

HIGHER EDUCATION GOVERNANCE (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Governance Arrangements

Chapter 1: Governing bodies

Senior lay member of governing body

Membership of governing body

Section 10: Composition of governing body

21. **Section 10** sets out the composition of the membership of an HEI's governing body. This provision is intended to introduce greater consistency in the basic composition of the governing bodies of HEIs. Section 10(1) provides that each governing body must include the members listed below. A person cannot be appointed as a member under more than one of these categories at the same time. The required members are:
- the person appointed to the position of senior lay member by virtue of section 8 (section 10(1)(a));
 - two members directly elected by the staff of the HEI from among the staff of the HEI (section 10(1)(b));
 - two members nominated by trade unions; both members must be members of staff of the HEI in question and must be members of a branch of a union that has a connection with the HEI; one member is to be nominated from among the academic staff and the other member from among the support staff of the HEI (section 10(1)(c) and (d));
 - two members nominated by a students' association of the HEI (section 10(1)(e)); the student nominees must be students of the HEI which, by virtue of section 22, includes sabbatical officers whether or not they remain as students during their period in office; and
 - other persons appointed in accordance with the governing instruments of the HEI or any enactment (section 10(1)(f)); this leaves the governing body to appoint the remaining members as it wishes, provided that this is in line with its governing instruments or any applicable legislation, for example the Universities (Scotland) Acts or individual governance orders made under section 45 of the 1992 Act.
22. **Section 10(2)** provides that a trade union nominating a person from among a category of staff must either be one that is recognised by that HEI in relation to that category of staff for collective bargaining purposes (as described in section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992) or otherwise appears to that HEI to be representative of the category of staff, having regard to all relevant factors.

Section 11: Elections to governing body

23. **Section 11** makes provision for the election of staff members appointed under section 10(1)(b). Section 11(2) states that the election is to be conducted according to rules made by the governing body of the HEI. Section 11(3) clarifies that the rules may make different provision for different vacancies (which means that different rules could be made by an HEI to apply to different categories of membership of the governing body if the HEI considers that to be appropriate) and may define “staff” as academic staff, support staff or all staff in order to specify the electorate and eligible candidates for a particular vacancy. Section 11(4) makes it clear that when the number of eligible candidates is equal to or fewer than the number of staff members being sought in any category of staff, those candidates are deemed to be elected.

Section 12: Nominations to governing body

24. **Section 12** makes provision for the nomination of the members of the governing body who are appointed by being nominated under section 10(1)(c) to (e). Section 12(2) requires that the nomination process is conducted according to any rules on nomination made by the governing body of the HEI. The rules required under this section deal only with the nomination process. The Act provides that the role of nominating bodies is simply to nominate but it remains open to an HEI to make provision for a more extensive role which might include the recall of nominees, subject to the provisions on removal in section 13. Section 12(3) provides that the rules may determine who can exercise the right of nomination (for example, where there is more than one body which meets the criteria for making a nomination under section 10) and that different provision might be made for different vacancies on the governing body.
25. **Section 12(4)** sets out that before making or changing any existing rules under section 12(2), the governing body must consult the representatives of anyone who has both a right of nomination under the proposed rules (section 12(4)(a)) and who is affected by the proposed new rules or by any proposed amendment to existing rules (section 12(4)(b)). Accordingly, if only part of the rules are revised, there will be no requirement to consult with bodies that have a right to make a nomination if the rules that are applicable to that body are not subject to any changes.

Section 13: Resignation or removal from body

26. **Section 13** concerns the resignation or removal of the senior lay member and other members of the governing body of an HEI.
27. Subsection (1) provides that rules made by the governing body of an HEI may contain provision about the procedure for the resignation or removal of members of the governing body, including the senior lay member. Subsection (2) provides that rules for removal should in particular prescribe the grounds for removal, require that removal can only be effected by a resolution based on those grounds and passed by a specified majority of the members of the governing body, and allow the person who is the subject of the resolution to seek a review in order to have the resolution reconsidered or quashed. Subsection (3)(a) provides that, for the purposes of subsection (2)(b), the majority to be specified by the HEI can be any size so long as it is a majority. Subsection (3)(b) provides that the member of the governing body who is the subject of the resolution should not be counted in the calculation of a majority and is not entitled to vote on the resolution. Subsection (4) provides that rules made about the procedure for the resignation or removal of the senior lay member do not need to be the same as rules made about the procedure for the resignation or removal of other members of the governing body of an HEI.

Section 14: Validity of body’s proceedings

28. **Section 14** ensures that the validity of proceedings of the governing body of an HEI is not affected by any vacancy arising in membership or category of membership

*These notes relate to the Higher Education Governance (Scotland)
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(section 14(a)). This means that, in the event of an unexpected vacancy arising, the HEI can continue to function pending the appointment of a new member under section 10. Further, this validity is not affected by any defect in the appointment of a member of the relevant governing body (section 14(b)).