

Higher Education Governance (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 21	Schedule
Sections 22 and 23	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Angela Constance

3 Before section 1, insert—

<Senior lay member of governing body

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 (*Interaction with role of rector*).>

Angela Constance

4 Before section 1, insert—

<Interaction with role of rector

- (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).

- 10 (2) Paragraphs (a) and (b) of subsection (2) of section (*Position of senior lay member*) 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)).
- (3) Subsection (4) applies in the case of a higher education institution at which there is a rector if—
- (a) the rector has been elected to office, and
 - (b) the electorate comprised or included the students of the institution.
- 15 (4) In so far as provided for in rules made by the governing body of the institution—
- (a) if the institution is one to which subsection (1) refers, the functions mentioned in paragraph (c) of subsection (2) of section (*Position of senior lay member*) are exercisable by the rector of the institution instead of the senior lay member of the governing body,
 - 20 (b) if the institution is not one to which subsection (1) refers, any of the functions mentioned in subsection (2) of section (*Position of senior lay member*) are exercisable by the rector of the institution instead of the senior lay member of the governing body.
- (5) In this section—
- 25 “the 1858 Act” means the Universities (Scotland) Act 1858,
“the 1889 Act” means the Universities (Scotland) Act 1889.>

Stewart Maxwell

- 4A** As an amendment to amendment 4, line 7, at beginning insert <In so far as provided for in rules made by the governing body of the institution,>

Stewart Maxwell

- 4B** As an amendment to amendment 4, leave out lines 11 to 23

Angela Constance

- 5** Before section 1, insert—

<Relevant criteria etc.

- (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.
- (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,
 - (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.
- (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 (*Advertisement and application*) to (*Appointment and tenure*)).>

Angela Constance

6 Before section 1, insert—

<Advertisement and application

- (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 (*Relevant criteria etc.*)(1) is to ensure that the advertisement—
 - (a) sets out the functions exercisable by the senior lay member of the governing body under section (*Position of senior lay member*)(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.>

Angela Constance

7 Before section 1, insert—

<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 (*Advertisement and application*)(1), and
 - (b) the application appears to the committee mentioned in section (*Relevant criteria etc.*)(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.>

Angela Constance

8 Before section 1, insert—

<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 (*Interview of certain applicants*)(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 (*Advertisement and application*)(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).>

Angela Constance

9 Before section 1, insert—

<Election franchise and result

- (1) These persons are entitled to vote in an election under section (*When election to be convened*) 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.
- (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.
- (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.>

Angela Constance

10 Before section 1, insert—

<Appointment and tenure

- (1) The winning candidate in an election under section (*When election to be convened*) 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.
- (3) The position cannot be filled otherwise than by an appointment made by virtue of this section.>

Angela Constance

11 Before section 1, insert—

<Remuneration and conditions

- (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.>

Section 1

Liam McArthur

27 In section 1, page 1, line 12, leave out from <a> to <Regulations> in line 14 and insert <arrangements set out in rules to be made by the governing body of the institution.

- (1A) In making rules under subsection (1), the governing body must have regard to any principles which appear to the Scottish Further and Higher Education Funding Council to constitute good practice in relation to higher education institutions in accordance with section 9A of the Further and Higher Education (Scotland) Act 1995.
- (2) Rules>

Liam McArthur

28 In section 1, page 1, leave out line 21 and insert—

<(v) arrangements for election of candidates,>

Liam McArthur

29 In section 1, page 1, line 22, leave out <expenses incurred in the process.> and insert <reasonable expenses incurred in the process of selection and election.

