

HIGHER EDUCATION GOVERNANCE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Higher Education Governance (Scotland) Bill (which was introduced in the Scottish Parliament on 16 June 2015) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.
2. These revised Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

4. The Bill makes provision to improve and modernise aspects of the governance of higher education institutions (HEIs). The Bill contains provision covering four areas:
 - **Appointment of the senior lay member of the governing body within an HEI:** A requirement is placed on each HEI to appoint a senior lay member of the governing body in accordance with a two stage process comprising an advertisement, application and selection stage followed by an election stage. Each HEI is also required to make payable, at the request of the senior lay member, reasonable remuneration and allowances for undertaking the role of senior lay member. In addition, provision is made about how such a senior lay member may resign or be removed from that office.
 - **Membership of the governing body within an HEI:** A requirement is placed on each HEI to ensure that the membership of its governing body includes a senior lay member appointed in accordance with the process stipulated in sections A1 to A8 of the Bill; two members who are directly elected from the HEI's staff; one member nominated by a trade union representing academic staff; one member nominated by a trade union representing support staff; and two student members nominated by a students' association of the HEI. In addition, provision is made about how the chairing member of the governing body (which is not an expression used elsewhere

in the Bill) and an “ordinary member” of the governing body (that is every member except the senior lay member) may resign or be removed from the governing body.

- **Composition of an HEI’s academic board:** A requirement is placed on HEIs to ensure that elected members comprise more than 50% of the total membership of the academic board. Overall, at least 10% of the academic board must be made up of elected student members, subject to the rule that no more than 30 student members are required. All staff and student board members appointed under the Bill’s election process for staff and students, with the exception of any members attending *ex officio*, must be elected by the constituency they represent.
- **Academic freedom:** Section 26 of the Further and Higher Education (Scotland) Act 2005, which makes provision for the protection of academic freedom by post-16 education bodies, is replaced with a new section. The new section strengthens the obligation on post-16 education bodies. It requires that such bodies must aim to uphold, so far as the body considers reasonable, the academic freedom of persons engaged in teaching, the provision of learning or research at the body. It also requires that such bodies must aim to ensure, so far as the body considers reasonable, that appointments held or sought and entitlements or privileges enjoyed by such persons are not adversely affected by the exercise of academic freedom of those engaged in teaching, the provision of learning or research at the body. The new section also expands the definition of academic freedom to include the freedom to develop and advance new ideas or innovative proposals.

5. Throughout these Explanatory Notes various terms and abbreviations are used; the most important are as follows:

- “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992;
- “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005;
- “academic board” means the body within the HEI which is charged with dealing with and making decisions on academic and research matters; some HEIs refer to the academic board as the Senate;
- “designated institution” means an institution designated under section 44 of the 1992 Act;
- “HEI” means an institution which is a university or designated institution (with the exception of the Open University), and which is listed in schedule 2 to the 2005 Act; these institutions are institutions based in Scotland which provide higher education within the meaning of section 38 of the 1992 Act and which are eligible for funding from the Scottish Further and Higher Education Funding Council;
- “post-16 education body” means a body listed in schedule 2 to the 2005 Act and a college that is assigned to a regional strategic body under section 7C of the 2005 Act;
- “Universities (Scotland) Acts” means the Universities (Scotland) Acts of 1858, 1889, 1922, 1932 and 1966.

COMMENTARY ON SECTIONS

6. The Bill has the following three Parts:
- Part 1 is concerned with governance arrangements for HEIs and is separated into three chapters. The first chapter deals with appointment of a senior lay member of a governing body of an HEI and membership of that governing body more broadly. The second chapter addresses the composition of academic boards in HEIs. The third chapter deals with key definitions.
 - Part 2 replaces the statutory definition of academic freedom as set out in section 26 of the 2005 Act.
 - Part 3 addresses general provisions.

PART 1: GOVERNANCE ARRANGEMENTS

Chapter 1: Governing bodies

Senior lay member of governing body

7. Chapter 1 concerns the appointment of a senior lay member of a governing body of an HEI and membership of that governing body more broadly. Sections A1 to A8 set out the process which an HEI is required to follow when appointing a senior lay member. Section A9 concerns the remuneration of the senior lay member appointed in accordance with sections A1 to A8. Section 1A deals with the resignation or removal of the “chairing member”.

