



# Higher Education Governance (Scotland) Act 2016 2016 asp 15

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th March 2016 and received Royal Assent on 13th April 2016**

An Act of the Scottish Parliament to make provision about the composition of and appointment to the governing bodies and academic boards of higher education institutions; and to revise provision about the academic freedom of various persons carrying out activities at higher education and certain other institutions.

## **PART 1**

### GOVERNANCE ARRANGEMENTS

#### **CHAPTER 1**

##### GOVERNING BODIES

###### *Senior lay member of governing body*

### **1 Position of senior lay member**

- (1) The governing body of a higher education institution is to include the position of senior lay member (however the institution chooses to name the position).
- (2) The senior lay member of the governing body of a higher education institution has—
  - (a) the duty to preside at meetings of the governing body,
  - (b) a deliberative and a casting vote at such meetings,
  - (c) responsibility for—
    - (i) the leadership and effectiveness of the governing body,
    - (ii) ensuring that there is an appropriate balance of authority between the governing body and the principal of the institution.

- (3) 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) in the absence of the senior lay member or while the position is vacant.
- (4) Subsections (2) and (3) are subject to section 2.

## **2 Interaction with role of rector**

- (1) Subsection (2) applies in the case of a higher education institution at which there is a rector who has functions under section 4 of the 1858 Act and section 5(5) of the 1889 Act (each of which contains provision relating to the role of the rector at an older university).
- (2) Paragraphs (a) and (b) of subsection (2) of section 1 and subsection (3) of that section so far as relating to those paragraphs are of no effect in relation to the institution (but see section 5(5) of the 1889 Act (which also contains provision about who is to preside at certain meetings in the absence of the rector)).
- (3) In this section—
  - “the 1858 Act” means the Universities (Scotland) Act 1858,
  - “the 1889 Act” means the Universities (Scotland) Act 1889.

## **3 Relevant criteria and process**

- (1) Whenever a vacancy arises in the position of senior lay member of the governing body of a higher education institution, the governing body must delegate to a committee the responsibility of—
  - (a) devising the relevant criteria with respect to the position,
  - (b) ensuring the efficiency and fairness of the process for filling the position.
- (2) The relevant criteria include the availability, skills and knowledge considered by the committee to be necessary or desirable to—
  - (a) exercise the functions of the senior lay member,
  - (b) command the trust and respect of—
    - (i) the other members of the governing body,
    - (ii) the academic board of the institution,
    - (iii) the staff and students of the institution.
- (3) Each time the process for filling the position is undertaken, the committee must make publically available a report indicating by way of overview (and without disclosing individual identities or confidential information)—
  - (a) the number of applicants for the position,
  - (b) so far as consent to disclosure has been received by the committee from the applicants, the characteristics listed in section 149(7) of the Equality Act 2010 with respect to—
    - (i) the applicants,
    - (ii) the applicants invited to an interview for the position,
    - (iii) the applicants entitled to stand as candidates in an election for the position following such an interview.

- (4) The membership of the committee must include at least one person from each of these categories—
  - (a) the staff of the institution,
  - (b) the students of the institution.
- (5) Rules made by the governing body of the institution may contain provision about the process for filling the position of senior lay member of the governing body (subject to sections 4 to 8).

#### **4 Advertisement and application**

- (1) A current or upcoming vacancy in the position of senior lay member of the governing body of a higher education institution is to be advertised widely by the governing body, in a manner suitable for bringing the vacancy to the attention of a broad range of persons.
- (2) The committee mentioned in section 3(1) is to ensure that the advertisement—
  - (a) sets out the functions exercisable by the senior lay member of the governing body under section 1(2),
  - (b) summarises the relevant criteria with respect to the position and states how more information about the relevant criteria can be obtained,
  - (c) explains—
    - (i) the process for filling the position,
    - (ii) how the application form in relation to the position can be obtained,
    - (iii) that reimbursement is offered of expenses incurred in connection with attending an interview or campaigning in an election for the position,
    - (iv) that remuneration and allowances are available in connection with the holding of the position.

#### **5 Interview of certain applicants**

- (1) If—
  - (a) an application for the position of senior lay member of the governing body of a higher education institution is made in the correct form in response to an advertisement under section 4(1), and
  - (b) the application appears to the committee mentioned in section 3(1) to show that the applicant meets the relevant criteria with respect to the position,the applicant must be invited to an interview conducted by the committee.
- (2) If the applicant satisfies the committee at such an interview that the applicant meets the relevant criteria, the applicant is entitled to stand as a candidate in an election for the position.
- (3) The governing body of the institution is to offer every applicant for the position reimbursement of reasonable expenses that are incurred by the applicant in attending such an interview.

