

Consultation Paper on a Higher Education Governance Bill

MINISTERIAL FOREWORD



Scotland can be proud of its higher education system. Our universities fulfil a vital role, and join a common purpose, in contributing to Scotland's prosperity through their teaching, research and links with business and the community.

They are diverse organisations, characterised by a distinctive ethos with autonomy at the core. The 2012 Review of Higher Education Governance in Scotland, undertaken by Professor Ferdinand von Prondzynski, stated that 'for universities to be successful, and in order to avoid undue influence from outside, they need to be autonomous institutions'. This is a view which is shared by the Scottish Government.

However, Scotland's universities also receive a substantial amount of public investment. For that reason, it is important that an appropriate level of democratic accountability is embedded in the governance arrangements for each institution and to ensure public confidence in the sector is maintained.

Existing governance structures, influenced by introduction of the new Scottish Code of Good HE Governance, have served our higher education institutions well enough, but I am confident that the system is capable of further improvement. The Scottish Government does not want to increase Ministerial control over universities, but support them to refine their governance systems, enabling an evolution that can enhance their important contribution to Scotland and the advancement of its people and economy.

This Scottish Government has demonstrated its commitment to the higher education sector through continued investment. As Cabinet Secretary for Education and Lifelong Learning, I want further success for our higher education institutions. And I believe continued success can be delivered if we work in partnership to continuously improve the governance of Scotland's excellent universities.

A handwritten signature in black ink, appearing to read 'Michael Russell', written in a cursive style with a long horizontal stroke extending to the left.

Michael Russell MSP
Cabinet Secretary for Education and Lifelong Learning

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CONSULTATION PAPER ON A HIGHER EDUCATION GOVERNANCE BILL

INTRODUCTION

This is a Scottish Government consultation paper on higher education governance.

Your views are invited on the proposed introduction of legislation to the Scottish Parliament aimed at enhancing and improving governance in higher education institutions in Scotland.

The Scottish Government wants modern, democratic and accountable processes to inform governance arrangements in higher education institutions in Scotland.

The overarching aim is to strengthen governance in the higher education sector in Scotland, ensuring that it remains fit for purpose. The aim of the legislative change that is proposed is not to increase Ministerial control over our institutions, but to support them to develop and refine their own governance systems by introducing a limited number of new statutory measures aimed at embedding greater consistency of approach.

Our aim in this consultation is to invite views on specific proposals in relation to higher education governance. The views received will help shape the legislation that we intend to present to Parliament.

We would like to hear your views on our proposals. This paper covers a range of complex issues and we appreciate there is a lot to consider. That is why we wanted to set out these ideas at an early stage, to ensure we develop impactful legislation.

Background information on higher education governance is contained in this consultation at Annex A together with questions to assist you in framing your consultation response (Annex C). However, in responding to this consultation paper, please do not feel constrained by the questions set. We would also like to hear your views on any potential impact of the proposals (Annex D).

In considering your response to all questions, and in particular those on the proposals in sections D, E and F, due consideration should always be given to applicable law in terms of the principles of equality and diversity.

We appreciate some people will have a particular interest in certain areas. We would encourage you to respond to any or all of those areas where you feel you have a contribution to make.

HIGHER EDUCATION GOVERNANCE REVIEW

In June 2011, the Cabinet Secretary for Education and Lifelong Learning asked Professor Ferdinand von Prondzynski, Principal of Robert Gordon University, to chair a panel to review the governance of Scottish higher education institutions. The Review panel's membership included representatives from a wide range of stakeholder interests from across the higher education sector and included a University Rector, President of the National Union of Students Scotland, a trade union representative, and a representative of the Chairs of University Courts.

The panel was invited to identify and examine proposals for change which would recognise the benefits of an autonomous sector but which would also consider the importance of transparency as well as the effectiveness of management and governance, the clarity of strategic purpose and its efficient implementation. This included looking at where governance worked well, where it could work better, and what standards of good practice all governing bodies should observe.

The panel invited, and considered, written and oral evidence from a wide range of interests and experience - from the public, academics, staff and student representatives in Scotland and from across Europe and the USA.

Review Recommendations

The panel's report, the Report of the Review of Higher Education in Scotland ("the Review") was published in January 2012 and contained 17 recommendations aimed at strengthening the higher education sector in Scotland. These included recommendations that there should be:

- a new statute setting out key principles of governance and management,
- elected chairs of Court,
- a Scottish Higher Education Advisory Forum,
- a minimum of 40% female court members,
- more transparency around senior management pay,
- a new Scottish Code of Good Governance for Higher Education Institutes (HEIs).

Of the 17 recommendations, a number have already been taken forward by the sector and by intermediary organisations within the sector. For example, the new Scottish Code of Good Governance ("the Code") was developed on behalf of the Chairs of University Courts by a steering group chaired by Lord Smith of Kelvin and published in July 2013. This voluntary code is implemented on a 'comply or explain' basis. The Scottish Further and Higher Education Funding Council (SFC) established a University Sector Advisory Forum in 2013, chaired by the Cabinet Secretary for Education and Lifelong Learning.

The proposed legislation will take forward some further elements of the Review recommendations. In terms of gender balance on university courts, the Scottish Government aspires to gender balance on governing bodies. In his Letter of Guidance 2015/16 issued to the SFC on 31 July 2014, the Cabinet Secretary for Education and Lifelong Learning said:

“I look to you to consider how the SFC can support practical action to improve the gender balance on governing bodies... In the HE sector, I want you to discuss with the sector how women’s representation on governing bodies and in senior positions can be improved”.

Currently the Scottish Parliament does not have the legislative powers to consider setting a minimum percentage of female court members.

Following the Scottish Government consultation “Women on Board – Quality Through Diversity”, published on 30 April 2014, dialogue was opened up with the UK Government on transferring powers. Such powers would give the Scottish Parliament additional levers for change, should it choose to use them, where other mechanisms are not working, or are not delivering change fast enough.

In addition, the Scottish Government, in response to the Smith Commissions on the post Referendum devolution commitments on further powers for the Scottish Parliament, has proposed that:

“Scotland should have full devolved responsibility for equalities and be empowered to design and implement equality legislation. This would guarantee the strength of existing legislation and provide the power to make reasoned choices about the use and extension of measures in combination with other devolved responsibilities. More specifically, it will create opportunities to address gender balance on boards and to strengthen the representation and voice of under-represented communities in Scotland’s civic institutions and public life”

However, how that might be implemented for organisations like universities which are not public bodies, but are recipients of government funding, would require further consideration.

CONSULTATION PAPER ON A HIGHER EDUCATION GOVERNANCE BILL: LEGISLATIVE PROPOSALS

POLICY PURPOSE

The Scottish Government is committed to excellence in higher education in Scotland and to continuous improvement.

Our vision for this legislation is to build on the strengths the sector already has by creating provisions which will modernise and strengthen governance, and embed the principles of democracy and accountability in the higher education sector now and for the future. Our aim is not to increase Ministerial control over institutions, but to support our institutions to develop their own governance systems to enable them to continue to reach their full potential.

