



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 9 February 2016

Session 4

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CONTENTS

	Col.
HIGHER EDUCATION GOVERNANCE (SCOTLAND) BILL: STAGE 2	1
SUBORDINATE LEGISLATION	76
Named Persons (Training, Qualifications, Experience and Position) (Scotland)	
Order 2016 (SSI 2016/16)	76
Child's Plan (Scotland) Order 2016 (SSI 2016/17).....	76

EDUCATION AND CULTURE COMMITTEE

5th Meeting 2016, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

*Mark Griffin (Central Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

*Chic Brodie (South Scotland) (SNP)

*Gordon MacDonald (Edinburgh Pentlands) (SNP)

Liam McArthur (Orkney Islands) (LD)

*John Pentland (Motherwell and Wishaw) (Lab)

*Mary Scanlon (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Angela Constance (Cabinet Secretary for Education and Lifelong Learning)

Jim Eadie (Edinburgh Southern) (SNP)

Iain Gray (East Lothian) (Lab)

Tavish Scott (Shetland Islands) (LD) (Committee Substitute)

Liz Smith (Mid Scotland and Fife) (Con)

Sandra White (Glasgow Kelvin) (SNP)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Education and Culture Committee

Tuesday 9 February 2016

[The Convener opened the meeting at 09:52]

Higher Education Governance (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning, and welcome to the fifth meeting in 2016 of the Education and Culture Committee. I remind everybody to ensure that all electronic devices are switched off at all times.

Our first item is to consider the Higher Education Governance (Scotland) Bill at stage 2, for which I welcome the Cabinet Secretary for Education and Lifelong Learning and her officials. I also welcome Tavish Scott, who is substituting for Liam McArthur, and Jim Eadie, Iain Gray, Liz Smith and Sandra White, who are attending for this item of business.

Everyone should have a copy of the bill as introduced, the marshalled list of amendments and the groupings of amendments. For the debate on each group of amendments, I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. All other members who have amendments in the group, including the cabinet secretary, if her doing so is relevant, will then be asked to speak to them. Members who have not lodged amendments in the group but who wish to speak should indicate that by catching the attention of me or the clerks.

If the cabinet secretary has not already spoken on the group, I will invite her to contribute to the debate just before moving to the winding-up speech. The debate on the group will be concluded by me inviting the member who moved the first amendment in the group to wind up. Following debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press it, I will put the question on that amendment. If a member wishes to withdraw their amendment after it has been moved, they must seek approval to do so. If any member objects, the committee immediately moves to the vote on that amendment.

If any member does not want to move their amendment when it is called, they should say, "Not moved." Please note that any other member of the Scottish Parliament may move the

amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting in any division is by a show of hands. It is important that members keep their hands clearly raised until the clerk has recorded the vote. The committee is required to indicate formally that it has considered and agreed each section of the bill, so I will also put a question on each section at the appropriate point. We intend to get through all amendments today.

Before section 1

The Convener: Amendment 3, in the name of the cabinet secretary, is grouped with amendments 4, 4A, 4B, 21 and 24 to 26.

The Cabinet Secretary for Education and Lifelong Learning (Angela Constance): In considering this group, and indeed all the groups of amendments, it is important to bear in mind the purpose of the bill. Essentially, the Government aims to ensure that every voice in the higher education community is heard and that we can, through this modest and focused bill, enable an approach to governance that is based on greater transparency and inclusivity, thereby supporting continuous improvement in the operation of our higher education institutions. Provision for the election of a senior lay member to the governing body of each Scottish HE institution is key to that ambition. The amendments in the group set out that new role and how it would interact with the statutory role of rectors, where they exist.

As promised at stage 1, the amendments seek to make—in place of the original regulation-making power in section 1—provision in the bill for the establishment of an elected chairing member. Throughout stage 1, we listened to the views of stakeholders and the committee and I very carefully considered the views of rectors and their supporters in particular. That engagement informed the development of the wider provisions that are set out chiefly in amendments 3 to 10.

To avoid impinging on the statutory role of rectors, and to respect their valued contribution to our institutions, the elected position that is provided for in our amendments is that of the senior lay member of the governing body of all Scottish HEIs. With reference to that role, the "Scottish Code of Good Higher Education Governance" separates it from the role of the rector by referring to it as the

"extensive role of the 'chair' ... variously called senior governor, vice convener or convener".

Therefore, there can be no ambiguity about the pivotal role that will be played by the senior lay member in each higher education institution.

The provisions in amendment 3 oblige each Scottish higher education institution to feature the position of senior lay member on its governing body, and they specify the core functions of the lay member. Those functions include

“a duty to preside at meetings of the governing body ... a deliberative and casting vote at such meetings”

and

“responsibility for the leadership and effectiveness of the governing body”.

They also ensure that there is an

“appropriate balance of authority between the governing body and the principal”—

a term whose ordinary meaning is understood to encompass other designations—for example, director—that are used in some HEIs.

Subsection (3) of amendment 3 will enable higher education institutions to select another member of the governing body to perform those functions when the position of senior lay member is vacant, or the holder of that position is unable to attend a meeting.

Crucially, subsection (4) of amendment 3 makes it clear that the functions of the senior lay member are subject to the provisions of amendment 4. Subsections (1) and (2) of amendment 4 will ensure that the historical role of rector, which is provided for in statute, is protected in the ancient universities. Mr Maxwell's amendment 4A would dilute the statutory protection in subsections (1) and (2), effectively allowing for removal of the statutory rights of rectors by the governing bodies of higher education institutions. I do not think that that is an outcome that any of us wants. Therefore, I hope that Mr Maxwell will not move his amendment 4A.

Amendment 4, which was lodged on 2 February in my name, will also enable the governing bodies of universities that have rectors to allow the rector to take on some of the role of the senior lay member, as described in amendment 3. Subsections (3) and (4) in the amendment allow that, but only where a governing body wishes to do so. I must make it clear that the subsections do not affect the statutory protection of the role of rector in the ancient universities under subsections (1) and (2) of amendment 4. The power at subsections (3) and (4) is intended to recognise the autonomy of universities and will give them maximum flexibility within the governance requirements of the bill.

However, having considered Mr Maxwell's amendment 4B, which would, in effect, remove subsections (3) and (4) in my amendment 4, I am content to encourage the committee to support it because it achieves the core intentions of amendment 4. Amendment 4B seeks to protect

the statutory role of the rectors at the ancient universities and goes no further than that. On balance, there is an advantage in the provisions remaining focused on the core intention of protecting the statutory role of rectors.

I turn briefly to the remaining amendments in the group. Amendment 21 will remove section 14 of the bill because the regulation-making powers in sections 1, 2, 8 and 13 are now subject to other Government amendments that will remove them. Therefore, section 14 will not be required. I am mindful that many of our higher education institutions perceived the extent of regulation-making powers in the bill as having a detrimental impact on their autonomy, and I hope that amendment 21 and others that have been lodged at this stage will remove all concerns in that regard.

10:00

Amendment 24 will ensure restoration of the statutory role of rector under section 4 of the Universities (Scotland) Act 1858, which applies to the ancient universities of Glasgow, Edinburgh, St Andrews and Aberdeen and provides that the rector is the ordinary president of the court with a deliberative and a casting vote. I felt that it was necessary to remove that provision at introduction, given that section 1 of the bill proposed that regulations make provision for the appointment of a chairing member. However, as amendments 3 to 10 and 12 propose to replace that regulation-making power with full provision on the face of the bill to protect the statutory role of rectors, it is therefore appropriate to ensure that section 4 of the 1858 act continues.

Likewise, amendment 25 ensures restoration of the statutory role of rector under section 5 of the Universities (Scotland) Act 1889, which applies to the ancient universities of Glasgow, Edinburgh, St Andrews and Aberdeen and provides that the rector has the right to preside at meetings of the court and has a deliberative and casting vote. Crucially, amendment 25 also provides that the senior lay member should preside at meetings of the relevant governing body or court when the rector cannot attend or preside. The 1889 legislation sets out that in the absence of the rector in an ancient institution, a vice-chancellor who has been elected by the governing body can preside. It is our view that because the new senior lay member is an elected post, that person should preside when the rector is unable to.

Lastly, amendment 26 is consequential on amendment 25 and seeks to amend paragraph 2(2)(d) of the bill's schedule to provide a definition of the term “senior lay member” in the 1889 act that clearly links it to the meaning that is set out in the bill. As a result of amendment 25, there is now

a need to define in the 1889 act the term “senior lay member” rather than “chairing member”.

I ask the committee to support my amendments as well as Mr Maxwell’s amendment 4B. For the reasons that I have given, I ask Mr Maxwell not to move amendment 4A; if it is moved, I ask the committee to reject it.

I move amendment 3.

The Convener: Amendments 4A and 4B in my name have been lodged on the back of discussions that we had last week with the HE sector in relation to Government amendments 3 and 4. The clear view of many in the sector is that amendment 4—and, as the cabinet secretary has said, subsections (3) and (4) in particular—sought to transfer some responsibilities with regard to the governing body of each institution. Instead of each institution being able to determine things, the role of rectors would have been changed and there would be a change with regard to setting the rules. That move was not welcomed.

In an attempt to resolve the matter, I lodged amendments 4A and 4B on Thursday morning. Of course, members will remember that on Thursday morning an electronic problem meant that there was no email or printing available. That morning we had a rather scrambled situation—that was my fault—as we attempted to resolve the matter.

I fully accept the Government’s view on amendment 4A and the views of a number of individuals from the sector to whom I spoke on Friday, over the weekend and again by email this morning. It is clear that amendment 4A would have unintended consequences—I had intended to ensure that rectors would be unaffected by the legislation—so I do not intend to move it.

However, I think that amendment 4B provides at least comfort—if not more than that—to the sector in seeking to remove subsections (3) and (4) of the proposed new section. As the cabinet secretary has described, that will allow the current arrangements to remain in place and not to be impacted on by the legislation. I therefore intend to move amendment 4B at the appropriate point.

Liz Smith (Mid Scotland and Fife) (Con): Amendments 3 and 4 will fundamentally change the role of the rector at the universities where that role exists. That is at odds with what the Scottish Government promised at stage 1. I will quote to the committee what the cabinet secretary said at that stage:

“It is extremely important to remember that the role of rector and that of an elected chair, who is otherwise known as the senior governor, are very distinct.”—[*Official Report*, 14 January 2016; c 66.]

That is not the case with amendments 3 and 4. In universities with rectors there would be two

different, yet overlapping, electorates, which I am sure—I hope—is not the Scottish Government’s intention.

I understand that Universities Scotland has taken legal advice on the issue. That advice concluded that there is very considerable ambiguity in the drafting, and that it seems likely that the rector would take on the two specific roles of the senior governor: namely, responsibility for the leadership and effective operation of the governing body and ensuring that there is the appropriate balance of authority between the governing body and the principal. However, within that institution there would then be an advertisement and an electoral process for a disempowered position. Again, I hope that that is not the Scottish Government’s real intention.

Just as worrying is the fact that the Government amendments would mean that in universities that have rectors—with the exception of the University of Edinburgh, of course—staff would be excluded from the electorate for the position that is most empowered. That is not acceptable.

I understand, convener, why you have lodged amendments 4A and 4B. I have some sympathy with that, but the fact that they exist is acknowledgement that amendments 3 and 4 will create a real mess. Although they are an attempt to preserve the rector role, they do not do anything to address the fundamental weakness of the Scottish Government’s proposals, which will mean overlapping electorates and an unworkable system. That, to be frank, is just not acceptable to the sector. It would create instability and—as Universities Scotland argues—the possibility of a considerable argument about which post has the stronger and more democratic mandate.

Convener, that part of the bill is a real mess, which is regrettable; I think that we all believe that real effort was being made to find a consensus that was acceptable to all parties. Now, quite frankly, that has blown apart completely and I cannot think that anything will solve that other than starting again on that part of the bill. Students and staff are not at all happy about the situation and, quite properly, university courts worry about the destabilising effect on their institutions. In short, it demonstrates everything that is wrong with the bill.

The last meeting that the Scottish Government had with all the stakeholders was way back at the end of November. I understand that there has been no consultation whatsoever between stage 1 and stage 2. For the people who are actually going to have to deliver the legislation, that is just not acceptable.

Mark Griffin (Central Scotland) (Lab): I agree with a lot of what Liz Smith has said. The Government was working towards a consensus

around the bill, but the amendments—in particular, 3 and 4—seem to have blown that apart.

Our stage 1 report said that the role of rector, which is an historic and often high-profile role in Scotland's ancient universities, should be clarified. It said that if there are to be elected chairs and elected rectors, there should be “no ambiguity about” their respective roles and “both figures” should be

“able to work together for the good of the institution”.

Unfortunately, rather than clarifying the situation, the Government has muddied the waters further with amendments 3 and 4.

At stage 1, the cabinet secretary said that the aim was not to change the role of rector, but as far as I can see amendments 3 and 4 will do exactly that. That is either a change in position by the Government or an error in drafting. We would like proper consultation of the sector—which has not happened, as far as I can see. We ask the Government not to press the amendments and to work with the sector in advance of stage 3 to build the consensus that had seemed to be coming together.

Tavish Scott (Shetland Islands) (LD): First, I pass on Liam McArthur's apologies. I am sure that members are familiar with the trials and tribulations of Loganair—I could do 10 minutes on that. I was an hour and a half late into Aberdeen last night and I got a speeding ticket on the way down.

In the best of moods to take on the amendments, the thing that struck me most in reading them all yesterday and this morning was the Government's assertion that it has consulted on these matters. My reading of the situation is that although there might have been some consultation much earlier in the process, as Liz Smith and others said, the Government should not bring forward fundamental changes to law—that is what we are dealing with today—through rushed amendments at the last minute. The cabinet secretary has proposed fundamental and important changes to how our universities are to operate that in effect are being pushed through the Parliament without proper pre-legislative scrutiny, or indeed any other kind of scrutiny.

