

UCU Scotland response to Scottish government consultation on a higher education governance bill

The University and College Union is the largest trade union in the Post-16 education sector in the UK, representing 120,000 academic and related members across the UK, and is the largest union in the higher education sector in Scotland.

We are happy for this submission to be made publicly available and shared within the Scottish Government.

Summary

UCU believes that the proposed legislation should:

- include the areas and recommendations specified in the consultation document relating to the role of the Privy Council; the definition of academic freedom; the selection of chairs of governing bodies including that they be elected (but elected at an earlier stage); more representative governing bodies; and that the academic board or senate is fully representative and can function efficiently.
- not include provisions to change the title of the head of the university from principal to chief executive officer. We do not believe that this would be a positive step. The term of principal is known and understood within higher education and more generally in Scotland.
- include proposals that were included in the von Prondzynski review but are missing from the consultation. Specifically those on the appointment, appraisal and remuneration of principals; and the establishment by the Scottish Funding Council of a Scottish Centre for Higher Education Research.

Introduction

UCU publicly supported the findings of the Review of Higher Education Governance in Scotland (the von Prondzynski proposals) chaired by Professor von Prondzynski which were arrived at by a panel consisting a principal, rector, chair of a university court, and trade union and student representatives. We believe that the review's findings and recommendations should be considered as a whole and that to properly improve the governance of our universities will take more than legislating on only some aspects of the review's findings.

UCU fully believe that our universities require to be autonomous institutions and that they and the academic and related staff employed by universities have academic freedom. It is important to note though that the two terms are not synonymous and that autonomy for institutions and academic freedom for staff are distinct things.

We do believe, given the amount of funding institutions receive from the public purse, that elected representatives and the Scottish Parliament are entitled to set the parameters of good governance and transparency within universities. Doing so does not increase ministerial control or limit autonomy but rather ensures that public funds are used in a transparent way and that the sector is well governed with the appropriate checks and balances.

UCU welcomes - with one exception - the proposals contained in this consultation. In particular, we see the introduction of elected chairs of governing bodies as an essential starting point to reforming governance of our universities. We believe that this measure can be strengthened by opening the election up to all students and staff and holding elections openly without prior selection of candidates.

But we also believe that were legislation to be limited solely to the areas this consultation proposes that this would be a missed opportunity. The von Prondzynski proposals, as indicated, represent a formidable piece of work and the elements missing from this consultation - and also missing from the watered down code of governance drafted by university management in the form of the Chairs of Court - deserve to be considered and included in future legislation. These include the proposals to make the recruitment, appraisal and remuneration of university principals more transparent and that as well as principals the remuneration of senior management should also be more transparent.

And there is a need for more transparency in this and other aspects of university governance. In recent years UCU have submitted FOI requests to universities requesting minutes from the remuneration committees that discussed their principal's pay awards. The average pay for a principal or vice-chancellor in the UK is currently £254,000 with some in Scotland reaching the £300,000 mark. Most recently having sent the FOI requests only a third responded, with two of them sending redacted minutes with little or no information on it and only two mentioning any detail of the pay award. One gave a two percent increase for 'excellent leadership' and another an austerity busting five per cent despite remarking less effusively on merely 'strong performance'.

A further proposal mentioned in von Prondzynski but missing from the consultation was the recommendation to establish a Centre for Higher Education Research in Scotland so that future debates on the HE sector will be based, in so far as is possible, on established fact rather than a simple he-said, she-said debate between senior managers, staff and students or based on research such as it exists that is not publically available and often driven by external and non-independent forces as can too often be the case at present. Again, the

establishment of such a centre is something that UCU supports.

UCU shares the stated intention of the Scottish Government not to see increased influence for Ministers in the running of universities. The von Prondzynski proposals – and those which have been carried through to this consultation – do not seek to do so. Elected, properly resourced and by definition stronger chairs of governing bodies would be a step toward ensuring greater democracy and good governance rather allowing Government more say in how universities are run. That universities should be required to follow principles of democracy and good governance is something which an elected Parliament is absolutely entitled to require through legislation.

PRIVY COUNCIL

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

No. See answer to question 2.

