

Higher Education Governance (Scotland) Bill

[AS AMENDED AT STAGE 2]

CONTENTS

Section

PART 1

GOVERNANCE ARRANGEMENTS

CHAPTER 1

GOVERNING BODIES

Senior lay member of governing body

- A1 Position of senior lay member
- A2 Interaction with role of rector
- A3 Relevant criteria etc.
- A4 Advertisement and application
- A5 Interview of certain applicants
- A6 When election to be convened
- A7 Election franchise and result
- A8 Appointment and tenure
- A9 Remuneration and conditions
- 1A Resignation or removal of chairing member

Membership of governing body

- 4 Composition of governing body
- 5 Elections to governing body
- 5A Resignation or removal of ordinary members of governing body
- 6 Nominations to governing body
- 7 Validity of body's proceedings

CHAPTER 2

ACADEMIC BOARDS

- 10 Composition of academic board
- 11 Elections to academic board
- 12 Validity of board's proceedings

CHAPTER 3

KEY DEFINITIONS

- 15 Meaning of higher education institution
- 16 Meaning of governing document
- 17 Meaning of governing body
- 18 Meaning of academic board

18A References to students

PART 2

ACADEMIC FREEDOM

19 Upholding academic freedom

PART 3

GENERAL PROVISIONS

Ancillary and consequential

20 Ancillary regulations

21 Consequential modifications

Commencement and short title

22 Commencement

23 Short title

Schedule—Consequential modifications

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Higher Education Governance (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the composition of and appointment to the governing bodies and academic boards of higher education institutions; and to revise provision about the academic freedom of various persons carrying out activities at higher education and certain other institutions.

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PART 1

GOVERNANCE ARRANGEMENTS

CHAPTER 1

GOVERNING BODIES

Senior lay member of governing body

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A1 Position of senior lay member

- (1) The governing body of a higher education institution is to include the position of senior lay member (however the institution chooses to name the position).
- (2) The senior lay member of the governing body of a higher education institution has—
 - (a) the duty to preside at meetings of the governing body,
 - (b) a deliberative and a casting vote at such meetings,
 - (c) responsibility for—
 - (i) the leadership and effectiveness of the governing body,
 - (ii) ensuring that there is an appropriate balance of authority between the governing body and the principal of the institution.
- (3) Another member of the governing body of a higher education institution may be selected by the governing body to exercise any of the functions mentioned in subsection (2) in the absence of the senior lay member or while the position is vacant.
- (4) Subsections (2) and (3) are subject to section A2.

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A2 Interaction with role of rector

- 5 (1) Subsection (2) applies in the case of a higher education institution at which there is a rector who has functions under section 4 of the 1858 Act and section 5(5) of the 1889 Act (each of which contains provision relating to the role of the rector at an older university).
- (2) Paragraphs (a) and (b) of subsection (2) of section A1 and subsection (3) of that section so far as relating to those paragraphs are of no effect in relation to the institution (but see section 5(5) of the 1889 Act (which also contains provision about who is to preside at certain meetings in the absence of the rector)).
- 10 (3) In this section—
“the 1858 Act” means the Universities (Scotland) Act 1858,
“the 1889 Act” means the Universities (Scotland) Act 1889.

A3 Relevant criteria etc.

- 15 (1) Whenever a vacancy arises in the position of senior lay member of the governing body of a higher education institution, the governing body must delegate to a committee the responsibility of—
(a) devising the relevant criteria with respect to the position,
(b) ensuring the efficiency and fairness of the process for filling the position.
- 20 (2) The relevant criteria include the skills and knowledge considered by the committee to be necessary or desirable to—
(a) exercise the functions of the senior lay member,
(b) command the trust and respect of—
(i) the other members of the governing body,
(ii) the academic board of the institution,
25 (iii) the staff and students of the institution.
- (3) The membership of the committee must include at least one person from each of these categories—
(a) the staff of the institution,
(b) the students of the institution.
- 30 (4) Rules made by the governing body of the institution may make provision for the process for filling the position of senior lay member of the governing body (subject to sections A4 to A8).

A4 Advertisement and application

- 35 (1) A current or upcoming vacancy in the position of senior lay member of the governing body of a higher education institution is to be advertised by the governing body, including by publication—
(a) on the institution’s website, and
(b) in the print or internet version of at least one national newspaper in Scotland.