The Government should be embarrassed by that and should admit that it is wrong. Mark Griffin is right; the Government should withdraw amendment 3, not move the other Government amendments in the group and go back to the sector to work out the right thing to do. It cannot be right for the Parliament to operate in the way that is proposed.

I am told that there is nothing that could be described as the product of consultation or

consensus in the Government's amendments. The idea of electing both a rector and a senior lay member attracted no consensus in the meetings that took place during—not after, but during—stage 1. The Government cannot assert that it has consulted adequately on the matter.

It is not just university principals, chairs and courts that have been making that point more widely. The other day, the president of the University of Glasgow students representative council said:

“I am perplexed ... as to how the Scottish Government has managed to botch this Bill so profoundly. From inadvertent clauses that risked turning Scotland's universities into public bodies to utter ignorance of relationship between the role of Rector and role of 'chair' of court. This Bill has been an unmitigated disaster.”

I would have thought that the Government should pay pretty close attention to such comments from people who are knowledgeable about their sector.

The verdict of “disaster” is epitomised by amendment 3. I am told that the cabinet secretary gave an assurance to the committee and the Parliament that she would not seek to change the role of the rector, but that is precisely what amendment 3 and the other Government amendments in the group do.

The Government amendments also set out in extraordinarily elaborate detail the mechanism for advertising for and electing a senior lay member, who has in effect been disempowered. I am not sure what Government wants to achieve by that kind of micromanagement of the public sector.

As Liz Smith said, in the universities that have rectors, with the exception of the University of Edinburgh, the amendments will exclude staff from voting for the person who will be substantially empowered—that is, the chair of the governing body. That seems extraordinary—I say to my good friend Iain Gray that it sounds like Labour's old electoral college. Different and overlapping electorates will be asked to vote for two different people who have poorly differentiated roles on the governing body. That cannot be good policy or a good approach.

I acknowledge the convener's attempts to get the cabinet secretary out of the hole that she has dug for herself by proposing to move amendment 4B, but that does not get round the fact that what is being put in place is an unworkable system of overlapping roles and functions. The Scottish Government is building in an incentive for an arm-wrestling contest between rectors and elected chairs over whose democratic mandate is the greater. I cannot believe that that is a good way to reform our university sector.

If the Government's intention really is to avoid altering the role of the rector or setting the rector

up in conflict with the senior lay member, I urge the cabinet secretary to withdraw amendment 3 and seek to find a way to work constructively with universities on a solution that honours the commitments that were given earlier, which are certainly not being honoured in the Government's amendments today.

Iain Gray (East Lothian) (Lab): Members round the table come at the issue from different starting points. Labour supported the Scottish Government on the principle of elected chairs of court in our universities; other members did not support that principle. However, I think that we all agree that at stage 1 the cabinet secretary committed to lodging amendments at stage 2 to provide clarity, first, on the process of elections for chairs, and secondly, on the relationship in the ancient universities between the chair and the ancient position of rector. It seems clear to me that the cabinet secretary has failed to do that. Bringing such amendments forward means doing so with some evidence of support from, or at least acceptance by, the different interest groups within the sector: rectors, the institutions, the staff trade unions and the National Union of Students Scotland.

Instead of amendments that created clarity and demonstrated consensus that they were a good way forward, the amendments that came forward late last week added to the ambiguity and have led to bewilderment on all sides. Any possibility of a fragile consensus being created within the sector to take the proposals forward was shattered.

Like Mr Scott, I appreciate the attempts that the convener has made to try to dig the Government out of the hole in which it has put itself. That is not the convener's job, and it is unfortunate that he has been put in that position.

I agree with colleagues that, given the situation that we have arrived at, the only sensible way forward is for the cabinet secretary to withdraw amendment 3, to recommit to what she promised at stage 1 and to bring forward stage 3 amendments that she can demonstrate are clear and have the support, or at the very least the acceptance, of the sector.

10:15

Chic Brodie (South Scotland) (SNP): I support amendment 4B. I have made my position clear from the beginning that to have two individuals on the court elected by the wider franchise will not achieve consistency and will probably enhance points of conflict. That is not desirable. Amendment 4B helps to alleviate if not eliminate that issue.

I welcome subsection (3) of the new section that would be inserted by amendment 3. Subsection (3) says:

"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)".

Those functions include responsibility for "leadership and effectiveness" and for establishing "an appropriate balance of authority".

Angela Constance: The Government has made good its commitment to protect statutory provision for rectors. As I am sure many members of the committee already know, there was extensive consultation in November with the sector—with Universities Scotland, rectors, the trade unions—

Liz Smith: Will the cabinet secretary take an intervention?

Angela Constance: Certainly.

Liz Smith: How much consultation has there been with Universities Scotland and the chairs of court between stages 1 and 2 to try to build consensus?

Angela Constance: There has been extensive consultation between officials and all stakeholders. Workshops on the election model were convened, because we were pressurised to remove the regulation-making power and set out the model for electing chairs on the face of the bill.

There were two specific workshops on the model for electing chairs. There was specific engagement with rectors, and discussions around the model strayed into the area of ensuring that the roles of the senior lay member and the rector were appropriately dovetailed.

I was very pleased to receive today correspondence from Catherine Stihler, who says:

"I welcome your attempts to retain the statutory role of the Rectors in the Ancient Universities. You have always been throughout our discussions clear that the Scottish Government would continue to support the role of the Rector and the statutory rights to preside over university court."

As I said in my opening remarks, the aim of amendments 3 and 4 is very much to address the position of the senior lay member and the interaction with the role of the rector.

Liz Smith: Will the cabinet secretary take an intervention?

Angela Constance: Just let me make this point, please.

For clarity, subsections (3) and (4) of amendment 4, which was lodged on 2 February in my name, enable all universities with a rector to

allow the rector—should they wish to do so—to take on some of the role described for senior lay members in amendment 3. The flexibility already exists in the ancient universities to dovetail the role of the senior lay member with that of the rector. Subsections (3) and (4) merely express that.

Iain Gray: If it is in fact the case, as the cabinet secretary implies, that there has been widespread consultation and that there is widespread agreement on that approach in the sector, what would be lost by withdrawing or not moving the amendments now, taking the time to demonstrate that acceptance and agreement to us and making the changes at stage 3? Nothing would be lost.

Angela Constance: The fundamental issue is that there is a misunderstanding of what the Government's provisions attempt to do. There has been consultation with the chairs of court, Universities Scotland and the Edinburgh rector, as well as a wider group of rectors. I have clearly stated the rationale for amendment 3. Subsections (1) and (2) of amendment 4 are about making good our commitment to protect the role of rector. I see no need to row back from that. I have indicated that we can accept Mr Maxwell's amendment 4B, which would mean that we would go no further than protecting the statutory role of rectors as it is.

Liz Smith: I repeat what you said, which was that

"It is extremely important to remember that the role of rector and that of an elected chair, who is otherwise known as the senior governor, are very distinct."—[*Official Report*, 14 January 2016; c 66.]

Amendments 3 and 4 do not represent that distinction. Could you comment on that?

Angela Constance: I have always been crystal clear, both in plenary debates in the chamber and in stage 1 evidence at this committee, that the roles of senior lay member and rector are very distinct. It is important to recognise that amendment 4 seeks to protect the rector's right to preside and his or her deliberative and casting vote in meetings. I therefore see no need to row back from that commitment, which we have made very clear at various stages of the bill.

Iain Gray: The cabinet secretary said earlier that there was widespread misunderstanding about the intention of the amendments. I do not doubt her intention to deliver what she promised at stage 1, but she has acknowledged that there is widespread misunderstanding about whether the amendments achieve that aim. What is to be lost by simply taking the amendments away, addressing that misunderstanding and coming back at stage 3 with something that everyone can sign up to?

Angela Constance: I contend that there is no dubiety with regard to amendments 3 and 4—

Iain Gray: You just said that there was.

Angela Constance: Not in terms of the Government's intentions. Mr Gray could have acknowledged that I have received correspondence from a colleague of his welcoming the Government's efforts in this area. Amendment 3 and subsections (1) and (2) of amendment 4 are very clear. Further, I have indicated that the Government is content with Mr Maxwell's amendment 4B. I am clear that others may have misunderstood the intent of the amendments, but the amendments are clear.

Tavish Scott: I totally take the point that the cabinet secretary is clear about the amendments. Will she tell the committee on what date she or her officials discussed the amendments with the university sector?

Angela Constance: Members will be aware that the amendments were lodged last week, but I stress that we have had extensive discussions with all stakeholders regarding most aspects of the bill. I have to accept that some people will never be content with the bill or, indeed, with some of its provisions, but I would have hoped that we could all agree that the provisions in amendment 3 and proposed new subsections (1) and (2) in amendment 4 achieve the intentions that we have discussed at length at the committee to protect the statutory position of rectors in our ancient universities.

The Convener: The question is, that amendment 3 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Against

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 3 agreed to.

Amendment 4 moved—[Angela Constance].

Amendment 4A not moved.

Amendment 4B moved—[Stewart Maxwell]—and agreed to.

Amendment 4, as amended, agreed to.

The Convener: Amendment 5, in the name of the cabinet secretary, is grouped with amendments 6 to 11, 27 to 29, 32, 31 and 13 to 15.

Angela Constance: The Scottish Government amendments in the group are focused chiefly on setting out the process that Scottish higher education institutions would be required to follow in appointing their senior lay member. Throughout stage 1, we listened to the views of stakeholders and took note of the evidence that was gathered by the committee. In addition, we engaged senior sector stakeholders in workshops related to this and other parts of the bill at the end of last year.

Amendment 5 is the first in a suite of amendments that effectively replaces section 1 as introduced with provision on the face of the bill—rather than in regulations—for a single model for the appointment of the elected senior lay member of higher education institutions' governing bodies. The amendment obliges a higher education institution, when a vacancy for the senior lay member arises, to delegate responsibility for the recruitment process to a committee featuring at least one student and one staff member drawn from the institution.

Those committees are commonly known as nominations committees. However, the role of the committee that is formed to appoint an elected senior lay member is not one of nomination, but rather of selection to stand for election against criteria devised by that committee. Subsection (2) of amendment 5 allows for the committee to determine relevant criteria for the role of senior lay member that encompass key principles of competence. The intention is to allay previously raised concerns from some stakeholders about who might be elected to lead governance of an institution.

Amendment 6 obliges higher education institutions to advertise a vacancy for the post of senior lay member to the general public through established methods to attract interest from a wide range of candidates. Subsection (2) of amendment 6 sets out plainly the obligations required in relation to the advertisement. The intention is to advertise widely and fully inform potential applicants of the nature of the role and what the recruitment process will involve further down the line.

The requirement for an application to be in a certain form and for the relevant criteria to be made available will ensure that there is a fair playing field for all applicants and that their applications are considered in a consistent way. It is worth noting that existing legislation already obliges an institution to make appointments to its

governing body in a way that encourages equal opportunities and does not discriminate against any individual with characteristics that are protected by equalities legislation, such as race, gender or disability, to name a few.

10:30

The advertisement and application stage is an important part of improving access to the position of senior lay member. Amendment 7 seeks to ensure that, in response to the advertisement of a vacancy in the position of senior lay member, an applicant has submitted an application on the correct form and met the criteria that are set out for the role of senior lay member by presenting sufficient relevant evidence on the application form, the committee must invite that applicant to attend an interview for the role. In short, that is very much like any transparent and modern recruitment exercise. If at the interview the applicant again satisfies the committee that they meet the criteria for the post, they will be entitled to stand for election for the role of senior lay member.

Subsection (3) of amendment 7 requires every HEI to offer applicants reimbursement of reasonable expenses that are incurred in connection with attending an interview. In keeping with the bill's intention to respect the autonomous nature of HEIs, it will be for each HEI to determine what is reasonable.

Amendment 8 provides that a higher education institution will be required to convene an election for the position of senior lay member of the governing body if, after interviews, more than one candidate is entitled to stand and confirms their intention to stand. If an institution fails to identify two candidates who fit the criteria for the role, the bill will require that it repeats the process from the point of advertisement. In that way, the bill ensures a real and meaningful election in keeping with its overall aim of establishing an open, transparent and more democratic appointment process across all higher education institutions for the role of senior lay member.

Amendment 9 provides details on the franchise, mechanism and result of the election of a senior lay member of the governing body. Specifically, it provides that the franchise must consist of the governing body itself and all staff and students of the HEI. That makes clear the Government's intention to democratise the process of appointing a senior lay member and allow everyone in the institution's community a say in who that should be.

Amendment 10, which sets out the final step in the recruitment process, provides that the winning candidate at the preceding election must be

appointed to the position of senior lay member and that that is the only way in which such a position may be filled.

On a connected note, amendment 11 replaces section 2 of the bill with provision on the face of the bill rather than in regulations for remuneration of the senior lay member. That ensures that a senior lay member of the governing body can request and will be paid reasonable remuneration from the higher education institution that is commensurate with carrying out the functions of that office. That payment will not amount to a salary. The relevant amount must be reasonable and commensurate with work that has been done.

Given that amendments 3 to 11 make provision on the face of the bill for the appointment and remuneration of the senior lay member, amendments 12 and 13 remove the regulation-making powers in sections 1 and 2 of the bill as introduced.

The purpose of amendment 14 is to remove section 3 of the bill as introduced, which obliges the Scottish ministers to consult higher education institutions and other appropriate persons prior to making regulations under sections 1 or 2 of the bill as introduced.

Amendment 15 is a consequential amendment that ensures that all Scottish HEIs must include the new elected senior lay member as a member of their governing bodies. The amendment is necessary in order to replace reference to “the chairing member” in section 4(1)(a) of the bill as introduced.

I hope that the committee can support amendments 5 to 15.

Amendment 31, which was lodged by Liz Smith, is not necessary, as it provides for a power that already exists. Higher education institutions can currently provide remuneration if they wish. Compliance with the code of good HE governance in that respect is also currently required.