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

Yes. Higher education in Scotland has distinct, generalist origins different from those elsewhere in the UK and which have engendered a more democratic character with a tradition of elected rectors and governance arrangements. Notwithstanding the more recent managerialist approach we have an opportunity to ensure that the tradition in our universities is brought up to date and reflected in a practical and contemporary way by initiating a modern governance system which firstly reflects the distinct origins and the democratic tradition in which they evolved and grew but also allows the sector to thrive as autonomous, successful and world leading institutions. The establishment of the Scottish Parliament began to address the perceived democratic deficit in Scotland and we believe that the current system for approving governance changes through the Privy Council should reflect that. Rather than relying on a body, the membership and functions of which are obscured from the wider public and even much of the academic community it makes sense to establish a committee answerable to the Scottish Parliament to fulfil the duties currently undertaken by the Privy Council. We are content that the membership of that committee comprise of the First Minister, Lord Advocate and the Lord President of the Court of Session and that such a committee should be subject to the scrutiny of the Scottish Parliament.

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

Yes. See answer to question 2.

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

Yes. See answer to question 2.

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?

Current arrangements require institutions to consult widely before seeking Privy Council approval. The need for consultation and external scrutiny should be maintained for all proposed governance changes. Further, we would envisage significant difficulty in determining which changes could be approved locally and which required external permission.

ACADEMIC FREEDOM

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

Yes. UCU Scotland have been content with the definition of academic freedom contained in the 2005 Further and Higher Education (Scotland) Act as derived from the 1997 UNESCO recommendation. We would be happy to see this definition broadened to contain a reference to 'new' ideas as long as any definition maintained the existing references to hold and express opinion, question and test established ideas and received wisdom, and present controversial or unpopular points of view. We would also want to retain the current wording's inclusion of all staff involved in the provision of teaching, learning and research.

Should new legislation amend the 2005 definition then we would also want any new act to refer both to higher and further education in regard to the definition of academic freedom as is the case currently.

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

We do not see dangers in academic and related staff having academic freedom. Risks occur from inadequate protection of academic freedom or from narrow interpretations of its definition. Academic freedom should be responsibly exercised and peer scrutinised and that there should be a presumption in favour of academic freedom before any constraints are imposed.

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

UCU agree with this proposal. The process of drawing up, adopting and subsequently presenting a policy on academic freedom to the funding council would properly embed the principles within the mindset and structures of the institution and include all facets of the university affected. The model developed in Trinity College Dublin, and referenced in the von Prondzynski report, is one which has value and could form the basis of any proposal in Scotland.

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

It is important that academic freedom and the ability to hold and express an opinion is not strictly limited solely to the subject a member of university staff is employed to teach or research at any given time. During the run-up to the referendum on Scottish independence academics on both sides of the debate were subject to pressures for indicating their opinions on the future constitutional arrangements for Scotland although this was not a matter directly linked to their subject specialism. Academics can and do achieve prominence in society as public commentators through the work that they carry out. While institutions during the referendum were largely supportive it is important that academic staff are able to play the part expected of them in public discourse as thought leaders and at times public figures.

More generally 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.

ROLE OF PRINCIPALS

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

No. Such a proposal is specifically against the proposals contained in the von Prondzynski report which recommended that the title of Principal be retained. The term is well understood in higher education and more widely in Scotland. Any move to change the title to that of chief executive officer would simply ape the terminology used in private sector businesses for little reason other than, presumably, to allow the new CEO to push for pay and bonuses comparable to those historically found in the private sector. Universities are demonstrably not private busin'esses but rather societal institutions which receive large sums of funding from the public purse. As such there is no requirement for them to copy management terms from the private sector. In fact, as von Prondzynski recommends, the

remuneration of senior managers pay should be transparent and made by publicly accountable remuneration committees whose makeup reflects the institution. Von Prondzynski did make reference to the consideration of the title 'chief officer' where there was a technical or legal necessity but specifically ruled out the term 'chief executive officer'.

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'?

If a principal were to have their job title changed to CEO in legislation but maintain the day to day working title of principal then there would seem little if any point in making the change in the first place.

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

The head of the university's title should remain as the 'principal'. As indicated, the term is well understood in higher education and beyond in Scotland.