Section A1: Position of senior lay member

8. Section A1 requires the governing body of an HEI to include the position of senior lay member. The senior lay member is the individual who will have the duty to preside at meetings of the governing body; a deliberative and a casting vote at such meetings; responsibility for the leadership and effectiveness of the governing body; and responsibility for ensuring that there is an appropriate balance of authority between the governing body and the principal of the institution. Subsection (1) clarifies that the position of senior lay member can be given any name by an HEI, and this means that an HEI could, for example, use the title senior governor, convenor, vice-convenor, chair or any other term that the HEI considers appropriate. The responsibilities ascribed to the senior lay member appointed through the process in the Bill reflect the existing role of the senior lay member in most HEIs (irrespective of the particular title used by an HEI) and encapsulate such functions as ensuring that the members of the governing body work well together. Subsection (3) provides that when the position of senior lay member is vacant or the holder of that position is absent, another member of the governing body may be selected by the governing body to exercise any of the senior lay member’s functions. Subsection (4) provides that subsections (2) and (3) – which relate to the functions of the senior lay member – are subject to section A2, which clarifies the interaction between senior lay members and rectors at those HEIs that have a rector with statutory functions under the Universities (Scotland) Acts of 1858 and 1889.

Section A2: Interaction with role of rector

9. Section A2 provides for the interaction between the senior lay member and rectors at the four ancient universities. These are the University of Glasgow, the University of Edinburgh, the University of Aberdeen and the University of St Andrews. Subsection (2) provides that paragraphs (a) and (b) of section A1(2) and section A1(3) so far as relevant in relation to those paragraphs do not apply in relation to the ancient universities. The overriding of sections A1(2)(a), A1(2)(b) and A1(3) by sections A2(1) and (2) means that the statutory functions of the rectors at the ancient universities under section 4 of the Universities (Scotland) Act 1858 and section 5(5) of the Universities (Scotland) Act 1889 are preserved. These functions of the rectors are of presiding at meetings of the governing body and having a deliberative and a casting vote at such meetings. Nevertheless, the senior lay member at an ancient university is expected to continue to participate and vote at meetings of the governing body just as the other members participate and vote.

Section A3: Relevant criteria etc.

10. Section A3 provides that, whenever a vacancy arises in the position of senior of lay member, the governing body of an HEI must delegate to a committee the responsibility of devising the relevant criteria with respect to the position, and ensuring the efficiency and fairness of the process for filling that position. The relevant criteria include the skills and knowledge considered by the committee to be necessary or desirable to exercise the functions of the senior lay member and command the trust and respect of the other members of the governing body, the academic board of the institution and the staff and students of the institution. Section A3 does not prescribe which committee these responsibilities must be delegated to nor whether it should be an existing committee or a committee convened for this specific purpose. In practice, these responsibilities may be delegated to committees similar or equivalent to the nominations committees that many HEIs have for the purpose of making appointments to the governing body. However, under sections A3 to A8, the role of such a committee will not be nomination, it will be one of oversight of the recruitment process and selection of election candidates according to whether or not the committee is satisfied that an applicant meets the relevant criteria. Subsection (3) requires that the committee must include at least one staff member and at least one student member. Subsection (4) clarifies that the governing body of an HEI can, itself, make rules to further govern the appointment process within the parameters set by sections A4 to A8.