My amendment 11 ensures that a senior lay member or chair of the governing body can request and will be paid reasonable remuneration that is commensurate with the responsibilities of carrying out the functions of that office. That is not akin to a salary or unlimited payment, but it is a right for a senior lay member to request reasonable remuneration and allowances for the work that they have done and a duty on higher education institutions to make such payments where reasonable. I therefore cannot support amendment 31, which describes a discretion that HE institutions already have. I ask Liz Smith not to move the amendment, and I ask the committee to reject it if she moves it.

I do not believe that amendments 27 to 29, in the name of Liam McArthur, would have a positive impact on the process for the appointment of the chairing member. The bill’s principal aim is to enable the development of a framework of governance that is more modern, accountable and inclusive. I consider that Liam McArthur’s amendments would make little substantive change to current practice, effectively returning us to the status quo and leaving the decision making in the process of appointing the chairing member—as at present—to the governing body to create its own rules and restrict the electorate for the chairing member to the members of the governing body only.

Although Mr McArthur’s amendments would require the rules to include provision for students and staff to be represented in the process of selecting candidates for election, they would simply allow for, rather than require, an institution to undertake an election. As such, the amendments make no provision for consistency across the sector, as they would allow different rules to be developed by different institutions, albeit with regard to the Scottish code of good higher education governance.

The principles underpinning the bill are to enhance inclusion, participation, transparency and consistency in governance arrangements in our HEIs. Unfortunately, none of Mr McArthur’s amendments would meet any of those principles at the most basic level. For that reason, I ask Mr McArthur not to move his amendments, and I ask the committee to reject them if he moves them.

The amendments in my name in this group provide for consistency, robust selection and a fair election. We have consulted and listened to stakeholders and responded to their concerns by setting out what should happen on the face of the bill. I hope that they are supportive of that considered approach.

I ask the committee to support my amendments. For the reasons that I have given, I ask the committee to reject amendments 27 to 29 if they are moved, and amendment 31 if it is moved by Liz Smith.

I move amendment 5.

Tavish Scott: First, I observe that this Government seems to want to be on top of absolutely every detail of what goes on in our universities. I was quite taken aback by the cabinet secretary’s contribution to the debate this morning. I totally understand her sincerity in lodging the amendments, but her approach is quite breathtaking in its desire to be all over every detail of what goes on across this aspect of university activity, and I think that that is wrong.

The cabinet secretary gave the game away at the end of her remarks when she said that Liam McArthur's amendments were not right because they would allow different universities to come up with different options. That says it all, does it not? We are all to do exactly what the Government says.

I will make the argument for amendments 27 to 29. Instead of the unbelievably detailed and mechanistic approach that is taken by the Government, the amendments seek to provide a workable framework for the election of chairs of governing bodies, giving institutions appropriate discretion to set out arrangements. I would have thought that this committee, above all committees in the Parliament, would believe in discretion in education.

The amendments require that that should be done in accordance with the standards set out in the higher education governance code—which the cabinet secretary rightly mentioned, although she went on to say that it did not really matter—which, unlike primary legislation, is subject to regular changes. Good practice evolves—I thought that that was the whole point of the higher education governance code. When ministers previously appeared before the committee to discuss other pieces of legislation, I understand that they said that that approach was right and that it was the means by which to achieve what is loosely described as future proofing, which strikes me as a dreadful phrase that we all use in public life these days.

The proposals would absolutely require the engagement of students and staff in the process of selecting the chairs of governing bodies—that process might be different in different institutions, but I would have thought that that would be a strength of the approach, rather than a weakness as the Government appears to believe—primarily through the membership of the nomination committees that select candidates. Amendments 27 to 29 would have the added advantage of delivering exactly what the cabinet secretary said that she previously wanted to achieve. They would leave the role of the rector untouched, and would allow institutions to avoid the nonsense of having student and staff elections for both the rector and the senior lay member.

I am sure that members who have much more experience of this committee than I have will look closely at those measures, but it must be important that the committee tries to save the Government from itself instead of allowing the hole to be dug ever deeper, and that is what the amendments would do. The overly detailed and interventionist approach in amendments 5 to 11 will simply store up problems for the future. Amendment 5 illustrates that perfectly, while

amendment 6 sees ministers attempting to write into primary legislation—into law—every last detail of a job advert, while removing any scope for universities to negotiate remuneration and allowances with their chairs. That is an extraordinary level of influence, if not the heavy hand of the law over the practical activities of an independent institution, and I urge the committee to think about that rather than just passing it on the nod.

In that context, the more flexible and pragmatic approach that is set out in Liz Smith's amendment 31 is more sensible. Amendment 8 fails to address the problem of the governing body being denied the opportunity to elect its own chair, which must be deeply ironic in the context of what this Parliament has decided to do with committees, but there we go—nothing surprises me any longer.

As for the introduction of a measure allowing candidates to claim election expenses, that has emerged, I am told, from nowhere. It is supported by no evidence, including the costs, which presumably will be borne by universities, and it smacks of understandable populism on the part of ministers.

The cabinet secretary's amendment 12, which removes section 1, is right, but I urge the committee to replace it with a more flexible and proportionate framework, as set out in amendments 27 to 29, along with amendment 31, rather than the unworkable prescriptions that have been put forward this morning.

Liz Smith: Amendment 31 is required because it countermands one of the Scottish Government amendments that is based on payment on demand rather than on need. Amendment 31 requires decisions about the remuneration of chairs to be made in accordance with current and evolving best practice, which is very important and is set out in the higher education governance code, based on the need for remuneration or allowances to enable someone to discharge that role in the circumstances of the institutions. It also removes ministers from a decision-making role in relation to the remuneration of chairs.

I agree with every comment that Tavish Scott made regarding amendments 27 to 29. He is absolutely right. If there is anything that has led to the success of our universities, it is their diversity and their ability to respond to increasing global competition, so to condition that down to what the Government says is, quite frankly, not acceptable.

In amendment 5, having disempowered the senior governor institution with rectors, the Scottish Government has now set out the criteria for the selection of the senior governor whether or not they actually have that meaningful role. The code of governance provides for a process that is

far more competent than what is expressed in the amendment so I cannot see any reason to support amendment 5.

In amendment 6, since the code already requires transparency and compliance—which I have to say is required by law—there is no need for the oversimplification of the process. As Tavish Scott rightly says, it is centralisation of the worst sort. Indeed, it makes me wonder whether the Scottish Government really knows what it is talking about when it comes to how advertisements actually appear in national newspapers and whether it would ever consider setting out the full description of the post and how applicants could claim their expenses. Furthermore, the expectation that a university will pay for people to campaign—be it the senior lay governor or anyone else—is utterly ludicrous. That has never been the subject of consultation, nor has the cost been addressed in the financial memorandum—as the committee knows, that document has already been torn apart by the Finance Committee—and that shows clearly that the Government has in mind a competitive, adversarial election, along the lines of the election of student officers. There are serious concerns about amendment 6.

The real worry about amendment 7 is the fact that it provides the nominations committee with little more than a tick-box role in determining whether the candidate fits the criteria that are specified. I believe that that has been written with ignorance about modern, effective practice when it comes to selecting people for senior roles. It gives no capacity to the nominations committee to make a judgment about who among the so-called tick-box candidates has the strength of skill, experience and commitment to that institution's mission.

I turn to amendment 8. The committee is well aware that Universities Scotland remains wholly unconvinced of the wisdom of having an election of chairs from a body that is outwith the governing body, which is in itself inclusive of staff and students. It rightly points to examples in the outside world and, indeed, within the Parliament's committee structures, which are held up as good practice precisely because the governing body is the group that elects the chair. There is a good reason for that, namely the essential need to ensure that there is full trust between the chairman and the governing body. If that trust is broken, the whole institution would be undermined, hence the outcry from so many quarters about the proposal.

10:45

Amendment 8 has two other crucial failures. First, in the highly possible event that there is only one willing candidate, it provides for paralysis for an indefinite period. Again, any institution that is

operating without a chair is likely to be in a difficult position. Secondly, I understand that there was no consultation about the proposal; it was not even mentioned at stage 1. It will create an absurd situation in which institutions will be paying candidates' campaign expenses. As far as I can see, that has not been costed and it is very likely to attract vexatious campaigners who do not have at heart the institution's best interests. The amendment is one of the most problematic in the whole bill. We certainly cannot support it.

Amendment 9 gives by far the greatest power to choose a role about the long-term view of the institution to the most transient community—the students. If there is to be an election with student and staff franchises, there should be equal weighting for the electoral colleges of governing body students and staff. Institutions will need to be able to make rules about who qualifies as members of the electorate. For example, is it acceptable that an overseas student who is doing distance learning over a short period will become part of the electorate? The proposal has not been thought through.

Amendment 10 obviously relates to amendments 3 to 9, but again I ask what happens under amendment 8 if there is only one candidate and an appointment cannot be made.

Amendment 11 would be open to abuse, because in effect it provides for payment on demand and as such would attract some of the wrong people. It restricts itself to disempowered senior lay members and not the empowered rector. We saw comments in yesterday's newspapers about that.

Cabinet secretary, there are serious implications for amendments 5 to 11. I would ask that you think again about them.

Chic Brodie: In my previous offering, I said that inconsistency is a major feature of the bill, as is the need to reduce points of conflict in it. Of course, given the momentum behind the education institutions, there must be flexibility.

On the issue of inconsistency and turning to amendments 6 to 9, I have made it absolutely clear in the past—I do so again today—that I am against the election of chairs on a wider franchise. In making my offerings, I suggested a mechanism by which the rectors elected by the wider franchise could co-chair the court with the senior lay member—or whatever he or she is called—on the basis that the rector could chair policy items, which would affect the university's direction, but that the day-to-day operations should be convened and chaired by a lay member elected by the court.

An issue that I am concerned about—it is why I asked my earlier question—arises in subsection (2) of amendment 8 as proffered:

“the election is to be postponed until the election can be held with more than one candidate”.

That could go on for a long time, particularly because those who might aspire to be the senior lay member, the chair or what have you, may not wish to go through an election process. That said, and this is what makes it so interesting, if an election were to be postponed—let us say for year—in order to get more than one candidate, we would then have a situation in which another member of the governing body of a higher education institution might be selected by the governing body. Therefore, while we are waiting for the election, someone will be in position who is elected by the governing body. I fail to see why that is relevant.

In addition, subsection (5) of amendment 9 says:

“In the event of a tie between two or more candidates”—

let me suggest that there are three 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”

whatever the rules are. Let us say that the person who wins has fewer votes than the aggregate of the other two candidates. Someone mentioned the parallel with what happens in this Parliament. That is true in a constituency vote, but we use proportional representation by top-up. What we are saying is that a chair—or a senior lay member or convener—could be elected on a minority of the franchise. Not only that, but they will then have to engender trust in a body that has had no say in appointing them. I will come on to other issues, such as the removal of members, when we deal with other amendments later.

I am confused by the whole process. I repeat that I will not support the election process for a chair that is being recommended on the basis of the reasons that I have given. I could go on to talk about the vetting process and how good it is. Will candidates who have the appropriate skills be put forward? I agree that there should be staff and student involvement at the appropriate level; they should certainly be involved in the election of rectors and in helping to put forward a candidate or candidates to the court for election.

In mentioning the need for consistency, I hope that I have been as constructive as possible. That will help us to reduce what I assure you will be major points of conflict.

George Adam (Paisley) (SNP): I want to talk about amendments 8 and 9, which set out the arrangements for the electoral franchise. The

heart and soul of the bill is the democratisation of the process. As elected members, we should not fear democracy—we should not fear the idea of bringing into the process people from the communities of higher education institutions. We should not back away from pushing forward in that way because, for me, that is the heart and soul of the bill. We should promote that all the time.

Amendments 5, 6 and 7 propose a sifting process to ensure that the right candidate is put forward so that we do not end up in a situation in which someone goes through the process just to get some form of publicity. I believe that if we reject any of the amendments that I have mentioned, we will detract from the fundamental principle of the bill, which is to ensure that every person who is involved in an institution gets the opportunity to be part of it and to move things forward.

Chic Brodie: I made a point about having the rector elected on a wider franchise to secure their attendance to project policy, which is clearly a driver for any institution. That would allow us to make sure that that democratisation applies at the very point of policy projection. I do not understand why that is not acceptable.

George Adam: I know that Mr Brodie is a man of principle, but the principle of the bill is to make sure that we open up higher education institutions to democratisation and make sure that more people get involved in the process. That is the important thing here—that is the message that we want to send out to those institutions. For far too long, it has been a closed process.

I am not saying that there have been issues, but because of the lack of openness and transparency in the process, our institutions could be accused of quietly making decisions in secret corridors of power. I am not saying that that is the situation, but that is how it could be perceived.

Liz Smith: Does George Adam agree that, regardless of the process, there is not a person at this table who does not want democracy and transparency in our universities? Do you accept that, with many of the Scottish Government's amendments, the process through which it is trying to achieve that is fundamentally flawed?

George Adam: That is where Liz Smith and I disagree, because I can see how the process can work and allow institutions to deliver what we all want them to deliver. As I said, we should not fear democracy. We should not get to a situation in which we do not allow institutions to empower the people in their communities. That is the important part of the bill—indeed, it is its heart and soul. I therefore encourage everyone to support amendments 5, 6, 7, 8 and 9.

Mary Scanlon (Highlands and Islands) (Con):

I am really just seeking some clarity. This follows what George Adam said. I agree with Liz Smith that no one does not want democracy, transparency and accountability in respect of every part of public funding in Scotland. I also want to drill down into Tavish Scott's point on amendment 6. I would like the cabinet secretary to clarify some points in her summing up.

Since I came here in 1999, we have passed a lot of life-changing legislation—rightly so. Parliament has an excellent reputation for that. Today we are looking at our world-class universities. In this country, we have universities that are in the top 100 in the whole world. We are not talking about Scotland, the United Kingdom or Europe; we have world-class universities. It is important to put that on the record.