PROPOSED LEGISLATION

As already set out, the Review included a recommendation to introduce ‘*a new statute of the Scottish Parliament setting out key principles of governance and management*’. Repealing all existing legislation would have the effect of removing all historical weight currently attached to the legislation around ancient and chartered universities. We would like to preserve this historical significance and are not proposing to repeal all existing legislation, but to provide for implementation of elements of a number of key recommendations of the Review.

Taking account of the recommendations already implemented, we propose that the new legislation should focus on six key areas. These are:

- A. transfer of the Privy Council’s role, in relation to higher education governance, to a new Scottish based committee subject to the scrutiny of Parliament in order to simplify the current process for making amendments to the existing governance instruments,
- B. setting out in legislation a new definition of Academic Freedom which is more explicit than the current definition,
- C. clarifying that the role which the Principal has in an institution is that of chief executive officer and involves the leadership, administration and management of the institution,
- D. creating a more transparent process for selecting the Chair of an institution’s court/governing body, as well as making the position more accessible to a wider audience through open advertisement, and election at the final stage of the selection process,
- E. ensuring the composition of the memberships of governing bodies are fully representative, and
- F. ensuring that the composition of the academic board or senate is fully representative and that the board itself can function efficiently.

A. PRIVY COUNCIL

Current Position

The Privy Council (“the Council”) is a formal body of advisers to the Queen. It comprises around 600 members and membership includes all members of the UK Cabinet, past and present, the Speaker of the House of Commons, the leaders of all major UK political parties, Archbishops and various senior judges as well as other senior public figures. Their role is to advise the Queen in carrying out her duties as Monarch. Most functions of the Council are exercised through a single committee, the Cabinet. The Council may meet wherever the Queen decides, although normally at Buckingham Palace, Windsor Castle, or, occasionally, Balmoral Castle. There are usually 9 scheduled Privy Council meetings held each year by The Queen. The meetings are presided over by the Lord President of the Council and 3 other Privy Counsellors must be present for the meeting to have enough members present to allow official decisions to be made. These are invited on a rota basis and will not necessarily have any link with the business being submitted, their only role is to be present at the meeting. Only Privy Counsellors from the serving government are generally invited to attend. The Clerk of the Privy Council, or a Deputy Clerk, must also be present to witness business being approved. All business presented at those meetings has already been considered and recommended for approval beforehand by the Privy Counsellors with responsibility for the relevant policy areas.

In relation to higher education, the Privy Council has a role in terms of the three categories of institution, the ancient universities, chartered universities and post-1992 universities (further details on the three categories of institution can be found at Annex A). The role of the Privy Council is set out in greater detail next.

Ancient Universities

The Court is the governing body of the university. The powers of the court have been developed over time, and are set out in the Universities (Scotland) Acts 1858 to 1966. The court can exercise its powers by making ordinances or resolutions. The Universities (Scotland) Act 1966 sets out that certain powers of the university court, for example amendment of the composition of the court, are exercisable by ordinance and such ordinances do not come into operation until they have received the approval of Her Majesty in Council. In practice, before the approval is given, advice on any proposed changes is sought from the Scottish Universities Committee set up under section 9 of the Universities (Scotland) Act 1889. The functions of that 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 who will provide a recommendation on whether or not changes should be approved by the Queen.

Chartered Universities

These are universities which are established through royal charter. A royal charter is a formal document issued by a monarch granting a right or power to a university. In

order to make any amendments to their charter, these universities need to seek the approval of the Queen. The Privy Council is responsible for advising Her Majesty on proposals from universities to amend their royal charter. The universities also have statutes which regulate their internal governance arrangements and these also require approval of the Privy Council before any amendments can be made. In practice, advice is sought from the Lord Advocate and the First Minister before any changes are approved.

Post-1992 Universities/ Glasgow School of Art/ Royal Conservatoire of Scotland

These universities and institutions predominantly have 'governance orders' which are made by the Privy Council under the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). Such orders are approved by the First Minister and the Lord President of the Privy Council and made by the Privy Council as Orders of Council. However, there is no absolute requirement for institutions' governance arrangements to be set out in an order made by the Privy Council.

Privy Council Role

In general terms there is a two stage process for providing advice to Her Majesty in relation to amending governance instruments.

The first stage is informal and involves the Privy Council Office (PCO) seeking the views of the First Minister, and, the Lord Advocate (and Lord President of the Court of Session, if the changes relate to an ancient university) on the proposed governance changes. Informal views are given to the PCO. The PCO feeds those views back to the university. The university then has the opportunity to amend their draft instrument before submitting it to Privy Council formally for approval. This process can be very time consuming and involve multiple exchanges.

The formal process involves the university, having received informal views, formally submitting their final draft instrument to Privy Council for approval. The PCO then reissues the final draft instrument to the First Minister and the Lord Advocate (and in the case of the ancient universities, to the Lord President of the Court of Session as well) requesting their approval or otherwise of the instrument. The committee members again seek advice from their officials on the final draft instrument. Only when the relevant members of the Privy Council have given their approval for the instrument is it laid before Her Majesty in Council at one of the meetings or, in the case of the post-1992 universities, made as an Order of Council. As a result of this process being undertaken the overall timescales involved in undertaking functions such as approval of changes to an instrument can be very long.

By transferring the functions for approving amending instruments to a committee entirely based within Scotland, the timing of the process could be compressed allowing amendments to be implemented more quickly.

The Privy Council is also concerned with the affairs of chartered bodies, over 1000 institutions, charities and companies who are incorporated by royal charter. Whilst we are proposing to replace the functions of the Privy Council in relation to higher

education institutions in Scotland with a new Scottish Committee, we would not wish chartered universities to lose their chartered status. It would therefore be our intention to retain the role of Her Majesty The Queen in amending governance instruments of the chartered universities royal charter.

What are we proposing to do and why?

We propose that the functions of the Privy Council to approve changes to governance instruments, as outlined in the 1966 Act for the ancient universities, to amend statutes of the chartered universities and outlined in the 1992 Act for the post-1992 universities, are transferred to a new committee comprising the First Minister of Scotland, the Lord Advocate and for governance issues relating to the ancient universities, the Lord President of the Court of Session. This committee would be subject to scrutiny by the Scottish Parliament. The aim of this would be to expedite the undertaking of these functions more quickly and efficiently.

In examining change that could improve the efficiency and effectiveness of alterations to the governance of individual HEIs, institutions may have ideas about the further delegation of the ability to make changes without referring to the Privy Council or a replacement Committee in Scotland.

Benefits

The Privy Council is the oldest form of legislative assembly still functioning in the UK, and introducing a Scottish Committee to carry out the functions as set out above would enable us to adopt a flexible approach. We would intend that universities would liaise directly with officials in advance and potentially reduce the length of the process for institutions to make changes to their governance instruments.

Questions

1. Do you think that the mechanism for approving governance changes through the Privy Council should be retained?
2. Do you agree that the functions of the Privy Council, as set out above, should be transferred to a committee which operates entirely in Scotland?
3. Do you agree that any such committee to which those current functions of the Privy Council as already set out should comprise the First Minister, Lord Advocate and the Lord President of the Court of Session?
4. Do you agree that any such committee, to which those current functions of the Privy Council as already set out are transferred to, should be subject to the scrutiny of the Scottish Parliament?
5. Could individual institutions be afforded greater autonomy to make changes to their governance without seeking permission from the Privy Council, or a replacement Scottish Committee? If so, what functions might this cover?