Section A4: Advertisement and application

11. Section A4 sets out requirements in relation to advertisement of a current or upcoming vacancy in the position of senior lay member, as described in section A1. Section A4(1) obliges HEIs to advertise the vacancy by publication on the HEI's website and in either the online or print version of at least one Scottish national newspaper. Section A4(2) requires that the committee to whom responsibility has been delegated for devising the relevant criteria with respect to the position of senior lay member must ensure that the advert includes certain things. Specifically, it must set out the functions exercisable by the senior lay member under section A1(2), summarise the relevant criteria and state how more information about those criteria can be obtained, as well as explaining the appointment process, how the application form can be obtained, what expenses can be met for attending an interview and campaigning in an election, and what remuneration and allowances are available for holding the position. Section A4(2)(a) does not require reference to functions beyond those specified in section A1(2). In the case of

the ancient universities at which there is a rector the senior lay member's functions under paragraphs (a) and (b) of section A1(2) are subject to the preservation of the functions of the rector by section A2 as discussed above and so the terms of the advertisement will need to reflect this. In that and any other case, there is no requirement as to the level of detail that the advert must contain when explaining the matters in section A4(2)(c) and so this remains a decision for the HEI.

Section A5: Interview of certain applicants

12. Section A5 concerns the assessment of applications and applicants at interview for the position of senior lay member. Subsection (1) requires that where an application for the position of senior lay member is made in the correct form in response to the advertisement of that position and where the applicant appears from the application, in the view of the committee provided for in section A3(1), to meet the relevant criteria, the applicant must be invited to an interview conducted by the committee. This requires the committee to decide whether or not it is satisfied that an applicant appears from the application to meet the criteria that the committee has set. Subsection (2) provides that if the applicant satisfies the committee at interview that the applicant meets the relevant criteria, then the applicant is entitled to stand for election to the position. Again, it is for the committee to decide whether or not it is satisfied that an applicant has demonstrated that they meet the criteria. Subsection (3) requires the HEI to offer every applicant reimbursement of reasonable expenses incurred in attending an interview (with the HEI determining what is reasonable).

Section A6: When election to be convened

13. Subsection (1) of section A6 places a duty on each HEI to convene an election for the position of senior lay member if more than one applicant for the position is entitled to stand as a candidate in the election, in the terms described in section A5, and confirms an intention to stand as a candidate. If fewer than two candidates are entitled to stand under section A5 then there would be a subsisting vacancy and the recruitment process would have to begin again from the point of advertisement under section A4. Subsection (2) of section A6 requires an HEI that has convened such an election, where the number of candidates subsequently falls below two, to postpone the election until it can be held with more than one candidate. In such a case, the vacancy would need to be advertised again, but any subsisting candidate remains entitled to stand in that reconvened election without the need to reapply or be interviewed again. Subsection (3) requires HEI governing bodies to offer reimbursement of campaigning expenses to candidates standing for election up to a limit to be fixed by the governing body. That limit is to apply per candidate and must apply equally to every candidate.

Section A7: Election franchise and result

14. Section A7 relates to the election franchise and the election result in an election for the position of senior lay member. Section A7(1) provides that all staff and students of the HEI as well as members of the governing body will be entitled to vote in that election. The term students of the HEI is defined in section 18A. Subsections (2) and (3) provide that an individual can only cast one vote (regardless of the number of eligible voting categories into which the individual falls), with each vote cast carrying equal weight. Subsection (4) provides for a simple majority electoral system such that the election is won by the candidate who secures the highest number

of votes. Subsection (5) provides that when there is a tie for the highest number of votes cast, the winner is whoever is deemed the winner in accordance with rules made by the governing body of the HEI.

Section A8: Appointment and tenure

15. Subsection (1) of section A8 places a duty on the governing body to appoint the winning candidate in an election as determined under section A7 to the position of senior lay member. Subsection (2) provides that appointment is to be made for the period specified in rules made by the governing body. Those rules may also specify that this period can be extended, without the need for the individual to seek re-election. Subsection (3) provides that appointment under section A8 (i.e. appointment following an election under section A7) is the only way in which a senior lay member may be appointed. Should the winning candidate decline to be appointed or be unable to take up the position, there would be a subsisting vacancy and the recruitment process would have to begin again from the point of advertisement under section A4.

Section A9 Remuneration and conditions

16. Section A9 concerns the remuneration and terms and conditions of the appointment of a senior lay member. It requires the governing body of an HEI to pay reasonable remuneration and allowances to the senior lay member of the governing body on the request of the appointed senior lay member. It also makes provision about the terms and conditions of appointment of the senior lay member.

