

HIGHER EDUCATION GOVERNANCE (SCOTLAND) BILL

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this supplementary Financial Memorandum is published to accompany the Higher Education Governance (Scotland) Bill (introduced in the Scottish Parliament on 16 June 2015) as amended at Stage 2.
2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.
3. The purpose of this supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following the amendments made at Stage 2. The majority of amendments do not significantly affect the assumptions in the original Financial Memorandum. This document addresses those amendments where additional costs occur or costs are likely to be altered. Amendments agreed at Stage 2 which are not covered in this supplementary Financial Memorandum are considered not to give rise to any substantial additional costs.
4. The original Financial Memorandum that accompanied the Bill at introduction set out costs relating to the remuneration of the chair of the governing body as £3,072 per higher education institution. These costs have been increased by £12,768 per institution in this supplementary Financial Memorandum. Evidence provided at Stage 1 has informed this change. Further details are provided at paragraph 17.

STAGE 2 AMENDMENTS WITH ANTICIPATED OR POTENTIAL COST IMPLICATIONS

Senior lay member of governing body: sections A1 to 1A

5. Full provision for the appointment of an individual to the position of senior lay member of the governing body of a higher education institution ("HEI") was inserted into the Bill at Stage 2 by amendment. New sections A1 to A8 replace the original section 1 of the Bill which conferred a power on the Scottish Ministers to set out, in regulations, the process by which a chairing member of the governing body of an HEI must be appointed.

6. Sections A1 to A8 require HEIs to appoint the senior lay member of their governing body through a two stage process of advertisement, application and selection followed by an election. These provisions require an HEI to publicly advertise the vacancy in at least one Scottish national newspaper as well as on its own website, sift applicants for interview (with the sifting to be carried out by a committee against relevant criteria that the committee has devised to reflect the skills and knowledge required to perform the role), and interview those shortlisted applicants who demonstrate that they meet the relevant criteria through the sift exercise. If the applicant satisfies the committee that they meet the relevant criteria at interview, they are then entitled to stand as a candidate for election for the position of senior lay member. The franchise for this election will be the members of the governing body, and the staff and the students of the institution.

7. Section A5(3) provides that the governing body of an HEI must offer every applicant reimbursement of reasonable expenses incurred in attending an interview for selection as a candidate in an election to the position of senior lay member. It is for the HEI to decide what is reasonable. Interview expenses were costed in the Financial Memorandum that accompanied the Bill at introduction. This was based on potential costs in respect of the regulation making power contained in section 1 at introduction. The basis of that cost has now been confirmed in section A5(3) by provision on the face of the Bill as amended at Stage 2. The level of the cost estimated in the original Financial Memorandum is unchanged; all that has changed is that it is now certain that the cost will be incurred.

8. Section A6(3) provides that candidates that are entitled to stand as a candidate for election must be offered reimbursement of reasonable expenses that are incurred in campaigning in the election. It is for the HEI to decide what is reasonable and to fix a limit per candidate which will apply equally to each candidate. Campaign expenses were costed in the Financial Memorandum that accompanied the Bill at introduction. This was based on potential costs in respect of the regulation making power contained in section 1 at introduction. The basis of that cost has now been confirmed in section A6(3) by provision on the face of the Bill as amended at Stage 2. The level of the cost estimated in the original Financial Memorandum is unchanged; all that has changed is that it is now certain that the cost will be incurred.

Remuneration and conditions

9. Full provision for the remuneration and conditions of an individual appointed to the position of senior lay member of the governing body of an HEI was inserted into the Bill at Stage 2 by amendment. New section A9 replaces the original section 2 of the Bill, which conferred a power on the Scottish Ministers to make provision, by regulations, for remuneration and allowances to be payable by an HEI to the chairing member. Section A9 provides that a senior lay member of the governing body can request, from the HEI, remuneration and allowances for the functions that senior lay member has fulfilled in relation to that position; payment must be made if the remuneration and allowances are reasonable and commensurate with the nature and amount of work done by the senior lay member. 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.

COSTS ON THE SCOTTISH ADMINISTRATION

10. The amendments agreed at Stage 2 will have no further cost or resource implications in respect of the Scottish Administration than those set out in the original Financial Memorandum.