B. ACADEMIC FREEDOM

Current Position

The principle of academic freedom which applies to fundable bodies, including HEIs, is set out in Section 26 of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”). This is derived from the UNESCO recommendation concerning the Status of Higher Education Teaching Personnel made in Paris on 11 November 1997.

Section 26 of the 2005 Act places a duty on post-16 education bodies, including universities, to have regard to the desirability of ensuring academic freedom for those involved in teaching, learning or research in relation to their appointment, or any entitlement or privileges they may enjoy. This includes the freedom (within the law) to hold and express opinions, question and test established ideas and received wisdom and present controversial or unpopular points of view.

What are we proposing to do and why?

Section 26 of the 2005 Act has served our institutions well. However, within the proposed legislation there is an opportunity to make provision for a definition of academic freedom which explicitly refers to freedom to encourage new ideas.

Our intention would be to replace the current definition of academic freedom with a definition which contains a provision that “academic freedom” includes freedom to encourage the exploration of new ideas, alongside the testing of received wisdom and the expression of points of view whether controversial or otherwise. Our aim would be to remove any threat to academic freedom, within the law, and hence to freedom of intellectual enquiry and expression thus enhancing the protection currently offered to academic staff.

We further propose to make provision within the legislation to require HEIs to adopt a statement on their implementation of the statutory protection of academic freedom and present it to the SFC. This statement would then be treated by SFC as a condition of grant.

Benefits

By making the current definition of academic freedom more explicit we would hope to encourage diversity of opinion. Our aim is that this in turn will lead to staff seeking knowledge for its own sake and putting forward new and innovative ideas without feeling constrained by popular opinion.

Adopting a statement on the implementation of the statutory protection of academic freedom will, we hope, enhance the value of freedom of expression and the benefits it brings to the academic community and the wider society.

Questions

6. Do you agree that the principle of 'academic freedom' currently defined in legislation should explicitly refer to freedom to encourage new ideas?
7. If you do agree, what might the risks be?
8. Do you agree that HEIs should be required by legislation to adopt a statement on their implementation of the statutory protection of academic freedom which they should present to the SFC and which would be treated as a condition of grant?
9. Do you think there are any further measures which should be included in a new definition of academic freedom?

C. ROLE OF PRINCIPALS

Current Position

In Scotland, the Principal is appointed by the governing body of the university and will be chair or President of the body of academics. In the case of the ancients the Principal is President of the Academic Senate. The Principal also holds the title of Vice-Chancellor but their powers with regard to this position extend only to the awarding of degrees, as both the Vice-Chancellor and Chancellor are titular posts.

The Code requires the governing body to adopt a Statement of Primary Responsibility which includes provisions relating to the appointment of the Principal as Chief Executive Officer of the institution.

The Principal leads the management and day to day running of the institution, subject to the general control and direction of the university governing body. The Principal is also accountable to the SFC for use of public funds.

What are we proposing to do and why?

The title of 'Principal' is well established in Scottish HEIs, however, the role which the Principal undertakes is that of chief executive officer of the institution. **The legislative intention would be to clarify that role by describing the heads of Scottish HEIs as 'Chief Executive Officer' but retaining the working job title as 'Principal'.** We are proposing to introduce this provision to make it clear that the role which the Principal has in an institution involves the leadership, administration and management of the institution.

We believe that 'chief executive officer' better describes the responsibilities of the role than Principal does.

Benefits

Introducing this provision into legislation will, we believe, clarify that the role undertaken by the Principal is that of chief executive officer of the institution and embed consistency across all institutions.

Questions

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

11. 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'?

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

D. CHAIRING OF GOVERNING BODIES

Current Arrangements

The current process for selecting the chair of the court/governing body is not the same across the sector. The four ancient universities retain a position of Rector, an elected lay member, and in those institutions the Rector has the right to chair the governing body. This is laid out in legislation under section 4 of the Universities (Scotland) Act 1858 where it is stated that the Rector 'shall be the ordinary president' of the university court. The University of Dundee also has a Rector, who is elected by the students, but does not chair the governing body.

Outside of the four ancient universities, there is little conformity on the selection process for chairs across the sector. Universities use various processes for selecting chairs, including selecting them from existing lay members for a specified period of office (typically 3 years), however there are also institutions that advertise the position externally.

One of the aims of this legislation is to aid the modernisation of our universities and increase the levels of accountability across the sector. The introduction of the Scottish Code of Good HE Governance has taken the first steps to this. The Code states at page 4:

"The chair shall be responsible for the leadership of the governing body, and be ultimately responsible for its effectiveness. The chair shall ensure the institution is well connected with its stakeholders, including staff and students".

The current process for selecting chairs, as has been described, is varied and in some cases not as conducive as it could be to attracting a wide pool of potential candidates from a broad range of backgrounds and experience who have the potential to bring a wider range of qualities to the roles of Rector or chair.

What are we proposing to do and why?

Given that the chair undertakes an important role within the university governance structure, it is vital that the process of 'selecting' this position be rigorous and transparent. Chairs play a key role in meetings of the university courts, ensuring the agenda is discussed sufficiently and the tone of meetings fits with the university which they represent.

We propose that all chairs are appointed at the culmination of a transparent process which includes development of a job description and essential criteria for the position including both skills and attributes, public advertisement, competitive selection including shortlisting, interview, and finally election by a balanced and representative electorate.

The job specification and essential criteria should be made publicly available. The selection process should be transparent and a panel structure should be used when interviewing candidates. The interview panel should contain both lay members of the governing body and other university stakeholders, including staff and students.

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

Furthermore, to enable this position to be more accessible to prospective candidates it is proposed that universities are given a lever to offer a 'reasonable' remuneration to elected chairs to cover their expenses during their term. This may be in the form of a stipend or reasonable attendance allowance.

Benefits

Introducing a process for selecting a chair of an institution's governing body will present an opportunity to introduce consistency across the sector and create a more transparent appointment process.

Creating a job description will enable the governing body to consider what skills and attributes they are potentially missing and would work in synergy with the skills and attributes of the current members. Publicly advertising posts will assist this by enabling courts/governing bodies to reach a wider pool of candidates and potentially attract more individuals who possess the skills and experience required by the post. Providing institutions a lever to offer a reasonable remuneration, if necessary, will further enhance this by opening the position to a wider field of candidates who may not be in a position to undertake the position without remuneration. An appointment process, as outlined above, including election of the chair from successful shortlisted candidates would embed greater transparency and democratic accountability across the sector.

Questions

13. Do you agree that a pool of candidates for the position of chair of the governing body should always be selected through an open and transparent process?
14. Do you agree that the recruitment process should include open advertisement of the position?
15. Do you agree that open advertisement of the position would help to attract a wider pool of candidates?
16. Do you agree that the selection process should culminate in an election by a group of representatives of key stakeholders both internal and external to the university?
17. What do you think the composition of the group of representatives that elect the chair should be?
18. Would you welcome universities offering suitable remuneration for elected chairs?
19. Do you have any other comments you wish to add?

