

SCHEDULE
MODIFICATION OF ENACTMENTS

Further and Higher Education (Scotland) Act 1992 (c.37)

- 2 (1) The 1992 Act is amended as follows.
- (2) In section 3—
- (a) in subsection (6), after “Act” insert “and the Further and Higher Education (Scotland) Act 2005”,
- (b) after subsection (6) insert—
- “(7) Before making regulations under subsection (6), the Scottish Ministers must consult—
- (a) the boards of management to which the regulations relate;
- (b) any regional strategic body for a college of further education which has such a board;
- (c) the students’ association of each such college;
- (d) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally;
- (e) the Council;
- (f) any body which appears to the Scottish Ministers to be representative of colleges of further education;
- (g) the representatives of any trade union which is recognised by a board of management to which the regulations relate or which otherwise appears to the Scottish Ministers to be representative of its staff;
- (h) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland; and
- (i) any other person appearing to the Scottish Ministers as likely to be affected by the regulations.”.
- (3) In section 5—
- (a) in subsection (1), after “situated” insert “, the persons mentioned in subsection (1A)”,
- (b) after subsection (1) insert—
- “(1A) Those persons are—
- (a) the Council; and
- (b) where the proposal is to exercise the power under section 3(1)(b) or (c) or 44 of this Act—
- (i) the board of management of the college or colleges concerned;
- (ii) any regional strategic body for such a college;
- (iii) the representatives of any trade union which is recognised by any such board of management or which otherwise appears to the Scottish Ministers to be representative of its staff;
- (iv) the students’ association of each such college.”.

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(4) In section 12—

- (a) in subsection (2)(d), after “Act” insert “or of the Further and Higher Education (Scotland) Act 2005”,
- (b) after subsection (4) insert—

“(4A) A board of management of a regional college is to pay to the chairing member appointed under paragraph 3(2)(a) of Schedule 2 such remuneration as the Scottish Ministers may in each case determine.”.

(5) In section 36(1)—

- (a) omit the word “and” appearing after the definition of “interest in land”,
- (b) after the definition of “land” insert—
 - ““regional college” means a college of further education designated as a regional college by order made under section 7A of the Further and Higher Education (Scotland) Act 2005; and
 - “regional strategic body” has the same meaning as in that Act of 2005.”.

(6) In section 60—

- (a) in subsection (1), after second “Act” insert “or which falls within subsection (2A)”,
- (b) after subsection (2) insert—

“(2A) An order falls within this subsection if—

- (a) it is made under section 3(5) of this Act and makes provision other than provision varying the maximum or minimum number of members of a board of management established in pursuance of Part 1 of this Act; or
- (b) it is made under section 12(8) of this Act.

(2B) An order falling within subsection (2A) is subject to the affirmative procedure.”.

(7) In Schedule 2—

- (a) omit paragraphs 2 and 4,
- (b) in paragraph 5—
 - (i) in sub-paragraph (1), for the words from “6” to the end of the sub-paragraph substitute “5A and 5B below, a member of the board—
 - (a) if appointed in pursuance of paragraph 3(2)(a) as the chairing member of the board of a regional college, holds and vacates office on such terms and conditions as the Scottish Ministers may determine;
 - (b) if appointed in pursuance of paragraph 3(2)(c) to (f) as a member of the board of a regional college, holds and vacates office on such terms and conditions as the board may determine;
 - (c) if appointed in pursuance of paragraph 3A(2)(a) or (c) to (f) as a member of the board of a college which is not a regional college, holds and vacates office on such terms as the regional strategic body may determine; and

