

## **HE Governance Bill Response from The Open University in Scotland.**

### **Introduction**

The Open University in Scotland welcomes the opportunity to submit a response to the Scottish Government's consultation paper on a Higher Education governance bill.

Governance arrangements at The Open University are taken very seriously, not only to ensure legal and regulatory compliance, but also to support informed and transparent decision-making. As the only UK-wide Higher Education Institution The Open University is unique and its governance structures reflect the fact that it operates across all four nations of the UK.

We have outlined in more detail below the governance structure of The Open University, including the fact that our governance arrangements lie in England. We would therefore expect that The Open University in Scotland will be treated as an 'exceptional case' in the proposed legislation. Although we do not anticipate that The Open University in Scotland will be directly affected by all of the proposals, we have submitted our views on the specific issues/questions raised in the consultation. It will be apparent from those responses that, with the exception of the transfer of powers from the Privy Council to a Scottish Committee, we feel that regulation of the governance of Scottish universities is best achieved through the [Scottish Code of Good HE Governance](#).

### **Section 1 - Governance structures at The Open University**

The Open University is a unique institution, which delivers teaching and research in all four nations of the UK and is funded by the governments in Scotland, England, Wales and Northern Ireland. As such, it has governance structures which recognise and work within the increasingly diverse policy contexts of each nation. The Director of The Open University in Scotland is designated Vice-Chancellor's Delegate in Scotland and is responsible for the provision of services to students based in Scotland.

In line with the rest of the Higher Education sector in Scotland, the teaching of Open University students resident in Scotland is funded by the Scottish Funding Council (SFC). The Open University is accountable to SFC for this funding, however, as the University is a UK wide institution, our regulator is the Higher Education Council for England (HEFCE), as agreed by the UK and Scottish Governments.

The Open University (OU) was established by Charter in 1969 and is governed by two statutory bodies: the Council and the Senate.

The Chancellor is the University's ambassador, presiding over degree ceremonies and attending University events. The Pro-Chancellor chairs the OU's governing body and reviews the performance of the Vice Chancellor. The processes for appointing the Chancellor, the Pro-Chancellor and the Vice-Chancellor are set out in statute.

## **The Council**

The Council is The Open University's governing body for all its operations across the UK including The Open University in Scotland. It has a membership of 25 which includes a majority of external members co-opted for their experience and expertise in line with the requirements of [Scottish Code of Good HE Governance](#), the Vice-Chancellor, five members of the Senate (academic or non-academic), the President of the Open University Students Association and one other student elected by the OU Students Association, two Associate Lecturers (tutors) and one member of the non-academic staff. Much of the detailed business of the Council is conducted through its specialist committees, which advise the Council on Audit, Development (fundraising), Estates, Finance, Membership, Remuneration and Staff Strategy. The Council is chaired by the Pro-Chancellor and has the ultimate authority within the OU but has to respect the views of the Senate in academic matters.

One member of Council is assigned Lead Governor for The OU in Scotland, just as other members are assigned to other nations.

## **The Senate**

The Senate, chaired by the Vice-Chancellor, is the academic authority of the University which, subject to the powers reserved for the Council, is responsible for promoting the academic work of the University in teaching, learning, and research and enterprise. The Senate has a membership of 108 with an academic majority. It comprises *ex-officio* members such as the Pro-Vice-Chancellors, Deans and some other officers, fifty-seven representatives of the academic and research staff, six Associate Lecturers, six students and 14 non-academic staff. There are in addition a number of co-opted places, one of which is held by the Director of The Open University in Scotland to represent the academic interests of staff and students in Scotland.

## **Section 2 – the HE Governance Bill**

The Open University in Scotland welcomes the opportunity to respond to this consultation and has outlined its responses to the specific questions below alongside further details of our governance arrangements, to illustrate points, where relevant.

### **A. Privy Council**

The University's Charter sets out the process for its amendment. As a UK wide institution amendments would continue to require the approval of the Privy Council.

The Open University in Scotland can see potential benefits of transferring the functions of the Privy Council to a committee operating in Scotland for Scottish institutions. However, we believe further details and greater reassurances are needed to understand how the proposed committee would deliver greater efficiency and more transparency, as well as a better understanding of what level of scrutiny it would be subject to, to guarantee freedom from any political interference.

