



Post-16 Education (Scotland) Act 2013

2013 asp 12

Regional boards

11 Regional boards: constitution

(1) After section 23O of the 2005 Act, inserted by section 10, insert—

“Regional boards: constitution etc.

23P Regional boards: constitution

Schedule 2B makes provision about the constitution of a regional board, about the general powers of such a board and about certain administrative and other matters with respect to such a board.”.

(2) After schedule 2A to the 2005 Act, inserted by section 8(2), insert—

“SCHEDULE 2B
(introduced by section 23P)

REGIONAL BOARDS

Regional boards

- 1 (1) References in this schedule to “the board” are references to a regional board specified in Part 1 of schedule 2A.
- (2) The board is to be known by the name by which it is described in that Part.

Status

- 2 (1) The board is a body corporate.
- (2) The board—
 - (a) is not a servant or agent of the Crown;
 - (b) has no status, immunity or privilege of the Crown,

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and its property is not to be regarded as property of, or held on behalf of, the Crown.

Membership

- 3 (1) The board is to consist of no fewer than 15 members.
- (2) The board is to be comprised of—
- (a) a person appointed by the Scottish Ministers to chair meetings of the board (the “chairing member”);
 - (b) subject to sub-paragraph (4), the chairing member of each of the board’s colleges;
 - (c) a person appointed by being elected by the teaching staff of the board’s colleges from among their own number;
 - (d) a person appointed by being elected by the non-teaching staff of the board’s colleges from among their own number;
 - (e) two persons appointed in accordance with paragraph 4; and
 - (f) up to 10 other members appointed by the board.
- (3) A person is not eligible for appointment as the chairing member if the person is—
- (a) a member of the Scottish Parliament;
 - (b) a member of the House of Lords;
 - (c) a member of the House of Commons;
 - (d) a member of the European Parliament; or
 - (e) the chief officer of the board.
- (4) A person is disqualified from being part of the board in pursuance of sub-paragraph (2)(b) if the person has previously been removed from the board under section 23Q.
- (5) An appointment made in pursuance of sub-paragraph (2)(f) has effect only if approved by—
- (a) the chairing member; and
 - (b) the Scottish Ministers.
- (6) In appointing members under sub-paragraph (2)(f) and in extending the period of appointment of any member so appointed, the board must have regard to any guidance issued by the Scottish Ministers in relation to the making of such appointments (including any guidance on the desirability of appointing members with particular skills and experience).
- (7) Before issuing guidance under sub-paragraph (6), the Scottish Ministers must consult—
- (a) any regional board to which the guidance relates;
 - (b) the board of management of any college of further education which is, or which the Scottish Ministers consider likely to be, assigned to the regional board by order under section 7C;
 - (c) the local authority for any area in which such a college is situated;
 - (d) the students’ association for each such college;

- (e) the representatives of any trade union which is recognised by any such college or which otherwise appears to the Scottish Ministers to be representative of its staff;
- (f) the Council;
- (g) any body which appears to the Scottish Ministers to be representative of colleges of further education;
- (h) any body which appears to the Scottish Ministers to be representative of local authorities;
- (i) any body which appears to the Scottish Ministers to be representative of students of colleges of further education generally; and
- (j) any body which appears to the Scottish Ministers to be representative of trade unions in Scotland.

(8) Different guidance may be issued for different purposes.

Student members

- 4
- (1) The students' associations of the board's colleges are each entitled to nominate students for appointment in pursuance of paragraph 3(2)(e).
 - (2) Where only two students are so nominated, those students are to be so appointed.
 - (3) Members are otherwise to be so appointed by being elected by the students of all the board's colleges from among the students so nominated.
 - (4) Sub-paragraphs (1) to (3) do not apply where only two colleges are assigned to the board and, in such a case, the students' association of each college is to appoint one member from among the students of their respective colleges.

