

Consultation on a Higher Education Governance Bill

Analysis of written responses

April 2015

**CONSULTATION ON A HIGHER EDUCATION
GOVERNANCE BILL
Analysis of written responses**

Linda Nicholson, The Research Shop

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1. EXECUTIVE SUMMARY

1.1 A review of the governance of higher education in Scotland was undertaken by a panel of stakeholders on behalf of the Scottish Government and chaired by Professor Ferdinand von Prondzynski, Principal of Robert Gordon University. The review report, submitted to Scottish Ministers in 2012, contained 17 recommendations aimed at strengthening the higher education sector in Scotland.

1.2 Some of the review recommendations have already been taken forward, for example, the Scottish Code of Good HE Governance (“the Code”) which has been implemented, on a “comply or explain” basis.

1.3 Scottish Ministers propose legislation to take forward further elements of the review recommendations and issued a consultation on 7 November 2014 to seek wider views on proposals for inclusion in a higher education governance bill. The proposals are intended to build on the strengths of the sector by creating provisions to modernise and strengthen governance and embed principles of democracy and accountability into the sector.

1.4 Views on the proposals were sought by 30 January 2015 and will inform the provisions for inclusion in a Higher Education Governance Bill. 125 responses to the consultation were received, just over half (53%) from individuals, many of whom indicated that they were from a higher education institution (HEI). One quarter (25%) of responses were submitted by universities and university representative bodies. The remaining responses were from other organisations such as unions, student representative bodies, business and industry bodies and local authorities.

1.5 Respondents provided views on topics of relevance to them, and not all provided responses to every question posed. A summary of views submitted in response to the consultation follows.

Privy Council

1.6 The majority (62%) of respondents who addressed the issue did not think that the mechanism for approving higher education governance changes through the Privy Council should be retained. Several universities, however, felt that the case for change was not clear.

1.7 Just over half (55%) of respondents who provided a view considered that the functions of the Privy Council relating to governance changes to Scottish HEIs should be transferred to a committee operating entirely in Scotland. This was envisaged as providing more flexibility, transparency and bringing decision-making closer to implementation on the ground. Opponents were not convinced that a Scottish-based committee would operate with greater efficiency and

effectiveness than the current arrangements, and expressed concern over what they perceived to be the risk of political interference.

1.8 Views were mixed on whether the proposed committee should comprise the First Minister, Lord Advocate and the Lord President of the Court of Session, with almost all universities who provided a view opposing this proposal, and all unions and most of the student representative bodies supporting it. Several respondents advocated widening the committee membership to include those with more HEI-specific experience to ensure greater depth and expertise.

1.9 Just over half (56%) of those who addressed the issue agreed that any such committee should be subject to the scrutiny of the Scottish Parliament.

1.10 Universities were largely in favour of individual HEIs being afforded greater autonomy to make changes to their governance without seeking permission from the Privy Council or a replacement Scottish committee. This was seen as separating decisions from political interference and promoting greater autonomy. Unions in particular opposed this proposal which they felt could lead to undemocratic governance decisions which lacked transparency.

Academic freedom

1.11 Views were mixed on whether the principle of “academic freedom” currently defined in legislation should explicitly refer to freedom to encourage new ideas. Almost all universities who responded on this topic opposed it. A common view from opponents was that the current definition has served the test of time and already allows for new ideas to be encouraged.

1.12 Amongst the student representative bodies and unions who supported the proposal for change emerged the prevailing view that this would encourage diversity of opinion and would make clear that such ideas are permissible in the face of any future threat to academic freedom from within institutions.

1.13 Views were also mixed on whether 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 Scottish Funding Council (SFC) as a condition of grant. 51% of those who responded disagreed with this proposal. Whilst most of the universities opposed this proposal, all of the business and local authority respondents, unions, and most of the student representative bodies agreed with it.

1.14 A recurring theme was that academic freedom should not be limited solely to the area in which an academic is employed and by the HEI in which they work.

Role of Principals

1.15 The majority (91%) of those who provided a view opposed the proposal to describe the head of the university as the “Chief Executive Officer” in legislation. This title was perceived as belonging to the business rather than the HEI sector and considered unnecessary as the Chief Executive Officer functions of the Principal are already well understood. Many considered that changing the title to Chief Executive Officer could lead to confusion and is not a legislative priority.

1.16 A majority (83%) of those who commented agreed that if the role of the Principal is set out in legislation as Chief Executive Officer then the working job title should continue to be “Principal”.

Chair of governing bodies

1.17 The majority (91%) of those who addressed the issue agreed that a pool of candidates for the position of chair of the governing body should always be selected through an open and transparent process. A recurring theme was that legislation was not required to articulate this as the Code already sets this out and compliance with the Code is a condition of grant.

1.18 It was generally agreed that the position of chair should be advertised openly and that this would help to attract a wider pool of candidates, although a few respondents emphasised that care should be taken to place adverts appropriately in order to reach potential candidates from protected characteristic categories.

1.19 There was much opposition to the proposal that the selection process for chair should culminate in an election by a group of representatives of key stakeholders both internal and external to the university. Overall, over three-quarters (78%) of those providing a view did not agree.

1.20 A common view amongst unions, student representative bodies and individuals was that all staff and students should be given one vote each in an open election for chair. They expressed concern that prior selection of candidates by a panel other than staff and students could result in candidates going forward for election who are not those preferred by staff and students.

1.21 A prevailing counter-view, largely from universities, was that election by stakeholders other than governing bodies of HEIs ran contrary to good governance and could lead to chairs being appointed who do not have the confidence of the governing body to whom they are accountable.

1.22 Concern was expressed that the electoral model proposed may lead to factions and divisions between institutional groups which were particularly damaging in smaller HEIs. A common view was that potentially high calibre candidates could be put off by the electoral process proposed.

Remuneration for elected chairs

1.23 Around half (48%) of those who provided a view welcomed the proposal that universities offer suitable remuneration for elected chairs.

1.24 Most universities opposed the proposal, with a common view being that the post of chair is essentially a voluntary one, with those putting themselves forward doing so on a “pro bono” basis as part of a public service commitment. Supporters, however, argued that remuneration could provide the basis for wider diversity of applicants for chair in terms of enabling wider access to those on low incomes. A recurring view amongst supporters of and opponents to the proposal was that modest, out-of-pocket expenses should be provided to elected chairs.

Membership of governing bodies

1.25 The consultation proposed that legislation should require the governing body to provide positions for a minimum of two students, nominated by the student association/union, 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, and up to two alumni representatives. Of those respondents who considered this proposal, two-thirds (67%) opposed it.

1.26 Universities were predominant amongst opponents and argued largely that trade unions should not be involved in nominating staff for membership of governing bodies as this would lead to such staff representing the stance of the nominating union rather than bringing their independent perspective to the table. Reserving or “ring fencing” places on the governing body for staff who are in unions was also perceived to be contrary to the principles of equal opportunity and inclusivity.

1.27 A prevailing view, amongst universities and individuals in particular, was that additional legislation is not required to embed the principle of equality in establishing the membership of the governing body. The existing Code and the Public Sector Equality Duty were perceived as sufficient in this regard.

1.28 A recurring comment was that although HEIs can influence equality outcomes to some degree, this is largely restricted to the selection of “lay” members of the governing body, as others are almost all elected by staff and students or are ex officio.

1.29 Around one-third of those addressing the issue of equality appeared to support the introduction of membership quotas, at least in relation to gender balance, with suggestions that at least 40% of membership should comprise women. Others, however, felt that quotas may be difficult to implement and counter-productive in prioritising gender over skills and expertise.

Composition of academic boards and appointment of members

1.30 Of those who addressed this issue, a majority (57%) agreed that the academic board should be the final arbiter on all academic matters in all HEIs. However, most of the universities who commented disagreed with the proposal, arguing that “academic matters” is difficult to define, and legislation may be counter-productive in muddling rather than clarifying roles. Overlaps and grey areas were perceived between academic decisions and decisions fundamental to the sustainability of the institution as a whole, with some respondents considering that it is too difficult to legislate on when the academic board should have the final word.

1.31 Views were relatively evenly divided over whether with the exception of the Principal and the Heads of School who should attend ex officio, all other members of the academic board should be elected by the constituency that they represent. Whereas not one university agreed with this proposal, all unions, business and most student representative bodies supported it. Student representative bodies in particular perceived the impact of the proposal to be an increase in the accountability and transparency of the academic board.