- (2) The committee mentioned in section A3(1) is to ensure that the advertisement—
- (a) sets out the functions exercisable by the senior lay member of the governing body under section A1(2),
 - (b) summarises the relevant criteria with respect to the position and states how more information about the relevant criteria can be obtained,
 - (c) explains—
 - (i) the process for filling the position,
 - (ii) how the application form in relation to the position can be obtained,
 - (iii) what reimbursement is offered of expenses incurred in connection with attending an interview or campaigning in an election for the position,
 - (iv) what remuneration and allowances are available in connection with the holding of the position.

A5 Interview of certain applicants

- (1) If—
- (a) an application for the position of senior lay member of the governing body of a higher education institution is made in the correct form in response to an advertisement under section A4(1), and
 - (b) the application appears to the committee mentioned in section A3(1) to show that the applicant meets the relevant criteria with respect to the position,
- the applicant must be invited to an interview conducted by the committee.
- (2) If the applicant satisfies the committee at such an interview that the applicant meets the relevant criteria, the applicant is entitled to stand as a candidate in an election for the position.
- (3) The governing body of the institution is to offer every applicant for the position reimbursement of reasonable expenses that are incurred by the applicant in attending such an interview.

A6 When election to be convened

- (1) An election for the position of senior lay member of the governing body of a higher education institution must be convened if more than one applicant—
- (a) is entitled under section A5(2) to stand as a candidate in the election, and
 - (b) confirms an intention to stand as a candidate in the election.
- (2) If the number of candidates in the election subsequently falls to below two—
- (a) the election is to be postponed until the election can be held with more than one candidate standing (and the vacancy must be advertised under section A4(1) again),
 - (b) the remaining candidate (if there is one) continues to be entitled to stand as a candidate in the election.

- (3) The governing body of the institution is to offer every candidate in the election reimbursement of reasonable expenses that are incurred by the candidate in campaigning in the election (up to the limit per candidate that is fixed by the governing body).

A7 Election franchise and result

- 5 (1) These persons are entitled to vote in an election under section A6 for the position of senior lay member of the governing body of a higher education institution—
- (a) the members of the governing body,
 - (b) the staff of the institution,
 - (c) the students of the institution.
- 10 (2) No individual is entitled to cast more than one vote in the election.
- (3) Each vote cast in the election carries equal weight.
- (4) The election is won by the candidate who secures a simple majority of the total number of votes cast.
- 15 (5) In the event of a tie between two or more candidates for the highest number of votes cast, the election is won by whichever of them is deemed to be the winner in accordance with rules made by the governing body of the institution.

A8 Appointment and tenure

- 20 (1) The winning candidate in an election under section A6 for the position of senior lay member of the governing body of a higher education institution is to be appointed to the position by the governing body.
- (2) An appointment to the position is for the period specified in rules made by the governing body, but the period of such an appointment may be extended in accordance with the rules.
- 25 (3) The position cannot be filled otherwise than by an appointment made by virtue of this section.

A9 Remuneration and conditions

- 30 (1) The governing body of a higher education institution is, on the request of a person appointed to the position of senior lay member of the governing body, to pay reasonable remuneration and allowances to the person (which are to be commensurate with the nature and amount of the work done by the person in that capacity).
- (2) A person appointed to the position may not be a student of, or one of the staff of, the institution during the period of the person's appointment.
- (3) The holding by a person of the position is in all other respects subject to such terms and conditions as are specified by the governing body.

1A Resignation or removal of chairing member

- (1) The chairing member of the governing body of a higher education institution may resign from office by giving written notice to the secretary of the governing body.
- (2) Where notice is given under subsection (1), the resignation has effect at the end of—

- (a) the period of 3 months beginning with the date of receipt of the notice by the secretary of the governing body, or
- (b) such other period agreed between the chairing member and the secretary of the governing body.

5 (3) The chairing member of the governing body of a higher education institution may, by resolution passed by a majority of not less than two thirds of the members of the governing body, be removed from that office where the governing body considers that any of the grounds in subsection (4) are established.

(4) The grounds are that the chairing member is—

- 10
- (a) unable,
 - (b) unwilling, or
 - (c) unsuitable,

to continue to perform the functions of the office, in accordance with rules to be made by the governing body.