Election of staff and student members

- 5
- (1) An election to appoint members in pursuance of paragraph 3(2)(c) or (d) or 4(3) is to be conducted in accordance with rules made by the board.
 - (2) Before making, varying or replacing election rules, the board must consult—
 - (a) its colleges;
 - (b) in the case of rules about elections in pursuance of paragraph 3(2)(c), the representatives of any trade union which any of its colleges recognise as being, or which otherwise appears to the board to be, representative of the teaching staff of its colleges;
 - (c) in the case of rules about elections to be held in pursuance of paragraph 3(2)(d), the representatives of any trade union which any of its colleges recognise as being, or which otherwise appears to the board to be, representative of the non-teaching staff of its colleges; and
 - (d) in the case of rules about elections in pursuance of paragraph 4(3), the students' associations of each of its colleges.

Disqualification from membership

- 6 (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 the 1992 Act (in relation to any college) or section 23Q of this Act (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.
- (3) This paragraph does not apply in relation to persons appointed in pursuance of paragraph 3(2)(b).

Terms and conditions

- 7 (1) Subject to the other provisions of this Act—
- (a) the chairing member holds and vacates office on such terms and conditions as the Scottish Ministers may determine; and
 - (b) other members (unless holding office in pursuance of paragraph 3(2)(b)) hold and vacate office on such terms and conditions as the board may in each case determine.
- (2) Subject to sub-paragraphs (3) to (8), paragraph 9 and section 23Q—
- (a) the chairing member is to hold office for such period (not exceeding 4 years) as the Scottish Ministers may determine;
 - (b) a member appointed in pursuance of paragraph 3(2)(b) is to hold office until the person ceases to be a chairing member of any of the board’s colleges;

- (c) a member appointed by being elected in pursuance of paragraph 3(2)(c) or (d) is to hold office for 4 years;
 - (d) a member appointed in pursuance of paragraph 3(2)(e) is to hold office until 31 August following appointment; and
 - (e) a member appointed under paragraph 3(2)(f) is to hold office for such period (not exceeding 4 years) as the board may determine.
- (3) The Scottish Ministers may extend the period of appointment of the chairing member for a single further period not exceeding 4 years.
- (4) The board may extend the period of appointment of a member it appoints 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).
- (5) The chairing member is to vacate office if the chairing member becomes a person of the type described in paragraph 3(3).
- (6) A member appointed under paragraph 3(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 one of the board's colleges before the member's period of appointment ends.
- (7) A member appointed in pursuance of paragraph 3(2)(e) is to vacate office if the member ceases to be a student of one of the board's colleges before the member's period of appointment ends.
- (8) On ceasing to be a member, a person is eligible for reappointment (provided that the person is not ineligible by virtue of any other provision).

Remuneration and allowances

- 8
- (1) The board is to pay to its chairing member such remuneration as the Scottish Ministers may in each case determine.
 - (2) The board is to pay to its members such allowances as the Scottish Ministers may in each case determine.

Resignation and removal of members

- 9
- (1) The chairing member may by giving notice in writing to the Scottish Ministers resign office as a member.
 - (2) Any other member (except for a member appointed in pursuance of paragraph 3(2)(b)) may by giving notice in writing to the board resign office as a member.
 - (3) The Scottish Ministers must, by giving notice in writing to the chairing member, remove the chairing member from office if—
 - (a) the chairing member—
 - (i) is sentenced as mentioned in paragraph 6(1)(a);
 - (ii) has become a person to whom paragraph 6(1)(b) applies;
 - or

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- (iii) is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23Q of this Act (in relation to any other regional board); or
- (b) they are satisfied that the chairing member—
 - (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 functions of the chairing member.
- (4) The board must, by giving notice in writing to the member, remove any other member from office if—
 - (a) the member—
 - (i) is sentenced as mentioned in paragraph 6(1)(a); or
 - (ii) has become a person to whom paragraph 6(1)(b) applies; or
 - (b) it is satisfied that the member—
 - (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 functions of a member.
- (5) Sub-paragraph (4) does not apply in relation to a member appointed in pursuance of paragraph 3(2)(b).
- (6) The Scottish Ministers must, by giving notice in writing to the member, remove a member (other than the chairing member) from office if the member is removed from office under section 24 of the 1992 Act (in relation to any college) or section 23Q of this Act (in relation to any other regional board).
- (7) Where a member removed under sub-paragraph (6) was appointed under paragraph 3(2)(f), the Scottish Ministers may appoint another person in place of the removed member.
- (8) An appointment made under sub-paragraph (7) has effect as if made under paragraph 3(2)(f).

