UCU Scotland were one of the drivers of the changes to higher education governance in Scotland that culminated in the passage of the 2016 Higher Education Governance Act in the Scottish Parliament. This paper examines the key events leading up to the bill being enacted; looks at how far and fast the main provisions of the act are being implemented in institutions; and asks some key questions about what other areas of university governance remain outstanding and should be pursued by the union.

BACKGROUND TO THE 2016 ACT
In 2011 the then Scottish education minister, Mike Russell, announced a review into higher education governance in Scotland. The review was called on the back of criticism of decisions made by universities around course closures and complaints that courts and governing bodies were not representative of the institutions they were making decisions about exemplified by industrial and student unrest in early 2011 at Glasgow University.

The review was chaired by the then principal of Robert Gordon University, Ferdinand von Prondzynski, and included a university secretary, NUS representative, and a STUC nominees who was UCU member and past-president Terry Brotherstone. The review reported in early 2012 and made some 17 recommendations including elected chairs of governing bodies, widening the process of appointing of principals and that staff and students be involved in their appraisal, trade union representatives on the governing body; and that the governing body should meet in public.

After the report’s publication UCU pushed for the full implementation of the recommendations. Meantime the existing chairs of universities in 2013 published a code of good
higher education governance. In drawing up the code they didn’t initially plan to meet with UCU or the other higher education unions and when the code was published the union argued that it didn’t improve university governance and was nothing more than a code written by managers for managers.

In 2014, while speaking at a UCU education conference Mike Russell announced that the SNP would legislate on the von Prondzynski review, including for elected chairs of governing bodies and for trade union and student nominees.

When the Higher Education Governance bill was published in 2015 it received a furious response from university principals with their body Universities Scotland arguing that the autonomy of the sector was threatened by the bill’s proposals. They also stated that having trade union nominees on the governing body was contrary to the Nolan principles of standards in public life. This set the tone of the debate for the next year with university principals increasingly desperate arguments moving up a notch to include questioning whether the Office for National Statistics would reclassify university as non-charitable bodies and claiming in Parliament that democratising university governance even to the little degree allowed for in the bill would ‘devastate’ Scottish higher education and lead to the government suppressing critical thought.

Despite their best efforts university principals were unsuccessful in defeating the bill and the Higher Education Governance Act was passed in spring 2016 and enacted the same year.

**PROVISIONS OF THE 2016 ACT**

The act included provisions for the election of a senior lay governor, elected by all staff and students who will be the chair of the governing body. They are to be responsible for the leadership and effectiveness of the body, and ensuring the correct balance of authority between the governing body and the institution’s principal. In the universities with an existing and elected rector local rules would determine the relationship. This is broadly as happens at present where, in most cases, the rector is the chair only in name.

The university governing body is also to include two new trade union positions, one nominated by a union representing academic staff and another by support staff. The act also provides for university’s academic boards (often known as senate or academic council) to comprise 50% academic staff and students, of who 10% should be students. The act also extended the definition of academic freedom to include the freedom to hold and express opinions, to question and test established ideas or received wisdom, and to develop and advance new ideas or innovative proposals, and to prevent controversial or unpopular points of view.

**IMPLEMENTATION**

The act was passed on 8 March 2016 and received assent on 13 April the same year. The Scottish Government confirmed that the different provisions of the act would come into force at different times. Specifically, the provisions around academic freedom came into
effect on 30 December 2016. The senior lay member provisions came into effect on 30 June 2017 but if the recruitment process is already underway then it won’t be affected.
The provisions around the composition of the governing body came into effect on 30 December 2016 but there is a four year transitional period meaning the new members need to be on governing bodies no later than 30 December 2020.

In reality, the implementation of the various areas covered by the act has been slow and patchy. This is perhaps unsurprising given the tenacity of the arguments made against the bill by university principals.

Aberdeen and Dundee were the first institutions to appoint and deserve praise for bringing in the positions so quickly. They were closely followed by the University of Stirling with others beginning discussions with their union branches on how the positions will be appointed and some agreeing to have trade union nominees shadow the body and attend as observers.

These early trade union nominees play an important role, not just for their institution and branch but also as they are setting the scene for those who will follow. There are many who opposed the bill who would dearly love to see the first appointees fail and then use any problems to argue to government that the act is unworkable and in need of reform. In practice, the opposite has occurred. The currently elected trade union nominees on governing bodies have acted and been seen to act, as they were always going to do, in the best interests of both the union and the institution as the two interests are interlinked and not mutually exclusive. This is having the effect of debunking the most unsavoury of the attacks on UCU members during the passage of the bill, namely that trade unionists are incapable of acting in the interests of the institution and their membership of university courts would be contrary to the Nolan principles.