17. Subsection (1) ensures that a senior lay member can obtain on request remuneration and allowances for the functions that the senior lay member has fulfilled in relation to that position. The sum to which the senior lay member is entitled under this section is not a salary; it is remuneration and allowances for specific work actually done, and need only be paid if requested by the senior lay member. Following such a request, payment must be made by the HEI of remuneration and allowances that are reasonable and commensurate with the nature and amount of work done by the senior lay member (with the HEI determining what is reasonable).

18. The position of senior lay member is to be independent and, to that end, subsection (2) provides that the post holder must not be a staff member or student of the institution during the person's period of appointment. Subsection (3) provides that it is for the governing body of each HEI to specify the other terms and conditions of that appointment.

Section 1A: Resignation or removal of chairing member

19. Section 1A concerns the resignation or removal of the "chairing member" of an HEI's governing body. There is a similar provision in section 5A regarding other members of the governing body.

20. Subsection (1) provides that the chairing member of the governing body of an HEI can resign from office by giving written notice to the secretary of the governing body. Subsection (2) provides for when such resignation takes effect, which is at the end of the period of 3 months beginning with the date of receipt of the notice by the secretary of the governing body or such

other period agreed between the chairing member and the secretary. Subsections (3) and (4) allow for removal from office where at least two thirds of the members of the governing body pass a resolution because they consider that the member is unable, unwilling or unsuitable to continue to perform the functions of the office, in accordance with rules made by the governing body. Subsection (6) provides that the chairing member who is the subject of such a resolution is not entitled to vote on it. Subsection (5) sets out some of the factors to which the governing body may have particular regard to when considering whether any of the grounds for removal are established. These are whether the member has frequently failed to attend meetings of the governing body without reasonable excuse, any conduct of the member that is in breach of the member's duties as a charity trustee, and any conduct of the member that the governing body considers brings the HEI into disrepute. Under subsection (7), the governing body must provide a right of appeal against any removal from office in accordance with rules made by the nominations committee of the HEI.

Membership of governing body

Section 4: Composition of governing body

21. Section 4 sets out the composition of the membership of an HEI's governing body. This provision is intended to introduce greater consistency in the basic composition of the governing bodies of HEIs. Section 4(1) provides that each governing body must include the members listed below. A person cannot be appointed as a member under more than one of these categories at the same time. The required members are:

- the person appointed to the position of senior lay member by virtue of section A8 (section 4(1)(a));
- two members directly elected by the staff of the HEI from among the staff of the HEI (section 4(1)(b));
- two members nominated by trade unions; both members must be members of staff of the HEI in question and must be members of a branch of a union that has a connection with the HEI; one member is to be nominated by a trade union which is recognised by the HEI in relation to the academic staff of the HEI and one member is to be nominated by a trade union which is recognised by the HEI in relation to the support staff of the HEI (section 4(1)(c) and (d));
- two members nominated by a students' association of the HEI (section 4(1)(e)); the student nominees must be students of the HEI which, by virtue of section 18A, includes sabbatical officers whether or not they remain as students during their period in office; and
- other persons appointed in accordance with the governing instruments of the HEI or any related enactment (section 4(1)(g)); this leaves the governing body to appoint the remaining members as it wishes, provided that this is in line with its governing instruments or any applicable legislation, for example the Universities (Scotland) Acts or individual governance orders made under section 45 of the 1992 Act.

22. Section 4(2) provides that a trade union is recognised in relation to a category of staff of an HEI if it is recognised for collective bargaining purposes by that HEI (as described in section

178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992) or if the HEI otherwise considers the trade union to be representative of the category of staff.

Section 5: Elections to governing body

23. Section 5 makes provision for the election of staff members appointed under section 4(1)(b). Section 5(2) states that the election is to be conducted according to rules made by the governing body of the HEI. Section 5(3) clarifies that the rules may make different provision for different vacancies (which means that different rules could be made by an HEI to apply to different categories of membership of the governing body if the HEI considers that to be appropriate) and may define “staff” as academic staff, support staff or all staff in order to specify the electorate and eligible candidates for a particular vacancy. Section 5(4) makes it clear that when eligible candidates are equal to or fewer than the number of staff members being sought in any category of staff, those candidates are deemed to be elected.