15 (5) In considering for the purposes of subsection (3) whether any of the grounds in subsection (4) are established, the governing body may have regard, in particular, to—

- (a) whether the chairing member has frequently failed without reasonable excuse to attend meetings of the governing body,
- 20 (b) any conduct of the chairing member that is in breach of any of the duties with which the chairing member is required to comply as a trustee under the Charities and Trustee Investment (Scotland) Act 2005,
- (c) any conduct of the chairing member that is considered by the governing body to bring the higher education institution into disrepute.

25 (6) A chairing member of a governing body of a higher education institution who is the subject of a resolution under subsection (3) is not entitled to vote on that resolution.

(7) If a resolution to remove a chairing member of a governing body of a higher education institution is agreed to by the governing body in accordance with subsection (3), the chairing member must be given a right of appeal against the decision, in accordance with arrangements made from time to time by the nominations committee of the
30 institution.

Membership of governing body

4 Composition of governing body

(1) The membership of the governing body of a higher education institution is to be composed of—

- 35
- (a) the person appointed to the position of senior lay member by virtue of section A8,
 - (b) 2 persons appointed by being elected by the staff of the institution from among their own number,
 - (c) 1 person appointed by being nominated by a trade union, recognised in relation to the academic staff of the institution, from among the academic staff of the
40 institution who are members of a branch of a trade union that has a connection with the institution,

(d) 1 person appointed by being nominated by a trade union, recognised in relation to the support staff of the institution, from among the support staff of the institution who are members of a branch of a trade union that has a connection with the institution,

(e) 2 persons appointed by being nominated by a students' association of the institution from among the students of the institution,

(g) such other persons as are appointed—

(i) by virtue of an enactment, or

(ii) in accordance with the governing document of the institution.

(2) For the purposes of paragraphs (c) and (d) of subsection (1), a trade union is recognised in relation to a category of staff if the higher education institution—

(a) so recognises it as described in section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) otherwise recognises it as representative of the category of staff.

5 Elections to governing body

(1) This section applies in relation to an election of members to the governing body of a higher education institution for the purpose of paragraph (b) of section 4(1).

(2) The election process is to be conducted in accordance with rules made by the governing body of the institution.

(3) Rules under subsection (2) may include (in particular)—

(a) different provision for different vacancies,

(b) provision defining “staff” for section 4(1)(b) as—

(i) academic staff,

(ii) support staff, or

(iii) all staff.

(4) Where the number of eligible candidates in a category is equal to or fewer than the number of vacancies in that category, those candidates are deemed to be elected.

5A Resignation or removal of ordinary members of governing body

(1) A person appointed, nominated or elected as a member (other than the person appointed under section 4(1)(a)) of the governing body of a higher education institution (in this section an “ordinary member”) may resign from that position by giving written notice to the chairing member of the governing body.

(2) Where notice is given under subsection (1), the resignation has effect at the end of—

(a) the period of 1 month beginning with the date of receipt of the notice by the chairing member, or

(b) such other period agreed between the ordinary member and the chairing member.

(3) A person appointed, nominated or elected as an ordinary member of the governing body of a higher education institution may, by resolution passed by a majority of not less than two thirds of the members of the governing body, be removed from that position where the governing body considers that any of the grounds in subsection (4) are established.

5 (4) The grounds are that the ordinary member is—

- (a) unable,
- (b) unwilling, or
- (c) unsuitable,

10 to continue to perform the functions of the position, in accordance with rules to be made by the governing body.

(5) In considering for the purposes of subsection (3) whether any of the grounds in subsection (4) are established, the governing body may have regard, in particular, to—

- (a) whether the ordinary member has frequently failed without reasonable excuse to attend meetings of the governing body,
- 15 (b) any conduct of the ordinary member that is in breach of any of the duties with which the member is required to comply as a trustee under the Charities and Trustee Investment (Scotland) Act 2005,
- (c) any conduct of the ordinary member that is considered by the governing body to bring the higher education institution into disrepute.

20 (6) An ordinary member of a governing body of a higher education institution who is the subject of a resolution under subsection (3) is not entitled to vote on that resolution.

(7) If a resolution to remove an ordinary member of a governing body of a higher education institution is agreed to by the governing body in accordance with subsection (3), the ordinary member must be given a right of appeal against the decision, in accordance with arrangements made from time to time by the nominations committee of the institution.