George Adam talked about the “secret corridors of power”. I am shocked that learned individuals in our world-class universities have to be told in legislation to put an advert on their website to tell people how to get an application form. Is that really what the legislation of the Scottish Parliament is about? Do the universities not know about technology? Do they not know that, when there is a vacancy for a senior post, an advert should be put on the website? Do they not know that it is important that people know from where to get an application form? What I am asking the cabinet secretary is this: where is the problem? Where are the “secret corridors of power”? Where are the secret deals? Where is the necessity to use primary legislation to tell our world-class universities to put adverts on their websites and to direct people to where they can get application forms from?

I find it quite embarrassing to be sitting here debating such legislation. Democracy is one thing; micromanagement and the arrogance of doing that are something else. I seek clarity from the cabinet secretary on that point.

Angela Constance: It is important to put on the record that the model provided for what was recommended in the von Prondzynski review. Throughout the process, I have been alive to the objections that many members have raised about the regulation-making powers in the bill. Therefore, with lots of consultation and discussion with all stakeholders, the Government has proposed a model for electing chairs.

It is also important to recognise that the bill is discrete and the provisions in it are high level and focused. They also seek consistency across the 18 HE institutions in Scotland. I have to disagree with some colleagues: the code of good governance does not go far enough either on the process of appointing a chair or on issues of remuneration.

On the paralysis that Liz Smith and others have mentioned, amendment 3 allows for the business of the governing body to continue. However, in legislating, it is important that we do so in a robust way that does not allow people to sidestep the process of elections. Therefore, we have to be clear that, if there are not enough candidates to have an election, the process of advertisement has to recommence.

11:00

Chic Brodie: I understand that, and if you cut any of us through the middle you would see democracy running through us. However, I still cannot understand—particularly if we want more candidates to stand for election—why it is okay for a governing body to elect over a period of a year or longer its own senior lay member or chair. Where is the attainment of democracy in that?

Angela Constance: I am sure that Mr Brodie would be the first to point out the paralysis of boards that cannot be chaired appropriately, so of course there is provision in the event of there not being a timely election. However, it is beholden on the Government and those who believe in democratically elected chairs to ensure that the legislation is robust and ensures that elections actually occur. If at first you do not succeed, you have indeed to try again.

The provisions in relation to advertising are important. We have to ensure that universities advertise widely; they must cast the net wide for candidates to have an election. The relevant criteria as laid down in the Government provisions are important, but there will be an opportunity for the committees that will be established, which will include representatives of staff and students, to take into account the needs of their individual institutions. It is important that that committee considers the skills and attributes of candidates and that, as part of that, the candidate has the trust and confidence of the board. It is imperative that we set out in legislation the role and function of that committee and the entitlement of candidates who meet the criteria to go forward to an interview and to an election.

With regard to election expenses, the provisions are aimed at ensuring that candidates, who will have a variety of means and circumstances in their personal lives, can take part. That is important and not unreasonable if we want to cast the net wide and enable diverse high-quality candidates to come forward.

Liz Smith: Has that measure been costed?

Angela Constance: As I was going to say, it will be for the individual higher education institution to decide what expenses are reasonable, proportionate, affordable and

commensurate with the role—expenses for interview, expenses incurred in carrying out the role of senior lay member or election expenses. We are most certainly not micromanaging in any regard.

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Liz Smith: No.

The Convener: Sorry, Liz, but you do not have a vote. With all due respect, I say that you cannot speak for somebody else.

Mary Scanlon: I do not agree.

The Convener: Thank you, Mary.

There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 5 agreed to.

Amendment 6 moved—[Angela Constance].

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Abstentions

Brodie, Chic (South Scotland) (SNP)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 6 agreed to.

Amendment 7 moved—[Angela Constance].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Brodie, Chic (South Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 7 agreed to.

Amendment 8 moved—[Angela Constance].

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Brodie, Chic (South Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 8 agreed to.

Amendment 9 moved—[Angela Constance].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Brodie, Chic (South Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

The Convener: The result of the division is: For 6, Against 3, Abstentions 0.

Amendment 9 agreed to.

Amendment 10 moved—[Angela Constance].

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Abstentions

Brodie, Chic (South Scotland) (SNP)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 10 agreed to.

Amendment 11 moved—[Angela Constance].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Against

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Abstentions

Brodie, Chic (South Scotland) (SNP)

The Convener: The result of the division is: For 6, Against 2, Abstentions 1.

Amendment 11 agreed to.

Section 1—Appointment as chairing member

Amendment 27 moved—[Tavish Scott].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 27 disagreed to.

Amendment 28 moved—[Tavish Scott].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

Abstentions

Brodie, Chic (South Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 28 disagreed to.

Amendment 29 moved—[Tavish Scott].

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

Tavish Scott: They were late in saying “No”.

The Convener: There was a significant pause.

There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Brodie, Chic (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1. I will have to use my

casting vote, and I will vote against amendment 29.

Amendment 29 disagreed to.

Amendment 12 moved—[Angela Constance]—and agreed to.

After section 1

The Convener: Amendment 30, in the name of Liz Smith, is grouped with amendment 63.

Liz Smith: The Scottish Government's proposal for the election of chairs risks the governing body ending up with people who want to campaign on a single issue that is at odds with the governing body's overall policy—for example, somebody who wishes to maintain at a university a particular subject or facility that the governing body regards as academically poor or unsustainable. It also risks the governing body having great difficulty if the elected chair proves to be unfit for office, since it makes no provision for the removal of that person. Amendment 30 is designed to provide the necessary safeguard for a governing body to remove a chair who becomes unfit for office and who, more importantly, loses the trust of the governing body.

I move amendment 30.

Chic Brodie: We talked earlier about the appointments committee. I strongly agree that those who seek to appoint a chair should include as wide a range as possible of people who are affected by the talent of all the individuals in the institution. George Adam made a good point about ensuring that the institution remains effective. I would hesitate to use a phrase such as "It's Buggins's turn" or what have you, but the appointments process should be as rigorous as possible.

We require not only individuals' skills and talents, but their commitment. It seems anachronistic to have rectors who cannot or will not attend regular court meetings. When we look at the introduction to the court of people with skills and talents, we must recognise that the continuous improvement of outcomes requires the robust attention of everyone, particularly those who sit on the governing body.

I do not want to go back over what we have discussed, but the suggestion in my amendment 63 is that there should be a mechanism for removing or requesting the resignation of a member of the governing body if they are found to be unable or unwilling to attend court and give an input that improves the university's performance outcomes.

Angela Constance: I am grateful to Liz Smith and Chic Brodie for explaining the intent of

amendments 30 and 63. However, the amendments are neither necessary nor desirable.

The amendments are unnecessary because HE institutions already have powers to deal with the resignation or removal of the chair and other members of the governing body, and they will most likely already have their own arrangements in place. Moreover, amendments that I moved earlier today will ensure that the process for filling vacancies for senior lay members is carried out efficiently and fairly.

11:15

As I have said, the bill's intention is to make provisions that are high level and focused and which feature discrete measures that are aimed at providing a strengthened framework for governance across the entire sector, making it more modern, inclusive and accountable. That high-level framework is intended to work with existing provisions, meaning that the bill will enable existing arrangements covering the resignation or removal of any member of the governing body to continue.

I know that some people have called for the sort of detail that is contained in amendments 30 and 63, regarding resignation and removal, to be included in primary legislation. However, as I have said, if someone is not performing adequately, whether in an elected position or otherwise, institutions already have the ability to deal with that.

Chic Brodie: Are you able to advise how many members of courts have been removed or asked to resign in the course of their tenure?

Angela Constance: I do not know the answer to that question. It may be a question to ask the institutions themselves. The important point is that HE institutions are free to finesse their arrangements to deal with such situations if they so wish.

I do not have anything further to add, convener. Since Mr Brodie's amendment 63 and Ms Smith's amendment 30 curtail the autonomy of institutions, I cannot support them, and I ask the committee to reject the amendments if they are pressed.

Liz Smith: I am confused by what the cabinet secretary has just said. What Chic Brodie said is correct, and I do not see how my amendment undermines the principle of autonomy. Indeed, it is important that we have this safeguard in place to ensure that universities have the facility to remove the chair when that person becomes unfit for office.

I return to the fact that it is crucial that there is the utmost trust between the chair and the governing body, but I do not think that that is

recognised in the bill. Chic Brodie makes a strong point in that respect. I will press amendment 30.

The Convener: The question is, that amendment 30 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 30 agreed to.

The Convener: Amendment 59, in the name of Liz Smith, is grouped with amendments 60 to 62.

Liz Smith: I have been working with Sandra White on the issue and have great sympathy for the comments that she has made both in the chamber and in her amendments.

I think that the entire Conservative—sorry, conservatoire; that was a slip of the tongue [*Laughter*]. I will say that again. I think that the entire Royal Conservatoire of Scotland community, which I stress includes elected staff and student governors, is opposed to the proposal to elect the chair of the board of governors through an electorate other than the board itself—for exactly the reasons that we discussed just a little while ago. The conservatoire believes that an election would be especially divisive and destructive, given its size—there are roughly 1,000 students and 40 full-time academic staff—and the disciplines on which it focuses. It believes that such a process would sow the seeds of division, and I think that it would lead to a politicisation of the role of the chair.

In terms of scale, the conservatoire believes that its current system of representative democracy is very effective and much more likely to deliver a good chair than a more widely drawn plebiscite would. The conservatoire's board of governors includes two academic staff: one directly elected and the other nominated by the academic board. That is a ratio of one academic staff governor to 22 staff. The board also includes two student governors, which is a ratio of one student governor to 500 students and is obviously quite different from any large university.

Because of the conservatoire's scale and culture, elected staff and student representatives can be relied on to reflect the views of colleagues and fellow students. We heard that message very strongly when the committee had the round-table discussion. Under its current arrangements, it would be inconceivable that the conservatoire's board would appoint a chair in the face of opposition from elected student and staff governors. Its nomination committee already includes two staff and two student governors, which exceeds the requirements of the bill. Accordingly, subsection (4) of amendment 61 makes explicit the need for a chair to have the support of not only the majority of governors but the combined majority of staff and student governors within that overall majority.

The conservatoire believes that election by plebiscite would put good candidates off. The conservatoire is as much a performing arts institution as it is an HE institution. Obviously, its discrete qualities are a very important consideration, and I think that the unnecessary imposition of an election process would cause difficulties.

I move amendment 59.

The Convener: Do any other members wish to contribute?

Tavish Scott: I support the tone of the amendments in this group. My understanding is that those involved with the Royal Conservatoire in all capacities—staff, students, management and stakeholders—have made clear their opposition to the bill's provisions applying to their institution in the way in which Liz Smith has illustrated. The conservatoire has set that out through the widest possible cross-section of its stakeholder community—a pretty decent principle, given some of our earlier considerations.

I suggest that the concerns that have been illustrated demonstrate the risks inherent in taking such a blunt instrument as the law to something as diverse and complex as our university sector. The very nature of what has been illustrated in this discussion demonstrates that. Other institutions in the HE sector have concerns and seek an exemption from all or part of the bill—the University of the Highlands and Islands in my part of Scotland is certainly one. If the minister can reassure us through later amendments that something can be done in that regard, that would clearly be helpful and important. However, Liz Smith's amendments in this group are the right amendments for the exemption that is being sought.

Sandra White (Glasgow Kelvin) (SNP): I agree with what has been said about the conservatoire, which also applies in some

respects to Glasgow School of Art, which I will speak about when we come to my amendments 48 and 49 in a later group. My amendments are based on the fact that the conservatoire and the Glasgow School of Art are small, specialist institutions that already adhere to the von Prondzynski recommendations and criteria. I have met representatives from the conservatoire and Glasgow School of Art, who feel that the governance that they have at present fits the criteria that the bill seeks to apply.

I support Liz Smith's amendments in this group. As has been said, the conservatoire is a specialist institution with a worldwide reputation. It has trade union representatives on its governing board, as does Glasgow School of Art.

Angela Constance: I have listened carefully to Ms Smith and other colleagues and their explanation of the intent of amendments 59 to 62. However, I cannot support those amendments, principally because they seek to make specific arrangements for only one of our HE institutions, which cuts across the very heart and purpose of the bill. As we have said already today, the principal aim of the bill is to enable a framework of governance that is more modern, accountable and inclusive. We of course welcome the diversity in our HE sector; in particular, we value the contribution made by the Royal Conservatoire to our tertiary sector.

However, I have made it clear that this is a focused bill that features discrete, high-level measures that are aimed at strengthening governance across the entire sector and which apply a consistency of approach that should apply to all our institutions. We have the same ambitions for the Royal Conservatoire as we have for our other 17 institutions. I do not expect any of the 18 Scottish HE institutions to which part 1 applies to be unable to meet the bill's requirements, particularly as institutions will be able to work towards full compliance over the transitional period during which the bill is commenced.

Amendment 61 makes it clear that this group of amendments is about retaining the ability of the Royal Conservatoire's governing body to simply select its chairing member. That would mean that only members of that governing body would be entitled to vote, which would exempt the Royal Conservatoire from one of the bill's core aims and provisions. For that reason and others, I ask the committee to reject Liz Smith's amendment 59, if it is pressed, and amendments 60 to 62, if they are moved.

Liz Smith: I have listened carefully to what the cabinet secretary has said, but there is a fundamental point to consider here. She will know about the recommendation made by Ferdinand von Prondzynski all those months ago that there

be separate discussions on the specialist institutions. It seems to me that those discussions have not taken place. I think that the Royal Conservatoire has made excellent recommendations about what works for it, and I do not think that any of us can criticise just how successful it has been.

Angela Constance: My understanding of the von Prondzynski review was that he said that those institutions should be included.