1.32 A majority (57%) of those who provided a view were in favour of the proposal that elected members should form a majority of the total membership of the academic board. There was general support for embedding equality principles into the establishment of such bodies but many respondents also cautioned that this brought challenges, and requested further debate and shared information on good practice.

1.33 Views were almost evenly split between those agreeing that academic boards should have no more than 120 members and those disagreeing. Some questioned what the rationale was for imposing a consistent approach to a cap on membership across HEIs, arguing that institutions should be able to set their own size of board, based on their structure and needs.

Additional comments

1.34 Respondents were invited to submit further comments over and above those in direct response to the questions posed. Three overarching themes emerged:

- questioning of the evidence to support the need for the changes proposed in the consultation;
- time should be given to allowing the Code to bed in and its impact evaluated;
- opposition to attempts to impose a “one size fits all” approach to the governance of HEIs.

2. INTRODUCTION

2.1 In 2011 the Scottish Government established a panel to review the governance of Scottish higher education institutions (HEIs). The panel, chaired by Professor Ferdinand von Prondzynski, Principal of Robert Gordon University, included representation from a wide range of stakeholder interests. Central to the review was an appreciation of the autonomy of HEIs, and the need for them to remain autonomous, yet an awareness also of the need for robust governance and accountability structures which enable transparency and fairness in their operation.

2.2 The panel's report "The Review of Higher Education Governance in Scotland"¹, ("the Review") was submitted to Scottish Ministers in January 2012 and contained 17 recommendations aimed at strengthening the higher education sector in Scotland. Several of these recommendations have already been taken forward, for example, the Scottish Code of Good Governance ("the Code")² (2013) was developed on behalf of the Chairs of University Courts by a steering group led by Lord Smith of Kelvin. This is a voluntary code which has been implemented on a "comply or explain" basis.

2.3 Scottish Ministers propose legislation to take forward further elements of the Review recommendations. It is proposed that new legislation focuses on six key areas:

- 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.
- Setting out in legislation a new definition of academic freedom which is more explicit than the current definition.
- 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.
- 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.
- Ensuring that the composition of the membership of governing bodies is fully representative.
- Ensuring that the composition of the academic board or senate is fully representative and that the board itself can function efficiently.

2.4 The Scottish Government had agreed to consult on proposals for inclusion in legislation aimed at strengthening higher education governance within Scottish

¹ <http://www.gov.scot/Resource/0038/00386780.pdf>

² <http://www.scottishuniversitygovernance.ac.uk/>

institutions. On 7 November 2014 the Higher Education and Learner Support Division issued a consultation on proposals for inclusion in a higher education governance Bill which they intend will build on the strengths of the sector by creating provisions which will modernise and strengthen governance, and embed principles of democracy and accountability into the sector. The consultation sought to gather views from interested parties on the proposals, with a closing date of 30 January 2015. The views submitted will inform the proposals being considered for inclusion within the Bill.

2.5 This report presents the analysis of views contained in the responses to the consultation. These responses have been made publicly available on the Scottish Government website unless the respondent has specifically requested otherwise.

Consultation responses

2.6 The Scottish Government received 125 responses to the consultation. Table 2.1 shows the distribution of responses by category of respondent. A full list of the organisations who responded is in Annex 1.

Table 2.1: Distribution of responses by category of respondent

Category	No. of respondents	%
Universities and university representative bodies*	31	25
Business/Industry/Local Authorities	9	7
Unions	8	6
Student representative bodies	8	6
Others	3	2
Individuals	66	53
Total	125	100**

*Includes one letter signed by 6 individuals which has been counted as one group response for the purpose of this consultation.

**Percentages may not total 100% due to rounding.

2.7 Just over half (53%) of all respondents to the consultation were individuals. Of these, it could be deduced from the content of their responses that most were from HEIs. However, the consultation did not request respondents to specify this, and it is therefore not possible to quantify precisely the volume of responses from academics.

2.8 The largest sector to respond was universities and their representative bodies, with this sector generating one-quarter of all responses.

2.9 Responses were submitted electronically with most respondents using the response pro-forma provided, although a minority submitted views in free-text format. The consultation paper posed 31 questions, with most of them closed in nature, but 11 open, allowing for supporting views and explanations. The views

contained in all submissions were amalgamated into an electronic spreadsheet to aid analysis.

2.10 Respondent categories have been abbreviated in the report as follows:

Universities and university representative bodies	Univ
Unions	Union
Student representative bodies	Stud
Business/Industry/Local Authorities	Bus
Other organisations	Oth
Individuals	Ind

3. PRIVY COUNCIL

Background

The Privy Council is a formal body of advisers to the Queen comprising around 600 members including all members of the UK Cabinet, past and present, the Speaker of the House of Commons, and the leaders of all major UK political parties.

In relation to higher education, the Privy Council has a role in terms of the three categories of HEI in Scotland: the ancient universities, chartered universities and post-1992 universities. For ancient universities, the Universities (Scotland) Act 1966 sets out that certain powers of the university court are exercisable by ordinance and such ordinances do not come into operation until they have received the approval of Her Majesty in Council. The chartered universities are established through royal charter and the Privy Council is responsible for advising her Majesty on proposals from universities to amend their royal charter. The post-1992 universities and institutions predominantly have “governance orders” which are made by the Privy Council under the Further and Higher Education (Scotland) Act 1992. Such orders are made by the Privy Council as Orders of the Council.

The Scottish Government proposes that the functions of the Privy Council to approve changes to governance instruments should be transferred to a new committee operating entirely in Scotland and subject to scrutiny by the Scottish Parliament. This is envisaged as expediting the undertaking of the current functions of the Privy Council as they related to HEIs in Scotland.

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

3.1 99 respondents (79% of all those who responded to the consultation) answered this question. Of these, the majority (62%) did not think that the current mechanism for approving governance changes through the Privy Council should be retained. Table 3.1 overleaf presents views by category of respondent.

3.2 All of the unions and all but one of the student representative bodies were against retaining the mechanisms for approving governance changes through the Privy Council. Universities were most divided in view, almost evenly split between those advocating retention and those against, with others holding mixed views.

Table 3.1: Views on whether to retain the Privy Council approval mechanism by category of respondent

Category	Retain	Do not retain	Do not know	Comments only	Total no. of respondents
Universities	7	8	9	0	24
Business/LA	3	1	2	0	6
Unions	0	7	0	0	7
Student Rep	1	7	0	0	8
Others	1	1	0	0	2
Individuals	11	37	4	0	52
Total	23	61	15	0	99

3.3 Some respondents expressed cautious support for change, stipulating that any new approach should incorporate the necessary checks and balances to ensure appropriate scrutiny of governance changes. Others felt that greater consideration should be given to the issues prior to any decision being made, for example:

“There may...be a case for addressing the powers and functioning of the Privy Council, but this must only come following detailed research into the effectiveness of reform” (Confederation of British Industry).

3.4 Several universities commented that the case for change had not, in their view, been made clear, with their experience of Privy Council generally positive to date. A few respondents requested greater reassurance that any alternative mechanism would enhance efficiency and effectiveness. Comments included:

“The Privy Council has an important role in University governance, through the provision of an independent scrutiny of the instruments of governance. The University of Stirling has found that on the whole the existing system works well” (University of Stirling).

“At all times we found the Privy Council to be responsive and in no way a barrier to progressing the changes” (University of the Highlands and Islands).

Question 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?

3.5 100 respondents (80% of all those who responded to the consultation) addressed this question. Of these, a majority (55%) agreed that the functions of the Privy Council as set out, should be transferred to a committee which operates entirely in Scotland. Table 3.2 overleaf presents views by category of respondent.

Table 3.2: Views on whether the functions of the Privy Council should be transferred to a committee in Scotland by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	11	6	7	3	27
Business/LA	2	2	1	1	6
Unions	6	0	0	0	6
Student Rep	7	1	0	0	8
Others	1	2	0	0	3
Individuals	28	19	3	0	50
Total	55	30	11	4	100

3.6 Whilst unions and student bodies were almost entirely in support of establishing a new committee in Scotland to take on the functions of the Privy Council as they relate to approving governance changes, universities and individuals were more mixed in their views.

3.7 Some supporters of the proposal provided their reasons:

- potential to be more flexible and less time consuming than the Privy Council
- could be more open and transparent
- will bring decision-making closer to where the decisions will be implemented on the ground
- HEIs in Scotland have distinct origins and features will be better represented by a Scottish-based committee.

3.8 Many of those opposing the proposal were not convinced of the suggestion that greater efficiency and effectiveness would be achieved through a Scottish-based committee. It was suggested that other models of working, perhaps in other countries, should be examined first to identify lessons from other possible approaches.