Section 5A: Resignation or removal of ordinary members of governing body

24. Section 5A concerns the resignation or removal of ordinary members of the governing body of an HEI. There is a similar provision in section 1A regarding the “chairing member” of the governing body.

25. Subsection (1) provides that ordinary members of the governing body of an HEI can resign from office by giving written notice to the chairing member (i.e. the senior lay member) of the governing body. Subsection (2) provides for when such resignation takes effect. Subsections (3) and (4) allow ordinary members to be removed from office, in accordance with rules made by the governing body, where at least two thirds of the members of the governing body pass a resolution on the grounds that the member is unable, unwilling or unsuitable to continue to perform the functions of the position. Subsection (6) provides that the ordinary member who is the subject of such a resolution is not entitled to vote on it. Subsection (5) sets out some of the factors to which the governing body may have particular regard to when considering whether any of the grounds for removal are established. These factors are whether the member has frequently failed to attend meetings of the governing body without reasonable excuse, any conduct of the member that is in breach of the member’s duties as a charity trustee, and any conduct of the member that the governing body considers to bring the HEI into disrepute. Under subsection (7), the governing body must provide a right of appeal against any decision to remove an ordinary member, in accordance with rules made by the nominations committee of the HEI.

Section 6: Nominations to governing body

26. Section 6 makes provision for the nomination of the members of the governing body appointed by being nominated under section 4(1)(c) to (e). Section 6(2) requires that the nomination process is conducted according to any rules on nomination made by the governing body of the HEI. The rules required under this section deal only with the nomination process. The Bill provides that the role of nominating bodies is simply to nominate but it remains open to an HEI to make provision for a more extensive role which might include the recall of nominees, subject to the provisions on removal in section 5A. Section 6(3) provides that the rules may determine who can exercise the right of nomination (for example, where there is more than one

body which meets the criteria for making a nomination under section 4) and that different provision might be made for different vacancies on the governing body.

27. Section 6(4) sets out that before making or changing any existing rules under section 6(2), the governing body must consult the representatives of anyone who has both a right of nomination under the proposed rules (section 6(4)(a)) and who is affected by the proposed new rules or by any proposed amendment to existing rules (section 6(4)(b)). Accordingly, if only part of the rules are revised, there will be no requirement to consult with bodies that have a right to make a nomination if the rules that are applicable to that body are not subject to any changes.

Section 7: Validity of body's proceedings

28. Section 7 ensures that the validity of proceedings of the governing body of an HEI is not affected by any vacancy arising in membership or category of membership (section 7(a)). This means that, in the event of an unexpected vacancy arising, the HEI can continue to function pending the appointment of a new member under section 4. Further, this validity is not affected by any defect in the appointment of a member of the relevant governing body (section 7(b)).

Chapter 2: Academic boards

Section 10: Composition of academic board

29. Section 10(1) sets out the composition of the membership of an academic board of an HEI. Each academic board must include the following members:

- the principal of the HEI (section 10(1)(a));
- heads of school, who are the individuals who are the most senior academics in a particular department within an HEI (section 10(1)(b));
- academic staff elected from among their own number (section 10(1)(c));
- students elected from among their own number (section 10(1)(d)) which, by virtue of section 18A, includes sabbatical officers whether or not they remain as students during their period in office; and
- other persons appointed by virtue of a related enactment (section 10(1)(e)(i)) or in accordance with the governing instruments of the HEI (section 10(1)(e)(ii)) or in accordance with a decision made by the governing body of the HEI (section 10(1)(e)(iii)).

30. Section 10(2)(a) provides that more than 50% of the membership of the academic board members must be persons elected by staff or students. Section 10(2)(b) provides that at least 10% of the membership of the academic board members must be persons elected by students.

31. Section 10(3) provides that, despite section 10(2)(b), HEIs are not obliged to elect more than 30 student members. The proportions that will be required (just over 50%, and 10%, respectively) are generally reflected in the composition of the majority of existing academic boards. Election, rather than nomination, of student members to academic boards will be new to the majority of HEIs.