- (3) Rules under this section must include provision for students and staff of the institution to be represented in the process of selecting candidates for election to the position of chairing member of the governing body.>

Angela Constance

12 Leave out section 1

After section 1

Liz Smith

30 After section 1, insert—

<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.
- (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—
 - (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.
- (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,
 - (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.
- (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 institution.>

Liz Smith

59 After section 1, insert—

<Election as chairing member of the Royal Conservatoire of Scotland

The chairing member of the governing body of the Royal Conservatoire of Scotland is to be elected in accordance with the process set out in section (*Royal Conservatoire of Scotland: when election to be convened*).>

Liz Smith

60 After section 1, insert—

<Royal Conservatoire of Scotland: when election to be convened

- (1) An election for the position of chairing member of the governing body of the Royal Conservatoire of Scotland must be convened if more than one applicant 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,
 - (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 Royal Conservatoire of Scotland 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).>

Liz Smith

61 After section 1, insert—

<Royal Conservatoire of Scotland: election franchise and result

- (1) Only members of the governing body of the Royal Conservatoire of Scotland are entitled to vote in an election under section (*Royal Conservatoire of Scotland: when election to be convened*) for the position of chairing member of the governing body of the Royal Conservatoire of Scotland.
- (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 majority of the votes cast, always providing that this majority includes a majority of staff and students, such provision being particular to the Royal Conservatoire of Scotland.
- (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 Royal Conservatoire of Scotland.>

Liz Smith

62 After section 1, insert—

<Royal Conservatoire of Scotland: appointment and tenure

- (1) The winning candidate in an election under section (*Royal Conservatoire of Scotland: when election to be convened*) for the position of chairing member of the governing body of the Royal Conservatoire of Scotland 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.
- (3) The position cannot be filled otherwise than by an appointment made by virtue of this section.>

Section 2

Liz Smith

31 Leave out section 2 and insert—

<Payment of remuneration or allowances to chairing member

- (1) The governing body of a higher education institution may make such arrangements to pay remuneration or allowances to the chairing member of that governing body as it sees fit.
- (2) Any remuneration or allowances paid to the chairing member are to be determined by the governing body and must be in accordance with any principles which appear to the Scottish Further and Higher Education Funding Council to constitute good practice in relation to higher education institutions in accordance with section 9A of the Further and Higher Education (Scotland) Act 2005.
- (3) The chairing member is not entitled to vote in respect of any decision of the governing body under subsection (1) or any determination by it under subsection (2).>

Angela Constance

13 Leave out section 2

Section 3

Angela Constance

Supported by: Liz Smith

14 Leave out section 3

Section 4

Angela Constance

15 In section 4, page 2, line 17, leave out from first <as> to end of line and insert <to the position of senior lay member by virtue of section (*Appointment and tenure*).>

Liz Smith

- 32 In section 4, page 2, line 18, after first <by> insert <either—
(i) both persons>

Liz Smith

- 33 In section 4, page 2, line 19, at end insert <or
(ii) 1 person being appointed by the academic board of the institution and 1
person being elected by the staff of the institution,
with the mechanism for appointment to be determined by the governing body of
the institution,>

Liz Smith

- 34 In section 4, page 2, leave out lines 20 to 27 and insert—
<() 1 person being appointed by being elected by the academic staff of the institution
and 1 person being appointed by being elected by the professional staff of the
institution, in an election administered by the trade unions recognised in relation
to the staff of the institution or, where there are no trade unions so recognised,
administered under arrangements made by the governing body of the institution,>

Liam McArthur

- 35 In section 4, page 2, line 25, leave out first <support> and insert <professional>

Liam McArthur

- 36 In section 4, page 2, line 25, leave out second <support> and insert <professional>

Liz Smith

- 37 In section 4, page 2, line 28, after <persons> insert <either elected by the students of the
institution from among their own number or>

Liz Smith

- 38 In section 4, page 2, line 29, at end insert <with the mechanism for appointment to be determined
by the governing body of the institution,>

Angela Constance

- 16 In section 4, page 2, leave out lines 30 and 31

Liam McArthur

- 39 In section 4, page 3, line 1, at end insert—
<() Paragraphs (c) and (d) of subsection (1) do not apply to an institution that does not have
trade unions that are recognised in relation to the staff of the institution, within the
meaning given by subsection (2).>