3.9 Some respondents, including several universities, raised their concerns over risks of political interference should a committee operating in Scotland be established.

3.10 Another key concern focused around the current role of the Monarch in amending governance instruments of chartered universities, and how this could be sustained should a Scottish-based committee take over the functions of the Privy Council. The University of Strathclyde considered that sustaining this role may lead to complications:

“The university is...concerned that transferring functions to a committee in Scotland might add an extra layer to the process for chartered universities rather than provide a simplification, since the Privy Council would still operate as an advisory body to Her Majesty for chartered universities.”

Question 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?

3.11 87 respondents (70% of all those who responded to the consultation) addressed this question. Of these, around half (51%) did not agree that the committee should comprise the First Minister, Lord Advocate and the Lord President of the Court of Session.

Table 3.3: Views on whether the committee should comprise the First Minister, Lord Advocate and the Lord President of the Court of Session by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	0	12	3	2	17
Business/LA	2	2	0	0	4
Unions	7	0	0	0	7
Student Rep	6	2	0	0	8
Others	0	0	0	0	0
Individuals	22	28	1	0	51
Total	37	44	4	2	87

3.12 Almost all of the universities who responded to this question disagreed with the proposal. Individuals were divided in opinion. All unions and most of the student bodies supported the proposal.

3.13 A prevailing view was that the committee membership, as proposed, appeared too narrow and lacking in depth of relevant expertise. Suggestions were made for broadening membership to include those with more HEI-specific experience, such as academics, researchers and students. One respondent proposed the involvement of the Office of Scottish Charity Regulator (OSCR) on the committee. Another recommended adding the Presiding Officer of the Scottish Parliament and COSLA, as a representative of local government, to the membership.

3.14 More general views were that whatever the membership, the committee should be able to seek appropriate advice when required, and should be held accountable for its decisions. It was noted that under the proposal, two of the posts are political appointments, and a few respondents emphasised the need for the committee to be perceived as an independent body, free from politicisation.

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

3.15 87 respondents (70% of all those who responded to the consultation) addressed this question. Of these, a majority (56%) agreed that the committee should be subject to the scrutiny of the Scottish Parliament. Only a third (32%) of respondents clearly disagreed with the proposal, the remainder were undecided.

3.16 Unions, student bodies and businesses were most clearly in favour of the proposal. Universities and individuals were more divided in their view.

Table 3.4: Views on whether the committee should be subject to the scrutiny of the Scottish Parliament by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	6	4	5	2	17
Business/LA	3	1	0	0	4
Unions	7	0	0	0	7
Student Rep	5	2	1	0	8
Others	1	0	0	0	1
Individuals	27	21	2	0	50
Total	49	28	8	2	87

3.17 Few substantive comments were received specifically on this proposal, although a few universities expressed concern that scrutiny by the Scottish Parliament could be seen as politicising the process, which could undermine the autonomy of HEIs. Some felt that more detailed consideration of the scrutiny process is required before firm decisions are taken.

Question 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?

3.18 84 respondents (67% of all those who responded to the consultation) addressed these questions (see Table 3.5 overleaf). Views were divided overall on whether individual institutions could be afforded greater autonomy to make changes to their governance without seeking permission from the Privy Council or a replacement Scottish Committee. Universities were largely in favour of the proposal, whilst unions were unanimously opposed.

Table 3.5: Views on whether individual institutions should be afforded greater autonomy to make changes to their governance without seeking wider permission by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	14	1	2	2	19
Business/LA	2	0	1	0	3
Unions	0	6	0	0	6
Student Rep	4	0	2	0	6
Others	0	0	0	1	1
Individuals	20	28	1	0	49
Total	40	35	6	3	84

3.19 Reasons provided by respondents to underpin their support for the proposal included:

- separates decisions from political interference
- promotes flexibility and autonomy
- HEIs will be more capable of responding competitively to global markets
- gets away from the “one size fits all” mentality
- will help to stimulate more stakeholder engagement which can be put off by political engagement.

3.20 A few respondents qualified their support by emphasising their view that individual institutions’ autonomy to make changes to governance should be limited to decisions on day to day operations, and those issues which do not have a significant impact on the governance of the institution. A university recommended that greater accountability amongst management should accompany this autonomy.

3.21 A university remarked that as the basis of governance structure of universities is determined by a statutory instrument, there could be practical difficulties in devolving the power to universities to change this instrument.

3.22 A union suggested that decisions will need to be taken on which changes can be decided locally and which should require wider, external permission before implementation.

3.23 Amongst the opponents of the proposal emerged the recurring view that the proposal could lead to undemocratic governance changes which lacked transparency.

3.24 A few respondents identified what they felt were the benefits of involving the Privy Council in decision on changes to governance. They argued that universities operate on a UK-wide basis on issues such as Research Council funding and student applications and the Privy Council can bring broader experience, expertise and consistency to Scottish HEI governance decisions.

4. ACADEMIC FREEDOM

Background

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. This is derived from the UNESCO recommendation concerning the Status of Higher Education Teaching Personnel made in Paris on 11 November 1997. The Scottish Government proposes 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.

It is intended that by making the definition of academic freedom more explicit, this will encourage diversity of opinion. The 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.

Question 6: Do you agree that the principle of “academic freedom” currently defined in legislation should explicitly refer to freedom to encourage new ideas?

4.1 99 respondents (79% of all those who responded to the consultation) addressed this question. Views were relatively evenly divided over the proposal to extend the definition of “academic freedom” to refer explicitly to freedom to encourage new ideas. However, amongst respondent sectors, unions and all but one student representative body supported the proposal, whereas almost all university respondents disagreed.

Table 4.1: Views on whether the principle of “academic freedom” should explicitly refer to freedom to encourage new ideas by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	4	21	3	0	28
Business/LA	2	3	0	0	5
Unions	7	0	0	0	7
Student Rep	6	1	0	0	7
Others	0	1	0	0	1
Individuals	26	24	1	0	51
Total	45	50	4	0	99

4.2 Whilst many respondents stated that they found the proposal unobjectionable, others argued that the current definition had served the test of time and already allows for new ideas to be encouraged. One individual respondent expressed their view thus:

“The existing statutory definition of academic freedom is based upon an internationally agreed standard. Before embarking on legislative change the Scottish Government should demonstrate evidentially that new legislation is necessary. Fixing what is not broken seems a waste of precious government time” (Individual).

4.3 Student bodies and unions provided rationale for their view in support of the proposal. They argued that by stating explicitly in the definition that this included the freedom to encourage new ideas, this would encourage diversity of opinion and would clarify the situation in the face of any future threat to academic freedom from within institutions.

4.4 One university respondent recommended that the definition go further to encompass the right to speak out against management decisions without fear of bullying, harassment, intimidation or victimisation.

Question 7: If you agree, what might the risks be?

4.5 Many of those who responded to Question 6 argued that there were no risks attached to the proposal or that the potential benefits outweighed potential risks. However, others identified a number of possible risks, the most common being that legislation could undermine existing institutional processes which foster academic freedom. One university stated:

“...questions can be raised regarding whether it is appropriate to legislate “to encourage new ideas”. The creation of new ideas is fostered through a constructive and positive relationship between universities and stakeholders, including the Scottish Government, rather than through the imposition of legislation” (University of St Andrews).

4.6 A few respondents raised concerns that legislation may run the risk of over-defining the concept of academic freedom, and in so doing, actually be counter-productive to the creation of wider freedoms.

4.7 A recurring concern amongst some universities was that any new legislation needs to take cognisance of the wider context of the university. The example provided was of academics executing their freedom to encourage new ideas to the detriment of their teaching commitments. One individual cautioned that new ideas should not be pursued without due academic rigour and consideration. One university expressed concern that the new definition may overlap with the current meaning to the extent of creating confusion and uncertainty over freedoms. Another university respondent suggested that conflicts may emerge where academic partners are employed outwith the university (e.g. in local authorities), and wish to pursue their academic freedom in this different context.

Question 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 Scottish Funding Council (SFC) and which would be treated as a condition of grant?

4.8 90 respondents (72% of all those who responded to the consultation) addressed this question. Views were relatively evenly split between those agreeing with the proposal and those against. Whilst most of the universities disagreed, all of the business respondents, unions and most of the student representative bodies agreed.

Table 4.2: Views on whether legislation should require HEIs to present a statement on their implementation of academic freedom as a condition of grant by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	2	22	1	0	25
Business/LA	2	0	0	0	2
Unions	7	0	0	0	7
Student Rep	5	2	0	0	7
Others	0	1	0	0	1
Individuals	27	21	0	0	48
Total	43	46	1	0	90

4.9 A recurring theme amongst opponents was that the Code, along with the SFC’s Financial Memorandum, already address this. It was remarked that any related requirements set out in legislation could serve to confuse.