Liz Smith: The von Prondzynski review made it very clear that there would have to be further debate about the workings of those institutions. I have a quote from Professor von Prondzynski here, cabinet secretary, if you would like to see it after the meeting. He made it very clear that special circumstances applied to those institutions, which the review did not have time to consider. There is an important point to bear in mind here, and we should be careful with the facts.

An amendment in the name of Mr McArthur—I think that it is amendment 66—considers the overall possibility of exemptions, which brings us back to the question of the diversity of our HEIs. They are extremely diverse—their success lies in that diversity—and that is why I think that the Royal Conservatoire makes very good points. As a result, I will press amendment 59.

The Convener: The question is, that amendment 59 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 59 disagreed to.

Amendment 60 moved—[Liz Smith].

The Convener: The question is, that amendment 60 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Griffin, Mark (Central Scotland) (Lab)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 60 disagreed to.

Amendment 61 moved—[Liz Smith].

The Convener: The question is, that amendment 61 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Griffin, Mark (Central Scotland) (Lab)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 61 disagreed to.

Amendment 62 moved—[Liz Smith].

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Griffin, Mark (Central Scotland) (Lab)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 62 disagreed to.

Section 2—Remuneration to be payable

Amendment 31 moved—[Liz Smith].

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Brodie, Chic (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 4, Abstentions 1. I will have to use my casting vote again. I vote against amendment 31.

Amendment 31 disagreed to.

Amendment 13 moved—[Angela Constance]—and agreed to.

Section 3—Consultation for sections 1 and 2

Amendment 14 moved—[Angela Constance]—and agreed to.

Section 4—Composition of governing body

Amendment 15 moved—[Angela Constance]—and agreed to.

11:30

The Convener: Amendment 32, in the name of Liz Smith, is grouped with amendments 33 to 38, 16, 39, 40, 17, 41, 42, 18, 1 and 50. Please note that amendment 34 pre-empts amendments 35 and 36, and that amendment 42 pre-empts amendment 18.

Liz Smith: The amendments in my name to sections 4, 5 and 6 would protect the democratic nature of staff and student membership of governing bodies.

On the student side, the amendments would enable institutions to provide for directly elected student members, as well as or instead of nominees of the students association, to provide for an enhanced level of democracy.

Currently, the most common means of selecting student governors is for the elected sabbatical office-holders of students associations to fill roles—typically, one would be the student president, joining explicitly ex officio, and the second, by convention, would be another elected sabbatical officer. However, there are four directly elected student governors in the sector, across three institutions; any of the arrangements in that regard has a democratic element that is lacking

from the approach of simple nomination by the students association.

On the staff side, the amendments would require all staff members of governing bodies to be elected, rather than simply nominated by local trade union leaders, who typically represent fewer than a third of staff members, to retain the capacity of academic boards or senates to elect academic staff members to governing bodies.

There is an important connection between the bodies that are responsible for institutions' overall governance and the bodies that are responsible for institutions' academic leadership. Currently, 51 per cent of staff governors, excepting senior management, come to the governing body from the academic board. Amendment of sections 4(1)(b) and 5(3)(b) would enable academic boards or senates to elect members who would count as elected staff for the purposes of the bill.

Amended section 4(1)(c) would give trade unions their proper place, as is the case in the University of Glasgow, in running elections to the governing body that would be open to all staff rather than just the minority of staff who have chosen to join a trade union. Without my amendments, elected members of staff of governing bodies will inevitably be displaced by trade union nominees.

Even with the removal of the requirement for alumni governors, the new governors who will be required by section 4 will leave six HEIs' governing bodies in breach of one or both of the code's requirements that governing bodies should have

"no more than 25 members",

and

"a ... majority of independent members".

For example, the addition of two union-appointed governors would leave the University of Glasgow's court with 26 members, of whom 50 per cent would be independent. To comply with the Scottish code of good HE governance, as adopted by the Scottish Further and Higher Education Funding Council, it would be necessary to remove at least one non-independent member from the court. The bill does not specify how that would be done, but in practice the sole point of flexibility in the case of Glasgow is the cohort of staff elected to the court by the senate or academic board. That principle is very important in ensuring that there is greater democracy and accountability.

I move amendment 32.

Tavish Scott: I will speak to amendment 35 and other amendments in the group because they represent an attempt to rectify a somewhat strange and patronising assumption in the bill that characterises some staff as simply "support",

rather than being professional in their own right. I hope that the committee and the Government will support the proposed change.

Amendment 39 addresses the anomaly by which the bill gives recognised trade unions the right to nominate governing body members in institutions that do not have recognised trade unions. It is an attempt to ensure that this blunt bill does not take a one-size-fits-all approach to a sector that is as diverse as education, and that it incorporates sufficient flexibility to enable it to work as best it can to accommodate the circumstances of each institution.

In that spirit, I support the Government's amendments 16 and 17 in relation to graduates associations.

Angela Constance: The overarching aim of section 4 is to advance the inclusivity of the governing bodies of our higher education institutions, enabling every voice on campus to be heard.

Amendment 16 removes the requirement for the inclusion of two graduate members nominated by a graduates association of the institution. While there is no doubt that a graduate of an institution is of considerable value to many governing bodies, most governing bodies will naturally attract graduates. I have carefully examined the evidence that has been provided to this committee, and I acknowledge that, for those institutions that do not currently have a formally constituted graduates association—such as the Glasgow School of Art and Glasgow Caledonian University—there is a challenge in meeting that requirement. In acknowledgement of that challenge, I seek to remove the requirement from the bill.

Amending the bill in that manner will reduce the number of statutory members of the governing body required by the bill from nine to seven. As we heard in evidence, many institutions already have individuals on their governing body who, if elected or appointed under the bill's procedures, would fill five of the remaining seven statutory positions. As such, this amendment will also enable institutions to comply more easily with both the requirements of the bill and the Scottish code of good higher education governance, which suggests that a maximum of 25 members should be a benchmark of good practice for the size of the governing body.

Amendments 17 and 18 are consequential to amendment 16. They remove the definition of a graduate of an institution, as well as removing provision for the nominations process for graduate members. If amendment 16 is accepted, those provisions will no longer be necessary.

Amendment 1 removes the power at section 8 enabling Scottish ministers to amend, by regulations, the categories of governing body

membership that are set out in section 4(1) and the number of persons to be appointed under a particular category. I have listened and given full consideration to all the issues that have been raised by all committees in relation to this bill. I have also listened to and examined carefully the written evidence of stakeholders. Although I may not agree with their assessment that section 8 poses a risk of reclassification of higher education institutions as public bodies by the Office for National Statistics, I consider on reflection that removing that non-essential power will provide further comfort in that regard.

Amendments 32, 33 and 41, in the name of Liz Smith, seek to amend section 4. I have listened to Ms Smith's explanation of the rationale behind her amendments. Section 4(1)(b), as introduced, requires that the membership of the governing body includes two staff members, elected by the staff of the institution from among the staff of the institution. Amendments 32 and 33 introduce an alternative option of filling those two staff positions, with one person appointed by the academic board of the institution and one person elected by the staff of the institution. I have given consideration to that.

Although I am not opposed to the membership of any governing body including members who are drawn from another important body such as the academic board, I do not consider it necessary to provide for that in this section. My amendment 16 reduces the number of members required by the bill to only seven, which means that every HE institution will remain able to fill a further 18 positions on the governing body from wherever they wish, within the confines of the code.

Amendments 32 and 33 are not necessary, but amendment 41 is simply too restrictive in its framing of the electorate for these staff positions. It would enable the governing body to choose to restrict the electorate and the pool of candidates for the election of staff member positions to members of the academic board. That would be detrimental to the inclusivity that I want to support through the bill. I therefore ask the committee to reject amendments 32, 33 and 41.

My proposals to provide for trade union nominees to be included in the membership of governing bodies are among the most far-reaching and innovative provisions in the bill, and I am proud that it is this Government that is introducing them. Amendments 34 and 42, in the name of Liz Smith, provide an alternative approach that I cannot support. I believe that trade unions deserve more than simply an administrative role. Furthermore, amendment 34 provides for no trade union involvement at all where there is no trade union officially recognised by the HE institution. However, under section 4(2)(b), all that is required

for official recognition under the bill is that an HE institution

“recognises it as representative of the category of staff.”

That should always happen where a trade union has members who are staff of the institution.

I thank Tavish Scott for explaining the intent behind amendments 35, 36, 40 and 50. The Scottish Government considered fully and carefully the wording to be used in respect of the categories of staff that are described throughout the bill. The terms “academic staff” and “support staff” are well understood in the sector, are used in various governance orders in relation to the post-1992 institutions and take their ordinary meanings in much the same way as the terms “teaching staff” and “non-teaching staff” do in the legislation relating to colleges.

The issues in the bill are too important for us to be debating semantics when a term is already widely understood in the sector. The support staff in our HEIs are essential to the smooth operation and good governance of those institutions. They do very important work, and the bill ensures that they too are given a voice on the governing body of HE institutions.

The bill is absolutely clear about the extent of its application, and introducing new overlapping terms and unnecessary definitions would not be helpful. To introduce the term “professional staff” would muddy the waters, as academic staff would also commonly be understood to be professional staff. However, if concerns have been raised by unions or staff on the matter, I would be happy to discuss the matter further with Tavish Scott or Liam McArthur, or indeed with others, in advance of stage 3. I therefore ask the committee to reject the amendments in Mr McArthur's name.

Amendments 37 and 38, in the name of Liz Smith, would enable HE institutions to fill the two mandatory student positions on their governing bodies either through the appointment by nomination process already envisaged by section 4(1)(e) or by a new added election process, in which students could stand and vote.

As introduced, section 4 obliges HE institutions to have two student members on their governing body nominated by a students association of the institution, from among the students of the institution. Although I am not sure that institutions would welcome an attempt to require them to conduct more elections, Liz Smith's commitment to creating a democratic mandate for student members is laudable. However, it does not take into account the fact that, in most cases, members of students associations who are nominated to serve on governing bodies or other bodies have already been elected to an office of the students association by their fellow students, so whoever is

nominated is already likely to have a mandate from students.

11:45

A particular difficulty with amendment 37 is that it leaves it to the discretion of the HEI whether both student places are to be nominated or elected. I am clear about and comfortable with the provisions as drafted, which leave it to students themselves to nominate members to represent their interests. However, I am glad that we agree that students' influence on the governing body of their HEI is essential.

Amendment 38 is unnecessary. Section 6 already provides for the governing body of the HEI to make rules in accordance with which the nominations process must be conducted, including in relation to nomination by a students association under section 4(1)(e).

I ask the committee to support amendments 1, 16, 17, and 18 and to reject amendments 32 to 42 and 50 from Liz Smith and Liam McArthur, if they are pressed.

The Convener: I call Liz Smith to wind up and press or withdraw her amendment.

Liz Smith: I begin by saying how welcome it is that section 8 has been removed. It should never have been in the bill in the first place and it caused great angst to the entire sector—students and staff. I am pleased that the Government has seen sense on that and taken the section out.

The cabinet secretary said that the bill is about increasing democracy—it is. It is about increasing democracy for students but also about ensuring that no democracy is diminished. That is something that would unquestionably happen in some universities who will find that elected members of staff will no longer be able to take their positions, despite the fact that the cabinet secretary says that she is going to look at that.

The cabinet secretary said that she does not want to get bogged down in semantics. However, semantics are a key part of any bill, so it is very important to look at the semantics of the drafting. I suggest that one of the reasons why we have such difficulty over the bill is that the semantics have been so unclear.

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 32 disagreed to.

Amendment 33 moved—[Liz Smith].

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 33 disagreed to.

The Convener: I remind members that amendment 34 pre-empts amendments 35 and 36.

Amendment 34 moved—[Liz Smith].

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 34 disagreed to.

Amendment 35 moved—[Tavish Scott].

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 35 disagreed to.

Amendment 36 moved—[Tavish Scott].

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 36 disagreed to.

Amendment 37 moved—[Liz Smith].

The Convener: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 37 disagreed to.

Amendment 38 moved—[Liz Smith].

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 38 disagreed to.

*Amendment 16 moved—[Angela Constance]—
and agreed to.*

Amendment 39 moved—[Tavish Scott].

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 39 disagreed to.

Amendment 17 moved—[Angela Constance]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Elections to governing body

Amendment 40 moved—[Tavish Scott].

The Convener: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 40 disagreed to.

Amendment 41 moved—[Liz Smith].

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 41 disagreed to.

Section 5 agreed to.

After section 5

Amendment 63 moved—[Chic Brodie].

The Convener: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 63 agreed to.

Section 6—Nominations to governing body

The Convener: I remind members that amendment 42, in the name of Liz Smith, pre-empts amendment 18.

Amendment 42 moved—[Liz Smith].

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 42 disagreed to.

Amendment 18 moved—[Angela Constance]—and agreed to.

Section 6, as amended, agreed to.

Section 7 agreed to.

Section 8—Power to modify section 4

Amendment 1 moved—[Angela Constance]—and agreed to.

11:56

Meeting suspended.

12:02

*On resuming—***Section 9—Size of academic board**

The Convener: Amendment 19, in the name of Jim Eadie, is grouped with amendments 43, 44, 20, 45 to 47, 2 and 58.

Jim Eadie (Edinburgh Southern) (SNP): As one of the constituency members for the University of Edinburgh, I am pleased to speak to amendment 19.

The purpose of amendment 19 is to remove section 9 of the bill, which states:

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

I raised this matter directly with the cabinet secretary in the Scottish Parliament on 26 November last year, and I am aware that she has listened to the arguments about removing section 9 and has indicated that she is minded to support my amendment. I welcome her willingness to consider the sector’s views.

The University of Edinburgh already has strong and inclusive governance arrangements, with its governing body incorporating staff, students, alumni and the city as well as external independent members, who bring a breadth and a balance of skills and are appointed through an open, transparent process. The university’s system of governance, which has been refined to ensure full compliance with the new Scottish code of good higher education governance that was introduced in July 2013, is working well, and it provides appropriate oversight and assurance for the university. The University of Edinburgh is also the only Scottish university that has an independent rector who is popularly elected by staff and students.

