



THE CARNEGIE TRUST
FOR THE UNIVERSITIES OF SCOTLAND

Higher Education Governance (Scotland) Bill

The Education and Culture Committee – Call for Evidence

Submission from the Carnegie Trust for the Universities of Scotland, August 2015

Summary

The Carnegie Trust for the Universities of Scotland wishes to express a number of concerns about the Higher Education Governance (Scotland) Bill currently going before Parliament. In particular, the Trust notes that the new Bill, if enacted, risks undermining the autonomy of the Scottish Universities and imposing regulations that could be significantly detrimental to their current operation and future prospects for maintaining their existing high international standards.

Our Trust, founded in 1901, was a major funder of the Scottish universities during the early part of the 20th Century – a time in which government grants to the universities were relatively modest. Since that time, although the balance has shifted, we continue to play a significant role supporting students and staff in the Scottish universities and funding a variety of research programmes.

Having contributed to our universities becoming leading players within the world academy, we are keen to ensure that this major Scottish asset be maintained into the future. The proposed legislation could significantly threaten this position.

Preliminary comments

Our Trustees comprise principals of the Scottish universities and a similar number of nominated Trustees. Whilst the university principals are extremely familiar with the arguments surrounding this Bill, our other Trustees – from a variety of backgrounds – have been less closely involved with these issues. Nonetheless, this submission has been prompted by specific concerns raised amongst our nominated Trustees.

As the Trustees have not met together since the Bill was published, there has been no opportunity for the Board, as such, to debate its content. The Trust is consequently making this submission with the caveat that a small number of Trustees prefer to reserve judgement until they have had an opportunity to discuss the areas of concern in further detail.

We comment on four aspects of the Bill:

1. The status of Scottish universities

The Bill, as drafted, would appear to give Scottish Ministers unlimited powers to determine: the compositions of the governing and academic bodies (e.g. Court and Senate); the manner in which Chairs are selected and appointed; and remuneration arrangements for Chairs.

We are concerned that, in addition to disrupting unnecessarily the existing, highly effective, systems of governance, this degree of externally imposed oversight may jeopardise institutions' status as charities. That would have profound financial implications.

We are equally concerned that increased ministerial control of this type, building on other requirements brought into effect over recent years (e.g. adherence to ministerial guidance, outcome agreements, etc), increases the risk of reclassification of our universities by the Office for National Statistics as public sector bodies. This would have a particularly dramatic effect on institutions' financial capabilities, including their ability to plan ahead and borrow for crucial investments.

2. Weakening of governance

Existing arrangements already allow and support university staff to put themselves forward for governing body membership, through open elections and/or via the academic board. These procedures ensure broad representation of different categories of staff. The idea that a sub-group of staff – the 27% that are members of Trades Unions – should form a further constituency would seem both unnecessary and undemocratic. Furthermore, this would introduce members to the governing body with a mandate from a particular interest group – **contrary** to regulations covering charity trustees and widely accepted principles of good governance.

Most higher education institutions recognise trade unions for national collective pay bargaining and have separate, well established, liaison arrangements for regular consultation and discussion with unions on a wide range of issues. At the same time their members are already eligible to be elected to governing bodies through existing channels, as often happens in practice.

We are keen to see that our universities continue to attract a diverse range of talented individuals onto their governing boards, with the most appropriate expertise and experience. Previous examples in which candidates for such bodies were required to stand for public election (e.g. Chairs of Health Boards) have demonstrated that, under such circumstances many talented candidates are discouraged from putting themselves forward.

Current procedures, recognised in the earlier consultation on the Bill, by which individuals with appropriate skills and experience are attracted through advertisement and then interviewed by a panel including staff and students, already ensure an open and transparent process.

We are particularly concerned with the possibility of the election of Chairs by constituencies other than the governing body itself. This would erode crucial lines of accountability and potentially create unresolvable conflicts for the Chair, i.e. being simultaneously responsible to the governing body and to the mandate of an external electorate. Significant instability could ensue; with a governing body potentially finding itself at odds with its Chair.

3. Diversity

The Bill also seeks to impose uniformity on the operation and make-up of governing bodies and academic boards across the sector.

Scotland's higher education institutions vary greatly in size – from hundreds to thousands of staff, and less than a thousand to tens of thousands of students. And, constitutionally, they range from specialist institutions, incorporated as companies limited by guarantee, to universities operating under royal charters.

These structures have evolved over the years, often for very good reasons.

We see the widely differing size and nature of our universities, their autonomy and variety of governance structures, as strengths of the Scottish sector, which we ask be taken into account in progressing this Bill.

4. Academic Freedom

The Bill also seeks to address the issue of academic freedom. This is clearly an extremely important issue. However, Trustees have asked what evidence exists for a current lack of academic freedom or, as matters stand, a future threat to such freedom?

Request

Under the Trust Deed, written by Andrew Carnegie in 1901 and under which we operate, we are charged with contributing to the welfare of the universities in Scotland and their students. It is in this context that we request that the following factors be taken into account during the passage of the Bill:

- i. The evidence that exists internationally for a strong correlation between institutional autonomy, including freedom from political interference, and academic excellence.
- ii. The disadvantage of a "one size fits all" approach to the governance of institutions of widely differing size and nature and the need to respect diversity and heterogeneity.
- iii. The major financial risk to our universities were there to be, as a result of the Bill and other government actions, a consequent loss of charitable status or Office of National Statistics reclassification as public bodies.

We conclude by noting that this latter issue is of paramount concern to the universities' philanthropic supporters, such as our Trust, and any change of status could significantly restrict our ability to continue grant giving to the Scottish universities.

Professor Dame Anne Glover CBE FRSE FASM
Chair of the Carnegie Trust for the Universities of Scotland