With regard to elections for the senior lay governor, we saw an initial reluctance to move ahead on this. We have seen some institutions seemingly bringing forward recruitment to avoid having to be one of the first to hold an election. At least one brought forward the recruitment process starting before June 2017 and appointing in December 2017 for a position that does not become vacant for a year, with the new chair taking up their position in January 2019, a year and a half after they started recruiting. More positively, as with the trade unions nominees on court, both Aberdeen and Dundee universities have moved first, with – as of early 2019 – both in the early stages of elections for their new senior lay governor.

Alongside the lengths some institutions have used to avoid holding an election, the implementation had also seen different institutions adopt different attitudes to the way the unions establish their nominees to the governing body. While some have been happy to simply get on with identifying the process and accepting that UCU will follow a democratic process open to all members, others are being much more prescriptive. The act does state that the institution shall determine the rules following consultation with the unions, but some are, at least in early discussions, suggesting odd practices
such as seeking all staff elections for who a union's nominee will be. In practice, with a
degree of goodwill - and after consultation - we seem to be finding solutions in each
institution that will allow the different unions to agree who nominates and then someone to
be selected by the branch and in whom they have trust to act as an effective trade union
nominee on the governing body.

What has been more problematic has been the requirement of the act for one nominee
to be an academic and the other a member of support staff. This was a late change in
wording in the act and UCU have been unsuccessful in our attempts to revert to the earlier
wording that it is the union that is defined as representing academic staff and support
staff, rather than the individual. This creates an issue for UCU as a trade union as we
represent both academic and academic related and professional services members of
university staff. We've argued that the act does not define an academic and that the
term can arguably apply (as it does in relation to academic freedom in the 2005 Further
and Higher Education Act) to staff engaged in the teaching or provision of learning or
research. As such, this would be wider than those simply with academic contracts. We
will continue to try to help branches negotiate locally to ensure any UCU member
 nominated by a branch is able to take up their position recognising though that the
wording in the act is not helpful in this regard.

**NEXT STEPS**
The 2016 act brought in some of the recommendations of the von Prondzynski review
but not all of them. Areas outstanding include:

- Ending the jurisdiction of the privy council in Scottish higher education

- Setting up a higher education forum meeting annually and an academic Scottish
Centre for Higher Education to provide an evidence base.

- A review of principals and senior management's pay structures and in the interim
 limit pay rises to that awarded to other higher education staff.

- Hold governing body meetings in public.

- The involvement of staff and students in the appraisal of university principals.

Bringing in the 2016 Higher Education Governance Act was difficult for the Scottish
Government. Despite support for the changes the bill brought in from UCU Scotland,
other campus unions and NUS Scotland the bill faced opposition from university principals,
Universities Scotland and the existing chairs of court. Politically, as well as the Scottish
Government, the bill was supported by the Greens and Labour and opposed by the Liberal
Democrats and most vociferously by the Scottish Conservatives. They marshalled
a number of increasingly cataclysmic arguments detailed earlier in this paper including
that bringing in the act would lead to universities having their charitable status taken
away and that it would lead to the end of the sector’s autonomy from Government.
That, almost three years after the bill was enacted neither of these events have occurred is neither here nor there, the fact remains that the bill was vociferously opposed and the arguments utilised found support in the sections of the media looking to attack either the Scottish Government or the role of unions in Scottish society. Thus the Scottish Government and then main opposition party used up political capital in pushing the bill through and seem unlikely to want to revisit the issue of higher education governance, at least in legislative terms, for some time. Indeed, nor have we seen legislation other that the 2016 governance act relating to higher education introduced in the parliament since 2013.

**AREAS FOR DISCUSSION**

- Given the less than favourable landscape for legislative reform any arguments UCU make for further reform need to be well evidenced and argued. The questions below will hopefully allow the beginnings of a discussion on what area of further reform the union should be pushing for and consideration of what method is most likely to produce results.

- What areas outstanding form the 2011 von Prondzynski review should UCU push to be implemented?

- Other than those identified by the von Prondzynski review, what other areas of higher education governance are currently problematic? How should they be reformed?

- How should we seek to bring about change? By legislation, seeking to amend the code of good higher education governance or at an institutional level? What are the pros and cons of each?