CHAIRING OF GOVERNING BODIES

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

Yes. UCU believes that all the proposals contained in this consultation are important and deserve consideration. In our view though those relating to the chairing of governing bodies are the key to how governance in our universities can be improved. UCU have seen countless examples of our members losing their jobs because of consultant-led restructuring that goes through without proper consultation or consideration and which in some instance a future restructuring reverses. The purpose of good governance is to help senior management ensure that the decisions they take on behalf of the institution are properly and thoroughly interrogated and that we can be confident they are in the best interests of the university. When chairs of court are overly close to the principals and senior management then it is not possible to guarantee that this is the case. The key to ensuring good governance and that the governing body is able to govern rather than act as an arm of senior management is that the selection process be open and transparent.

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

Yes.

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

For the same reasons as highlighted in answer to question 12 UCU are in favour of open

advertisement and believe it would attract a wider pool of candidates. At the very least open advertisement would ensure that a wider group of people are aware of the position and it being vacant than at present.

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?

UCU wish to be make clear that, in our view, any election has to include all the staff and students in the university. That proposal is contained in the von Prondzynski review and inferred in the text of the consultation but is not reflected in the wording to question 15 which states that the election would be by '... a group of representatives...'. Whether external representatives are given a vote or not any election by staff and students needs to include all staff and students and not by representative groups of them.

On the substantive question, we are in favour of the chair of court being elected. We note that the proposal contained in von Prondzynski and carried forward to this consultation is to limit the democratic aspect of the process to the final stage. UCU are of the view however that, while for many higher education institutions any introduction of a democratic element would be a forward step that is not the case for all institutions. Edinburgh University currently has an elected chair of its governing body – the Rector - who is not subject to any 'vetting' process prior to being put forward to an election by students and staff.

We recognise that the von Prondzynski recommendations reflect a compromise position given the varied nature and background of those on it. It is the case, however, that having decided to introduce an element of democratic accountability into the role then it would seem odd to only introduce partial democracy at the last stage and only if someone else has deemed them to be 'appointable'. In practice this places a disproportionate amount of power in the hands of those who are doing the vetting. If, as an extreme example, only one candidate was allowed to go forward for election – in such a case essentially an affirmative ballot – then it would be difficult to describe them as having sufficient mandate to fulfil the role particularly if other candidates had been excluded from standing.

UCU believe that if we are going to reflect the traditional nature of the Scottish university system then we should simply decide to do so and do so properly with openly elected chairs of governing bodies not subject to any pre-vetting to prevent un-preferred candidates from standing.

With regard to who is entitled to vote, we believe that this should be limited to staff and students as the bodies with most to benefit from good governance in our universities. As far as the proposal to include external stakeholders then we are not convinced that it would be possible to satisfactorily identify who the external stakeholders might be, who would be included and excluded and consequently agree who should and should not have a vote. For example, take a university centred in Glasgow. The staff of the university and the students would have a vote. As for external stakeholders then the question of who should be

included and where you would draw the line is paramount - do you include local businesses and should they be individual businesses or the FSB and chambers of commerce, should it be the CEOs or boards of the businesses and what about their trade unions and workforces, what about local government, civic organisations or do we go right down to the level of individual citizens of the city? And, as is the case of Glasgow, where many of these individuals and bodies will have interests in multiple institutions then there may be if not cause for conflict of interest then certainly for confusion.

There is a comparison also to be made with the recent experiments in directly electing health boards. Besides the obvious similarities around the governance of public service bodies there is also widespread dissatisfaction over the lack of divergence in background of those putting themselves forward and of apparent ineffectiveness. Where direct elections took place then voters showed little interest in participating. That is not an argument not to bring democracy and transparency to university governing bodies, rather not to over extend it or force it on people who have currently little interest. If we limited the franchise to those with a real and direct interest in the future success and good governance of the university - namely the current staff and students - then we will see good participation levels and good decisions being made as a result of the increased power of the chair who can fairly claim to have been elected by the university family.