E. MEMBERSHIP OF GOVERNING BODIES

Current Arrangements

Across Scottish universities there are a number of different models of governing body in place. **Annex B** sets out the detailed governance models employed by each of the HEIs (with the exception of the Open University) as at August 2014. These are structures which do not remain static. However, a shared principle across the sector is that the majority of court members are 'lay' or 'independent', meaning that they are neither directly employed by, or students of, the institution.

'Lay' membership is an important element of the governing body structure. This arrangement allows engagement with the wider community, and provides a mechanism for the governing body to integrate with persons from a wide variety of experience and backgrounds, bringing added value to the governing body.

The membership of the governing body is addressed within the Code which sets out the priorities for members who sit on governing bodies within universities. The Code states at page 22:

“There shall be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence. The governing body shall draw up and make public full evaluation of the balance of skills, attributes and experience required for membership of the governing body, which shall inform the recruitment of independent members of the governing body”.

The Code also provides direction on governing body structure, identifying the requirement for the governing body to have a clear majority of independent members defined both as external and independent of the institution. A governing body of no more than 25 members is cited as providing a benchmark of good practice.

To support the sector further and embed fair representation across institutions within their governing bodies it is proposed that all governing bodies have effective representation of internal stakeholders, and all governing body members are selected in a way which is transparent.

What are we proposing to do and why?

It is key to the effectiveness of the governing body that its membership should be fully representative. Consistency in approach to this will increase transparency and democracy within the governance of institutions across the sector. With regards to this **we propose that it should be set out in legislation that, following a period of managed transition, the governing body should provide positions for a minimum of two students, nominated by the student association/union. There should be at least two directly elected staff members, as well as one member nominated by academic and related unions and one by administrative, technical or support staff unions. Governing bodies should also have up to two alumni representatives.**

Benefits

Prescribing membership of governing bodies in legislation will ensure more effective representation of internal stakeholders and will help to create a more inclusive environment within the institution. Greater consistency of approach will also be achieved across all institutions.

Members should be selected from within their own representative group which will increase transparency and democracy across the sector.

Questions

20. Do you agree with the proposed requirement outlined for membership and composition of the governing body?

21. Is there any representative/body not currently proposed for inclusion in membership of the governing body that you believe should be represented?

22. If there is a representative/body you believe should be included in the membership of the governing body, what do you believe they would bring to the governing body that isn't already there?

23. By what means do you think that the principle of equality should be embedded in establishing the membership of governing bodies?

24. Do you have any other comments you wish to add?

F. COMPOSITION OF ACADEMIC BOARDS AND APPOINTMENT OF MEMBERS

Current Arrangements

In general terms the academic board/senate has an important role in setting the tone of the institution and in providing academic input into the institutional strategy. The Review highlights the importance of academic decisions not being simply seen as endorsements of previous management decisions and the importance of ensuring that staff are engaged, providing academic boards that are a genuine forum for academic debate and governance. However, there is a degree of variety across the boards in the sector. For example, existing legislation applying to the ancient universities provides a lever for academic boards to be the final arbiter on academic matters within the university. In addition, the composition of the academic board also differs between HEIs in Scotland. For example, St Andrews University has a senate membership in excess of 140 members whilst Edinburgh Napier University's academic board consists of around 35 members. Currently, there is no national standard size of the academic board that sits within Scottish universities.

We consider that it is important to provide a clear indication that the academic board has an independent role in making decisions, providing a platform for genuine debate with meaningful consultation and participation on academic matters.

What are we proposing to do and why?

This consultation proposes three changes to current governance structures. 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 secondly propose that, **with the exception of the Principal and the Heads of School (or equivalent) who should attend ex officio, all other members of the academic board should be elected by the constituency that they represent, and elected members should form a majority of the total membership.**

Thirdly we propose that **overall, academic boards should not have more than 120 members.**

Benefits

We believe that the academic board should be the final arbiter on academic matters in all HEIs, providing for this in legislation to apply to all HEIs will embed consistency across the sector. It will also provide the academic board with a stronger purpose and identity within the institution. Introducing measures through which all members are elected by the constituency they represent will enable academic boards to ensure that staff and students are engaged in shaping the direction of the institution both in terms of teaching and research.

It is important that students are involved in collaborative decision making through the academic board and we believe this will be achieved by giving students significant representation.

The introduction of a cap of 120 members would enable academic boards to be contained at a manageable size.

Questions

25. Do you agree that the academic board should be the final arbiter on all academic matters in all HEIs?
26. Do you agree that, with the exception of the Principal and the Heads of School (or equivalent) who should attend ex officio, all other members of the academic board should be elected by the constituency that they represent?
27. Do you agree that elected members should form a majority of the total membership of the academic board?
28. By what means do you think that the principle of equality should be embedded in establishing the membership of academic boards?
29. Do you agree that academic boards should have no more than 120 members?
30. Do you agree that elected members should form a majority of the total membership?
31. Do you have any other comments you wish to add?

CONCLUSION

The responses to this consultation will help inform and shape the proposed legislation. As already outlined, the policy purpose of this legislation is not to increase Ministerial control but to modernise and strengthen the existing governance structures across the sector. By supporting the sector's continuous improvement, and embedding democracy and clear accountability in each institution the legislation will ensure that public confidence both now, and in the future, is maintained.

We aim to support our institutions to continue to thrive and to maintain their world class reputation by introducing legislation which will provide the basis for modernising their approach to aspects of their governance.

We value your opinions and welcome your views on the proposed changes that we have identified in this consultation document.

CONSULTATION PROCESS

We are inviting written responses to this consultation paper by 30 January 2015.

A full list of the consultation questions is contained in **Annex C** of this document. We would be grateful if you would use the consultation questionnaire provided or clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid collation of the responses received.

This consultation, and all other Scottish Government consultations, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>.

Please send your response with the completed Respondent Information Form to:

HEGovernance@scotland.gsi.gov.uk; or

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If you have any queries please contact Karen Frew on 0300 244 6737 or by email HEGovernance@scotland.gsi.gov.uk.

The Scottish Government has an email alert system for consultations <http://register.scotland.gov.uk>. This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). This system complements, but in no way replaces Scottish Government distribution lists. It is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

HANDLING YOUR RESPONSE

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form attached at **Annex E** with your response as this will ensure that we treat your response appropriately.

If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002. We would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Further information about the Scottish Government consultation process is available on <http://www.scotland.gov.uk/Consultations/About>.

COMMENTS

If you have any comments about how this consultation exercise has been conducted, please send them to Karen Frew (karen.frew@scotland.gsi.gov.uk). We welcome your views on any or all of the issues covered by this paper.

GLOSSARY

Academic Board: has responsibility for academic matters (including curriculum content and student assessment), in some universities called the 'Senate' (and in others, the 'Academic Council'). Currently chaired by the Principal.

Bill: a draft Act, containing the text that will, if the Bill is passed and enacted, become part of the statute law.

Chancellor: the titular head of the University and is elected to the post by the General Council (all graduates and established academic staff).

Chancellor Assessor: appointed by the Chancellor to represent him/her on Court.