4.10 Others, however, argued that although constituting an added administrative burden, the proposal could result in the principles of academic freedom being more deeply embedded in the mindset and structures of institutions.

4.11 Some respondents referred to the model of working developed by Trinity College, Dublin, and referenced in the von Prondzynski report as useful to consider in the context of this proposal.

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

4.12 A recurring theme amongst unions and individual respondents was that academic freedom should not be limited solely to the area in which an academic is employed, and within the institution they work. Comments included:

“This is particularly important when considering “new ideas” which might be by definition dynamic and involve ways of working or thinking that do not fit current norms” (Scottish Trades Union Congress).

“...an academic involved in the evolution of new ideas in a subject area may potentially cross over from their subject specialism into others in pursuing their idea. As such it is important that academic freedom is not limited solely to the area they are employed by the institution to work in” (University and College Union Scotland).

4.13 Other measures suggested by one or two respondents included:

- The right should be included expressly in the employment contracts of all academic and academic-related staff.
- Punitive measures should be outlined for the management of HEIs who suppress academic freedom.

4.14 One union proposed the removal of caveats, which they reported were operated by some HEIs, which state that work that seriously damages the reputation of the institution should not be carried out. The respondent argued that such caveats need to be removed in order to make academic freedom a reality.

5. ROLE OF PRINCIPALS

Background

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. It is proposed to clarify that role in legislation by describing the head of Scottish HEIs as “Chief Executive Officer” but retaining the working job title as “Principal”. By introducing this provision into legislation, it is expected that the role undertaken by the Principal will be clarified as that of Chief Executive Officer of the institution and that this will embed consistency across all institutions.

Question 10: Do you agree that a provision to describe the head of the university as the “Chief Executive Officer” should be introduced in legislation?

5.1 101 respondents (81% of all respondents) provided a response to this question, with the majority (91%) opposing the proposal to describe the head of the university as the “Chief Executive Officer” in legislation. All respondent categories were largely opposed to the proposal except for businesses/local authorities who had relatively mixed views.

Table 5.1: Views on whether the head of the university should be described in legislation as the “Chief Executive Officer” by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	1	26	0	0	27
Business/LA	3	2	1	0	6
Unions	0	6	0	0	6
Student Rep	0	7	0	0	7
Others	0	2	1	0	3
Individuals	3	49	0	0	52
Total	7	92	2	0	101

5.2 Two reasons against the proposal dominated responses. Firstly, many were of the view that the term Chief Executive Officer belonged to the business sector and did not sit well within the HEI sector. Views included:

“The corporate model of university governance has already gone too far. A university is a public institution, not a private company”
(University of Glasgow Group of Academics).

“A direct comparison between business management and the management of a publicly funded, societal institution may not be entirely appropriate. The priorities and responsibilities of a university Principal are different to those of a Chief Executive Officer of a profit-making organisation” (Aberdeen University Students’ Association).

5.3 A second prominent reason for opposing the proposal was that respondents felt it unnecessary as the Chief Executive Officer role and function of the Principal were already well understood and indeed were referred to in the Code and SFC Financial Memorandum. It was considered that changing the title to Chief Executive Officer in legislation could risk confusion and was not a legislative priority. For example:

“The role of Principal within Scottish Higher Education is well known and recognised internationally. The status of the Principal as the chief executive officer of a higher education institution is established unequivocally in existing regulatory documents” (University of Stirling).

“We recognise that it is important to have consistency in the description of the role across the HE sector in Scotland. However, we believe that the role of the Principal is already well understood by our institutions” (National Union of Students (Scotland)).

“Introducing CEO as the formal title would both introduce confusion where there currently is none and undermine a title which has an eminent history and marks out the Scottish HE sector. It may very well be that the term CEO captures better the responsibilities of the role, but universities would be poorer for the term’s introduction, particularly when the term Principal is so well understood. The Financial Memorandum with the Scottish Funding Council also clearly defines an institution’s Principal as its Chief Executive Officer” (University of Dundee).

5.4 Several universities commented that the decision on how to describe the head of the university should be left to individual institutions rather than having imposed upon them a “one size fits all” approach.

5.5 A few other reasons to oppose the proposal were put forward by a small number of respondents: the proposal runs contrary to the recommendation within the Review by von Prondzynski that the title of Principal should be retained; if a change is to be made, this could be to the Code rather than enshrined in legislation; there is no evidence that a problem exists and benefits of the proposal need to be identified more clearly before any action should be taken.

5.6 Finally, a few respondents considered that replacing the title Principal with Chief Executive Officer is inappropriate as the Chief Executive responsibilities constituted only part of the overall role:

“.....it fails to emphasise that the Principal of an HEI has two distinct but equally essential roles, first as academic leader of the institution and second, as CEO with the strategic and operational managerial leadership this requires. Focussing on the latter may give the impression to anyone with senior managerial leadership experience in any sector that he or she may be suitable to lead an HEI, regardless of

his or her qualifications for academic leadership” (The Royal Society of Edinburgh).

5.7 Amongst the minority of respondents who agreed with the proposal, only a few provided substantive reasons to support their view. Two rationales emerged:

- Chief Executive Officer more accurately describes the role of the post than does Principal.
- Placing the title Chief Executive Officer in legislation ensures that the role is clearly articulated.

Question 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”?

5.8 77 respondents (62% of all respondents) provided a response to this question, with a majority (83%) agreeing that if the role of the Principal is set out in legislation as Chief Executive Officer then the working job title should continue to be “Principal”. Several respondents re-iterated their view that they did not agree that the role should be set out in legislation as Chief Executive Officer, but should that happen, then it would be preferable to retain Principal as the working title.

Table 5.3: Views on whether the working job title should be “Principal” if the legislative title is Chief Executive Officer, by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	11	0	0	0	11
Business/LA	4	0	0	0	4
Unions	3	3	1	0	7
Student Rep	4	0	0	0	4
Others	0	1	0	0	1
Individuals	42	5	3	0	50
Total	64	9	4	0	77

5.9 The prevailing reason for disagreeing with the proposal was that there seemed to be little point in making the legislative change in the first place, if the legislative title is not to be used more widely.

5.10 One business respondent recommended that the option to continue to use “Principal” as the working job title should not be mandatory, but left to individual institutions to decide.

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

5.11 The most prominent view was that the issue of how to describe the head of a university should not take up legislative time, but should be left to individual institutions. Comments included:

“The question of how an autonomous charity refers to its chief executive seems a rather trivial point to merit valuable parliamentary time” (Individual respondent).

“.....legislation for legislation's sake. The head of a university should be what its governing body wants its title to be” (Individual respondent).

“Given the diversity of the sector, which we all value, we are perplexed by Scottish Government’s desire to achieve ‘consistency across all institutions’ in what is an internal matter” (Board of Governors - Royal Conservatoire of Scotland).

5.12 Two new suggestions were made, each by one respondent, for how to describe the head of the university. “Head of the Institution” (Union) was one; the other was simply, “Head of University” (Ind), which was perceived by the respondent to be neutral in terms of encompassing both business and academic aspects of the role.

6. CHAIRING OF GOVERNING BODIES

Background

The Code states that “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 stakeholder, including staff and students.”

The Scottish Government contends that the current process for selecting chairs is varied and in some cases may not be 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.

It is proposed that a clear process for selecting a chair of an institution’s governing body should be introduced which is aimed at achieving greater consistency across the sector and creating a more transparent appointment process.

The Scottish Government proposes 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 short listing, interview and finally election by a balanced and representative electorate.

Question 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?

6.1 107 respondents (86% of all respondents) provided a response to this question, with the majority (91%) agreeing that a pool of candidates for the position of chair of the governing body should always be selected through an open and transparent process.

Table 6.1: Views on whether the pool of candidates for the position of chair should always be selected through an open and transparent process, by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	24	1	2	0	27
Business/LA	4	0	1	0	5
Unions	7	0	0	0	7
Student Rep	8	0	0	0	8
Others	1	2	0	0	3
Individuals	53	4	0	0	57
Total	97	7	3	0	107

6.2 Few respondents provided commentary to support their view. However, some unions and student bodies remarked that it was good to set out the open and transparent process in legislation in order to promote consistency in approach, and also, more generally, in the interests of good governance. One respondent (Oth) remarked that an open and transparent process was all part of making sure the right person with the right skill-set secures the position of chair.