## **6 When election to be arranged**

- (1) An election for the position of senior lay member of the governing body of a higher education institution must be arranged by the governing body if more than one applicant—
  - (a) is entitled under section 5(2) to stand as a candidate in the election, and
  - (b) confirms an intention to stand as a candidate in the election.
- (2) If the number of candidates in the election subsequently falls to below two—
  - (a) the election is to be postponed until the election can be held with more than one candidate standing (and the vacancy must be advertised under section 4(1) again),
  - (b) the remaining candidate (if there is one) continues to be entitled to stand as a candidate in the election.
- (3) The governing body of the institution is to offer every candidate in the election reimbursement of reasonable expenses that are incurred by the candidate in campaigning in the election (up to the limit per candidate that is fixed by the governing body).

## **7 Election franchise and result**

- (1) These persons are entitled to vote in an election under section 6 for the position of senior lay member of the governing body of a higher education institution—
  - (a) the members of the governing body,
  - (b) the staff of the institution,
  - (c) the students of the institution.
- (2) No individual is entitled to cast more than one vote in the election.
- (3) Each vote cast in the election carries equal weight.
- (4) The election is won by the candidate who secures a simple majority of the total number of votes cast.
- (5) In the event of a tie between two or more 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 rules made by the governing body of the institution.

## **8 Appointment and tenure**

- (1) The winning candidate in an election under section 6 for the position of senior lay member of the governing body of a higher education institution is to be appointed to the position by the governing body.
- (2) An appointment to the position is for the period specified in rules made by the governing body, but the period of such an appointment may be extended in accordance with the rules.
- (3) The position cannot be filled otherwise than by an appointment made by virtue of this section.

## **9 Remuneration and conditions**

- (1) The governing body of a higher education institution is, on the request of a person appointed to the position of senior lay member of the governing body, to pay such remuneration and allowances to the person as the governing body considers to be reasonable (which are to be commensurate with the nature and amount of the work done by the person in the capacity as senior lay member).
- (2) A person appointed to the position may not be a student of, or one of the staff of, the institution during the period of the person's appointment.
- (3) The holding by a person of the position is in all other respects subject to such terms and conditions as are specified by the governing body.

### *Membership of governing body*

## **10 Composition of governing body**

- (1) The membership of the governing body of a higher education institution is to be composed of—
  - (a) the person appointed to the position of senior lay member by virtue of section 8,
  - (b) 2 persons appointed by being elected by the staff of the institution from among their own number,
  - (c) 1 person appointed by being nominated by a trade union from among the academic staff of the institution who are members of a branch of a trade union that has a connection with the institution,
  - (d) 1 person appointed by being nominated by a trade union from among the support staff of the institution who are members of a branch of a trade union that has a connection with the institution,
  - (e) 2 persons appointed by being nominated by a students' association of the institution from among the students of the institution,
  - (f) such other persons as are appointed—
    - (i) by virtue of an enactment, or
    - (ii) in accordance with the governing document of the institution.
- (2) For the purposes of paragraphs (c) and (d) of subsection (1), a trade union nominating a person from among a category of staff must be one that—
  - (a) is recognised by the institution in relation to the category of staff, as described in section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992, or
  - (b) otherwise appears to the institution to be representative of the category of staff, having regard to all relevant factors.

## **11 Elections to governing body**

- (1) This section applies in relation to an election of members to the governing body of a higher education institution for the purpose of paragraph (b) of section 10(1).
- (2) The election process is to be conducted in accordance with rules made by the governing body of the institution.

- (3) Rules under subsection (2) may include (in particular)—
  - (a) different provision for different vacancies,
  - (b) provision defining “staff” for section 10(1)(b) as—
    - (i) academic staff,
    - (ii) support staff, or
    - (iii) all staff.
- (4) Where the number of eligible candidates in a category is equal to or fewer than the number of vacancies in that category, those candidates are deemed to be elected.

## **12 Nominations to governing body**

- (1) This section applies in relation to a nomination of members to the governing body of a higher education institution for the purpose of each of paragraphs (c) to (e) of section 10(1).
- (2) The nomination process is to be conducted in accordance with rules made by the governing body of the institution.
- (3) Rules under subsection (2) may include (in particular)—
  - (a) provision specifying who may exercise the rights of nomination (whether individually or jointly),
  - (b) different provision for different vacancies.
- (4) Before making or modifying rules under subsection (2), the governing body must consult the representatives of anyone—
  - (a) with a right of nomination under the proposed rules, and
  - (b) affected by the proposed rules or (as the case may be) modification.