Section 11: Elections to academic board

32. Section 11 makes provision for the conduct of elections of members appointed under section 10(1)(c) or (d). Section 11(2) provides that the election is to be conducted in accordance with rules made by the governing body of the HEI. Under section 11(3) the rules may determine the number of appointments to be made (paragraph (a)), and make different provision for different vacancies (paragraph (b)) (which means that the rules for the election of staff members could be different to the rules for the election of student members).

33. Section 11(4) provides that where the number of eligible candidates in one of the categories in section 10 is equal to or fewer than the number of vacancies available in that category, those candidates will be deemed to be elected.

Section 12: Validity of board's proceedings

34. Section 12 ensures that the validity of proceedings of the academic board of an HEI is not affected by any vacancy in membership or category of membership (paragraph (a)). It further provides that this validity is not affected by any defect in the appointment of a member of the relevant academic board (paragraph (b)).

Chapter 3: Key definitions

Section 15: Meaning of higher education institution

35. Section 15(1) provides a definition of the term “higher education institution” which applies for the purposes of Part 1 of the Bill. Section 15(1) provides that the term has the same meaning as in the 2005 Act, but that it includes an institution here only if it is also listed in schedule 2 to the 2005 Act. The definition of HEI, however, explicitly excludes the Open University (subsection (1)(b)).

36. The 2005 Act definition of “higher education institution” is found in section 35(1) of that Act where it is defined as (1) a university or (2) a designated institution within the meaning of section 44(2) of the 1992 Act. In practice, the only non-universities which are currently designated under that section are:

- the Royal Conservatoire of Scotland (which was designated by SI 1992/1025 under its former name, the Royal Scottish Academy of Music and Drama),
- Glasgow School of Art (which was also designated under SI 1992/1025), and
- SRUC, or Scotland’s Rural College (which was designated by SSI 2008/177 under its former name, the Scottish Agricultural College).

37. Any institution listed in schedule 2 to the 2005 Act is a fundable post-16 education body, meaning that it is currently eligible to receive funding from the Scottish Further and Higher Education Funding Council. However, the further education colleges listed under the first italic heading in that schedule will not be caught, as they are not covered by the definition of higher education institution in section 35(1) of the 2005 Act.

38. The effect of the definition is to capture institutions which provide higher education in Scotland only if they are eligible for public funding, while excluding the Open University on the basis that it is a single institution established elsewhere and operating across multiple jurisdictions which might otherwise be made subject to conflicting governance requirements.

39. Section 15(2) provides that the Scottish Ministers may by regulations modify the definition of “higher education institution” in subsection (1). This would enable the Scottish Ministers to exclude a particular HEI (including the Open University itself) from that definition. There is no power for the Scottish Ministers to add a particular HEI, but all new HEIs will automatically be included within the definition as long as they are fundable post-16 education bodies. Section 15(3) provides that such regulations will be subject to the negative procedure.

Section 16: Meaning of governing document

40. Section 16 sets out the meaning of the term “governing document” used in Part 1 of the Bill. Section 16(1)(a) confirms that in the case of an older university this means any ordinances made under the Universities (Scotland) Acts. Under the same subsection, paragraph (b) confirms that for an HEI established by royal charter, a governing document is any of its charters and any statutes made under them (paragraph (b)).

41. Section 16(1)(c) confirms that in the case of a “designated institution”, a governing document will be any orders of the Privy Council which are in force with respect to the HEI, except where the HEI is a registered company under the Companies Acts and it has no orders of the Privy Council in force in relation to it. In such cases the governing document is the articles of association of the HEI. Section 16(2) clarifies that the term “designated institution” means an institution designated under Part II of the 1992 Act (where the definition is found in section 44).

42. Section 16(1)(d) explains that a governing document, aside from the cases set out in section 16(1)(a) to (c), means any instrument which establishes the HEI or which governs the composition of its governing body or academic board.

43. In addition to defining “designated institution”, section 16(2) provides that, “older university” is to be construed in accordance with section 16(1) of the Universities (Scotland) Act 1966. These are the University of Aberdeen, the University of Edinburgh, the University of Glasgow and the University of St. Andrews. It also provides that “registered company” means a company registered under the Companies Acts as defined in section 2 of the Companies Act 2006.