Angela Constance

- 17 In section 4, page 3, line 2, leave out subsection (3)

Section 5

Liam McArthur

- 40 In section 5, page 3, line 15, leave out <support> and insert <professional>

Liz Smith

- 41 In section 5, page 3, line 16, at end insert <, or
() members of the academic board of the institution.>

After section 5

Chic Brodie

- 63 After section 5, insert—

<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.
- (4) The grounds are that the ordinary member is—
 - (a) unable,
 - (b) unwilling, or
 - (c) unsuitable,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,
 - (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.
- (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.>

Section 6

Liz Smith

- 42 In section 6, page 3, line 21, leave out <each of paragraphs (c) to (f)> and insert <paragraph (e)>

Angela Constance

- 18 In section 6, page 3, line 21, leave out <(f)> and insert <(e)>

Section 8

Angela Constance

- 1 Leave out section 8

Section 9

Jim Eadie

Supported by: Liz Smith

- 19 Leave out section 9

Section 10

Liam McArthur

- 43 In section 10, page 4, line 13, after <principal> insert <or director>

Liam McArthur

- 44 In section 10, page 4, line 14, leave out <heads of school of the institution,> and insert <senior academic staff of the institution, to be designated by the institution as it sees fit,>

Angela Constance

- 20 In section 10, page 4, line 25, at end insert—

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

Liz Smith

- 45 Leave out section 10

Section 11

Liz Smith

- 46 Leave out section 11

Section 12

Liz Smith

- 47 Leave out section 12

Section 13

Angela Constance

Supported by: Liz Smith

- 2 Leave out section 13

After section 13

Sandra White

- 48 After section 13, insert—

<CHAPTER

SMALL SPECIALIST INSTITUTIONS

Small specialist institutions

- 5 (1) The Scottish Ministers may by regulations modify this Act to exclude any or all small specialist institutions from any or all of the provisions of this Act.
- (2) In considering whether to make regulations under subsection (1) the Scottish Ministers must consult such persons as they consider appropriate.>

Liz Smith

- 48A* As an amendment to amendment 48, line 6, at end insert—

<() In considering whether to make regulations under subsection (1), the Scottish Ministers must have regard to any report from the Scottish Further and Higher Education Funding Council made under section (*Small specialist institutions: duty on the Scottish Further and Higher Education Funding Council*).>

Liz Smith

- 64* After section 13, insert—

<CHAPTER

SMALL SPECIALIST INSTITUTIONS: DUTY ON THE SCOTTISH FURTHER AND HIGHER EDUCATION FUNDING COUNCIL

Small specialist institutions: duty on the Scottish Further and Higher Education Funding Council

- (1) The Scottish Further and Higher Education Funding Council must send a report to the Scottish Ministers recommending whether the provisions of this Act should apply to any or all small specialist institutions.
- (2) For the purposes of the report the Scottish Further and Higher Education Funding Council may recommend that—
- (a) the Act should apply to all small specialist institutions,
 - (b) the Act should not apply to any small specialist institution,

- (c) the Act should apply to specific small specialist institutions,
 - (d) particular provisions of the Act only should apply to all small specialist institutions,
 - (e) particular provisions of the Act only should apply to specific small specialist institutions.
- (3) In making its recommendations, the Scottish Further and Higher Education Funding Council must take account of—
- (a) the relevancy of the provisions to all or specific small specialist institutions
 - (b) the proportionality of applying the provisions to all or specific small specialist institutions,
 - (c) the nature, scale and governance structure of the small specialist institution.>

Section 14

Angela Constance

- 21 Leave out section 14

Section 15

Liz Smith

- 65 In section 15, page 5, line 30, at end insert—
<() excludes small specialist institutions,>

Angela Constance

- 22 In section 15, page 5, line 33, leave out <include or>

After section 18

Angela Constance

- 23 After section 18, insert—
- <References to students**
- 5 (1) 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).
- (2) But this section does not apply to the reference to such students in section (*Interaction with role of rector*)(3)(b).>

