

Higher Education Governance (Scotland) Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 74-EN. A Policy Memorandum is printed separately as SP Bill 74-PM.

Higher Education Governance (Scotland) Bill

[AS INTRODUCED]

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

Chairing of governing body

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1 Appointment as chairing member

- (1) The chairing member of the governing body of a higher education institution is to be appointed in accordance with a process set out in regulations made by the Scottish Ministers.
- (2) Regulations under this section may include (in particular) provision for—
 - (a) periods of appointment (and whether reappointment is possible),
 - (b) means of selection for appointment, for example through—
 - (i) public advertisement,
 - (ii) criteria for selection,
 - (iii) interview of candidates,
 - (iv) shortlisting of candidates,
 - (v) holding an election from among candidates,
 - (c) reimbursement of candidates' expenses incurred in the process.

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2 Remuneration to be payable

- (1) The Scottish Ministers may by regulations make provision for remuneration and allowances to be payable by a higher education institution to the chairing member of the governing body of the institution.
- (2) Regulations under this section may include (in particular) provision that—
- (a) specifies or limits the circumstances in which sums must be offered,
 - (b) requires sums to be reasonable given the responsibilities of the chairing member,
 - (c) delegates to other persons the function of determining sums in particular cases.

3 Consultation for sections 1 and 2

- Before making regulations under section 1 or 2, the Scottish Ministers must consult—
- (a) each higher education institution to which the regulations relate,
 - (b) such other persons as the Scottish Ministers consider appropriate.

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—
- (a) the person appointed as the chairing member as mentioned in section 1(1),
 - (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 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,
 - (f) 2 persons appointed by being nominated by a graduates' association of the institution from among the graduates 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.

- (3) In paragraph (f) of subsection (1), the reference to the graduates of the institution includes the graduates of any former institution that the governing body of the current institution considers for the purpose of this subsection to be a predecessor to that institution (for example, by virtue of a reconstitution, take-over or merger).

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.

6 Nominations to governing body

(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 (f) 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)—

(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—

(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.

8 Power to modify section 4

The Scottish Ministers may by regulations modify—

- (a) the categories of membership in section 4(1),
- (b) the number of persons to be appointed under a particular category in that section.

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CHAPTER 2

ACADEMIC BOARDS

9 Size of academic board

The academic board of a higher education institution is to consist of no more than 120 members.

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10 Composition of academic board

- (1) The membership of the academic board of a higher education institution is to be composed of—
 - (a) the principal of the institution,
 - (b) the heads of school of the institution,
 - 15 (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—
 - 20 (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.
- (2) The academic board is to be constituted in such a way that—
 - 25 (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).

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).
- 30 (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.

- (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—

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

13 Power to modify sections 9 and 10

- (1) The Scottish Ministers may by regulations modify the number of members specified in section 9.
- 10 (2) The Scottish Ministers may by regulations modify—
(a) the categories of membership in section 10(1),
(b) the number or percentage of persons to be appointed under a particular category in that section.
- (3) Modification under subsection (1) or (2)(b) may be made by way of specifying—
15 (a) a fixed number or percentage, or
(b) a maximum or minimum (or both).

CHAPTER 3

REGULATIONS AND DEFINITIONS

14 Procedure for regulations

- 20 (1) Regulations under the preceding provisions of this Part are subject to the affirmative procedure.
- (2) Regulations under the preceding provisions of this Part may—
(a) make different provision for different purposes,
(b) include supplemental, incidental, consequential, transitional, transitory or saving
25 provision.

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—
30 (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 include or exclude a particular institution.
- (3) Regulations under subsection (2) are subject to the negative procedure.

16 Meaning of governing document

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

(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—

(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—

“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,

“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.

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 the academic freedom of all relevant persons, and
 - (b) ensure 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.”.

PART 3

GENERAL PROVISIONS

Ancillary and consequential

20 Ancillary regulations

- (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.

21 Consequential modifications

The schedule makes consequential modifications.

Commencement and short title

22 Commencement

- (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)—
- (a) the words “consist of the members and” are repealed,
- (b) the words from “, and of which” to the end 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 word “rector” there is substituted “chairing member”,
- (d) after subsection (5) there is inserted—
- 20 “(5A) In subsection (5), “chairing member” means the person appointed as mentioned in section 1(1) 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
- 35 subsection (1) there is inserted—
- ““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,
5 (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.”.

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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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