Section 9 could undermine the University of Edinburgh’s strong and inclusive governance arrangements. I do not believe that that is the intention behind the bill, but this section could reduce the university’s ability to compete effectively, would strip hundreds of members of staff of their current rights as senate members and would provide no obvious benefit to the university.

As members have stated this morning, one of the strengths of our university sector is its diversity. The one-size-fits-all approach taken in section 9 fails to take into account the different shapes and sizes of higher education institutions, and I firmly believe that it would be inappropriate for a university as large as the University of Edinburgh, which employs 13,000 staff and has 35,000 students. Taking all of that into account, I hope that the Scottish Government will support my

amendment, take on board the University of Edinburgh's concerns and, in doing so, allow each higher education institution to determine the size of its academic board.

I move amendment 19.

Tavish Scott: I agree with Jim Eadie's remarks on amendment 19, which relates to academic boards, and I particularly commend his approach to and his remarks on the code of practice. In light of our earlier debate, I would commend his support in that respect to his own Government.

You will just have to take my word for this, convener, but my understanding is that Liam McArthur's amendments in this group are relatively minor and seek to address references to specific titles and roles that, as the bill stands, are overly uniform. In that context, I hope that the committee might consider it appropriate to support them.

Briefly, I want to welcome amendments 45 to 47, in the name of Liz Smith, which appear to put into the bill safeguards that prevent ministers from legislating on matters of internal academic governance. Surely such a principle is only sensible. I also welcome amendment 20, in the name of the minister, which also seems to take the right approach.

Finally, I welcome amendment 2, in the name of the minister, which removes what I understand to be the controversial section 13. That was never necessary; thankfully, it is on its way out, and the bill will be all the better for it.

Angela Constance: I thank Jim Eadie for outlining the purpose behind amendment 19, which seeks to remove the requirement on HE institutions to ensure that their academic boards comprise no more than 120 members. The Scottish Government has listened and has fully considered the issue as set out in the evidence provided to the Education and Culture Committee.

Although the Scottish Government is still of the view that each academic board needs to be of a manageable size and efficiently run, we have been persuaded that that can still be achieved by a larger academic board. On reflection, we consider that the size of an academic board should be for each individual HE institution to decide, and I am therefore content to support amendment 19.

Amendments 43 and 44 provide for additional descriptions of two of the categories of membership of an HE institution's academic board as set out in section 10. The term "principal" is intended to identify the senior executive member of staff of a higher education institution, regardless of their job title. The term is well understood among the education sector; it is also used in the Scottish code of good higher education

governance, and its meaning is clear as denoting the person who is the head of the institution. Therefore, HE institutions will be clear about the position to be covered under section 10.

Similarly, the term "head of school" is sufficiently understood in the education sector. It is explained in the explanatory notes accompanying the bill as

"individuals who are the most senior academics"

of the HE institution, and it is already used in provisions in the governance instruments of some HE institutions in relation to the membership of their academic boards. As a result, I do not consider the amendments necessary, and I ask the committee to reject amendments 43 and 44 in the name of Liam McArthur.

Amendment 20 follows from amendment 19, which removes the provision for a maximum number of members of an academic board. Its purpose is to ensure that, despite the requirement for students to make up 10 per cent of the membership of the academic board, no HE institution will be required to have more than 30 students on its academic board. I should also point out that any board that wishes to have more than 30 students can, of course, still do so. Student representation on academic boards and senates should be significant rather than token, and amendment 20 continues to protect and enable that aspiration. Significant student representation on the academic board of an institution would still be achieved, even if a larger academic board were not required to have more than 30 student members.

At the moment, amendment 20 will have a practical effect only on the senates of the universities of Glasgow and Edinburgh, where membership of the board currently exceeds 300. However, as I have indicated, it would still be open to those senates to have more than 30 student members if they so wished. I therefore ask members to support amendment 20.

As for amendments 45 to 47 in the name of Liz Smith, I have to say that the removal of sections 10 to 12 would have a detrimental effect. Academic boards play an important role in our HEIs, providing oversight of academic quality and the necessary co-ordination with university governing bodies to ensure that decision making at all levels is properly informed. We must ensure that academic boards are, and remain, representative of the main communities in their institution. Section 10 sets out a minimum composition of academic boards and guarantees the participation of elected staff as well as elected student members. As the Government would not want any provisions to be removed that would diminish the intent, purpose and effect of section

10 as introduced, I cannot support amendments 45 to 47 and ask the committee to reject them.

The purpose of amendment 2 is to remove the power in section 13, which enables Scottish ministers to amend, by regulation, the number of members on an academic board specified in section 9 and to modify the categories of membership of an academic board set out in section 10(1) and/or the number or percentage of persons to be appointed under a particular category. The Scottish Government has listened and given full consideration to all the issues that have been raised by the Finance Committee and the Education and Culture Committee, and I have also carefully examined the written evidence that has been provided by stakeholders. Although I might not agree with their assessment of the risk posed by section 13 of HEIs being reclassified by the ONS as public bodies, I consider, on reflection, that the power to amend the categories of academic board membership and the number of persons to be appointed under a particular category is not essential, and I therefore urge members to support amendment 2.

Amendment 58 in the name of Liz Smith, which seeks to restore the provision relating to the membership of senates at the ancient universities under section 5 of the Universities (Scotland) Act 1858, is not desirable as it would result in inconsistencies in the rules defining the membership of the academic boards of HEIs. As a key policy aim is to embed a level of consistency in the approach to governance across HEIs and to improve the effectiveness of academic boards and the representativeness of their decision making, I cannot support the amendment.

I ask the committee to support amendment 19 in the name of Jim Eadie and amendments 20 and 2 in my name and to reject the other amendments in the group if they are moved.

Liz Smith: At the beginning of the meeting, my colleague Mary Scanlon asked the cabinet secretary, "If there isn't a problem, why do we need to fix anything?" I would ask exactly the same question about academic boards. Academic boards should be entirely a matter for self-regulation by autonomous institutions; indeed, I do not see why we are even contemplating legislation on the issue.

My amendments are designed to ensure that there is as much autonomy as possible. I believe that, during stage 1, Professor von Prondzynski himself made recommendations about academic boards; however, the evidence was completely lacking, and that situation has continued ever since. There is just no evidence about what is supposed to be wrong with academic boards and senates.

I have to say that I am delighted with amendment 2, which deals with the ONS situation by removing section 13. It is very good news, given that that above all else was about to destroy much of our university sector.

I support Jim Eadie's comments about the University of Edinburgh, and I also support the amendments in the name of Liam McArthur.

12:15

The Convener: As no other members wish to contribute, I will make a short statement myself. I welcome amendment 19 in the name of Jim Eadie on the maximum size of academic boards, and I also welcome the Government's support for that amendment, given our close questioning of witnesses about the reasoning behind the figure of 120. On behalf of the committee, I welcome the fact that Jim Eadie has lodged the amendment and the cabinet secretary's support for it.

Jim Eadie: I welcome the constructive approach that the cabinet secretary has taken in listening to and acting upon the concerns that have been expressed by and on behalf of the University of Edinburgh. I also very much welcome committee members' support this morning. In agreeing to remove section 9, the Government has recognised the diversity of the sector and has introduced a degree of flexibility into the bill that will be welcomed by the University of Edinburgh and the wider higher education sector in Scotland.

For those reasons, convener, I will press amendment 19.

Amendment 19 agreed to.

Section 10—Composition of academic board

Amendment 43 moved—[Tavish Scott].

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 43 disagreed to.

Amendment 44 moved—[Tavish Scott].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 44 disagreed to.

Amendment 20 moved—[Angela Constance]—and agreed to.

Amendment 45 moved—[Liz Smith].

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 45 disagreed to.

Section 10, as amended, agreed to.

Section 11—Elections to academic board

Amendment 46 moved—[Liz Smith].

The Convener: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)

Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 46 disagreed to.

Section 11 agreed to.

Section 12—Validity of board's proceedings

Amendment 47 moved—[Liz Smith].

The Convener: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 47 disagreed to.

Section 12 agreed to.

Section 13—Power to modify sections 9 and 10

Amendment 2 moved—[Angela Constance]—and agreed to.

After section 13

The Convener: Amendment 48, in the name of Sandra White, is grouped with amendments 48A, 64, 65 and 49.

Sandra White: I speak as the member for the Glasgow Kelvin constituency, where the Royal Conservatoire of Scotland and Glasgow School of Art, which are world-renowned institutions, are based.

Amendment 48 is about small specialist institutions. It states:

“The Scottish Ministers may”—

I emphasise the word “may”; I specifically did not use the word “must”—

“by regulations modify this Act to exclude any or all small specialist institutions from any or all of the provisions of this Act.”

It continues:

“In considering whether to make regulations under subsection (1) the Scottish Ministers must consult such persons as they consider appropriate.”

That brings me on to Liz Smith’s amendment 48A, which she will speak to. It is eminently sensible in relation to other small specialist institutions.

Amendment 49 is on the meaning of “small specialist institutions”. Basically, it says that the phrase means the Royal Conservatoire of Scotland and Glasgow School of Art. It continues:

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

It also says:

“Regulations under subsection (2) are subject to the affirmative procedure.”

I will concentrate on the meaning of “small specialist institutions”. In a recent education debate, I raised the issue with regard to the conservatoire and Glasgow School of Art, both of which are in my constituency and are world-renowned institutions. As has been said, their boards of governors already meet the criteria. In particular, the conservatoire and Glasgow School of Art have representation from unions that apply to them, including Equity and the Educational Institute of Scotland.

On the issue that Jim Eadie brought up about section 9, the cabinet secretary was good enough to listen to the debate and to agree that there will be no limit on the size of academic boards. Jim Eadie mentioned that the University of Edinburgh has 13,000 staff and 35,000 students, whereas Glasgow School of Art has 40 staff and 1,000 students, and the figures are not dissimilar for the conservatoire. That difference shows exactly why we say that the bodies are small specialist institutions, and why my and Liz Smith’s amendments are important.

We have not yet considered small specialist institutions. I ask the cabinet secretary to consider the recommendations of von Prondzynski’s review and perhaps come back at stage 3 with something along those lines about such institutions. We must recognise how important the institutions are not only to Glasgow or my Kelvin constituency but to the whole of Scotland. They punch well above their weight and are world renowned. In fact, Glasgow School of Art is ranked 10th in the world among arts institutions.

I mentioned Jim Eadie’s point about the size of the University of Edinburgh. The same point

applies to the University of Glasgow and the University of Strathclyde, which are in my constituency. There is a world of difference between those institutions and small specialist institutions such as the conservatoire and Glasgow School of Art.

I will leave it there for now, but I may speak to Liz Smith’s amendments later.

I move amendment 48.

Liz Smith: I will start with two quotations. The first is from Ferdinand von Prondzynski, who said:

“we are aware that these institutions”—

the small specialist institutions—

“may wish to have their special status recognised in particular ways, and we take the view that further consideration may need to be given to them in that context”.

The cabinet secretary’s predecessor, Michael Russell, said:

“in the case of the Small Specialist Institutions, the application of the terms of the governance Code should pay particular attention to the principles of proportionality and of relevance to the nature of the individual Institution.”

For those reasons, we must be extremely careful that we do not undermine the diversity and success of the specialist institutions. Sandra White was correct to say that they are world-leading institutions, and if we try to constrain them in a particular way just because we want centralisation of all HEIs, we will end up in considerable difficulty.

As Tavish Scott has said, the Royal Conservatoire of Scotland, Glasgow School of Art and Scotland’s Rural College are very small and it could be argued that they have approaches that are in many ways quite different—the conservatoire and GSA are artistic—from those of some of the universities. We must recognise that, because that relates to their success.

The conservatoire has a unique corporate structure. It is a company limited by guarantee, with shareholders who include its elected staff and student governors. That is evidence of the conservatoire’s commitment to transparency and accountability, and I do not think that any of us could argue that it does not have very good relationships with trade unions and with anyone who wishes to raise particular points.

We must be careful about what we are seeking to do. The Scottish Government has failed to define the problem that the bill seeks to solve and, in the case of the specialist institutions, it will end up creating great difficulty. For that reason, I will support Sandra White’s amendments and, obviously, my own.

I move amendment 48A.

Angela Constance: I thank Sandra White and Liz Smith for explaining the intent behind amendments 48, 48A, 64, 65 and 49. Having considered the amendments carefully, I confirm that the Scottish Government does not support them.

As I have said previously, the Scottish Government intends the bill to apply equally to all 18 Scottish higher education institutions. I have been clear that the provisions in the bill are high level and focused; they feature discrete measures that are aimed at strengthening governance across the entire sector, which will make it more modern, inclusive and accountable. Moreover, I am satisfied that the existing provisions in the Further and Higher Education (Scotland) Act 2005 already have the balance right in placing duties on the Scottish Further and Higher Education Funding Council to report to Scottish ministers on higher education institutions.

I put on record my appreciation for the small specialist institutions such as the conservatoire, Glasgow School of Art and Scotland's Rural College, and I highlight the value of the role that they play in our HE sector and in wider society. I am aware of the concerns that the conservatoire has expressed about the bill. Board members wrote to me in December to request exemption from the bill because in their

"collective view, the Conservatoire's current governance arrangements, which are unique amongst Scottish Higher Education Institutions, are already fully fit for purpose".

That view has been expressed more than once during the bill process and by more than one institution. Although I respect any view that is offered, that does not mean that I am convinced that any of our higher education institutions should be treated differently. Consistency of application of the high-level requirements in the bill is fundamental to the bill's progress.

It is important to put it on record that the 2014 von Prondzynski report concluded that, where possible, small specialist institutions should be covered by any legislation, albeit that their special status might need to be considered. However, the range of recommendations for legislation in the original von Prondzynski report was much wider than the focused content of the bill. I therefore believe that it is reasonable to propose that the bill's provisions are equally relevant to all 18 Scottish higher education institutions.