Staff

- 10 (1) The board may (subject to any directions given under sub-paragraph (4)) appoint a chief officer and such other employees as it considers appropriate on such terms and conditions as the board may determine.
- (2) The board may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed by the board.
- (3) Arrangements under sub-paragraph (2) may include—
 - (a) the making of contributions or payments towards provision for pensions, allowances or gratuities; and

- (b) the establishment and administration of pension schemes.
- (4) The board must comply with any directions given by the Council as regards—
 - (a) the appointment of employees;
 - (b) terms and conditions determined under sub-paragraph (1); or
 - (c) payments or arrangements made under sub-paragraph (2).

Proceedings of the board

- 11 (1) The board may regulate its own procedure (including any quorum).
- (2) The validity of any proceedings of the board is not affected—
- (a) by a vacancy in membership (or in a category of membership); or
 - (b) by any defect in the appointment of a member.

Committees

- 12 (1) The board may establish committees.
- (2) The board is to determine—
- (a) the composition of any committees;
 - (b) the terms and conditions of membership of any committee; and
 - (c) the procedure (including any quorum) of any committee.
- (3) A committee may include persons who are not members of the board (but such persons are not to be entitled to participate in making decisions).
- (4) The board is to pay to the members of its committees (whether or not they are also members of the board) such allowances as the Scottish Ministers may determine.

Participation at meetings

- 13 Unless the chairing member determines otherwise, a person who is the principal of one of the board's colleges but who is not a board member is entitled to participate in any deliberations (but not in making decisions) at meetings of the board.

General powers

- 14 (1) The board may (subject to sub-paragraphs (2) to (9)) do anything that is necessary or expedient for the purpose of or in connection with the exercise of its functions, including in particular—
- (a) acquiring and disposing of land and other property;
 - (b) entering into contracts;
 - (c) investing sums not immediately required for the purpose of the discharge of its functions;
 - (d) accepting gifts of money, land or other property;
 - (e) forming or promoting (whether alone or with another) companies under the Companies Act 2006.

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- (2) The board may not borrow money.
- (3) The board is not to—
 - (a) give any guarantee or indemnity over or in respect of any property; or
 - (b) create any trust or security over or in respect of any property, without the written consent of the Scottish Ministers.
- (4) The board is not to dispose of any property to which this sub-paragraph applies without the written consent of the Scottish Ministers.
- (5) Consent, for the purposes of sub-paragraphs (3) or (4), may be given—
 - (a) in respect of any case or class of case; and
 - (b) subject to such conditions as the Scottish Ministers may determine.
- (6) Consent, for the purposes of sub-paragraph (4), is not required for a disposal of land which is or forms part of property to which that sub-paragraph applies if the disposal is in consequence of the compulsory acquisition (under any enactment) of the land.
- (7) But the board is to inform the Scottish Ministers of the compulsory acquisition (under any enactment) of land which is or forms part of property to which sub-paragraph (4) applies.
- (8) Where property to which sub-paragraph (4) applies is disposed of, the board is (after deduction of such expenses as appear to the Scottish Ministers to have been reasonably incurred in the disposal) to pay to the Scottish Ministers such portion of the proceeds or value of the consideration for the disposal as the Scottish Ministers may, after consultation with the board, determine.
- (9) Sub-paragraph (4) applies to—
 - (a) any property which has been acquired, improved or maintained wholly or partly, or directly or indirectly, out of funds provided by the Council under section 12; and
 - (b) any proceeds of, or any consideration for, the disposal of any such property.

Goods and services

- 15 The board may, for the purposes of providing support for the provision of fundable further education or fundable higher education, provide (and make charges in respect of the provision of) goods or services—
- (a) to any of its colleges;
 - (b) to any other post-16 education body;
 - (c) to any other regional strategic body; or
 - (d) to any other person.

