

POLICY NOTE

THE EDINBURGH NAPIER UNIVERSITY AMENDMENT ORDER OF COUNCIL 2018

S.S.I. 2018/170

1. The above instrument is made in exercise of the powers conferred upon the Privy Council by sections 45 and 60(3) of the Further and Higher Education (Scotland) Act 1992. The instrument is subject to negative resolution procedure.

Policy Objectives

2. The constitution of Edinburgh Napier University (“the University”) is principally contained in the Napier University (Scotland) Order of Council 1993 (S.S.I 1993/557) (“the 1993 Order”) made under section 45 of the Further and Higher Education (Scotland) Act 1992. Article 2 of the Edinburgh Napier University (Scotland) Order of Council 2007 (S.S.I. 2007/160) changed the University’s name to “Edinburgh Napier University” but the 1993 Order remains the principal governance instrument in relation to the University .

3. The purpose of this instrument is to amend the 1993 Order in light of the requirements of the Higher Education Governance (Scotland) Act 2016 (“the 2016 Act”). Chapter 1 of Part 1 of the 2016 Act makes provision in relation to governing body of a higher education institution. It makes provision for the membership of each governing body to include a senior lay member (or “chair”) with responsibility for the leadership and effectiveness of the governing body (section 1). The senior lay member is to be appointed following an appointment process which includes election by the staff and students of the institution (sections 3 to 8). It also makes provision for the membership of the governing body (sections 10 to 14). Chapter 2 of Part 1 of the 2016 Act (sections 15 to 17) makes provision in relation to the composition of the academic board.

4. Section 10 of the 2016 Act provides that the governing body of a higher education institution is to be composed of: the senior lay member; two persons of staff elected by the staff; two persons nominated by a trade union with a connection to the institution (one from the academic staff and one from the support staff); two student members nominated by the students’ association of the institution; and such other persons appointed by virtue of an enactment or in accordance with the governing document of the institution. Sections 11 and 12 provide that the election and nomination process for the staff, student and trade union members is to be conducted in accordance with rules made by the institution.

5. Section 15 of the 2016 Act provides that the Academic Board is to be composed of: the principal; the heads of school; persons elected by the staff of the institution who are to make up more than 50% of the total membership; persons elected by the students of the institution who are to make up at least 10% of the total membership; and such others as are appointed by virtue of an enactment or in accordance with the institution’s governing document or decision of the governing body. Section 16 provides that the election of staff and student members is to be conducted in accordance with rules made by the institution.

6. Sections 1, 2, 10 to 25 and the schedule of the 2016 Act came into force on 30 December 2016 and sections 3 to 9 came into force on 30 June 2017. But sections 3 to 9, 10

and 15 apply in accordance with transitional provisions set out in the Higher Education Governance (Scotland) Act 2016 (Commencement, Transitory, Transitional and Savings Provisions) Regulations 2016 (S.S.I. 2016/382).

7. The amendments which this instrument makes to the governance arrangements set out in the 1993 Order are further described below.

Proposals

Article 2 of the 1993 Order - Interpretation

8. Article 3 of this Order amends article 2(1) of the 1993 Order (which sets out relevant definitions) to provide new entries for the “the 2016 Act” and “Chair of Court”. The Chair of Court means the person appointed under article 3(2)(a) of the 1993 Order.

Article 3 of the 1993 Order - The Court

9. Article 3 of the 1993 Order makes provision for the composition of the Court, which requires to be amended in order to comply with Chapter 1 of Part 1 of the 2016 Act. Article 4(a) of this Order substitutes a new article 3(2) setting out the composition of the Court. The members are to include the Chair of Court, who is the person appointed to the position of senior lay member by virtue of section 8 of the 2016 Act, and the other members required by section 10 of the 2016 Act (who are to be appointed in accordance with that Act). Other members are the Principal and Vice-Chancellor, a member nominated by the Chancellor, one Vice-Principal, a member of staff elected by the Academic Board and 12 to 14 lay members. Article 4(b), (c) and (e) makes amendments in consequence these changes. Article 4(d) amends article 3(9) of the 1993 Order to provide that where the Chair of Court has previously served as a member of the Court, the maximum aggregate term of office should not exceed a period of 12 years.

Article 6 of the 1993 Order – The Academic Board

10. Prior to amendment by this Order, the 1993 Order set out the composition of the Academic Board in Schedule 2 and also provided the Court with the power to amend the composition from time to time. The 1993 Order is amended so that the power of the Court to determine the composition of the Academic Board is retained but the composition itself is no longer set out in the 1993 Order. A new article 6(1) of the 1993 Order is inserted by article 5(a) of this Order to provide that the Court is to determine the composition of the Academic Board in accordance with the requirements of the 2016 Act and the 1993 Order (as amended by this Order).

11. Article 5(a) of this Order also inserts new paragraphs (1A) to (1D) into article 6 of the 1993 Order in relation to the Academic Board:

- paragraph (1A) provides that the Court is to consult the Academic Board before making any changes to the composition of that body;
- paragraph (1B) provides that the persons appointed by being elected by the academic staff of the University may hold office for a period not exceeding 4 years, to be determined by the Academic Board and are eligible for re-election;

- paragraph (1C) provides that persons appointed by being elected by the students of the University hold office for a period of one year and are eligible for re-election;
- paragraph (1D) provides that the Principal and Vice Chancellor is to preside over meetings of the Academic Board.

Part B of schedule 1 of the 1993 Order - Administration

12. Article 6 of this Order amends Part B of schedule 1 of the 1993 Order, which sets out the powers of the Court, as follows:

- new paragraphs (6) and (6A) make provision for the appointment of the Chair of Court and Vice-Chair;
- new paragraph (7) makes provision relating to the Court's power to appoint and remove members;
- new paragraph (10) makes provision for the method of appointment of Academic Board members.

Schedule 2 of the 1993 Order – The Academic Board

13. Article 7 of the Order omits schedule 2 of the 1993 Order, as a consequence of the amendments to article 6 of the 1993 Order, which are discussed at paragraphs 10 and 11 above.

Transitional Provision

14. Article 8 of the Order makes transitional provision to provide that the chairman of the Court who is in office immediately before the commencement of this Order is treated as having been appointed under article 3(2)(a) and paragraph (6) of Part B of schedule 1 of the 1993 Order, as amended by this Order.

Commencement

15. The Order will come into force on 15th September 2018.

Consultation

16. The Scottish Government consulted the Privy Council Office, Edinburgh Napier University and the Scottish Further and Higher Education Funding Council during the preparation of this instrument.

Impacts

17. A Regulatory Impact Assessment has not been prepared as this instrument has no financial effects on the Scottish Government, local government or on business.

**Scottish Government
Higher Education and Science Division**

3 May 2018