It is important that we debate and consider the special circumstances, but I have not as yet heard a compelling argument based on size for the conservatoire, for example, to be exempt from the election of chairs or from having seven statutory members on its governing body. I am sure that the debate will continue as we move towards stage 3. The conservatoire has met officials and is due to

meet Dr Alasdair Allan imminently. It should be noted that the amendments lodged and supported by Liz Smith and Sandra White do not include the SRUC.

12:30

I expect all our 18 Scottish institutions to be able to meet the requirements of this very focused bill, which will enable every voice on campus to be heard. Many institutions, including the Royal Conservatoire and Glasgow School of Art, have already achieved a level of compliance in practice and have made progress, as Sandra White outlined. To allow those institutions an exemption would undermine the bill's aims. I have the same aspirations for all our HE institutions and I am convinced that all our HE institutions are capable of achieving them. Therefore, I ask the committee to reject all the amendments in the group if they are pressed.

Sandra White: I thank the cabinet secretary for her comments. I admit that I am rather disappointed. Amendment 48 would apply to the conservatoire and Glasgow School of Art. I did not include the SRUC because nobody from it contacted me. If an organisation does not contact me, I cannot raise its issue.

Again, I contrast the number of staff and students in Edinburgh university with the numbers in the conservatoire and Glasgow School of Art. The cabinet secretary is aware of the issues that the conservatoire and GSA have raised. They are worried that they will not be able to implement the measures in the bill. It may cost them more money, and they may lose good people from their boards. Those are the issues that they have raised with us.

I will press my amendments.

Liz Smith: The issue comes back to democracy and the democratic processes that we all want to see. I ask the cabinet secretary what specific problems smaller specialist institutions have had that need to be resolved. I argue that the situation of smaller specialist institutions is the reverse: they are a success story and their existing governance has worked extremely well.

I press amendment 48A.

The Convener: The question is, that amendment 48A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 48A disagreed to.

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 48 disagreed to.

Amendment 64 moved—[Liz Smith].

The Convener: The question is, that amendment 64 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Griffin, Mark (Central Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 64 disagreed to.

Section 14—Procedure for regulations

Amendment 21 moved—[Angela Constance]—and agreed to.

Section 15—Meaning of higher education institution

The Convener: Amendment 65, in the name of the cabinet secretary, was debated with amendment 48. I call the cabinet secretary to move it formally. [*Interruption.*] I apologise—amendment 65 is in the name of Liz Smith.

Liz Smith: I stress that the amendment is about the conservatoire.

I move amendment 65.

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Griffin, Mark (Central Scotland) (Lab)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 65 disagreed to.

The Convener: I will have words with my clerks later.

Amendment 22, in the name of the cabinet secretary, is grouped with amendment 66.

Angela Constance: The purpose of amendment 22 is to remove the power that enables the Scottish ministers, by regulations, to include a particular institution in the definition of a higher education institution for the purposes of part 1 of the bill. The Delegated Powers and Law Reform Committee suggested removing that in its report to this committee.

We have considered that and, on reflection, we consider that the power to include new institutions is not required. Our policy intention is that only fundable bodies should be covered by the new requirements in the bill. I am content that there should be no power to add bodies beyond those that will fall within the definition naturally. If any new institution is added to the list of fundable bodies, it will automatically fall within the definition of a higher education institution for the purposes of the bill.

Amendment 66 from Liam McArthur would introduce a process to enable institutions to apply to the Scottish ministers for exemptions from any

of the provisions that are set out in part 1 of the bill. Introducing such a provision would be to the bill's detriment, so I cannot support Mr McArthur's amendment 66.

As I have said throughout today, a core aspect of the bill is to introduce consistency in a small number of discrete key areas of governance of our higher education institutions. Amendment 66 would undermine that by enabling the application of the bill in a manner that differed across institutions. The process that is set out would provide the Scottish ministers with a far-reaching discretion to determine which provisions of the bill should apply to which institutions, if they applied for exemptions. I do not think that ministers should have such a role.

I ask the committee to support amendment 22. For the reasons that I have given, I respectfully ask Mr Scott not to move amendment 66. If it is moved, I ask the committee to reject it.

I move amendment 22.

Tavish Scott: I support the cabinet secretary's amendment 22, which will allow further exemptions to be made for institutions and enable more flexibility in how the bill operates in practice. In that context, it seems consistent also to support amendment 66, which is yet another attempt to ensure a degree of flexibility across the board—and not just for smaller specialist institutions, despite the very able and eloquent way in which Sandra White made the case for two very important institutions, which I argue are important not just in Glasgow but in Scotland as a whole.

Although the concerns are most pressing for the smaller institutions, there is legitimate anxiety more broadly across the sector about what might happen if the proposals in the bill do not lead to the outcomes that ministers predict. Given what we have heard today, that seems quite likely to happen. For example, if there was only one suitable or credible candidate for election as the chair of a governing body—a possibility that was subject to a fairly decent debate earlier in our proceedings—how would a university respond?

We had no answers to that question today, and I suspect that no answers will be forthcoming before the bill become law. However, they will be pretty forthcoming when we all end up in court over these matters. The minister—I apologise; I mean the cabinet secretary—keeps saying that this is a high-level, focused and discrete bill, but a lot of us have come to a different conclusion and think that it will mean the introduction of one-size-fits-all legislation across all aspects of higher education. That cannot be the right approach.

Amendment 66 would put in place a proportionate and transparent process that would allow decisions to be taken quickly, though not in

haste. Importantly, it would mean that ministers were required not simply to decide on any exemption but to make the basis for that decision clear. It would certainly be a step forward if the basis for lots of things in the bill was made clear.

Liz Smith: I will make a short comment. I agree entirely with Tavish Scott and think that the most important point that he made was about consistency of approach. If we are introducing flexibility as a result of the cabinet secretary's amendment 22, it is entirely logical and sensible to do exactly the same thing through Liam McArthur's amendment. I see no reasonable argument that would suggest otherwise.

Angela Constance: First, I make it clear that amendment 22, in my name, will reduce Scottish ministers' powers and ability to change the definition of a higher education institution. It is simply a response to the Delegated Powers and Law Reform Committee's comments. The amendment does not do what Tavish Scott and Liz Smith suggested; it does not enable flexibility, because only the fundable body in question will be automatically included.

The process that amendment 66 proposes is pretty bureaucratic. I point out to members that, if that amendment was agreed to, there would be no limit on the number of times an institution could apply to be exempted from the bill.

Amendment 22 agreed to.

Section 15, as amended, agreed to.

Sections 16 to 18 agreed to.

After section 18

The Convener: Amendment 23, in the name of the cabinet secretary, is grouped with amendment 23A.

Angela Constance: The purpose of amendment 23 is to ensure that sabbatical officers of a students' association of an institution are not excluded from participating fully in the governance of their institution, even if they are not technically matriculated students of the institution during their period of office.

The Scottish Government has given full consideration to this issue, and I thank Gordon MacDonald for raising it at stage 1. From the outset, our policy intention has been to ensure that all students are able to participate fully in the governance of their institution; it was never our intention to exclude sabbatical officers from provisions pertaining to the rest of the student population. Indeed, I understand that the vast majority of sabbatical officers remain as students during their term in office. However, I welcome the opportunity to clarify on the face of the bill that sabbatical officers are included, whether or not

they remain students during their term of office, as I appreciate that the situation can vary across institutions.

Amendment 23, therefore, seeks to ensure that sabbatical officers, whether or not they remain students throughout their term of office, are included in the provisions in the bill regarding appointment as a member of the committee that recruits the senior lay member; participation in the election of the senior lay member; nomination as a student member of the governing body; and election as a student member of the academic board.

Amendment 23A is a technical amendment. Subsection (2) of the new section inserted by amendment 23 would have been required only for the purpose of subsections (3) and (4) of the section inserted by amendment 4. However, Mr Maxwell's amendment 4B—which, as I explained, I support—removed those two subsections from amendment 4.

I move amendment 23, and I ask members to support it and amendment 23A.

Amendment 23A moved—[Angela Constance]—and agreed to.

Amendment 23, as amended, agreed to.

Amendment 49 not moved.

Amendment 50 moved—[Tavish Scott].

12:45

The Convener: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 50 disagreed to.

Amendment 66 moved—[Tavish Scott].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 66 disagreed to.

Section 19—Upholding academic freedom

The Convener: Amendment 51, in the name of Liz Smith, is grouped with amendments 52 to 57.

Liz Smith: I am still confused about and do not understand why we should be legislating in the area of academic freedom. The stage 1 report found no rationale for the Scottish Government to propose legislation in this area. Indeed, at the time there was a real concern, I think, about why we were even thinking about it. According to my information, there is no problem with academic freedom and it is not felt to be something that the Scottish Government should get involved in.

I tested out whether that was the case following several emails that came in to MSPs when it was first proposed to change the definition of academic freedom. Personally, I received 47 such emails, and I got back in touch with each of the senders, who were mostly members of staff in universities, to ask for specific examples of how academic freedom was currently constrained. I am sorry to say that only one person was able to supply an example, which was very specific to a piece of research in a particular institution.

Therefore, I am not at all sure what the bill is trying to do in this regard. My amendments in the group seek to ensure that we can respond to the committee's concern that academic freedom should be balanced with responsibility. It must not be exercised with malice, for instance, so that under the cover of academic freedom a person makes inflammatory or gratuitously offensive remarks. Obviously, anything must be based on facts and reason. I entirely accept that unevicenced assertions by members of academic staff about things outside their professional competence should not be protected by academic freedom.

As I said, the wording in section 19 can be interpreted as constraining a governing body's capacity to make decisions about the overall academic shape of the institution. My amendments in the group, in particular amendments 51, 52 and 54, seek to ensure that the risk of that is avoided.

I come back to the point that I do not understand why academic freedom is regarded as being a problem. When the cabinet secretary speaks to the amendments in the group, I would be interested to hear whether she feels that there are specific examples of a university in the current set-up being in some way prevented from having academic freedom.

I move amendment 51.

The Convener: I will speak to my amendment 53 and to the other amendments in the group. I think that we all agree that academic freedom is a principle on which the strength and success of our universities is founded.

I listened very carefully to what Liz Smith said, and I do not think that I agreed with an awful lot of it. However, I think that she made one point that is very important, which is that there is a balance to be struck between the rights and the responsibilities of staff and others in our HEIs. Liz Smith's amendments and my amendments compete in this area, so she will have to accept my apology, as I cannot support her amendments because I will be supporting my own.

The key issue is balance. We must ensure that academics and teaching staff can offer their opinions freely, unfettered by consideration of, for example, the impact on their ability to seek a new appointment or to maintain their current appointment. However, we must also ensure that the right to hold and express an opinion is exercised strictly within the ambit of the law.

My amendments 53 and 55 would introduce a qualification to the duty on post-16 education bodies that is proposed in section 19(2) of the bill. Further to the evidence presented to the committee, that should satisfy some—but perhaps not all—of those who are concerned about the impact of section 19 as introduced.

Some have asked for rights around academic freedom to be extended to the student population. I think that, practically, that would be difficult to achieve. Given that the nature of the relationship between governing bodies and students is quite different from that between an institution and its staff, I do not think that that is a sensible option. Moreover, students have the right to freedom of expression under current human rights legislation, as any other person does.

With that thought in mind, I consider amendments 53 and 55 to be a proportionate response to the issues. They provide balance, and I encourage members to support my amendments.

Angela Constance: It is worth noting that a statutory definition of academic freedom exists in the Further and Higher Education (Scotland) Act 2005. It is fair to say that the Government took the opportunity presented by this bill to look to strengthen that definition. However, the bill as introduced seeks to strengthen it in a modest way, and we certainly discussed issues of academic freedom, as set out in the bill, with a range of stakeholders in the workshops that I alluded to earlier.

I am sympathetic to what Liz Smith is trying to achieve with amendment 56, but I will be crystal clear on one point: academic freedom that is enjoyed by those teaching and researching in our universities must be exercised within the law; it does not represent a free pass—so to speak—to break the law. I am also aware of the points raised by the Scottish Council for Jewish Communities in its evidence on the bill. However, I think that there may be legal difficulties in applying a subjective test, based on whether there was any malicious intent in the exercise of academic freedom, in addition to the explicit requirement to comply with the law when exercising academic freedom.

Amendments 51, 52 and 54 would alter the wording of section 19 in a way that I consider would weaken the Government's original intention of strengthening academic freedom. The amendments would simply reinstate the provisions that currently exist in section 26(1) of the Further and Higher Education (Scotland) Act 2005. I appreciate the intention behind amendment 57 but, given the often subjective nature of opinions held or expressed, I do not think that it is realistic to expect academics to produce hard facts to support any view or opinion that they may hold or express. For the reasons given already I cannot support amendments 51, 52, 54, 56 and 57. I ask the committee to reject all the amendments put forward by Liz Smith.

Amendments 53 and 55, in the name of Stewart Maxwell, would make a minor adjustment to the duty on all post-16 education bodies to uphold the academic freedom of any of its staff who are engaged in teaching and research, and to ensure that the appointments and privileges of those persons engaged in teaching and research are not adversely affected by the exercise of their academic freedom. I am content to support amendments 53 and 55 to qualify the duty such that, in fulfilling it, a post-16 education body acts in a way that it considers to be reasonable. I make it clear that the requirement on people who are

engaged in teaching and research to exercise their academic freedom within the law is not affected.

Therefore, I support amendments 53 and 55 and urge members to support those amendments but to reject other amendments in the group if they are moved.

Liz Smith: The cabinet secretary said that there is already a definition of “academic freedom”. There is, absolutely, such a definition; what I do not understand is why we are trying to amend it. I entirely accept the convener’s point about the need for a balance between freedom and responsibility, and for that reason I will support his amendments 53 and 55. However, the convener gave the example of human rights, which are backed by law, whereas we have got into the territory of trying to legislate on academic freedom in relation to academic issues in institutions.