Angela Constance

- 23A As an amendment to amendment 23, leave out lines 6 and 7

Sandra White

Supported by: Liz Smith

- 49 After section 18, insert—

<Meaning of small specialist institutions

- (1) In this Part, “small specialist institutions” means the following institutions—

- (a) the Royal Conservatoire of Scotland,
 - (b) Glasgow School of Art.
- (2) The Scottish Ministers may by regulations modify the definition in subsection (1) so as to include or exclude a particular institution.
- (3) Regulations under subsection (2) are subject to the affirmative procedure.>

Liam McArthur

50 After section 18, insert—

<Meaning of academic staff and professional staff

- (1) In this Part, “academic staff” in relation to an institution means—
- (a) any person holding a contract of employment with the governing body of the institution as a professor, reader, senior lecturer or lecturer of the institution, or
 - (b) any other person holding a contract of employment with the governing body who is engaged in teaching, the provision of learning or research in the institution.
- (2) In this Part, “professional staff” means any person holding a contract of employment with the governing body of the institution other than a contract of employment described in subsection (1).>

Liam McArthur

66 After section 18, insert—

<Exemptions

Exemptions

- (1) If a higher education institution considers that, for whatever reason, it is unable to comply with any provision of this Part, it may apply in writing to the Scottish Ministers for an exemption from that provision.
- (2) The Scottish Ministers must, within two months of receiving an application under subsection (1) and having given due consideration to all relevant matters, determine whether to grant an exemption and give reasons for that decision.
- (3) If the Scottish Ministers grant an exemption, they must issue an Exemption Order in writing to the higher education institution.
- (4) An Exemption Order—
- (a) must set out the provisions with which the higher education institution need not comply,
 - (b) may set out—
 - (i) the extent to which the institution need not comply with a provision,
 - (ii) the duration for which the institution need not comply with a provision,
 - (iii) such other conditions as the Scottish Ministers consider appropriate.>

Section 19

Liz Smith

51 In section 19, page 7, line 2, leave out <aim to> and insert <have regard to the desirability of>

Liz Smith

52 In section 19, page 7, line 3, leave out <uphold> and insert <upholding>

Stewart Maxwell

53 In section 19, page 7, line 3, after <uphold> insert <(so far as the body considers reasonable)>

Liz Smith

54 In section 19, page 7, line 4, leave out <ensure> and insert <ensuring>

Stewart Maxwell

55 In section 19, page 7, line 4, after <ensure> insert <(so far as the body considers reasonable)>

Liz Smith

56 In section 19, page 7, line 15, after <law> insert <, provided they are not motivated by malice,>

Liz Smith

57 In section 19, page 7, line 16, at end insert <together with the facts upon which those opinions are based,>

After section 19

Chic Brodie

67 After section 19, insert—

<Post-legislative scrutiny

The Scottish Parliament may designate one of its committees to carry out, at such time as the Scottish Parliament may determine, a review of the impact of this Act on the effectiveness of higher education institution governance in Scotland.>

Section 20

Liam McArthur

68 In section 20, page 7, line 28, leave out <are subject to the affirmative procedure if they> and insert <may not>

Liam McArthur

69 In section 20, page 7, line 30, leave out <otherwise,>

Schedule

Angela Constance

24 In the schedule, page 9, leave out line 8

Liz Smith

58 In the schedule, page 9, leave out lines 9 to 11

Angela Constance

- 25 In the schedule, page 9, line 18, leave out from <word> to end of line and insert <words “a vice-chairman elected by the Court from among all its members” there is substituted “the senior lay member”,>

Angela Constance

- 26 In the schedule, page 9, line 20, leave out from <“chairing”> to <1(1)> in line 21 and insert <“senior lay member” means the person appointed to the position by virtue of section (Appointment and tenure)>

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