COSTS ON LOCAL AUTHORITIES

11. There are no anticipated costs on local government arising from the amendments.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

12. The costs associated with this Bill are expected to be met from the existing resources of individual HEIs.

Election of a senior lay member to the governing body

13. The requirement for HEIs to run an election to appoint the senior lay member presents a new cost to individual institutions. This was addressed in the Financial Memorandum at introduction. However, amendment of the Bill to replace the regulation making power at section 1 with full provision now informs the Scottish Government's consideration of the costs associated with this. Many HEIs will already operate online voting for existing elections and where an HEI already has a subscription to an online election software programme which is an unlimited annual subscription, there will be no additional cost to them (other than a small amount of time in running the programme, which is expected could be done within existing staff time).

14. In respect of instances where an HEI does not already have a subscription to an online election software programme which is an unlimited annual subscription, research carried out using publicly available information shows that for smaller institutions with an electorate of approximately 5000 voters, election software subscriptions can be purchased at a cost of approximately £2,000 per election. For larger institutions, such as those with an electorate of approximately 30,000 voters, election software subscriptions can be purchased at a cost of approximately £5,000 per election. The estimated total cost for all 18 HEIs would therefore fall between £36,000 - £90,000 per election dependent on size of the electorate. A senior lay member is normally appointed for a four year period, therefore this cost would normally arise only once every four years. However, annual subscriptions are also available and could be taken out where the institution is using similar software for other elections and the cycle of elections is such that this would be more economical.

15. This estimate of cost does not include information on the staffing and other costs to the institution of conducting the election and ensuring its probity as all HEIs are likely to have systems in place to manage the various internal elections that they already conduct. It is expected that these costs will be absorbed within existing institutional budgets.

16. Although three of the 15 written submissions to the Finance Committee during Stage 1 provided costs in respect of conducting an election, this was based on the Bill as introduced and not as amended. The University of Dundee placed the cost at £21,000

based on a recently held election which was outsourced, and the University of Aberdeen placed the cost at around £30,000. Universities Scotland placed the cost between £1,000 and £3,000 per election using electronic voting only. Based on the Universities Scotland maximum figure of £3,000 per election, the cost of running senior lay member elections might total £54,000 for all of the 18 HEIs per election, which would be met from existing budgets. For the same reason as that in paragraph 14, these estimates do not include information on the staffing and other costs to the institutions of conducting the election and ensuring its probity. As the costs provided by the sector are not attributable to the Bill as amended, the costs estimated for the election of a senior lay member are considered to be as set out at paragraph 13 above.

17. The requirement for HEIs to offer every candidate in the election reasonable campaigning expenses presents a new cost to institutions. It is for the HEI to decide what is reasonable. This was addressed in the Financial Memorandum at introduction. However, amendment of the Bill to replace the regulation making power at section 1 with full provision now informs the Scottish Government's consideration of the costs associated with this. It is considered that the maximum cost of election campaign costs would be broadly equivalent to the cost of electing a rector within the ancient universities. The University of Aberdeen¹ provides detailed guidance on the process of electing a rector and specifies the maximum permitted campaigning costs. During the rectoral election process at the University of Aberdeen, candidates and their proposers are limited to spending £500 in connection with promoting that candidate's campaign. This includes expenditure on items such as posters, leaflets, advertisements and websites. The University of Aberdeen subsequently reimburses expenditure of up to £300, subject to receipts being provided. Candidates may personally contribute or obtain sponsorship of up to a further £200. The cost of reimbursing candidates to campaign for election is, therefore, estimated at an upper limit of £500 per candidate; however, it is for each HEI to fix a limit that it considers reasonable. It is assumed that this cost would be met in its entirety from the existing budgets of HEIs.