The Open University in Scotland would be supportive of individual Scottish institutions being afforded the autonomy to approve changes to the instruments which regulate their internal governance arrangements themselves.

### **B. Academic Freedom**

The OU's Charter (Statute 21) includes as a guiding principle, "that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas

and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges”.

Article 10 of the Human Rights Act refers to the right to receive and impart ideas so the explicit inclusion of “freedom to encourage the exploration of new ideas” in the definition of academic freedom is supported. The Open University in Scotland however does not believe that requiring institutions to provide a statement on the implementation of the statutory protection of academic freedom is needed “to encourage diversity of opinion” or for staff “to seek knowledge for its own sake” - these benefits are already evident in the academic community.

### **C. Role of Principals**

The Open University advertised for a new Vice-Chancellor in 2014 and included in the information provided to candidates that the role is that of ‘chief executive officer’ (CEO).

The Open University in Scotland would suggest that legislation is not required to describe the head of a university as the CEO rather that this requirement is included in a revision to Main Principle 8 (The Head of the Institution) of the Scottish Code of Good HE Governance which Scottish institutions are required to comply with as a condition of funding.

### **D. Chairing of Governing Bodies**

The OU’s Charter and Statutes set out the process for appointing a new Pro-Chancellor who is Chair of the governing body. An appointment is approved by the governing body on the recommendation of an appointment committee set up by the Council.

The Open University in Scotland agrees that the recruitment process should be open and transparent and that advertising is an appropriate mechanism for achieving this. However, it is important that the successful candidate has the skills and experience to lead the governing body of a complex organisation. There is a risk that the calibre of people the University would attract to such a role would be negatively impacted by the prospect of open election. Also an open election may attract individuals who wish to use such a selection process to champion the cause of one particular group or interest. A selection process overseen by committee ensures that candidates are tested against the requirements of the role, enables the maintenance of confidentiality to what is currently an unremunerated role, and ensures the Chair has the full confidence of the members of the governing body. The full Council, including staff and student members, approves the appointment of the Pro-Chancellor.

### **E. Membership of Governing Bodies**

Given the breadth of interests that universities cover it is important that a range of stakeholders is represented on the governing body of a university. However, it is also important that members of governing bodies understand that they have a duty to use their positions to be collectively responsible for the good governance of the institution and not to represent the interests of particular groups.

The Open University in Scotland does not agree membership and composition should be proscribed in legislation, but rather, that the requirement for the governing body to be representative is included in a revision to Main Principle 10 (Governing body members) of the Scottish Code of Good HE Governance which Scottish institutions are required to comply with as a condition of funding. Similarly the principle of equality could be included in a revision to Main Principle 11 (Governing body members) of the Code.

## **F. Composition of Academic Boards and Appointment of Members**

The OU's Charter (Statute 16) states that the Senate is the "academic authority of the University". Following a review of the effectiveness of academic governance in 2005/06 changes were made to the membership and composition of the Senate such that the Vice-Chancellor, Pro-Vice-Chancellors, the Deans of Faculties and four other senior members of staff are ex officio members, all other members are elected or appointed by the constituency they represent and elected members form the majority of the membership.

The Open University in Scotland suggests the proposals in relation to Academic Boards should be included in a new Main Principle of the Scottish Code of Good HE Governance which Scottish institutions are required to 'comply' with as a condition of funding rather than being prescribed in legislation.

### **Summary**

The Open University strives to be an exemplar of good governance and currently meets the requirements of [Scottish Code of Good HE Governance](#) on a comply or explain basis as a condition of grant. As set out in our introductory comments, The Open University in Scotland expects that it will be treated as a 'exceptional case' in the proposed legislation given its unique governance arrangements. We believe that it may be more appropriate to take forward some of the proposals in the consultation paper as revisions to the Scottish Code, which would also offer a flexible mechanism to accommodate the unique position of The Open University in Scotland.

We would be happy to provide further information on our governance arrangements and/or to expand on any of the points that we have raised in our response.

### **Further information**

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