



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND CULTURE COMMITTEE

Angela Constance,
Cabinet Secretary for
Education and Lifelong Learning,
Scottish Government

T3.40
The Scottish Parliament
Edinburgh
EH99 1SP
Direct Tel: 0131 348 5222
Fax: 0131 348 5600

ec.committee@scottish.parliament.uk

9 July 2015

Dear Angela,

The Committee recently considered its approach to scrutinising the Higher Education Governance (Scotland) Bill at Stage one. As part of its approach, the Committee agreed that I should ask the Scottish Government some factual questions on the Bill, in order to inform our forthcoming oral evidence sessions.

I would be grateful if you could reply to the questions below by no later than 18 September—

Section 1: appointing a chair

1. Paragraph 36 of the policy memorandum notes that implementation of the Code has, 'to some extent', increased transparency in appointing a chair. However, there is 'no guarantee of consistency' and, "in practice, HEIs have adopted different approaches". Please explain whether and how the different approaches adopted have affected the quality of governance within the institutions in question.
2. Section 1(2) allows for regulations to be made in connection with appointing a chair. It highlights some matters (e.g. periods of appointment) but not others (e.g. removing a chair). Please set out all the steps involved in appointing a chair and confirm which of these are likely to be left to the HEIs to determine, rather than be specified in regulations.

Sections 4-8: governing bodies

3. The policy memorandum notes (paragraph 41) that these provisions will create "a more inclusive environment" and "embed a level of consistency

across the institutions”. What specific and measurable improvements are expected to arise as a result of the changes?

4. Paragraphs 46 – 47 of the policy memorandum explain, in response to concerns raised in consultation responses, that trade union nominees will be expected to act in the best interest of the HEI (as will, presumably, other members). Is there an agreed and established definition of “best interest”?
5. Please explain why student representatives are to be *nominated* for the governing body, but *elected* to the academic board.
6. Section 7 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. 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 4. Will this section be relevant in the event that a governing body is unable, from the outset, to secure a trade union, staff, student or trade union member?
7. Could one person fill the role of being both a graduate nominee and union nominee to the governing body?

Sections 9-13: academic boards

8. Why are students to comprise 10% of the membership of academic boards and what benefits are expected to derive from this? Is it likely that all HEIs will be able to meet this threshold?
9. Why are governing bodies, but not academic boards, to have trade union and graduate nominees?

Section 19: academic freedom

10. Does the Scottish Government have any case study examples of academics who have previously been penalised for exercising their academic freedom in a manner that would now be permitted under the Bill?
11. Academic freedom is to be exercised “within the law”. Please briefly summarise the key existing legislation that would place some constraints on academic freedom.
12. Academic freedom can be exercised by those who teach, make learning provision or undertake research. Will the provisions apply to a student at an HEI or college who is also undertaking some teaching or ‘learning provision’ (please also clarify what is meant by the latter term)?
13. The policy memorandum notes the definition of academic freedom in the Irish Universities Act 1997. This definition includes the phrase “in his or her teaching, research and any other activities in or outside the university”. Please confirm whether the Bill’s provisions will apply to a relevant person’s activities both within and outwith an HEI/ college. What type of activity outside an HEI/ college would and would not be covered by the new definition of academic freedom?

General

14. The policy memorandum discusses at various points the benefits of consistency in governance across HEIs. However, it also allows HEIs some

flexibility (for example, in relation to certain nomination and election processes). Where flexibility is to be allowed, is the Scottish Government content that there is a minimal risk of any significant inconsistencies arising? Does the Scottish Government intend to issue any non-statutory guidance to HEIs on such matters?

15. Does the Scottish Government anticipate that the Code will be rewritten to ensure it reflects the changes set out in the Bill? Between the provisions of the Code and the Bill, is the Scottish Government now content that all concerns about governance are being adequately addressed?

Yours sincerely,

STEWART MAXWELL MSP
CONVENER