Higher Education Governance Bill: Scottish Trades Union Congress Response

The STUC is Scotland’s trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 590,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black/minority ethnic members, LGBT members, and members with a disability, as well as retired and unemployed workers.

Introduction

The STUC has long been concerned about governance in the Higher Education (HE) sector in Scotland. We were, therefore, pleased to take part in the von Prondzynski Review and supported its findings.

The STUC was concerned by the length of time that passed between the reporting of this review and the drawing up of this Bill, however, we are, on the whole, very supportive of the legislation and we look forward to welcoming the provisions when they are brought into force.

(1) What do you consider to be the existing problems (if any) with higher education governance, particularly around modernity, inclusion and accountability?

The STUC played a full role in the Von Prondzynski review. This review took extensive evidence from the sector, trade unions, students and others around the functioning of universities and the appropriateness of their governance structures. This review made good recommendations to improve governance arrangements which this Bill now looks to implement. The Von Prondzynski review was set up in the light of governance failings within the University sector and proposed reforms so that there would be no more incidents that could bring the sector into disrepute, squander public money or put at risk the educational outcomes of students.
Throughout this work the STUC has consistently held the position that the von Prondzynski review was positive and set out useful recommendations that were necessary to improve the governance and the functioning of our Higher Education sector in Scotland. We have however, been concerned by how some of this work has been implemented to date, in particular the Code of Governance prepared by the Chairs of Court. This document is of a very low quality, reflecting the fact that it did not take account of the principles of good governance in its preparation. The STUC strongly believes that a Code of Governance is still necessary for the Higher Education sector, and would like to see a new draft prepared in line with the process that was undertaken in the Further Education sector.

In addition the STUC is concerned that there were recommendations in the von Prondzynski review that are not included within this Bill, 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. The STUC would hope to see this rectified as the Bill passes through Parliament.

Despite these concerns the STUC is convinced that this legislation is both useful and necessary and will make a contribution towards good governance in the Higher Education Sector.

(2) The extent to which the bill:

a. will improve higher education governance

The STUC believes that the proposals within the Bill have the potential to improve education governance particularly the proposals around elected chairs and reserved trade unions seats.

We were disappointed, however, that the legislation did not seek to deal with the make-up of remuneration committees. Transparency of remuneration committees and high awards for principals, out of step with pay decisions taken for other staff within the university, continues to be a problem for the sector. In addition the decision making processes of these committees continues to be opaque. The STUC’s affiliated union, the UCU, submitted Freedom of Information requests on this issue in 2015. Of 17 institutions asked by UCU to provide remuneration committee minutes and an explanation for a principals’ pay rise, four
refused to send any information and a further 8 redacted minutes, in some cases making them unintelligible. This work highlights the ongoing lack of transparency in the sector, and a need for remuneration committee reforms to be included in the Bill.

b. may alter the higher education sector’s current level of autonomy

This Bill is not about Government controlling Universities, it is about good governance. Good governance procedures mean that the sector will function better and as a result spend public money better. In this way the autonomy of the sector would be secured in the longer term by ensuring that institutions are better able to govern themselves and can show transparent and well evidenced decisions around how they spend public funds. Better governance structures will also help the University meet the educational needs of students and better support the economic development of Scotland.

c. may affect lines of accountability between the Scottish Government, relevant public bodies and the higher education sector.

Academic freedom is a core value of the University sector but this does not depend on universities having no lines of accountability between the Scottish Government and other public bodies. It is reasonable that where significant public funding is put into a sector, as is the case with Universities, that the use of this funding is effectively scrutinised by the Government and others. The STUC does not believe that this Bill significantly alters already established lines of accountability and, as set out in our answer above, better scrutiny and accountability within the institution itself, ultimately makes for better run and more responsive institutions.

(3) Has the correct balance been struck between legislative and non-legislative measures? Are further measures needed?

The STUC continues to believe that the Code of Good Governance has a significant and vital role to play in the creation of good governance throughout the HE sector. Unfortunately the Code that was produced by the Chairs of Court does not meet the necessary standard to achieve this aim. There are many weaknesses in the Code and the STUC
continues to believe that the recommendations made by the Code are simply not significantly stretching to change practice for the better throughout the sector. It is our view that this work was of a poor enough quality to require it simply to be redone and that any new code produced should be created in line with the principles of good governance.

The example of good governance that is followed within the NHS, along with the code of governance produced for the FE sector, shows what can be achieved when the work is done properly and when a genuine emphasis is placed on partnership working. This could still be achieved in the HE sector, but unfortunately not while using the existing Code.

(4) Please provide your views on the merit of each of the proposals.

   a. To require higher education institutions to appoint the chair of their governing body in accordance with a process set out in regulations made by the Scottish Ministers.

   The STUC believes that this is a key recommendation that has the potential to improve governance and the transparency of governance processes within the HE sector. We do however remain concerned that a vetting process will take place before candidates are presented for election. We are concerned that this process would place an unreasonable level of power in the hands of the vetting committee. The STUC is clear that elections for chairs should meet accepted democratic norms and should therefore allow the electorate a genuine choice of a range of candidates, even those that do not please the university centrally.

   b. To require HEIs to include various persons within the membership of their governing bodies.

   The STUC believes that this is a key area of reform within the legislation and is particularly pleased to welcome the trade union seats. The inclusion of trade union seats is in line with the wider Fair Work approach that we are taking in Scotland, which recognizes that role and the value of trade unions. Having reserved seats for trade unions, students and others, helps to ensure a plurality of interests are represented on the governing body, which helps to produce governance decisions that are responsive to the needs of the university as a whole.
c. To require HEIs to ensure that their academic boards are comprised of no more than 120 people, and include various persons.

The STUC is supportive of this proposal.

(5) The likely affects of these provisions, for example, whether there are any areas of teaching, learning or research that will be particularly enhanced.

Better learning and teaching would be a result of good governance practices. Universities, like other institutions, will face difficult decisions and budgetary pressures at times. Good governance does not remove these pressures but allows the institution to more effectively deal with them. By hearing the voices of staff and students effectively within the governing body, the university can make decisions that better reflect the educational experiences of those most directly involved in education.

(6) Are there likely to be any significant constraints – other than legal constraints – on academic freedom? For example, the particular ethos within an institution; funding pressures; institutions' policies on equality and diversity; etc.

It is possible for academic freedom to be constrained in a number of ways. These were explored fully within the Von Prondzynski review. It is therefore important to have academic freedom protected by law so that academics and other staff working within the sector are able to rely on this definition to protect themselves and their work.

(7) Are the situations in which relevant persons can exercise their academic freedom clear? For example, should their freedom be limited to their work within an institution, as opposed to views they may express outwith the institution?

Our view is that it should go beyond simply their work in an institution. Clearly work within the university should be covered but we are also clear that academics are often seen as public figures and opinion leaders. An example of this might be the 2014 referendum on Scottish independence where institutions largely supported high profile
individuals against perceived pressure but it cannot be guaranteed that this will always happen.

We are also clear that academic freedom should apply not solely to academic staff. The development of ideas and knowledge may be led by academic staff, but the process will involve academic related and support staff too. We believe that they should also be covered and protected by any definition of academic freedom.