6.3 A recurring theme across several sectors was that although they agreed with the selection process as proposed, they did not consider that legislation was required in view of the open and transparent process already being stipulated by the Code. A typical comment was:

“We agree that a pool of candidates for the position of Chair of the governing body should be selected through an open and transparent process including open advertisement. This is already set out in the Scottish Code. On the basis that compliance with this Code is a condition of grant for the University, we see no merit in these aspects being the subject of legislation, and are surprised that this is proposed” (Abertay University).

6.4 Some respondents expressed concerns about what was proposed. A few universities questioned where the role of Rector fits with the proposal, emphasising the value which is placed on this role within their institution. One remarked:

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

6.5 One respondent (Oth) remarked that enshrining the proposal in legislation could create confusion due to its overlap with the related requirements set out in the Code.

6.6 A business organisation commented that although they supported a transparent process, making it open risked installing a chair in whom the governing body did not have confidence.

6.7 One respondent (Oth) expressed their view that the role of the chair of a governing body is not a “job” but a position of “stewardship” and that a process that emulates an open corporate recruitment process may therefore be inappropriate. They advocated instead a “steward” selected on the basis of how well they are able to look after the interests of an institution and to reflect the interests of those who make up the university’s “community”, with the interests being defined by way of a democratic process.

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

6.8 99 respondents (79% of all those who responded to the consultation) addressed this question. Of these, a majority (89%) agreed that the recruitment process for chair of the governing body should include open advertisement of the position.

Table 6.2: Views on whether the recruitment process for chair should include open advertisement by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	21	1	1	0	23
Business/LA	3	0	0	1	4
Unions	6	0	0	0	6
Student Rep	7	0	1	0	8
Others	0	2	0	0	2
Individuals	51	5	0	0	56
Total	88	8	2	1	99

6.9 The proposal attracted very little direct comment of substance, other than one student body emphasising the need for open advertising to take place well in advance of selection in order to provide sufficient time for the selection process.

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

6.10 90 respondents (72% of all those who responded to the consultation) addressed this question. Of these, just under three-quarters (73%) agreed that open advertisement of the position would help to attract a wider pool of candidates. A significant minority of 16% of respondents were unsure whether this proposal would result in a wider pool of candidates being attracted.

Table 6.3: Views on whether open advertisement of the position of chair would help to attract a wider pool of candidates by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	16	0	4	0	20
Business/LA	2	0	1	0	3
Unions	7	0	0	0	7
Student Rep	7	0	1	0	8
Others	0	0	0	0	0
Individuals	34	10	8	0	52
Total	66	10	14	0	90

6.11 Open advertising of the position of chair was seen as promoting consistency across institutions in the selection of this post (Stud) and helping to maintain a higher profile for university courts in the public eye (Union).

6.12 A few respondents from a range of categories emphasised the need to ensure that adverts are placed appropriately in order to reach a wide range of sectors. Local papers, business publications and those of black and minority ethnic (BME) communities and LGBTQ groups were identified in this regard. One student representative body, however, considered that even with such broad advertising, this may not be sufficient to ensure women or members of BME communities are adequately represented amongst candidates, and suggested that positive action at further selection stages may be required to address this.

6.13 One university commented that institutions are already advertising openly and that legislation will do little to enhance the status quo. Another cautioned that quantity of applicant was no guarantee of quality.

Question 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?

6.14 111 respondents (89% of all those who responded to the consultation) addressed this question. Of these, just over three-quarters (78%) did not 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.

Table 6.3: Views on whether the selection process should culminate in an election by a group of key internal and external stakeholders by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	1	24	1	2	28
Business/LA	3	1	0	0	4
Unions	4	2	0	0	6
Student Rep	3	5	0	0	8
Others	0	2	0	0	2
Individuals	9	53	1	0	63
Total	20	87	2	2	111

6.15 A common view amongst unions, student representative bodies and individuals in particular was that rather than involve external stakeholders, all staff and students should be given one vote each in an open election. This was perceived to be democratic and accountable and generated comments such as: “Given that the staff and student body are the key stakeholders in the institutions they would seem to provide an informed and interested electorate to enable this to work in a university context” (UNISON).

6.16 Another prevailing view, particularly amongst student bodies, was concern that prior selection of candidates by a panel other than staff and students could result in candidates going forward for election who are not those preferred by staff and students. It was recommended that the selection panel be diverse in terms of members represented (students, trade unions and other staff) and protected characteristics, with a balance of gender (Stud).

6.17 A prevailing counter-view, largely from universities, was that election by stakeholders other than the governing bodies of institutions ran contrary to good governance. They argued strongly that the chair requires to have the confidence of the governing body, to whom they will be accountable. The governing body, many emphasised, already has representation from key stakeholders such as staff and students. Examples of some of the detailed arguments are below:

“We could only support the consultation paper's proposals if the electorate for this post was the governing body itself, which includes elected staff and students and independent members appointed by stakeholders or through open advertisement. The governing body therefore already addresses the consultation paper's desire for a 'group of representatives of key stakeholders both internal and external to the university'”(Secretaries of 17 HEIs).

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

6.18 Several respondents alluded to the Code which they described as reflecting the need for mutual accountability between chair and governing body and which, they stated, made clear that the governing body had a duty to investigate and remove an under-performing chair. They argued that it would be difficult to follow the Code in these respects if the governing body had not been the appointing body.

6.19 A recurring concern was that the proposal would lead to politicising the appointment of chair. One respondent remarked:

“We ...see a very real risk that there is potential for stakeholders to include Government – opening up the very real possibility of direct participation by the political process in the appointment of university chairs” (Committee of University Chairs).

6.20 Several individual respondents shared the view that the campaign activities associated with the electoral model proposed could lead to factions and divisions between institutional groups, which they viewed as particularly damaging within

smaller institutions. One university highlighted a possible risk to be the election turning into a popularity contest.

6.21 Referring to the electoral process, a common view, particularly amongst universities was that this may deter some high calibre candidates from putting themselves forward for chair. Comments included:

“It is also at least questionable whether individuals – all of them volunteers – although content with a modern recruitment and appointment process, would wish to submit themselves to a public election. What may hold no fears for the professional politician may not appeal to the private citizens on whom Scotland relies to put themselves forward for service to the public” (Abertay University).

“Strong candidates will be deterred from applying by the prospect that their potential non-selection will be known publically” (University of Strathclyde).

“Turning the process into an election campaign will be likely to narrow, rather than widen, the pool of candidates. It will deter people who are not comfortable with public campaigning and self-promotion, but who may be well qualified for the role” (The Royal Society of Edinburgh).

6.22 A few respondents questioned how “stakeholders” and representativeness would be defined and questioned how stakeholders, once identified, would be briefed on their task and would have the opportunity to meet and become familiar with the candidates.

6.23 Other issues raised amongst a small number of universities were:

- An election at the end of a selection process is out of step with how appointments are made in other areas of the public sector.
- The proposal risks appointing a chair who is incompetent.
- Equality issues are not addressed by the proposal (for example, it was remarked that women in particular may be deterred from applying due to the electoral process proposed).
- The process is undemocratic and could lead to chairs being unaccountable to their governing body.

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

6.24 Responses to this question overlapped largely with those in relation to the previous question. In summary, many universities and some individuals supported the view that the governing body should choose the chair (as discussed above). A contrasting view, presented largely by unions, student representative bodies and several individuals was that staff and students should

elect the chair. A common view, with few exceptions, was that external stakeholders should not be involved in the election of the chair.

6.25 Different respondents proposed different approaches to staff and student voting, some suggesting one vote per person, others attempting to define ratios such as 50% staff vote, 50% students. A few individuals recommended alumni votes; a few respondents emphasised that administrative staff and management should be involved in the election in addition to academic staff. One view (Ind) was that different academic areas within an institution should comprise representatives, for example, social sciences, medicine, and so on.

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

6.26 94 respondents (75% of all those who responded to the consultation) addressed this question. Of these, almost half (48%) welcomed universities offering suitable remuneration for elected chairs. A significant minority of 39% did not agree. These figures are confused by different interpretations of the question by various respondents, some of whom appeared to indicate disagreement on the basis that legislation is not necessary (although they support remunerating chairs). Others may have indicated their opposition to offering additional payment over and above basic expenses.

Table 6.4: Views on whether universities should offer suitable remuneration for elected chairs by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	2	11	6	2	21
Business/LA	4	1	0	0	5
Unions	8	0	0	0	8
Student Rep	4	5	0	0	9
Others	0	0	0	0	0
Individuals	27	20	4	0	51
Total	45	37	10	2	94

6.27 Taking the responses to this question on face value, whilst all unions and most business/local authority respondents who addressed the issue supported it, most universities opposed it. Student bodies and individuals were relatively divided in view.