Section 17: Meaning of governing body

44. Section 17 states that, in Part 1 of the Bill, the term “governing body” has the same meaning as in Part II of the 1992 Act (where the definition is found in section 56(1)).

Section 18: Meaning of academic board

45. Section 18 states the meaning of the term “academic board” in the context of an HEI. Section 18(1)(a) and (b) explains that the term means the body of persons with responsibility for

overall planning, co-ordination, development and supervision of the academic work of the HEI but that the academic board discharges that responsibility subject to the general control and direction of the governing body of the HEI.

46. Section 18(2) clarifies that the “academic board” is also known in some HEIs as the Senate, Senatus or (and in the case of the older universities, in the Universities (Scotland) Acts) Senatus Academicus.

Section 18A: References to students

47. Section 18A provides for how the term ‘students of a higher education institution’ is to be understood for the purposes of the Bill. This section states that a reference to the students of a higher education institution includes all persons holding sabbatical office in a students’ association of the institution, whether or not they remain students of the institution during their period of office.

48. The term ‘sabbatical officer’ is generally understood in the higher education sector and is used in certain governance orders made under section 45 of the 1992 Act as well as other education legislation. Section 22 of the Education Act 1994 sets out the requirements to be observed in relation to students unions (i.e. students’ associations). Section 22(2)(f) of that Act states that “a person should not hold sabbatical union office, or paid elected union office, for more than two years in total at the establishment”.

PART 2: ACADEMIC FREEDOM

Section 19: Upholding academic freedom

49. Section 19 of the Bill substitutes a new section 26 into the 2005 Act. The new section strengthens the obligation on post-16 education bodies by providing that such bodies must aim to uphold, so far as the body considers reasonable, the academic freedom of persons engaged in teaching, the provision of learning or research at that body (section 26(1)(a)). Specifically, the new section 26(1)(b) provides that post-16 education bodies must aim to ensure, so far as the body considers reasonable, that appointments of such persons (whether held or sought) and any entitlements or privileges enjoyed by such persons are not adversely affected by the exercise of their academic freedom. The new section 26(4) expands the current definition of academic freedom to clarify that it includes the freedom, within the law, to develop and advance new ideas or innovative proposals. This adds to the existing freedom to hold and express opinions, question and test established ideas or received wisdom, and present controversial or unpopular points of view.

PART 3: GENERAL PROVISIONS

Section 20: Ancillary regulations

50. Section 20(1) gives the Scottish Ministers the power, by regulations, to make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with the Act. Section 20(2)(a) provides that these regulations will be subject to the affirmative procedure when they

add to, replace, or omit any part of the Act or any other Act. Section 20(2)(b) provides that, in all other circumstances, regulations will be subject to the negative procedure.

Section 21: Consequential modifications

51. Section 21 introduces a schedule to the Bill making a number of consequential amendments to, or modifications of, other enactments as a result of the Bill. Paragraph 1 of the schedule makes consequential amendments to the Universities (Scotland) Act 1858. Paragraph 2 of the schedule makes consequential amendments to the Universities (Scotland) Act 1889. Finally, paragraph 3 makes consequential amendments to the Universities (Scotland) Act 1966. The consequential amendments are necessary as a result of the Bill's provisions on the appointment of senior lay members of governing bodies, the composition of governing bodies of HEIs and the composition of academic boards.

Section 22: Commencement

52. Section 22(1) brings sections 22 and 23 into force on the day after Royal Assent. Section 22(2) provides that the other provisions in the Act come into force on a day appointed by the Scottish Ministers in regulations. Section 22(3)(a) allows the Scottish Ministers by regulations made under subsection (2) to bring the other provisions of the Bill into force on different days for different purposes and section 23(3)(b) allows the Scottish Ministers to include transitional, transitory or saving provision in those regulations.

*This document relates to the Higher Education Governance (Scotland) Bill
as amended at Stage 2 (SP Bill 74A)*

HIGHER EDUCATION GOVERNANCE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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