6 Nominations to governing body

30 (1) This section applies in relation to a nomination of members to the governing body of a higher education institution for the purpose of each of paragraphs (c) to (e) of section 4(1).

(2) The nomination process is to be conducted in accordance with rules made by the governing body of the institution.

(3) Rules under subsection (2) may include (in particular)—

- 35 (a) provision specifying who may exercise the rights of nomination (whether individually or jointly),
- (b) different provision for different vacancies.

(4) Before making or modifying rules under subsection (2), the governing body must consult the representatives of anyone—

- 40 (a) with a right of nomination under the proposed rules, and
- (b) affected by the proposed rules or (as the case may be) modification.

7 Validity of body's proceedings

The validity of any proceedings of the governing body is not affected by any—

- (a) vacancy in membership (or category of membership),
- (b) defect in the appointment of a member.

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CHAPTER 2

ACADEMIC BOARDS

10 Composition of academic board

(1) The membership of the academic board of a higher education institution is to be composed of—

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- (a) the principal of the institution,
- (b) the heads of school of the institution,
- (c) persons appointed by being elected by the academic staff of the institution from among their own number,
- (d) persons appointed by being elected by the students of the institution from among the students of the institution,
- (e) such other persons as are appointed—

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- (i) by virtue of an enactment,
- (ii) in accordance with the governing document of the institution, or
- (iii) in accordance with a decision of the governing body of the institution.

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(2) The academic board is to be constituted in such a way that—

- (a) more than 50% of its members fall within subsection (1)(c) or (d),
- (b) at least 10% of its members fall within subsection (1)(d).

(3) Despite subsection (2)(b), the academic board is not required to have more than 30 members who fall within subsection (1)(d).

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11 Elections to academic board

(1) This section applies in relation to an election of members to the academic board of a higher education institution for the purpose of each of paragraphs (c) and (d) of section 10(1).

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(2) The election process is to be conducted in accordance with rules made by the governing body of the institution.

(3) Rules under subsection (2) may include (in particular)—

- (a) provision specifying the number of appointments to be made,
- (b) different provision for different vacancies.

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(4) Where the number of eligible candidates in a category is equal to or fewer than the number of vacancies in that category, those candidates are deemed to be elected.

12 Validity of board’s proceedings

The validity of any proceedings of the academic board is not affected by any—

- (a) vacancy in membership (or category of membership),
- (b) defect in the appointment of a member.

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CHAPTER 3

KEY DEFINITIONS

15 Meaning of higher education institution

(1) In this Part, “higher education institution” has the same meaning as in the Further and Higher Education (Scotland) Act 2005 except that it—

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- (a) includes an institution only if the institution is listed in schedule 2 (fundable bodies) to that Act,
- (b) excludes The Open University.

(2) The Scottish Ministers may by regulations modify the definition in subsection (1) so as to exclude a particular institution.

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(3) Regulations under subsection (2) are subject to the negative procedure.

16 Meaning of governing document

(1) In this Part, “governing document”—

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(a) in the case of an older university, means its ordinances made under the Universities (Scotland) Acts 1858 to 1966,

(b) in the case of an institution established by royal charter, means its charters together with the statutes (if any) made under them,

(c) in the case of a designated institution—

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(i) if it is a registered company and no orders of the Privy Council are in force with respect to it, means its articles of association,

(ii) otherwise, means the orders of the Privy Council that are in force with respect to it,

(d) in any other case, means the instruments that establish the higher education institution or govern the composition of its governing body or academic board.

(2) In this section—

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“designated institution” has the same meaning as in Part II of the Further and Higher Education (Scotland) Act 1992,

“older university” is to be construed in accordance with section 16(1) of the Universities (Scotland) Act 1966,

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“registered company” means a company registered under the Companies Acts as defined in section 2 of the Companies Act 2006.

17 Meaning of governing body

In this Part, “governing body” has the same meaning as in Part II of the Further and Higher Education (Scotland) Act 1992.

18 Meaning of academic board

- (1) In this Part, “academic board” in relation to an institution means the body which—
- (a) is responsible for the overall planning, co-ordination, development and supervision of the academic work of the institution, and
 - (b) discharges that responsibility subject to the general control and direction of the governing body of the institution.
- (2) For the avoidance of doubt, the body described by subsection (1) is the one sometimes known as the Senate, Senatus or Senatus Academicus.

18A References to students

In this Act, 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 as students of the institution during their period of office).