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- (d) is, on ceasing to hold office, eligible for re-appointment.”,
- (ii) for sub-paragraph (2) substitute—
 - “(2) Subject to sub-paragraphs (2A) to (2G) below—
 - (a) a member appointed by being elected in pursuance of paragraph 3(2)(c) or (d) or 3A(2)(c) or (d) is to hold office for 4 years;
 - (b) a member appointed in pursuance of paragraph 3(2)(e) or 3A(2)(e) is to hold office until 31 August following appointment; and
 - (c) each other member of the board (including the chairing member) is to hold office for such period (not exceeding 4 years) as is specified in the member’s terms of appointment.
 - (2A) The Scottish Ministers may extend the period of appointment of the chairing member of a regional college for a single further period not exceeding 4 years.
 - (2B) The board of a regional college may extend the period of appointment of a member appointed under paragraph 3(2)(f) for a single further period not exceeding 4 years (but such an extension has effect only if approved by the chairing member and the Scottish Ministers).
 - (2C) A regional strategic body may extend the period of appointment of a member it appoints under paragraph 3A(2)(a) or (f) for a single further period not exceeding 4 years.
 - (2D) The chairing member of a regional college is to vacate office if the member becomes a person of the type described in paragraph 3(4).
 - (2E) The principal of a college is to vacate office on ceasing to be the principal.
 - (2F) A member appointed under paragraph 3(2)(c) or (d) or 3A(2)(c) or (d) is to vacate office if the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of the college before the member’s period of appointment ends.
 - (2G) A member appointed in pursuance of paragraph 3(2)(e) or 3A(2)(e) is to vacate office if the member ceases to be a student of the college before the member’s period of appointment ends.”,
- (iii) omit sub-paragraphs (3) and (4),
- (iv) in sub-paragraph (5), for the words from “such” to “purpose” substitute “—
 - (a) in the case of the chairing member of the board of a regional college, the Scottish Ministers;

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- (b) in the case of any other member of the board a regional college, the board;
 - (c) in the case of any member of the board of a college which is not a regional college, the regional strategic body.”,
- (c) after paragraph 5 insert—
- “5A (1) A person is not eligible for appointment as a member of the board if the person—
- (a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;
 - (b) is an undischarged bankrupt; or
 - (c) has been removed from office under section 24 of this Act (in relation to any college) or section 23Q of the Further and Higher Education (Scotland) Act 2005 (in relation to any regional board).
- (2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—
- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);
 - (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);
 - (c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;
 - (d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;
 - (e) who has been adjudged bankrupt (and has not been discharged); or
 - (f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.
- 5B (1) The relevant person must remove a member of the board from office (by giving notice in writing to the member) if—
- (a) the member—
 - (i) is sentenced as mentioned in paragraph 5A(1)(a); or
 - (ii) has become a person to whom paragraph 5A(1)(b) applies; or
 - (b) the relevant person is satisfied that the member—

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- (i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
- (ii) is otherwise unable or unfit to discharge the member's functions.

(2) In sub-paragraph (1), “relevant person”—

- (a) in the case of the chairing member of the board of a regional college, means the Scottish Ministers;
- (b) in the case of any other member of the board of a regional college, means the board of management of that college;
- (c) in the case of a member of the board of a college which is not a regional college, means the regional strategic body for that college.

(3) The Scottish Ministers must, by giving notice in writing to the member, remove a member from office if the member is removed from office under section 24 of this Act (in relation to any other college) or section 23Q of the Further and Higher Education (Scotland) Act 2005 (in relation to any regional board).

(4) Where a member removed under sub-paragraph (3) was appointed under paragraph 3(2)(f) or 3A(2)(f), the Scottish Ministers may appoint another person in place of the removed member.

(5) An appointment made under sub-paragraph (4) has effect as if made under the provision under which the removed member was appointed.

5C Paragraphs 5A and 5B do not apply in relation to the principal of the college.”,

- (d) omit paragraphs 6 to 10,
- (e) in paragraph 11(1), for “paragraphs 12 and” substitute “paragraph”,
- (f) omit paragraph 12,
- (g) in paragraph 16, after “Act” insert “and paragraph 16A below”,
- (h) after paragraph 16 insert—

“16A The appointment of a principal of a college which is not a regional college, and the terms and conditions of such an appointment, have effect only if approved by the regional strategic body for the college.”.