6.28 A common view amongst universities and individuals was that the post of chair is in essence a voluntary one, with those putting themselves forward for this doing so on a “pro bono” basis, as part of a public service commitment in which they give something back to the university. One university considered that the voluntary status of the post was one of its key strengths.

6.29 It was acknowledged by many however, that chairs may incur out-of-pocket expenses which it was not unreasonable to cover. Items such as childcare and travel were mentioned in this regard. A recurring view was that modest expenses should be provided rather than remuneration over and above these. A student representative body summed up their view:

“Remuneration should be carefully calibrated such that it covers any costs incurred (travel, expenses, etc.) by an individual taking up the role, while not creating any external incentives to attract candidates beyond their desire for public service” (University of St Andrews Students’ Association).

6.30 Others suggested approaches to deciding on levels of remuneration:

- Comparable to other public bodies.
- Proportionate to the role and size/complexity of the institution.
- More if the role involves additional work over and above chairing the governing body.

6.31 Several respondents including unions and student representative bodies in particular were in favour of remuneration being used as a tool to encourage diversity in appointment of chair. It was commonly felt that some form of remuneration would open up the possibility of chair to those who may not otherwise be able to fund themselves. Women and members of BME were specifically mentioned in this regard by unions. One commented:

“We believe that one of the unfortunate realities of university governance is that in the main, membership of courts tend not to reflect the widest range of interests. If remunerating chairs would lead to the possibility of a wider range of individuals being able to apply for this post, given the commitments that it entails, then we would be in favour of this” (University and College Union, Glasgow Caledonian University).

6.32 Two respondents emphasised their view that should remuneration be provided, then the details of this should be made publicly available. Two individuals argued that levels of remuneration should be nationally set; many universities, however, felt that the offering of remuneration should be left to individual institutions to decide their own policy. A common view was that there was no need to legislate for this, as offering remuneration is already possible and covered by the Code.

6.33 Several universities raised a potential problem as being the current Charitable status of HEIs, within which is it highly unusual to pay trustees.

6.34 A few respondents including universities and individuals cautioned that remunerating chairs may lead to an imbalance and different relationship between the chair and the rest of the board. A few also felt that the impartiality of the chair could risk being called into question if payments exchange hands.

Question 19: Do you have any other comments you wish to add?

6.35 The comments added by respondents in response to this question have been subsumed within the commentary above relating to questions 17 and 18.

7. MEMBERSHIP OF GOVERNING BODIES

Background

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. It 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.

The Scottish Government considers that the key to the effectiveness of the governing body is that its membership is fully representative. The Scottish Government also believes that consistency in approach to this will increase transparency and democracy within the governance of institutions across the sector. They propose that legislation should require that after a period of managed transition, the governing body should provide positions for a minimum of two students, nominated by the student association/union; 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; and up to two alumni representatives.

It is considered that by prescribing membership of governing bodies in legislation, more effective representation of internal stakeholders will be ensured, thereby helping to create a more inclusive environment within the institution and greater consistency across institutions.

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

7.1 111 respondents (89% of all respondents) provided a response to this question, with two-thirds (67%) opposing the proposed requirement outlined for membership and composition of the governing body.

Table 7.1: Views on the proposed requirement outlined for membership and composition of the governing body by category of respondent

Category	Agree	Disagree	Do not know	Comment only	Total no. of respondents
Universities	1	27	0	1	29
Business/LA	3	1	0	1	5
Unions	5	1	1	0	7
Student Rep	4	3	0	0	7
Others	0	3	0	0	3
Individuals	19	39	2	0	60
Total	32	74	3	2	111

7.2 All but two universities opposed the proposal outright, whilst unions and businesses were generally in favour. Individuals were divided, with two-thirds opposing, but a significant minority of just under one-third (32%) supporting it.

Views opposing the proposal

7.3 The argument raised most frequently against the proposal was that trade unions should not be involved in nominating staff for membership of governing bodies. Many viewed this as undemocratic and against effective governance on two main grounds:

- Staff nominated in this way would in effect be representing the interests of the union which nominated them, rather than bringing their independent staff perspective to the table.
- “Reserving” or “ring fencing” places on the governing body for staff who are in unions runs contrary to the principles of equal opportunity and inclusivity.

7.4 Typical comments included:

“...selection of Court members as representatives of a trade union would involve those members arguing the trade union's position, whenever relevant, in the course of Court business. This would be contrary to good governance, which requires that all members of Court act in the best interests of the University rather than of a constituency” (University Court of the University of Glasgow).

“The Board has particular concerns over the proposals that trade unions should have a right to nominate members of the governing body. It is believed that this is contrary to the principle of good governance that “all members shall exercise their responsibilities in the interests of the institution as a whole rather than as a representative of any constituency” (Main Principle 6 of the Scottish Code). The Board strongly supports the presence of academic and support staff members of the governing body, and such staff members are also often members of a trade union as these appointments are made through an open and fair election process. It should also be borne in mind that the majority of staff are not trade union members” (Robert Gordon University).

“...not all employees are members of the two recognised trades unions and therefore to lose the option for all members of staff to have a say in electing a member would be undemocratic in our view” (Abertay University).

“A proposal that trade union members should have a preferential right to positions on the Board that are not open to non-trade union members is also quite undemocratic” (Board of Governors - Royal Conservatoire of Scotland).

7.5 Several universities and unions remarked that existing formal routes to consultation and engagement between governing bodies and unions worked well with trade unions already representing staff routinely.

7.6 A few respondents suggested that the proposal to prescribe membership of the governing body to include staff representatives nominated by unions may breach charity law in terms of introducing partisan, sector-specific voices, rather than independent voices onto the board, working to do the best for the institution as a whole.

7.7 One individual respondent questioned how decisions would be taken on which unions to involve in nominating members.

7.8 One further recurring argument in opposition to the proposal was that prescribing membership in this way is not conducive to good governance. For example, it was felt that stipulating quotas of type of member as detailed in the proposal could curtail existing efforts to ensure diversity of membership of governing body, in terms of gender and other diversity characteristics. Some emphasised their view that ensuring the necessary skills of individual members on the governing body should be paramount and whilst it may be desirable to encourage representation of various interests, the need for appropriate expertise should not be played down.

7.9 A few universities expressed concern that in meeting the stipulated composition of the governing body, they may need to reduce the number of lay members involved. Some considered that they may wish to bring in more than two alumni members. A prevailing theme was that HEIs should have more flexibility to decide the membership of their own governing body, abiding by the Code, perhaps as a condition of funding. Several reported that they felt their current membership to be diverse and skilled with no need for legislative prescription.

Views in favour of the proposal

7.10 Student representative body support focused largely around the proposal that there should be provision of a minimum of two students on the governing body. One body recommended that students be provided with training prior to taking up post.

7.11 Specific support was also provided by student representative bodies and an individual for trade union nominated posts on the governing body, with the view put forward that this was the best way to ensure representation of staff (Ind).

Question 21: Is there a representative body not currently proposed for inclusion in membership of the governing body that you believe should be represented?

Question 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?

7.12 Several respondents repeated their previous comments that the Code sets out the principles for membership and that over-prescribing the composition of the governing body is not in the best interests of effective governance.

7.13 A few suggestions were made, however, for wider membership:

- Local government representation, as universities have a significant impact on the local economy and environment. One union remarked: "Universities have a major footprint, physical, cultural and demographic. Local authority representation at court level is an important reflection of this "rootedness"" (University and College Union St Andrews Branch).
- Industry and business representation in order to build links between HEIs and business and ensure business experience is brought into the governing body.
- Local community lay membership to bring an alternative perspective on public policy.
- Locally elected councillors and MSPs in order for them to get an insight into university affairs.

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

7.14 87 respondents (70% of all respondents) addressed this question. The most common response from universities and individuals was that further legislation is not required in relation to embedding the principle of equality. Many respondents referred to the Code which already requires HEIs to establish policies to promote equality. Others highlighted the Public Sector Equality Duty as relevant in this regard. One respondent commented:

"...the need to address the principle of equality (is) better addressed through the Scottish Code, which allows for institutional diversity within the framework of agreed governance principles (Secretaries of 17 HEIs).