PART 2

ACADEMIC FREEDOM

19 Upholding academic freedom

- (1) The Further and Higher Education (Scotland) Act 2005 is amended as follows.
- (2) For section 26 (academic freedom) there is substituted—

“26 Academic freedom

- (1) A post-16 education body must aim to—
- (a) uphold (so far as the body considers reasonable) the academic freedom of all relevant persons, and
 - (b) ensure (so far as the body considers reasonable) that the matters mentioned in subsection (2) are not adversely affected by the exercise of academic freedom by any relevant persons.
- (2) The matters are—
- (a) appointments held or sought, and
 - (b) entitlements or privileges enjoyed,
- at the post-16 education body by those relevant persons.
- (3) In this section, “relevant persons” in relation to a post-16 education body means persons engaged in—
- (a) teaching, or the provision of learning, at the body, or
 - (b) research at the body.
- (4) For the purposes of this section, “academic freedom” in relation to relevant persons includes their freedom within the law to do the following things—

- (a) hold and express opinions,
- (b) question and test established ideas or received wisdom,
- (c) develop and advance new ideas or innovative proposals,
- (d) present controversial or unpopular points of view.”.

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PART 3

GENERAL PROVISIONS

Ancillary and consequential

20 Ancillary regulations

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- (1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) Regulations under this section—
 - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
 - (b) otherwise, are subject to the negative procedure.

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21 Consequential modifications

The schedule makes consequential modifications.

Commencement and short title

22 Commencement

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- (1) This section and section 23 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
 - (a) appoint different days for different purposes,
 - (b) include transitional, transitory or saving provision.

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23 Short title

The short title of this Act is the Higher Education Governance (Scotland) Act 2016.

SCHEDULE
(introduced by section 21)

CONSEQUENTIAL MODIFICATIONS

The Universities (Scotland) Act 1858

- 5 1 (1) The Universities (Scotland) Act 1858 is amended as follows.
- (2) In section 4 (university courts to be constituted), the words “consist of the members and” are repealed.
- (3) In section 5 (powers of the senatus academicus and principal)—
- 10 (a) the words from “consist of” to “discipline of the University, and” are repealed,
- (b) for the words “its property” there is substituted “the University’s property”.

The Universities (Scotland) Act 1889

- 2 (1) The Universities (Scotland) Act 1889 is amended as follows.
- (2) In section 5 (which makes provision about University Courts)—
- 15 (a) in subsection (1), the words before “Seven” are repealed,
- (b) in subsection (2), the words “Chancellor or” are repealed in each place where they occur,
- (c) in subsection (5), for the words “a vice-chairman elected by the Court from among all its members” there is substituted “the senior lay member”,
- (d) after subsection (5) there is inserted—
- 20 “(5A) In subsection (5), “senior lay member” means the person appointed to the position by virtue of section A8 of the Higher Education Governance (Scotland) Act 2016.”.

The Universities (Scotland) Act 1966

- 3 (1) The Universities (Scotland) Act 1966 is amended as follows.
- 25 (2) In section 2 (constitution of university courts)—
- (a) in subsection (1), after the words “Subject to the provisions of section 17 of this Act” there is inserted “and Chapter 1 of Part 1 of the 2016 Act”,
- (b) subsection (6) is repealed.
- (3) Section 7 (constitution of senates) is repealed.
- 30 (4) In section 11 (university staff ineligible to become rector, or assessor on court except in certain circumstances), at the end of the proviso following paragraph (b) there is inserted “or the right of a person to be appointed in accordance with section 4(1)(b) to (d) of the 2016 Act”.
- (5) In section 16 (interpretation), at the beginning of the list of defined expressions in subsection (1) there is inserted—
- 35 ““the 2016 Act” means the Higher Education Governance (Scotland) Act 2016;”.

- (6) In Part I (powers exercisable by ordinance) of Schedule 2, for paragraph 4 there is substituted—

“4. To provide for—

(1) the term of office of members of the Senatus Academicus,

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(2) the manner of election of members of the Senatus Academicus, except those elected in accordance with rules made under section 11(2) of the 2016 Act.”.

Higher Education Governance (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the composition of and appointment to the governing bodies and academic boards of higher education institutions; and to revise provision about the academic freedom of various persons carrying out activities at higher education and certain other institutions.

Introduced by: Angela Constance
On: 16 June 2015
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