially costly effects of ineffective governance due to conflicts within the governing body if Ministers choose to use section 1 of the Bill to introduce a model where the chairs of governing body were not chosen by the governing body itself and did not have the governing body's confidence. This could cause strategic opportunities to be missed, as well as loss of revenue via reputational damage. The Scottish Government's news release on publication of the Bill held this out as a possible policy intention, despite the objections of over three quarters of respondents to the pre-legislative consultation.

**Universities Scotland  
21 August 2015**