## **13 Resignation or removal from body**

- (1) Rules made by the governing body of a higher education institution may contain provision about the procedure for the resignation or removal of—
  - (a) the person appointed to the position of senior lay member of the governing body,
  - (b) the other persons within the membership of the governing body.
- (2) Provision as to removal is to (in particular)—
  - (a) prescribe grounds for removal, for example—
    - (i) inability to exercise the senior lay member’s functions or (as the case may be) the functions of membership generally,
    - (ii) misconduct (whether or not in the capacity as member),
  - (b) ensure that removal can be effected only by a resolution based on the grounds and passed by a specified majority of the members of the governing body,
  - (c) allow the person who is the subject of the resolution, if the resolution is so passed, to seek a review in order to have the resolution reconsidered or quashed.
- (3) For the purpose of subsection (2)(b)—
  - (a) a specified majority may be a majority of any particular size,

- (b) the person who is the subject of the resolution does not count in any calculation arising (and the person is not eligible to vote on the resolution).
- (4) Provision under subsection (1)(a) need not be the same as provision under subsection (1)(b).

#### **14 Validity of body's proceedings**

The validity of any proceedings of the governing body is not affected by any—

- (a) vacancy in membership (or category of membership),
- (b) defect in the appointment of a member.

## **CHAPTER 2**

### **ACADEMIC BOARDS**

#### **15 Composition of academic board**

- (1) The membership of the academic board of a higher education institution is to be composed of—
- (a) the principal of the institution,
  - (b) the heads of school of the institution,
  - (c) persons appointed by being elected by the academic staff of the institution from among their own number,
  - (d) persons appointed by being elected by the students of the institution from among the students of the institution,
  - (e) such other persons as are appointed—
    - (i) by virtue of an enactment,
    - (ii) in accordance with the governing document of the institution, or
    - (iii) in accordance with a decision of the governing body of the institution.
- (2) The academic board is to be constituted in such a way that—
- (a) more than 50% of its members fall within subsection (1)(c) or (d),
  - (b) at least 10% of its members fall within subsection (1)(d).
- (3) Despite subsection (2)(b), the academic board is not required to have more than 30 members who fall within subsection (1)(d).

#### **16 Elections to academic board**

- (1) This section applies in relation to an election of members to the academic board of a higher education institution for the purpose of each of paragraphs (c) and (d) of section 15(1).
- (2) The election process is to be conducted in accordance with rules made by the governing body of the institution.
- (3) Rules under subsection (2) may include (in particular)—
- (a) provision specifying the number of appointments to be made,
  - (b) different provision for different vacancies.

- (4) Where the number of eligible candidates in a category is equal to or fewer than the number of vacancies in that category, those candidates are deemed to be elected.

### 17 Validity of board’s proceedings

The validity of any proceedings of the academic board is not affected by any—

- (a) vacancy in membership (or category of membership),
- (b) defect in the appointment of a member.

## CHAPTER 3

### KEY DEFINITIONS

### 18 Meaning of higher education institution

- (1) In this Part, “higher education institution” has the same meaning as in the Further and Higher Education (Scotland) Act 2005 except that it—
- (a) includes an institution only if the institution is listed in schedule 2 (fundable bodies) to that Act,
  - (b) excludes The Open University.
- (2) The Scottish Ministers may by regulations modify the definition in subsection (1) so as to exclude a particular institution.
- (3) Regulations under subsection (2) are subject to the negative procedure.

### 19 Meaning of governing document

- (1) In this Part, “governing document”—
- (a) in the case of an older university, means its ordinances made under the Universities (Scotland) Acts 1858 to 1966,
  - (b) in the case of an institution established by royal charter, means its charters together with the statutes (if any) made under them,
  - (c) in the case of a designated institution—
    - (i) if it is a registered company and no orders of the Privy Council are in force with respect to it, means its articles of association,
    - (ii) otherwise, means the orders of the Privy Council that are in force with respect to it,
  - (d) in any other case, means the instruments that establish the higher education institution or govern the composition of its governing body or academic board.
- (2) In this section—
- “designated institution” has the same meaning as in Part II of the Further and Higher Education (Scotland) Act 1992,
- “older university” is to be construed in accordance with section 16(1) of the Universities (Scotland) Act 1966,
- “registered company” means a company registered under the Companies Acts as defined in section 2 of the Companies Act 2006.



**20 Meaning of governing body**

In this Part, “governing body” has the same meaning as in Part II of the Further and Higher Education (Scotland) Act 1992.

**21 Meaning of academic board**

- (1) In this Part, “academic board” in relation to an institution means the body which—
- (a) is responsible for the overall planning, co-ordination, development and supervision of the academic work of the institution, and
  - (b) discharges that responsibility subject to the general control and direction of the governing body of the institution.
- (2) For the avoidance of doubt, the body described by subsection (1) is the one sometimes known as the Senate, Senatus or Senatus Academicus.

