



Clerk to the Delegated Powers and Law Reform Committee  
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Scottish Parliament  
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Scottish Government

8 September 2015

### **Higher Education Governance (Scotland) Bill at Stage 1**

1. The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 8 September and seeks an explanation of the following matters:

#### **Section 1 – Appointment as chairing member**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

2. Section 1 provides that the chairing member of the governing body of a Higher Education Institution (“HEI”) is to be appointed in accordance with a process set out in regulations made by the Scottish Ministers. The process for appointment of chairing members of governing bodies is a key policy in the Bill and is understood to be a matter of controversy amongst HEI stakeholders.

3. **The Committee asks the Scottish Government:**

- (a) to explain why it is considered appropriate for the basic framework for the appointment of chairing members to be postponed to secondary legislation; and**
- (b) to consider whether the basic framework for the appointment of chairing members could be set out on the face of the Bill and therefore be made subject to full parliamentary consultation and debate, with the detail of the process to be set out in regulations.**

## **Section 2 – Remuneration to be payable**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

4. Section 2 provides that the Scottish Ministers may by regulations make provision for remuneration and allowances to be payable by an HEI to the chairing member of the governing body of the institution.

5. The principle of remuneration for chairing members of governing bodies is a new concept for HEIs and is understood to have met with opposition amongst HEI stakeholders.

### **6. The Committee asks the Scottish Government:**

**(a) to explain why it is considered appropriate for the principle and basic framework of remuneration for chairing members to be postponed to secondary legislation; and**

**(b) to consider whether the principle and basic framework of remuneration for chairing members could be set out on the face of the Bill and therefore be made subject to full parliamentary consultation and debate, with the detail to be set out in regulations.**

## **Section 8 – Power to modify section 4**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

### **Provision**

7. Section 8 gives a power to the Scottish Ministers to modify section 4 of the Bill, which sets out the requirements for the composition of the governing body of an HEI. The proposed requirements as to the composition of governing bodies set out in the Bill are understood to have met with opposition amongst HEIs.

**8. The Committee asks the Scottish Government to consider whether a requirement could be included on the face of the Bill for the Scottish Ministers to consult affected HEIs before making regulations under section 8 to modify such requirements, in similar terms to the existing requirement for consultation before exercising the powers in sections 1 and 2 of the Bill.**

## **Section 13 – Power to modify sections 9 and 10**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>affirmative</b>

9. Section 13 gives a power to the Scottish Ministers to modify sections 9 and 10 of the Bill, which set out the requirements for the size and composition of the academic board of an HEI. The proposed requirements as to the size and composition of the academic board of an HEI set out in the Bill are understood to have met with opposition amongst HEIs.

**10. The Committee asks the Scottish Government to consider whether a requirement could be included on the face of the Bill for the Scottish Ministers to consult affected HEIs before making regulations under section 13 to modify such requirements, in similar terms to the existing requirement for consultation before exercising the powers in sections 1 and 2 of the Bill.**

### **Section 15 – Meaning of higher education institution**

<b>Power conferred on:</b>	<b>the Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>regulations</b>
<b>Parliamentary procedure:</b>	<b>negative</b>

11. Section 15(1) sets out the definition of an HEI for the purposes of Part 1 of the Bill. HEI has the same meaning as in the Further and Higher Education (Scotland) Act 2005 – that is, a university or an institution providing higher education designated by the Secretary of State. However, a university or designated institution falls within the definition only if it is also listed in schedule 2 (fundable bodies) to that Act. Schedule 2 lists those bodies which may receive funding from the Scottish Further and Higher Education Funding Council. The Open University is specifically excluded from the definition.

12. Section 15(2) provides that the Scottish Ministers may by regulations modify the definition set out in section 15(1) so as to include or exclude a particular institution.

13. Given that the definition of HEI determines which institutions are subject to the governance requirements set out in the Bill, changes to the definition to include or exclude a particular institution could have a sizeable impact on the institution affected.

**14. The Committee asks the Scottish Government:**

**(a) for clarification as to why a power to include a higher education institution in the definition is required, since it appears that the definition in the Bill will already catch all universities and designated institutions (other than the Open University) which may receive funding from the Scottish Further and Higher Education Funding Council, by virtue of being included in schedule 2 (fundable bodies) to the Further and Higher Education (Scotland) Act 2005;**

**(b) for examples of when a power to include a higher education institution in the definition might be used;**

**(c) why the negative procedure is considered appropriate in this case, given the potential impact of a modification of the definition so as**

**to include a particular higher education institution, on the institution in question; and**

**(d) to consider whether a requirement could be included on the face of the Bill for the Scottish Ministers to consult affected HEIs before making any regulations under section 15, again given the potential impact on affected institutions, in similar terms to the existing requirement for consultation before exercising the powers in sections 1 and 2 of the Bill.**

15. Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 22 September.

**Deborah Cook  
Assistant Clerk to the Committee**