Governing Bodies - Court/Board of Governors: The governing body of most Scottish universities is called the 'court'. The governing body appoints the Principal. Governing bodies tend to be quite large, ranging from 17 to 28 members, and include representatives of staff and students. External or 'lay' members, who often form a majority of the total membership, are appointed by the governing body, or on its behalf by a nominations committee of it. In all Scottish institutions the Principal is a member (but not the chair) of the governing body.

Papal Bulls: documents issued by the Pope, these are the instruments which founded the 'ancient' universities. The name is derived from the lead seal (bulla) traditionally affixed to such documents.

Privy Council: the Queen's own council. There are around 600 council members and they advise the Queen in carrying out her duties.

Royal Charter: A royal charter is a way of incorporating a body, that is turning it from a collection of individuals into a single legal entity. Royal charters were at one time the only means of incorporating a body, but there are now other means (becoming a registered company, for example), so the grant of new Charter is comparatively rare. New grants of royal charters are these days reserved for eminent professional bodies or charities which have a solid record of achievement and are financially sound.

Scottish Further and Higher Education Funding Council: the public body that distributes funding as grants from the Scottish Government to higher education institutes.

ANNEX A: HIGHER EDUCATION IN SCOTLAND: IN CONTEXT

Scotland's higher education system is world class, with 4 of our institutions in the top 200 in the world. It is a sector that is steeped in history with institutions founded as far back as St Andrews in 1410, alongside the University of Highland and Islands, which was founded in 1992. Governing the oldest of those institutions is legislation dating back as far as The Universities (Scotland) Act 1858.

Our institutions are regulated by a landscape made up of papal bulls, statutes, statutory instruments and royal charters. This landscape, which has evolved over a number of years, has created a diverse range of systems and approaches to governance across the institutions.

Existing Governance Arrangements

The 19 Scottish universities/higher education institutions (HEIs) are commonly divided into three groups:

- ancient universities;
- chartered universities of the mid-20th century; and
- post-1992 'new' universities and 'small specialist institutions'.

Ancient Universities

The 'ancient universities', (Aberdeen, Edinburgh, Glasgow and St Andrews), are subject to the Universities (Scotland) Acts of 1858, 1889, 1922, 1932 and 1966. These Acts make provision for the main statutory bodies and officers: the Court, the Senate (Academic Board), the General Council; the Chancellor, the Principal and Vice Chancellor, and the Rector, and set out the powers and duties of those statutory bodies, as well as specifying their composition. Governance is regulated by resolutions, made by the university, which do not require Privy Council approval and ordinances, which do require the approval of Privy Council. The Universities (Scotland) Act 1966 ("the 1966 Act") sets out the procedure for making resolutions and makes provision for the University Courts to exercise, by resolution, a wide range of powers, including the institution of new degrees and degree regulations. Ordinances are required mainly for Court constitutional matters.

Chartered Universities

The 'chartered universities', (Dundee, Heriot-Watt, Stirling, Strathclyde and the Open University in Scotland), were established by royal charter in the 1960s. Each university's charter sets out the powers and functions of the university as well as identifying the key officers and committees within the university's structure. It sets the general framework under which the universities are governed through statutes, made by the University Court (governing body) but subject to Privy Council approval, as well as ordinances and regulations that are not subject to Privy Council approval. The Charter defines the objects, powers, officers, teaching, research and examining body and includes such fundamental powers as those of awarding degrees. The university's statutes prescribe details concerning the members and officers of the

university, the membership and functions of statutory bodies (including Court and Academic Board), and other miscellaneous provisions.

Post-1992 Universities/Small Specialist Institutions

The 'new' universities, (Abertay, Glasgow Caledonian, Edinburgh Napier, Robert Gordon, Queen Margaret Edinburgh, Highlands and Islands, and West of Scotland), were designated as universities under the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act"). The constitutional governance arrangements for the 'new universities' and the other higher education institutions, commonly known as the small specialist institutions, variously draw on a mixture of the 1992 Act, the Companies Acts and other legislation. In most cases governance arrangements are set out in a statutory order of the Privy Council made under section 45 of the 1992 Act. The 'small specialist institutions' are Glasgow School of Art, Royal Conservatoire of Scotland and Scotland's Rural College (SRUC).

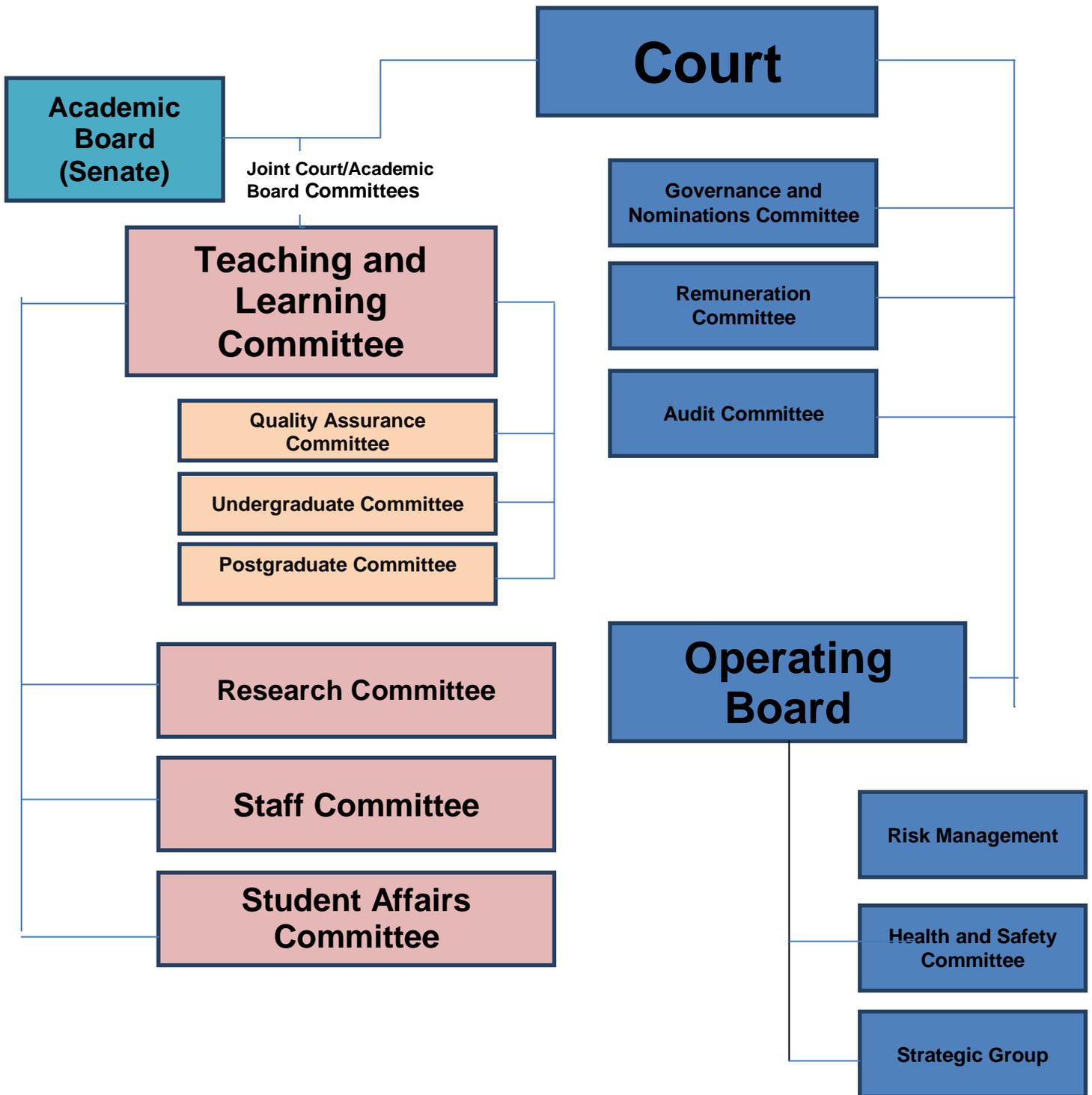
In addition to the instruments that established them, Scotland's higher education institutions are also subject to various pieces of legislation, some of which apply across the whole sector, while others apply only to specific institutions or to sub-sets within the sector. For example, the Scottish Public Services Ombudsman Act 2002, which legislates for complaints handling, relates to all institutions across the sector.