Remuneration of the senior lay member

18. The Bill as amended at Stage 2 requires that HEIs provide, upon request, reasonable remuneration and allowances to the senior lay member of the governing body commensurate with the nature and amount of work done in fulfilling the functions of office. 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. The original Financial Memorandum that accompanied the Bill at introduction sets out these remuneration costs for a chair in fulfilling the functions of that post. Those functions are the same as that of the senior lay member provided for in the Bill following Stage 2. The original assumptions were that a governing body of an institution would meet on average between four and six times per academic year. This focuses on chairing meetings of the court. Other duties carried out by senior lay members will vary by institution. However, further evidence gathered from individual HEI financial accounts show that senior lay members are linked to between six and 18 court and committee meetings per year, although these meetings do not necessarily

¹ http://www.abdn.ac.uk/infohub/documents/Rectorial_Election_Rules_for_the_web.pdf

last full days. Allowing for some preparation time for these meetings, it is considered reasonable to estimate that the senior lay member may spend a total of 30 full days carrying out the specific duties of chairing the governing body, attending subcommittee meetings and preparing for both.

19. As per the original Financial Memorandum, for illustrative purposes the Scottish Government has used the Public Sector Pay Policy for Senior Appointments Technical Guidance 2015/16² to estimate a maximum daily fee rate of £528. Attributing this to all HEIs would suggest a cost of £15,840 per annum per individual institution which when multiplied by the 18 HEIs affected by this provision would equate to a total approximate cost across all 18 HEIs of £285,120 per annum. This figure is considered a maximum as it is unlikely that all senior lay members will request the remuneration available for carrying out the duties of this post. In those HEIs where senior lay members already receive remuneration, the cost for those HEIs will not necessarily increase. These costs are expressed in the table below:

Table 1 - Assumed annual cost to HEIs for remuneration of senior lay member

	Assumed Daily Rate	Average number of remunerated days per year	Assumed total cost per institution per year	Assumed cost per 18 institutions
(i) Remuneration of reasonable expenses	£528	30	£15,840	£285,120

20. Further information provided to the Finance Committee by the sector suggests that the senior lay member will spend between 35-60 days carrying out the duties associated with their post with most of the evidence estimating the senior lay member spends around one day per week carrying out these duties. As per the original Financial Memorandum, for illustrative purposes using the Public Sector Pay Policy for Senior Appointments Technical Guidance 2015/16 to estimate a maximum daily fee rate of £528. Attributing this to all HEIs would suggest a cost of between £18,480 and £31,680 per annum per individual institution which when multiplied by the 18 HEIs affected by this provision would equate to a total approximate cost of between £332,640 and £570,240 per annum. However, this estimate includes wider functions than those associated with the minimum requirements of the Bill.

21. For the purposes of compliance with duties in the Bill, the costs associated with remuneration are in relation to the time spent carrying out the core functions of the position of senior lay member: chairing meetings of the governing body, attending sub-committees and preparing for these meetings. It does not include other discretionary functions carried out by the senior lay member. This is why the estimate is based on 30 days rather than a higher figure.

² <http://www.gov.scot/Resource/0047/00475950.pdf>

Amendments to governing documents

22. In order to comply with the Bill, when enacted, HEIs will require to amend their governing instruments in order to align with this primary legislation. These adjustments will be made over a transitional period of around four years. The typical resource cost associated with consideration of subsequent amendments to HEIs' governing documents was not indicated in the original Financial Memorandum that accompanied the Bill at introduction. Of the 15 responses provided to the Finance Committee, 10 provided some form of evidence in relation to the staff time taken to update the HEIs' governing documents. Of the 10, whilst agreeing that there would be a staff time/resource cost associated with carrying out this work, seven provided no estimate of costs.

23. The University of St Andrews estimated a one off cost of at least £50,000 whilst the University of Edinburgh estimated a one off cost of £79,500. Universities Scotland indicates that the precise impact is difficult to estimate, but estimates that one full-time member of staff for one year would be required per HEI. Exact costs would depend on the grade of the member of staff at each HEI, the number of individual changes required at each HEI and the manner in which the HEI chooses to implement the changes - for example making one detailed update or amending existing documents individually over the course of the full transitional period. In addition, this cost will also be influenced by the existing governance arrangements in each institution and how compliant an HEI already is with the requirements of the Bill. It is therefore not possible to estimate this cost.

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

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(SCOTLAND) BILL**
[AS AMENDED AT STAGE 2]

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