**22 References to students**

In this Act, a reference to the students of a higher education institution includes all persons holding sabbatical office in a students’ association of the institution (whether or not they remain as students of the institution during their period of office).

**PART 2**

## ACADEMIC FREEDOM

**23 Upholding academic freedom**

- (1) The Further and Higher Education (Scotland) Act 2005 is amended as follows.
- (2) For section 26 (academic freedom) there is substituted—

**“26 Academic freedom**

- (1) A post-16 education body must aim to—
- (a) uphold (so far as the body considers reasonable) the academic freedom of all relevant persons, and
  - (b) ensure (so far as the body considers reasonable) that the matters mentioned in subsection (2) are not adversely affected by the exercise of academic freedom by any relevant persons.
- (2) The matters are—
- (a) appointments held or sought, and
  - (b) entitlements or privileges enjoyed,
- at the post-16 education body by those relevant persons.
- (3) In this section, “relevant persons” in relation to a post-16 education body means persons engaged in—
- (a) teaching, or the provision of learning, at the body, or
  - (b) research at the body.

- (4) For the purposes of this section, “academic freedom” in relation to relevant persons includes their freedom within the law to do the following things—
- (a) hold and express opinions,
  - (b) question and test established ideas or received wisdom,
  - (c) develop and advance new ideas or innovative proposals,
  - (d) present controversial or unpopular points of view.”.

### PART 3

#### GENERAL PROVISIONS

##### *Ancillary and consequential*

#### **24 Ancillary regulations**

- (1) The Scottish Ministers may by regulations make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) Regulations under this section—
  - (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
  - (b) otherwise, are subject to the negative procedure.

#### **25 Consequential modifications**

The schedule makes consequential modifications.

##### *Commencement and short title*

#### **26 Commencement**

- (1) This section and section 27 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may—
  - (a) appoint different days for different purposes,
  - (b) include transitional, transitory or saving provision.

#### **27 Short title**

The short title of this Act is the Higher Education Governance (Scotland) Act 2016.

SCHEDULE  
*(introduced by section 25)*  
CONSEQUENTIAL MODIFICATIONS

*The Universities (Scotland) Act 1858*

- 1 (1) The Universities (Scotland) Act 1858 is amended as follows.
- (2) In section 4 (university courts to be constituted), the words “consist of the members and” are repealed.
- (3) In section 5 (powers of the senatus academicus and principal)—
  - (a) the words from “consist of” to “discipline of the University, and” are repealed,
  - (b) for the words “its property” there is substituted “the University’s property”.

*The Universities (Scotland) Act 1889*

- 2 (1) The Universities (Scotland) Act 1889 is amended as follows.
- (2) In section 5 (which makes provision about University Courts)—
  - (a) in subsection (1), the words before “Seven” are repealed,
  - (b) in subsection (2), the words “Chancellor or” are repealed in each place where they occur,
  - (c) in subsection (5), for the words “a vice-chairman elected by the Court from among all its members” there is substituted “the senior lay member”,
  - (d) after subsection (5) there is inserted—

“(5A) In subsection (5), “senior lay member” means the person appointed to the position by virtue of section 8 of the Higher Education Governance (Scotland) Act 2016.”.

*The Universities (Scotland) Act 1966*

- 3 (1) The Universities (Scotland) Act 1966 is amended as follows.
- (2) In section 2 (constitution of university courts)—
  - (a) in subsection (1), after the words “Subject to the provisions of section 17 of this Act” there is inserted “and Chapter 1 of Part 1 of the 2016 Act”,
  - (b) subsection (6) is repealed.
- (3) Section 7 (constitution of senates) is repealed.
- (4) In section 11 (university staff ineligible to become rector, or assessor on court except in certain circumstances), at the end of the proviso following paragraph (b) there is inserted “or the right of a person to be appointed in accordance with section 10(1) (b) to (d) of the 2016 Act”.
- (5) In section 16 (interpretation), at the beginning of the list of defined expressions in subsection (1) there is inserted—

““the 2016 Act” means the Higher Education Governance (Scotland) Act 2016;”.

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*Status: This is the original version (as it was originally enacted).*

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(6) In Part I (powers exercisable by ordinance) of Schedule 2, for paragraph 4 there is substituted—

- “4 To provide for—
- (a) the term of office of members of the Senatus Academicus,
  - (b) the manner of election of members of the Senatus Academicus, except those elected in accordance with rules made under section 16(2) of the 2016 Act.”.