Delegation of functions

- 16 (1) The board may authorise—

- (a) the chairing member;
 - (b) any of its committees; or
 - (c) any of its employees,
- to exercise such of its functions to such extent as it may determine.
- (2) Sub-paragraph (1) does not affect the responsibility of the board for the exercise of its functions.

Accounts

- 17 (1) The board must—
- (a) keep proper accounts and accounting records;
 - (b) prepare a statement of accounts in respect of each yearly period ending on 31 March; and
 - (c) send the statement of accounts to the Scottish Ministers,
- in accordance with such directions as the Scottish Ministers may give.
- (2) The Scottish Ministers must send the statement of accounts to the Auditor General for Scotland for auditing.

Modification

- 18 (1) The Scottish Ministers may by order modify this schedule (other than paragraph 2) by varying, adding to or removing any provision relating to a regional board's constitution, functions or administrative arrangements.
- (2) Before making an order under this paragraph, the Scottish Ministers must consult—
- (a) any board to which the order relates; and
 - (b) such other persons as they consider appropriate.”.

12 Regional boards: mismanagement

After section 23P of the 2005 Act, inserted by section 11(1), insert—

“23Q Mismanagement by regional boards

- (1) This section applies where it appears to the Scottish Ministers that a regional board—
- (a) has committed or is committing—
 - (i) a serious breach of any term or condition of a grant made to it under section 12(1)(c); or
 - (ii) repeated breaches of such terms or conditions;
 - (b) has failed or is failing—
 - (i) properly to discharge its responsibility for administering the funds made available to it under that section in respect of its colleges; or
 - (ii) to discharge any of its duties properly; or
 - (c) has mismanaged, or is mismanaging, its financial or other affairs.
- (2) Where this section applies, the Scottish Ministers may by order—

- (a) remove any or all of the members of the regional board; and
 - (b) where a removed member was appointed under paragraph 3(2)(a) or (f) of schedule 2B, appoint another person in place of the removed member.
- (3) Before making an order under subsection (2)(a), the Scottish Ministers must consult the Council.
- (4) The Scottish Ministers must give notice of exercise of the power of removal conferred by subsection (2)(a) to the board and the member.
- (5) An appointment made under subsection (2)(b) has effect as if made under the provision of paragraph 3 of schedule 2B under which the removed member was appointed.”.

13 Establishment and abolition of regional boards: supplemental

After section 23Q of the 2005 Act, inserted by section 12, insert—

“23R Establishment and abolition of regional boards: supplemental

- (1) The Scottish Ministers may make such arrangements as they consider appropriate in anticipation of the establishment of a regional board by virtue of an order under section 7B or the coming into force of section 8 of the Post-16 Education (Scotland) Act 2013.
- (2) They may, in particular, appoint on terms and conditions determined by them persons who are, from the day on which the board is established, to hold office as if appointed under paragraph 3(2)(a) or, as the case may be, (f) of schedule 2B.
- (3) An order under section 7B(2)(a) which abolishes a regional board may, in particular, make provision—
- (a) for the transfer of the regional board’s staff, property, rights, liabilities or obligations to such other person as may be specified in the order;
 - (b) for the Scottish Ministers to pay any expenses incurred in connection with the abolition;
 - (c) imposing such duties or conferring such additional powers in relation to the abolition as the Scottish Ministers consider appropriate;
 - (d) for the exercise of any of the regional board’s functions by any member of the board specified in the order;
 - (e) appointing a person to administer the abolition (and giving that person such powers and duties as appear to the Scottish Ministers to be necessary or expedient for such purposes as are specified in the order).
- (4) Such an order—
- (a) must ensure that any transferred property and rights which, before the transfer, were to be applied for the purpose of the advancement of education are to continue to be applied for that purpose after the transfer;
 - (b) may contain provision for the transfer of staff, property, rights, liabilities or obligations only if the person to whom the transfer is being made (apart from the Scottish Ministers) has consented to the transfer.

(5) This section does not prejudice the generality of powers conferred by section 34(2) or by section 22 of the Post-16 Education (Scotland) Act 2013.”.