While the legislative and constitutional arrangements vary, universities are all independent corporate institutions with charitable status and with a governing body that is responsible for the overall direction and strategy of the institution, and is accountable, alongside the Principal, for its resources.

General Governance Structures

Responsibility for governance within universities normally rests with the university court and the academic board. The court and academic board establish committees to assist them in their work.

The diagram below illustrates a typical organisational committee structure for the governing body of a Scottish university.



The Court/Governing Body

Every Scottish university is headed by a governing body (most commonly called the court) which carries ultimate responsibility for overseeing the institution's activities and resources, determining its strategic direction and delivering the mission for the benefit of the institution and its learners. The governing body also ensures compliance with the provisions regulating the institution, its framework of governance and all other relevant legal requirements/obligations. Generally, there are around 25 members, with a clear independent majority, drawn from academic staff, senior managers, students, graduate alumni, the local authority and lay (independent) members from the local/business community. The chair is responsible for the leadership of the governing body and for its effectiveness, ensuring the institution is well connected with its stakeholders, including staff and students.

The Academic Board (or Senate /Academic Council)

Chaired by the University Principal, the Academic Board (or Senate /Academic Council) is the body within universities responsible for decisions relating to the academic work of the university and for considering the development of the institution's academic activities. Academic Board decisions on academic matters which have financial or resource implications are subject to approval by the Court. Conversely, decisions by the Court which have academic implications are normally subject to consultation with the Academic Board. Membership is generally drawn from within the university and can be made up of Professors, Heads of Schools, non-professorial staff and student members.

University Committees

The university's committee structure is an important part of its governance processes. It is common practice for the governing body to delegate some of its powers and work to committees. Committees commonly deal with matters such as finance, estates, staffing, audit, remuneration and nominations to the governing body.

The General Council

The General Council is a corporate body of all senior academics and graduates presided over by the Chancellor. It plays an advisory role to the Court in the governance of the University. The General Council elects the Chancellor, the nominal head of the university, and also elects its Assessors, who are their representatives on the University Court.

University Principal

The Principal (or Director in the case of the Glasgow School of Art and Open University in Scotland) is responsible for the executive management and day-to-day operations of the institution, and is appointed by and accountable to the Court. The Principal is the designated officer in respect of the use of SFC funds and compliance with the SFC's Financial Memorandum which sets out the conditions of funding to institutions.

University Rector/Chair of Court

The four ancient universities and the University of Dundee have the office of Rector. The Rector is elected by the students, except in the case of Edinburgh, where the Rector is elected by the students and staff. In all but Dundee the Rector has the right to chair meetings of the governing body. The practice generally adopted in the other institutions is for there to be a chair that is elected by the independent members of court.

ANNEX B: GOVERNANCE STRUCTURES

University of Aberdeen has a total possible membership of 28 on the University Court comprising: Rector; Rector's Assessor, Principal, Chancellor's Assessor (Senior Governor); Vice-Principals (to a maximum of 3); City of Aberdeen Council Assessor; Aberdeenshire Council assessor; 4 General Council Assessors; 6 Senate Assessors; President of the Students' Representative Council; up to 8 co-opted members; with other Vice-Principals in attendance. The Senate is chaired by the Principal and includes all Vice-Principals, Heads of College, Heads of School, elected representatives of the academic and research staff of each School, representatives of the Students' Association and a number of ex officio members who hold University, College or School appointments.

Abertay University has a total possible membership of 25 on the University Court with 13 forming the independent lay core (including chair), 6 being co-opted, 4 being ex officio (Principal, 2 Vice-Principals, President of the Students' Association) and 3 representing academic and non-academic staff. The Senate is chaired by the Principal as defined in the governing Order, and consists of ex officio, elected, co-opted and professorial members. The elected membership comprises members of the full-time academic staff of the University, and a full-time matriculated student as a representative of the Students' Association. The number of elected members shall not be less than one third and not more than two thirds of the ex officio members of Senate and up to 4 co-opted persons and such other persons the University Court may approve.

University of Dundee has a 23-member Court, chaired by a lay member, and comprising: The Chairperson, The Principal, Assessor nominated by the Chancellor, Assessor nominated by the Rector (or the Rector), The Lord Provost of Dundee City Council (or his/her nominated assessor), 2 Assessors elected by the Graduates' Council, 2 Professors and 2 Readers, Senior Lecturers or Lecturers elected from among its members by the Senate, 2 members elected by the Academic Council, a member elected from and by non-academic staff, President of the Students' Association, a matriculated student elected by the student body, 7 other co-opted persons, not holding full-time appointments from Court. The Senate is chaired by the Principal and also comprises: the Vice-Principals, Deputy Principals, 2 members of Academic Council elected by the Council, at least 3 student representatives, a minimum of 51 Professors, Readers, Senior Lecturers and Lecturers (not less than two-thirds of the total membership shall be Professors), and such other person recommended by the Court. (The proposed new Statute for Senate, yet to be approved by the Privy Council, has the following membership: Principal, Vice-Principals, Deputy Principals, 2 members of Academic Council elected by the Council, at least 3 student representatives, the Deans of the Schools, a minimum number of 34 members of the academic staff). (Changes pending approval of the Privy Council.)

University of Edinburgh has a 22 member University Court, comprising: Rector; Principal; Chancellor's Assessor; 3 General Council Assessors; 4 Senate Assessors; City of Edinburgh Council Assessor; 8 co-opted independent members; 1 Non-Teaching Staff Assessor; 2 Student representatives. The Principle is President of

the Senate and membership includes; the Vice Chancellor, all Professors of the University, elected non-professorial representatives of readers, senior lecturers and lecturers, elected representatives of University demonstrators and research staff, elected student representatives and other ex-officio members not already in any of these categories.