7.15 A recurring remark was that although HEIs can influence equality outcomes to some degree, this is largely restricted to the selection of "lay" members of the governing body, as other members are almost all elected by staff and students or are ex officio. Several universities and individuals recommended that the process of selection of members be subject to positive action in which

advertisements are targeted to reach the various equality groups, and the posts are made more accessible, for example, through offering to cover expenses.

7.16 It was felt that progress towards equality will be helped by requiring HEIs to report publicly the actions they are taking to promote diversity of membership, to require robust evaluation of progress and to encourage the sharing of good practice, advice and guidance between HEIs.

7.17 Around one-third of those addressing this question appeared to support the introduction of membership quotas, at least in relation to gender balance. Suggestions were made that women should comprise at least 40% of membership (as recommended by von Prondzynski in his Review), with a few other respondents, notably unions and a student representative body, advocating a 50%:50% mandatory balance. One respondent commented:

“NUS Scotland welcomes the Scottish Government’s recent work towards transferring the powers necessary to legislate on gender quotas on public boards, as well as the recent Smith Commission report, which also recommended the devolution of those powers to Holyrood. We urge the Scottish Government to continue working to this end, and to ensure that once the devolution of the relevant powers is achieved, the Government will put forward legislation on gender quotas in public bodies at the earliest possible time” (National Union of Students).

7.18 One individual recommended that selection to Chair be on a fixed term basis, with the gender of the Chair changing at the end of each period.

7.19 A small number of respondents, across a range of sectors, expressed their strong opposition to the use of quotas to achieve an equality balance. Their reasons included:

- Too restrictive and too difficult to implement in practice.
- Unworkable as universities are not in control of the selection of the entire governing body.
- Counter-productive in that this will undermine the mandate by demoting skills and expertise as the key criteria for selection.
- Groups for whom quotas have been established may be resistant to this as they may feel they have been appointed simply to fulfil quotas.
- Difficult to establish and agree quotas, for example will these be based on representation of the diversity within the HEI or within the wider society?

7.20 Several respondents argued that there was too much emphasis on gender equality at the expense of focusing on other aspects of inequality.

7.21 A small number of respondents considered that open and transparent selection processes will ensure that issues of equality are addressed.

7.22 Two respondents felt that if quotas are set, even with the best will, they may still be very challenging to meet. One commented that it is difficult enough to identify quality candidates without stipulating various characteristics to be met. A few respondents referred to the proposals for prescribing the composition of the court and argued that such prescription could inadvertently work against gender and other equality attributes. A university commented that gender equality cannot be assured by adopting a public electoral process.

Question 24: Do you have any other comments you wish to add?

7.23 Many respondents took the opportunity to re-iterate or emphasise further their points made previously in response to the preceding questions.

7.24 A few unions and student representative bodies expressed further support for their own member involvement in HEI governance and extolled the benefits this would bring in terms of experience, perspective, knowledge, accountability and scrutiny.

7.24 The other main theme to emerge was caution over what many viewed as over-legislating HEI governance. A recurring view was that “one size does not fit all” and overly prescriptive law on university governance restricted individual institution flexibility and responsiveness. A few respondents expressed concern that the proposals run contrary to trends elsewhere and could reduce the competitiveness of Scottish HEIs in a global environment. Several considered that the Code is sufficient to provide clear, overarching guidance to institutions on good practice whilst enabling them to retain autonomy to develop in ways to fit their individual needs and circumstances. A repeated mantra was diversity is a strength, not a weakness. One individual respondent presented their view that good governance is not achieved through legislation, but rather through continuous examination and improvement of practices by institutions.

8. COMPOSITION OF ACADEMIC BOARDS AND APPOINTMENT OF MEMBERS

Background

Academic boards (or senates) can have important roles in terms of setting the tone of institutions and providing academic input into the institutional strategy. However, there is much variation in structure and role of boards across the HEI sector in Scotland. Boards vary in size from around 30 members to over 140 members across different institutions. Whilst existing legislation applying to the ancient universities provides for academic boards to be the final arbiter on academic matters, this is not the case for other universities.

The Scottish Government proposes that across all institutions the academic board should be the final arbiter on academic matters. In addition, it proposes 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. Finally, it is proposed that academic boards should not have more than 120 members.

These proposals are viewed as bringing consistency to the sector and providing the academic board with a stronger purpose and identity within the institution, whilst enabling academic boards to be contained at a manageable size.

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

8.1 96 respondents (77% of all respondents) provided a response to this question, with a majority (57%) agreeing that the academic board should be the final arbiter on all academic matters in all HEIs.

Table 8.1: Views on whether the academic board should be the final arbiter on all academic matters in all HEIs, by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	5	16	3	0	24
Business/LA	3	0	0	0	3
Unions	7	0	0	0	7
Student Rep	7	1	0	0	8
Others	2	1	0	0	3
Individuals	31	17	3	0	51
Total	55	35	6	0	96

8.2 The majority of the universities who addressed this topic disagreed with the proposal. All of the business and union respondents and all but one of the

student representative bodies agreed with it. Individuals were mixed in view but on balance supportive.

8.3 Very few substantive comments were made in support of the proposal other than one union considering that it was in line with promoting academic freedom, and one university remarking that without this academics may become disenfranchised over matters concerning them.

8.4 A prevailing view amongst those who opposed the proposal was that it is very difficult to define clearly what is meant by “academic matters” and to try to clarify this in legislation may be counter-productive and result in muddled responsibilities rather than clear-cut roles. Many respondents highlighted what they perceived to be the overlaps and grey areas between academic decisions and decisions fundamental to the sustainability and well-being of the institution as a whole, with a broad conclusion that it will be too difficult to legislate on when the academic board should have the final say. One respondent expressed a common view thus:

“A proposal to designate the academic board as “the final arbiter on all academic matters”, is, however, in conflict with good governance. This is a complex area, with many over-laps and grey areas of responsibility, particularly where academic decisions have financial implications or consequences for the institution’s structures” (The Royal Society of Edinburgh).

8.5 Another respondent attempted some clarification of the extent of “academic matters”:

“All universities already look to their academic boards as authorities in relation to curriculum, learning and teaching, academic awards and academic discipline. However, if one broadens the consideration to include the portfolio of academic subjects to be supported by the university or a university’s priorities for research investment, then these often have serious financial consequences that require the attention of the governing body” (University of St Andrews).

8.6 Several respondents highlighted that at present the court rather than the academic body is responsible to the SFC for assurance of quality of teaching and research. Furthermore, they argued, the Code makes clear that each institution should have a single governing body that is ultimately responsible for overseeing the institution’s activities and its strategic aims, and that body should be the court.

Question 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?

8.7 87 respondents (70% of all respondents) provided a response to this question, with views equally divided on whether, with the exception of the Principal and the other Heads of School who should attend ex officio, all other members of the academic board should be elected by the constituency that they represent.

Table 8.2: Views on whether, with the exception of the ex officio members, all other members of the academic board should be elected by the constituency that they represent, by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	0	17	0	2	19
Business/LA	3	0	0	0	3
Unions	7	0	0	0	7
Student Rep	6	2	0	0	8
Others	1	0	0	0	1
Individuals	24	22	3	0	49
Total	41	41	3	2	87

8.8 Whereas not one university agreed with the proposal, all unions, business and most student representative bodies who addressed the topic supported what was proposed. Individual respondents were mixed in view.

8.9 Student representative bodies supported the proposal largely on account of what they perceived to be its impact on increasing accountability and transparency of the academic board.

8.10 Two main reasons dominated the responses of the universities opposed to the proposal:

- Current arrangements work well by including the key people who can provide a range of perspectives and contribute to quality of debate. The proposal risks excluding some who may be less visible at large, but are significant in terms of decision-making. University registrars and those responsible for academic librarianship were provided as examples in this regard. It was remarked that to involve such stakeholders in elections for membership would take them away from their core activities.
- Decisions on membership of the academic board should be left to individual HEIs to determine based on their structures and needs. It was remarked that there is much re-structuring ongoing in institutions which it would be difficult to capture in legislation on the structure of boards. One respondent commented:

“...we do not consider the specific membership, or the manner in which those members are appointed in an autonomous institution is an area that should be governed by legislation. The specific composition and membership of the Senate should be governed by the specific needs of the institutions in question and should reflect the diversity of institutions in the sector” (Queen Margaret University).

Question 27 (and Question 30 which repeated this in error): Do you agree that elected members should form a majority of the total membership of the academic board?

8.11 83 respondents (66% of all respondents) provided a response to this question, with a balance (57%) in favour of the proposal that elected members should form a majority of the total membership of the academic board.

