

# HIGHER EDUCATION GOVERNANCE (SCOTLAND) ACT 2016

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Governance Arrangements**

#### *Chapter 3: Key definitions*

#### *Section 18: Meaning of higher education institution*

35. [Section 18\(1\)](#) provides a definition of the term “higher education institution” which applies for the purposes of Part 1 of the Act. Section 18(1) provides that the term has the same meaning as in the 2005 Act, but that it includes an institution here only if it is also listed in schedule 2 to the 2005 Act. The definition of HEI, however, explicitly excludes the Open University (subsection (1)(b)).
36. The 2005 Act definition of “higher education institution” is found in section 35(1) of that Act where it is defined as (1) a university or (2) a designated institution within the meaning of section 44(2) of the 1992 Act. In practice, the only non-universities which are currently designated under that section are:
  - the Royal Conservatoire of Scotland (which was designated by [SI 1992/1025](#) under its former name, the Royal Scottish Academy of Music and Drama),
  - Glasgow School of Art (which was also designated under [SI 1992/1025](#)), and
  - SRUC, or Scotland’s Rural College (which was designated by [SSI 2008/177](#) under its former name, the Scottish Agricultural College).
37. Any institution listed in schedule 2 to the 2005 Act is a fundable post-16 education body, meaning that it is currently eligible to receive funding from the Scottish Further and Higher Education Funding Council. However, the further education colleges listed under the first italic heading in that schedule will not be caught, as they are not covered by the definition of higher education institution in section 35(1) of the 2005 Act.
38. The effect of the definition is to capture institutions which provide higher education in Scotland only if they are eligible for public funding, while excluding the Open University on the basis that it is a single institution established elsewhere and operating across multiple jurisdictions which might otherwise be made subject to conflicting governance requirements.
39. [Section 18\(2\)](#) provides that the Scottish Ministers may by regulations modify the definition of “higher education institution” in subsection (1). This would enable the Scottish Ministers to exclude a particular HEI from that definition (in addition to the Open University, which is already excluded). There is no power for the Scottish Ministers to add a particular HEI, but all new HEIs will automatically be included

within the definition as long as they are fundable post-16 education bodies. Section 18(3) provides that such regulations will be subject to the negative procedure.

### **Section 19: Meaning of governing document**

40. **Section 19** sets out the meaning of the term “governing document” used in Part 1 of the Act:
- section 19(1)(a) confirms that in the case of an older university this means any ordinances made under the Universities (Scotland) Acts;
  - section 19(1)(b) confirms that for an HEI established by royal charter, a governing document is any of its charters and any statutes made under them;
  - section 19(1)(c) confirms that in the case of a “designated institution”, a governing document will be any orders of the Privy Council which are in force with respect to the HEI, except where the HEI is a registered company under the Companies Acts and it has no orders of the Privy Council in force in relation to it where the governing document is the articles of association of the HEI. Section 19(2) clarifies that the term “designated institution” means an institution designated under Part II of the 1992 Act (where the definition is found in section 44);
  - section 19(1)(d) explains that a governing document, aside from the cases set out in section 19(1)(a) to (c), means any instrument which establishes the HEI or which governs the composition of its governing body or academic board;
41. In addition to defining “designated institution”, section 19(2) provides that, “older university” is to be construed in accordance with section 16(1) of the Universities (Scotland) Act 1966. The older universities are the University of Aberdeen, the University of Edinburgh, the University of Glasgow and the University of St. Andrews. It also provides that “registered company” means a company registered under the Companies Acts as defined in section 2 of the Companies Act 2006.

### **Section 20: Meaning of governing body**

42. **Section 20** states that, in Part 1 of the Act, the term “governing body” has the same meaning as in Part II of the 1992 Act (where the definition is found in section 56(1)).

### **Section 21: Meaning of academic board**

43. **Section 21** states the meaning of the term “academic board” in the context of an HEI. Section 21(1)(a) and (b) explains that the term means the body of persons with responsibility for overall planning, co-ordination, development and supervision of the academic work of the HEI (although the academic board discharges that responsibility subject to the general control and direction of the governing body of the HEI).
44. **Section 21(2)** clarifies that the “academic board” is also known in some HEIs as the Senate, Senatus or (and in the case of the older universities, in the Universities (Scotland) Acts) Senatus Academicus.

### **Section 22: References to students**

45. **Section 22** provides for how the term ‘students of a higher education institution’ is to be understood for the purposes of the Act. This section states that 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 students of the institution during their period of office.
46. The term ‘sabbatical officer’ is generally understood in the higher education sector and is used in certain governance orders made under section 45 of the 1992 Act as well as other education legislation. Section 22 of the Education Act 1994 sets out the

*These notes relate to the Higher Education Governance (Scotland)  
Act 2016 (asp 15) which received Royal Assent on 13 April 2016*

requirements to be observed in relation to students unions (i.e. students' associations).  
Section 22(2)(f) of that Act states that "a person should not hold sabbatical union office,  
or paid elected union office, for more than two years in total at the establishment".