Edinburgh Napier University has a 24-member Court including a Chair of Court and a Vice Chair. Of the 24 members, 15 are independent members. The University also has a Chancellor, a Principal (also the Vice-Chancellor), and two Vice-Principals. Court also includes 3 members of staff (2 of whom are directly elected, and one appointed by the Academic Board) and 2 student members who are the President and an office-bearer of the Students' Association. The Principal is also the Convenor of the Academic Board which comprises 17 elected members of academic staff, 4 student representatives and 12 ex-officio members (including the Principal and 2 Vice-Principals).

University of Glasgow has a 25 member Court, comprising the Lord Rector (the chair who is elected by the student body), the Principal, the Chancellor's Assessor, a representative of Glasgow City Council, 5 assessors elected by the General Council, 7 Senate Assessors elected by the Academic Senate, 2 employee representatives, the President of the Students' Representative Council, one assessor elected by the Students' Representative Council, and 5 co-opted members. The Academic Senate, which has several hundred members, comprises all the Professors of the University as well as elected academic members, representatives of the Student's Representative Council, the Secretary of Court and directors of University services. The President of the Academic Senate is the Principal. In addition, a Council of Senate has been established to undertake the normal business of the Senate. The General Council is the final part of the tri-partite structure, and is an advisory body comprising all graduates and senior academics.

Glasgow Caledonian University has a total possible number of Court members of 23. This comprises a minimum of 9 and a maximum of 18 appointed lay governors, 2 ex officii (the Principal and Vice-Chancellor, the President of the Students' Association), and 3 staff governors (one elected by Senate from among the members of Senate, one elected by the staff from among the members of such staff, and one elected by the professional support staff from among the members of such staff). The Senate is chaired by the Principal and Vice-Chancellor. The membership comprises: governors ex officios (Principal and Vice Chancellor, Vice-Principle and Pro Vice Chancellor, Heads of Academic Departments, the President of the Students' Association), elected members (elected members consist of such number of persons, including one matriculated student, as may be determined by Senate provided this is not less than one-third and not more than two-thirds of the aggregate on ex officii members of Senate. The elected members are elected by and from among members of the academic staff and matriculated students of the University who are not members, ex officii or co-opted members), and co-opted members (co-opted membership must not exceed 4).

Glasgow School of Art can appoint up to a maximum of 25 members on the Governing Body. This figure includes three ex-officio Governors (Director; Deputy Director; President of the Students' Association), three staff Governors (2 elected and one appointed by the Academic Council) and up to 19 Lay Governors (the

minimum number of Lay Governors is 11). There are presently (as at August 2014) 14 Lay Governors. The Academic Council comprises 30 members: 18 ex officios including the Director, Deputy Director and heads of departments, 4 co-opted members including the Senior Tutor and the President of the Students' Representative Council and 8 elected members. The Academic Council currently comprises 23 members: 14 ex officios including the Director, Deputy Director, Heads of Schools and the President of the Students' Association; 2 co-opted members, both of whom are representatives of the University of Glasgow; and 7 elected members.

University of the Highlands and Islands has 20 members on the Governing Body comprising: 3 ex officios: the Principal, the President of the Students Association; and the Rector. 3 elected Governors: 2 Governors elected by and from the members of Staff, and 1 Governor elected by and from the students. 2 appointed Governors: 1 Governor appointed by the FE Academic Partners and 1 appointed by the Specialist and Research Academic Partners. 11 independent members (3 appointed by Foundation to secure reasonable geographical representation of the Highlands and Islands; 1 appointed from the CE of each of the local authorities, 1 appointed by Highlands and Islands Enterprise, 1 is the chair of UHI FE Regional Board and 8 appointed by the Court); 1 appointed jointly by our Sponsor University Members (Universities of Aberdeen, Edinburgh, and Strathclyde).

Heriot Watt University has a 25-member Court, of whom 14 are independent, 4 are nominated by the Senate and 2 by the student body. The Principal and Vice Principal are ex-officio members of Court. Of the independents, 10 are co-opted, 2 are members of the graduates and former students association and 1 is a local authority councillor. The 14th independent is the Chair of the Court. There are also 3 staff members in addition to the 4 Senate members, of whom 2 are non-academic and 1 is an academic. The Senate membership includes the following members: the Principal (who acts as chair); the Vice-Principal; the Deans of the University; the Chairs of the Senate Committees; the Heads of Schools and Institutes; the President of the Student Union and a member of the Executive of the Student Union (elected by the Executive of the Students Union); up to 6 holders of academic posts (currently including the Deputy Principals). Each School and Institute elects members to the Senate. The number of elected members of each School is based upon the number of relevant staff (FTE) per School. Elected members make up two thirds of the total membership of the Senate.

Queen Margaret University has a 24 member Court, including a Chair of Court and a Vice Chair. The university also has a Chancellor, a Principal (who is also the Vice-Chancellor and Chief Executive Officer), and one Deputy Principal. The Court comprises between 12 and 16 lay members (currently 16), including the Chair and the Vice-Chair. The Principal and Deputy Principal are members *ex officio*. There are 3 staff members (2 of whom are elected by staff and one of whom is appointed by the Senate), as well as the Student President and one other Student Union office bearer. The Principal is also the Convenor of the Senate and the Deputy Principal is the Deputy Convenor. At the time of writing (August 2014) the Senate comprises 18 elected members of academic staff representing the interests of 6 Academic Divisions. With effect from October 2014, there will be 21 elected members of academic staff representing the interests of 7 Academic Divisions. There are 2

student representatives in addition to 15 ex-officio staff members (the Principal, Deputy Principal, University Secretary, Deans of School, and Heads of Divisions or equivalent etc).

Robert Gordon University has 18 members on the Board of Governors comprising: Principal; Academic Council appointee; elected member from the academic staff; elected member from all other staff; 2 elected by the students (one undergraduate and one postgraduate); other appointed or elected independent members. The Academic Council is chaired by the Principal and also includes the Deputy Principal and Vice-Principals, Deans/Heads of School, Directors of Library Services and Marketing, Communication and Student Recruitment, Research Institute Directors, 3 student representatives (including President), 3 academic staff members elected from each Faculty, up to 2 co-opted persons.

The Royal Conservatoire of Scotland has a Board of Governors with a maximum membership of 26, comprising of a maximum of 19 Lay Governors, 3 elected staff members (by academic staff, support staff and Academic Board), 2 student representatives (including the President of the SU and one other student nominated by the SU) and 2 ex-officio members (the Principal and the Deputy Principal). The Academic Board has 13 members, including the Principal (Chair), Deputy Principal, Deans, 1 independent external from another higher education institution, 5 members of academic staff (2 elected and 3 co-opted), the Head of Information Services and 2 student representatives (President and Vice President of the SU).

SRUC Group Board is composed of a combination of Non-Executive and Executive Directors. The maximum number of Directors is 18 comprising of no more than 6 Executive Directors and no more than 12 Non-Executive Directors. The Education Board, which reports directly to the SRUC Group Board, comprises 18 members including 2 non-executive directors, the Principal & Chief Executive, the Vice Principal Education, the Vice Principal Research, the Dean of Postgraduate Studies, 2 student members (one from FE and one from HE), 2 nominated staff members (one from FE and one from HE, who are in teaching/educational roles), 6 further members approved by the SRUC Group Board and one member of staff from each of the validating universities (Edinburgh and Glasgow).