The other question to be addressed is whether there is weighting of votes from different sections as von Prondzynski proposes. In practice this would establish a form of electoral college. UCU have, through our democratic structures, had a number of discussions around what method of election would be best for electing the chair of the governing body and different views have been expressed. While we can see benefit in the establishment of an electoral college where votes are weighted to ensure parity between the different sections we can also see benefit in keeping the process as simple and understandable as possible and simply allowing staff and students to vote on a one individual one vote basis. We note that, on a simple numerical basis, that would be likely to advantage the student body over staff but in the round believe, on the basis of simplicity and transparency, that a simple one individual one vote basis is the best choice.

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

The groups who are eligible to vote for the chair of the governing body should be those who make up the university, namely the staff - academic, academic-related and support staff - and the students. As stated in answer to question 15 it should be all staff and students and not 'groups of representatives'.

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

As indicated the background of lay members of governing bodies is traditionally male, often retired and from a managerial background. People therefore have free time to give without

the need for payment or are employed in professions and senior enough to be able to take the time required to fulfil the role without the loss of income being to their detriment. Similarly to the effect that paying salaries to Members of Parliament had in the early twentieth century, UCU believe that offering suitable remuneration may open involvement in university governing bodies to a wider group of people than at present including women, the BME community, those from non-managerial backgrounds and other underrepresented groups.

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

n/a

MEMBERSHIP OF GOVERNING BODIES

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

We agree with the proposal that governing bodies should reserve specified places for student and staff representatives. Von Prondzynski argued that these should be at least two students, two directly elected staff members and two trade union nominated positions - one nominated by academic and related unions and one by the non-academic unions. This reflected the balance of the parties sitting on the review and their respective backgrounds and interests. This consultation carried those recommendations forward and we support the inclusion of the trade union and student positions.

UCU currently has a number of members on university governing bodies who stand as individual staff members and whose trade union membership is incidental to their membership of the governing body. At times they can be openly asked by university management about their role and whether or who they are speaking for and can be openly challenged on their independence. Ensuring that key staff and student groups are represented will make for better governance and the formal involvement of the trade unions will, as the Scottish Government's 'Working Together Review' demonstrated bring benefits to the better running and governance of the body, in this case the university.

While we welcome the reference to there being trade union nominated positions we do not see that there would be any additional requirement for non-union staff positions to be on the governing body. All universities in Scotland recognise trade unions to represent staff. In being recognised the university is formally accepting the right of the union or unions to negotiate on behalf of staff and there is no reason why this should not be the case on the governing body. Similarly pay negotiations take place nationally between the trade unions and employers. All staff, whether members of a trade union or not, benefit from what is agreed and positions on the negotiating body are not held for representatives of non-trade unionised staff.

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

n/a

22. Is there 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?

n/a

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

UCU is supportive of increasing representation from currently underrepresented groups on university governing bodies. We note and welcome the recent increase in women chairs of court but note the NUS research showing just 31 percent of university court lay members are women in Scotland and before the recent rise in the number of women chairs in 2011/12 there were no women chairs of governing bodies. UCU submitted to Scottish Government's consultation on the introduction of gender quotas on public boards and argued in favour, as is in line with the von Prondzynski proposals, for a quota of at least 40 percent women members being introduced into university governing bodies. We would not be against this being raised to at least 50 per cent. We note that the Smith Commission, while recommending that equalities legislation remain in the main reserved, contains proposals that the Scottish Parliament be given the power to implement gender quotas on public bodies. UCU would be supportive of this power be used and legislation requiring a minimum quota being enacted.

We further believe that governing bodies will function most effectively when they are representative of the diversity within the university sector and society as a whole and not solely in relation to gender. In order to achieve this additional quotas may be required in time.

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

n/a

COMPOSITION OF ACADEMIC BOARDS AND APPOINTMENT OF MEMBERS

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

Yes, the academic board should be the final internal arbiter in the higher education institution.

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 they represent?

Yes.

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

Yes.

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

In keeping with what we are suggesting for governing bodies it would make sense also to look to introduce an at least 40 percent quota for women on the academic board. Again, as in our response to question 22 if there were agreement to introduce a higher figure then one of at least 50 percent would be agreeable to the union. More generally steps should be taken to ensure that the body reflects the makeup of the staff and student body and that students make up a significant element of the body.

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

Yes, we agree with the recommendation of the von Prondzynski review that above this number there is a tendency for the body not to function effectively.

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

Yes.

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

n/a

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