I say again that it is impossible to find any examples—I note that the cabinet secretary could not give me a list—of things that institutions currently cannot do in their subject areas, provided that they are not breaking the law. I just do not see where we are going on this, hence my lodging of the amendments in this group.

Section 19 is one of the sections in this bill that is not needed—although I would argue that all sections in the bill are unnecessary, because we should not be changing university governance in the first instance. There is no logical basis for section 19, so I press amendment 51.

The Convener: The question is, that amendment 51 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 51 disagreed to.

Amendment 52 moved—[Liz Smith].

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 52 disagreed to.

Amendment 53 moved—[Stewart Maxwell]—and agreed to.

Amendment 54 moved—[Liz Smith].

The Convener: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 54 disagreed to.

Amendment 55 moved—[Stewart Maxwell]—and agreed to.

Amendment 56 moved—[Liz Smith].

The Convener: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 56 disagreed to.

Amendment 57 moved—[Liz Smith].

The Convener: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 57 disagreed to.

Section 19, as amended, agreed to.

After section 19

13:00

The Convener: Amendment 67, in the name of Chic Brodie, is in a group on its own.

Chic Brodie: I will be brief. This goes back to what I said at a previous meeting. When legislation is passed, we do two things. One is that we invariably set targets that mean absolutely nothing, because they are applicable only at the time when they are applied. My concern is that those who do not agree with some provisions will force the Government into setting targets, which would be nonsense.

If I may speak personally, I will say that the issue does not just apply to this bill. For example, it does not make sense to have a target for a month and then if you miss it, it is split up into four, so instead of getting battered around the head once a month, you would get battered around the head four times a month.

I am sorry that the “Scottish Code of Good Higher Education Governance” has not run its whole course. A purpose of my amendment 67 is to suggest that all parties—irrespective of whether we agree with all the bill’s provisions—allow a period of time during which the Scottish Parliament may decide that the act should be scrutinised. That scrutiny should happen a reasonable time after the act has been allowed to bed down and we can see whether there has been

an improved outcome. There is a suggestion that this is perhaps not the bill in which to introduce such a measure. I argue the converse of that. There is no question, as we have heard in emails, but that the bill is contentious. That will not stop, in my opinion. As a consequence, it behoves us to ask all parties to recognise that we should allow the bill, if passed, to bed down, and that we should, after a suitable period, look at whether the objectives have been achieved, including whether the outcome of improved performance in higher education institutions has been met.

I move amendment 67.

Liz Smith: I whole-heartedly agree with Chic Brodie’s comments; post-legislative scrutiny will be required. This is a bad bill—it is bad because it has been badly drafted and it is bad because there has not been relevant consultation. I return to the cabinet secretary’s comments about semantics. Semantics is important. Unfortunately, its rules have not been adhered to in a way that allows us to interpret the bill.

I maintain that little is wrong with our university sector. Post-legislative scrutiny would be essential. I—or, rather, Mary Scanlon—will support Chic Brodie’s amendment 67.

The Convener: That is up to Mary Scanlon—[*Laughter*]*—but we hear what you are saying. No other member wishes to make a contribution, so I will make a short one.*

I will not support amendment 67—not because I disagree with the principle of post-legislative scrutiny, which is obviously an important role for Parliament’s committees. Given the amount of work that committees do, there is a wider question about whether they have the time to undertake such activity. However, that is a question for Parliament, rather than one for this bill. I am slightly uncomfortable with the idea that committees would be instructed to carry out post-legislative scrutiny. That is a matter for committees. I do not support the idea of binding the hand of future committees; whether they consider that post-legislative scrutiny is the right thing to do is their decision to make at the appropriate time. On that basis, while accepting both the principle and that there is a question mark over post-legislative scrutiny, we should not support amendment 67, which would create what I believe would be an uncomfortable situation in binding the hands of future committees. That is why I will not support the amendment.

Angela Constance: I want to thank Chic Brodie for explaining the intent of amendment 67. I am, of course, supportive of the right of the committee—indeed, of any committee—to scrutinise any legislation or to provide a scrutiny role in any manner and on any subject it sees fit.

The Scottish Government does not support amendment 67 partly because Parliament is already enfranchised in the manner that Mr Brodie seeks to achieve. I am sure that the committee will agree that the current powers of the committee are adequate to examine the impact of the bill as enacted—or, indeed, any other legislation—at any point in the future. Therefore, in my view amendment 67 is unnecessary. Parliament does not need a statutory provision to give it permission to tell itself or its committees to carry out post-legislative scrutiny; the Parliament's committees are perfectly able to look into all matters within their portfolios.

Mary Scanlon: Many bills that Parliament has passed have been fairly consensual, and most of us would agree that we have been able to see the purpose of and the reason for those bills. Other ministers—Labour, Lib Dem and Scottish National Party—have accepted sunset clauses, because there is a convention that legislation needs to be revisited after a period to see whether it is working. However, scrutiny of the bill has been highly adversarial and I do not think that there is a university in Scotland that is in favour of the bill. Do you not think that—if you will not consider post-legislative scrutiny for this adversarial bill—it should be revisited under a sunset clause, given the amount of criticism of it?

Angela Constance: With respect, Ms Scanlon, I say that it is not unusual for bills that are brought before Parliament to be debated in great detail and for there to be much difference of opinion on them. I am speaking to Mr Brodie's amendment 67. It is not my role, as a minister, to tell any committee or, indeed, Parliament how to perform its role in scrutiny of a bill.

As I have outlined in response to Mr Brodie, Parliament is already enfranchised to do as it pleases, so to include such a provision could set an undesirable precedent that would imply that such action is necessary before Parliament and its committees could carry out their daily parliamentary business, as the convener suggested. I would not want to set that precedent or make that implication.

It may be of some reassurance to the committee that there will be—as discussed during earlier debates on the bill—a role for the university sector advisory forum in assessing the bill's implementation and effectiveness. Of course, that is secondary to the role of any committee of Parliament—and, indeed, to the role of Parliament as a whole—in scrutinising as, when and how it sees fit.

Chic Brodie: I hear what the cabinet secretary says about the university sector advisory forum looking at this contentious bill. However, at the end of the day, the bill will be passed by

Parliament, and my general view is that a bill of this nature should be allowed to bed down and be given the opportunity to run some of its course.

On timetables, I suggest that because of the contentious nature of the bill we will probably spend a lot of time trying to justify or not justify our comments. I am trying to assuage that by saying that we should have the scrutiny at a time to be determined by the Scottish Parliament. As you rightly said, the matter is up to the committees, and petitions are referred to the committees through the public forum. Nevertheless, we have to cool the jets on the bill now—if it is passed—and allow a time for all the parties that are involved to secure improved outcomes. I therefore urge the Government to accept amendment 67.

The Convener: Are you pressing amendment 67?

Chic Brodie: Yes.

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Brodie, Chic (South Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 67 disagreed to.

Section 20—Ancillary regulations

The Convener: Amendment 68, in the name of Liam McArthur, is grouped with amendment 69. I call Tavish Scott to move amendment 68 and to speak to both amendments in the group.

Tavish Scott: I apologise to Chic Brodie for not catching the convener's eye during the debate on the previous group. The only thing that I would add is that because the Government has lodged at stage 2 amendments that will fundamentally change the bill but have not been consulted on—as we have illustrated this morning—Mr Brodie's observations about post-legislative scrutiny were entirely appropriate and correct.

I have—dare I say it?—a heck of a lot of sympathy for the cabinet secretary. As a former minister, I have been given the same speaking

note saying, “Don’t, for goodness’ sake, let that one go.” I must say on reflection, however, that in all the time that Mary Scanlon and I have spent in this place, I have learned that we do not do post-legislative scrutiny very well, and Chic Brodie tried to do Parliament a favour there by introducing it on a measure that may not—I take his point—be adversarial, but is certainly highly controversial. I hope that Parliament and the conveners’ group will reflect on that for the future—you are one of those learned conveners, convener.

I would like to speak briefly to Liam McArthur’s learned amendment, which I nearly understand. It is an attempt to address potential concerns of the Office of the Scottish Charity Regulator in relation to the way in which ministerial powers under subordinate legislation might be used. Initial misgivings about the impact that the bill’s provisions might have on the charitable status of universities were allayed, I understand, by OSCR. The focus turned to the more substantive and justified concerns about the real threat of Office for National Statistics reclassification, and the minister has taken actions there that are obviously welcome and good. Nevertheless, as things stand, ministers will still, through secondary legislation, have significant powers to amend the bill, which I suggest need to be constrained. Amendments 68 and 69 in Liam McArthur’s name would achieve that, so I ask the committee to consider and support them.

I move amendment 68.

Angela Constance: As a committee that regularly deals with primary legislation, you will know that the bill could, like any other, when it becomes new law give rise to a need for a range of ancillary provisions. Section 20(1) of the bill will allow Scottish ministers to make ancillary provision without further primary legislation if a need is identified or a change is considered necessary or expedient. It is necessary, proportionate and commonplace in bills to allow for such flexibility. Committee members will recall their recent consideration of the Education (Scotland) Bill, which was passed by Parliament on 2 February 2016. That bill contained a similar ancillary provision.

The power in section 20(1) is limited to the extent that it can be exercised only if it is considered necessary or expedient for the purposes of, or in connection with, provision that has been made by the bill. Therefore, regulations will have to be closely and directly linked to the substance of the bill. The power would not allow ministers to make sweeping changes that would run contrary to the underlying principles or expressed provisions of the bill. It is merely a quick fix for technical problems; it is most certainly not a free hand.

Further, if ministers were to make under section 20(1) regulations that would amend primary legislation, they would be subject to affirmative procedure and therefore subject to parliamentary approval. I am sure that committee members will agree that that allows for adequate parliamentary scrutiny of anything that may be done under the power. I therefore ask the committee to reject amendments 68 and 69 in the name of Liam McArthur, if Mr Scott presses them.

Tavish Scott: I hear the cabinet secretary’s arguments. There is always merit in that approach, but when a bill has a range of late amendments, I argue—OSCR has made the observation not in this context but in a different one—that there is great merit in restricting the role of future ministers in doing exactly as they may wish.

The situation also rather makes the case for Mr Brodie’s post-legislative scrutiny amendment 67, which was not successful this afternoon. The illustration in the minister’s argument did not include any examples of what might be necessary. I hope that a Government would embark on that route into yet further legislation—primary, secondary or otherwise—only if a committee of the Parliament had reviewed the act and suggested where there were mistakes.

13:15

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brodie, Chic (South Scotland) (SNP)
Griffin, Mark (Central Scotland) (Lab)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 68 disagreed to.

Amendment 69 moved—[Tavish Scott].

The Convener: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Griffin, Mark (Central Scotland) (Lab)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 69 disagreed to.

Sections 20 and 21 agreed to.

Schedule—Consequential modifications

Amendment 24 moved—[Angela Constance]—and agreed to.

Amendment 58 moved—[Liz Smith].

The Convener: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Tavish (Highlands and Islands) (LD)

Against

Adam, George (Paisley) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)

Abstentions

Griffin, Mark (Central Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)

The Convener: The result of the division is: For 2, Against 5, Abstentions 2.

Amendment 58 disagreed to.

Amendments 25 and 26 moved—[Angela Constance]—and agreed to.

Schedule, as amended, agreed to.

Sections 22 and 23 agreed to.

Long title agreed to.

The Convener: That ends our consideration of the bill at stage 2. I suspend the meeting briefly.

13:18

Meeting suspended.

13:19

On resuming—

Subordinate Legislation**Named Persons (Training, Qualifications, Experience and Position) (Scotland) Order 2016 (SSI 2016/16)****Child's Plan (Scotland) Order 2016 (SSI 2016/17)**

The Convener: Our next item is consideration of two pieces of subordinate legislation. Do members have any comments on the instruments?

Mary Scanlon: This is not really a comment on the instruments. I have spoken to a couple of local authorities that raised concerns about the named person not applying to home-educated children. The issue is mentioned in paragraph 7 of the policy note on Scottish statutory instrument 2016/16, in the second bullet point. I notified both local authorities that had raised the issue with me of that, and they are pleased to hear that the provision has been included. However, I wonder whether there is any further information on implementation of the named persons order, because many local authorities have concerns about home-educated children. I just seek a bit of clarity. Local authorities were not aware that the provision was coming. If it is possible to get information on how the measure will be implemented, I would be pleased to take it back to the local authorities that I spoke to.

Colin Beattie (Midlothian North and Musselburgh) (SNP): In connection with Mary Scanlon's point about home-educated children, I have been speaking to the minister about that because of a constituency case: statutory guidance will come out later to deal with the gaps.

Mary Scanlon: I am grateful to Colin Beattie for answering my question on behalf of the minister. That is helpful.

Colin Beattie: I was not answering on behalf of the minister; I was just explaining that I have been speaking to the minister.

Mary Scanlon: You are closer to the source than I am. I am pleased to hear that. It would be helpful if we had an indication of when the guidance will be produced and whether it will go through the committee or whatever.

The Convener: There is one more piece of subordinate legislation still to come on the issue and it will come to the committee. I do not have a date for that yet, but obviously it will be quite soon, given that we have only a few weeks left. When

that instrument comes, if you wish further clarification, I will be more than happy for you to contact me or the clerks immediately, and in advance of the committee meeting, we will try to get an answer for you from the Government before the day of parliamentary consideration.

Mary Scanlon: Is that likely to happen before dissolution?

The Convener: Yes. I am told that it will be 1 March.

Mary Scanlon: That is helpful. Thank you.

The Convener: Does the committee agree to make no recommendation to Parliament on the instruments?

Members *indicated agreement.*

The Convener: I thank everyone for their indulgence. It has been a long meeting.

Meeting closed at 13:22.

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