University of St Andrews has a 23 member University Court, comprising: Rector (President); Senior Governor (Vice-President) (who currently also holds the position of Chancellor's Assessor); Principal; Senior Vice-Principal; Rector's Assessor; Provost of Fife's Assessor (currently held by a Local Councillor); 2 General Council Assessors; 4 University Senate Assessors; 1 Non-Teaching Staff Member; 2 Students' Association members (including President); maximum of 8 co-opted independent Members. Senate membership is in excess of 210.

University of Stirling has a 25 member University Court chaired by a lay member and comprising: Principal; Chancellor's nominee; Senior Deputy Principal; 6 Academic Council appointees (not fewer than 2 of whom shall be of non-professorial); Convener of Stirling Council; President and the Vice-President & Treasurer of the Students' Association; alumni appointee; up to 11 Court lay member appointees; Staff Assembly appointee (not being from Academic Staff). The Academic Council is chaired by the Principal and also includes Deputy Principals, Librarian, the Heads of School (ex officio); 7 professors; 7 non-professorial

designation (at least 5 of whom are academic staff); 2 student representatives (President & Vice-President); up to 2 others co-opted by the Academic Council.

University of Strathclyde has a 24 member University Court, comprising: Principal; Vice-Principal; City of Glasgow Council appointee; 5 Senate appointees; President of the Students Association; Students Association Executive appointee; Graduate/former students appointee; Professional Services staff appointee; up to 12 other persons co-opted by the Court. One-third of the total actual membership of the Court shall constitute a quorum. The Senate is chaired by the Principal and also includes the Vice-Principal and the Deputy Principals; Deans of the Faculties; Directors or Heads of Professional Services as may be determined by the Court on the recommendation of the Senate; Heads of the academic departments as may be determined by the Court on the recommendation of the Senate; such numbers of the Academic Staff, Research Staff and Teaching Staff, elected by and from those members of staff, as may be determined by the Court on the recommendation of the Senate; and such other members (not exceeding 5) as may be determined by the Court on the recommendation of the Senate.

University of the West of Scotland has a Court, of whom not less than 13 and not more than 17 appointed by the Court are lay governors from out with the institution. 2 are appointed by the Senate from among the academic staff who are members of the Senate. One is appointed by the Student's Association from the student office bearers. The Principal, Depute Principal and Student President are ex-officio members of Court. One governor is elected by the academic and one by all the other staff. The Court appoints its Chair and such deputies as required from among the lay governors. The Senate includes the Principal (who acts as Chair), the Depute Principal, the Vice Principals, Deans of the Faculties, Heads of Schools, President of the Students' Association, Heads of Support Services in such number as determined from time to time and up to 4 co-opted members. 3 academic staff elected from each of the 3 Faculties, 3 elected by and from the Professoriate and a further 3 elected by and from the academic staff. One student representative from each of the four campuses. (Currently being reviewed.)

**ANNEX C:
CONSULTATION QUESTIONS**

A. PRIVY COUNCIL

1. Do you think that the mechanism for approving governance changes through the Privy Council should be retained?

Yes No Don't Know

2. Do you agree that the functions of the Privy Council, as set out above, should be transferred to a committee which operates entirely in Scotland?

Yes No Don't Know

3. Do you agree that any such committee to which those current functions of the Privy Council as already set out should comprise the First Minister, Lord Advocate and the Lord President of the Court of Session?

Yes No Don't Know

4. Do you agree that any such committee, to which those current functions of the Privy Council as already set out are transferred to, should be subject to the scrutiny of the Scottish Parliament?

Yes No Don't Know

5. Could individual institutions be afforded greater autonomy to make changes to their governance without seeking permission from the Privy Council, or a replacement Scottish Committee? If so, what functions might this cover?

Yes No Don't Know

B. ACADEMIC FREEDOM

6. Do you agree that the principle of 'academic freedom' currently defined in legislation should explicitly refer to freedom to encourage new ideas?

Yes No Don't Know

7. If you do agree, what might the risks be?

8. Do you agree that HEIs should be required by legislation to adopt a statement on their implementation of the statutory protection of academic freedom which they should present to the SFC and which would be treated as a condition of grant?

Yes No Don't Know

9. Do you think there are any further measures which should be included in a new definition of academic freedom?

C. ROLE OF PRINCIPALS

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

Yes No Don't Know

11. 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'?

Yes No Don't Know

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

D. CHAIRING OF GOVERNING BODIES

13. Do you agree that a pool of candidates for the position of chair of the governing body should always be selected through an open and transparent process?

Yes No Don't Know

14. Do you agree that the recruitment process should include open advertisement of the position?

Yes No Don't Know

15. Do you agree that open advertisement of the position would help to attract a wider pool of candidates?

Yes No Don't Know

16. Do you agree that the selection process should culminate in an election by a group of representatives of key stakeholders both internal and external to the university?

Yes No Don't Know

17. What do you think the composition of the group of representatives that elect the chair should be?

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

Yes No Don't Know

19. Do you have any other comments you wish to add?

E. MEMBERSHIP OF GOVERNING BODIES

20. Do you agree with the proposed requirement outlined for membership and composition of the governing body?

Yes No Don't Know

21. Is there any representative/body not currently proposed for inclusion in membership of the governing body that you believe should be represented?

Yes No Don't Know

22. If there is a representative/body you believe should be included in the membership of the governing body, what do you believe they would bring to the governing body that isn't already there?

23. By what means do you think that the principle of equality should be embedded in establishing the membership of governing bodies?

24. Do you have any other comments you wish to add?

F. COMPOSITION OF ACADEMIC BOARDS AND APPOINTMENT OF MEMBERS

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

Yes No Don't Know

26. Do you agree that, with the exception of the Principal and the Heads of School (or equivalent) who should attend ex officio, all other members of the academic board should be elected by the constituency that they represent?

Yes No Don't Know

27. Do you agree that elected members should form a majority of the total membership of the academic board?

Yes No Don't Know

28. By what means do you think that the principle of equality should be embedded in establishing the membership of governing bodies?

29. Do you agree that academic boards should have no more than 120 members?

Yes No Don't Know

30. Do you agree that elected members should form a majority of the total membership?

Yes No Don't Know

31. Do you have any other comments you wish to add?

ANNEX D: ASSESSING IMPACT

Equality

The public sector equality duty requires the Scottish Government to pay due regard to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the "protected characteristics" of age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

A. Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the "protected characteristics" listed above.

The comments received will be used to complete a full Equality Impact Assessment and to determine if any further work in this area is needed.

Business and Regulation

The Business and Regulatory Impact Assessment analyses whether a policy is likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations.

B. Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

**ANNEX E:
CONSULTATION PAPER ON A HIGHER EDUCATION
GOVERNANCE BILL**



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation
Organisation Name

Title Mr Ms Mrs Miss Dr **Please tick as appropriate**

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions - I am responding as...

Individual / Group/Organisation
 Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate
 Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate
 Yes No

Yes, make my response,
name and address all
available

or

Yes, make my response
available, but not my name
and address

or

Yes, make my response and
name available, but not my
address



(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes



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ISBN: 978-1-78412-910-1 (web only)

Published by the Scottish Government, November 2014

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Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS38411 (11/14)

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