Table 8.3: Views on whether elected members should form a majority of the total membership of the academic board by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	4	11	2	0	17
Business/LA	3	0	0	0	3
Unions	7	0	0	0	7
Student Rep	7	1	0	0	8
Others	1	0	0	0	1
Individuals	25	18	4	0	47
Total	47	30	6	0	83

8.12 All sectors of respondent were represented amongst those agreeing with the proposal. Universities and individual respondents comprised most of the 36% of respondents who disagreed with it.

8.13 The consultation did not ask specifically for supporting views on responses to this question and only a few universities added commentary opposing the proposal. They argued that achieving an effective format of the academic board is important but should be left to individual institutions to determine, based on their internal structures and needs.

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

8.14 The responses to this question overlapped substantially with those relating to question 23 regarding embedding the principle of equality in the membership of governing bodies. Many respondents simply referred to their previous comments (reported above from paragraph 7.14).

8.15 Many respondents expressed in general terms their support for the principle of embedding equality into the establishment of such bodies but acknowledged that this brought challenges. Some highlighted their willingness to become involved in further debate about how best to achieve greater balance in terms of gender and other aspects of equality such as ethnicity. One university recommended that good practice be shared.

8.17 A key challenge raised by several respondents was that the electoral process took issues of equality out of the direct hands of the university and into those of the various constituencies making up the electorate. However, some argued that an emphasis on the principle of equality within these constituent groups, such as individual schools/faculties would, in turn, contribute to promoting greater equality at academic body level.

8.18 Once again, there was a divergence in view between those arguing against introducing equality quotas for membership and those supporting this approach. Opposing views (generally from individuals) focused largely around the need to prioritise skills and experience over gender or any other equality feature, whilst the supporting views (unions and individuals in the main) favoured quotas for women of 40% - 50%. A few respondents requested that more work is done on examining the impact of quotas where these have been introduced elsewhere.

8.19 Other views expressed by only a few respondents were that the current legislation and guidance including the Public Sector Equality Duty and the Code should suffice as supporting equality in membership; reporting membership openly will promote the principle of equality; and casting the net wide in open elections should contribute to a balanced membership in equality terms.

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

8.20 87 respondents (70% of all respondents) provided a response to this question, with views very evenly split between those agreeing that academic boards should have no more than 120 members and those opposed to this proposal (see Table 8.4 overleaf)

Table 8.4: Views on whether academic boards should have no more than 120 members by category of respondent

Category	Agree	Disagree	Do not know	Comments only	Total no. of respondents
Universities	4	15	1	0	20
Business/LA	2	2	0	0	4
Unions	6	1	0	0	7
Student Rep	3	5	0	0	8
Others	1	0	0	0	1
Individuals	24	20	3	0	47
Total	40	43	4	0	87

8.21 Very few additional comments were submitted in support of this proposal, other than to suggest that boards with more than 120 members may find it difficult to function effectively.

8.22 Two broad arguments featured prominently amongst the responses of those opposing the proposal. Firstly, some universities questioned whether there was any firm rationale for the imposition of a consistent approach to capping the number of academic board members, and queried whether a problem with size exists. Secondly, universities and some student representative bodies alike urged that institutions be permitted to set their own size of board, based on their structure and needs. One respondent's comments summed up the views of many:

“Given the diversity of institutions within the Scottish sector and their autonomous nature, it is inappropriate for legislation to prescribe the composition and size of academic boards. This should be a matter for institutions themselves to determine so that their respective Senates can be as effective as possible and reflect the range of academic disciplines within particular institutions. In the case of the University, our Senate is currently larger than 120 members at 150 and this size reflects the number of Schools and the need to give each of those constituencies an appropriate level of representation” (University of Aberdeen).

8.23 The situation at St Andrews in which most of the business of the Academic Senate is devolved to a much smaller Academic Council was highlighted in a few responses, with the view that the consultation had not taken this arrangement, perceived to be very effective, into consideration. Other respondents also described arrangements in which tasks are delegated by the academic board to smaller councils or committees, which they felt worked well.

Question 31: Do you have any other comments you wish to add?

8.24 Many respondents took the opportunity to re-iterate and emphasise comments previously made. Overall, three main themes emerged from responses.

8.25 Some of the proposals, if implemented, were viewed as making significant impact on some institutions and a repeated question amongst universities and individuals in particular was over the evidence to suggest that such change is necessary. Many appreciated the comments in the consultation referring to the high standard of HEIs in Scotland, but felt that this gave further credence to their questioning of why legislation for change is deemed necessary.

8.26 Another recurring view was that further legislation should not be developed until the Code has had time to bed in and its impact evaluated. The Code was welcomed as providing a flexible approach to governance in that it can be amended more readily than legislation if required, yet has teeth in terms of compliance being a condition of funding.

8.27 The third main theme focused on what was seen as the Scottish Government's desire to impose a "one size fits all" approach on HEIs, with critics arguing that institutions are varied and diverse and such an approach is inappropriate. One respondent remarked:

"We believe that blanket legislation for a sector that includes institutions as different one from the other as the University of Edinburgh, UHI (University of the Highlands and Islands) and the Royal Conservatoire of Scotland would lead to compromised and less effective governance, rather than achieve the desired aim of enhancing governance. We also believe that unintended consequences would inevitably flow from an attempt to legislate on a 'one size fits all' basis for such a diverse sector" (Board of Governors - Royal Conservatoire of Scotland).

8.28 A few universities commented that a balance between overall consistency yet independence within individual institutions already exists on account of the governance framework provided by the Code, SFC recognition of the Code and the OSCR requirements of their "charity test". They argued that such a framework enables individual institutional autonomy, yet provides for overall consistency in governance principles.

9. ASSESSING IMPACT

Equality

Background

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.

The consultation asked:

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.

9.1 Only one substantive comment was submitted identifying positive impacts, with one respondent (Bus) envisaging that positive impacts will result from the increased transparency and diversity generated by the proposals.

9.2 Very few respondents identified specific negative impacts of the proposals, other than cautioning that a focus on gender balance initially may disadvantage other groups with protected characteristics. One respondent re-iterated the view that the election process could have an adverse impact on attempts to promote balance in equality groups.

Business and regulation

Background

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

The consultation asked:

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.

9.3 Very few respondents addressed this issue. No respondent identified any savings that may occur as a result of the proposals for the Bill. A small number of individuals and universities considered that the following would incur additional costs:

- increase in bureaucracy
- ensuring compliance with the new legislation
- changing university statutes
- electoral processes
- reporting on the protection of academic freedom.

9.4 One respondent considered that indirect costs would result from additional regulation deterring lay people from committing to membership of institutional bodies, thereby reducing the pool of voluntary members.

ANNEX 1: LIST OF RESPONDENTS

Universities and university representative bodies

Business Committee of the General Council of the University of Aberdeen
Committee of Scottish Chairs
Committee of University Chairs
Council of Senate at the University of Glasgow
Court of Edinburgh Napier University
General Council of the University of Edinburgh
General Council of the University of Glasgow
Glasgow Caledonian University
GuildHE
Queen Margaret University
Robert Gordon's University
Royal Conservatoire of Scotland - Academic Board
Royal Conservatoire of Scotland - Board of Governors
Royal Conservatoire of Scotland – letter from 6 stakeholders/friends/supporters
Secretaries of 17 HEIs
SRUC (Scotland's Rural College)
The Open University in Scotland
University Court of the University of Glasgow
Universities HR Scotland
University of Aberdeen
University of Dundee
University of Edinburgh
University of Glasgow Group of Academics
University of St Andrews
Universities Scotland
University of Strathclyde
University of Stirling
University of the Highlands and Islands
University of the West of Scotland
Universities UK

Business/Industry/LA

Aberdeenshire Council
Confederation of British Industry
Department for Business Innovation and Skills
East Renfrewshire Council
Institute of Chartered Accountants of Scotland
Institute of Chartered Secretaries and Administrators
Scottish Council for Development and Industry
South Lanarkshire Council
Turcan Connell

Student Representative Bodies

Aberdeen University Students' Association
Dundee University Students' Association
Edinburgh University Students' Association
Glasgow University Student Representative Council
National Union of Students (Scotland)
Queen Margaret University Students' Union
The University of Strathclyde Students' Association
University of St Andrews Students' Association

Unions

The Education Institute of Scotland
Robert Gordon Branch of the University & College Union
Scottish Trades Union Congress
Unison Scotland
University and College Union Glasgow
University and College Union, Glasgow Caledonian University
University and College Union Scotland
University and College Union St Andrews Branch

Others

Common Weal
Office of the Scottish Charity Regulator
The Royal Society of Edinburgh



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