

Draft Order laid before the Scottish Parliament under section 60(2B) of the Further and Higher Education (Scotland) Act 1992 and section 34(4)(ca) of the Further and Higher Education (Scotland) Act 2005 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

EDUCATION

**The Colleges of Further Education and Regional Strategic
Bodies (Membership of Boards) (Scotland) Order 2023**

Made - - - - 2023

Coming into force - - 31st January 2024

The Scottish Ministers make the following Order in exercise of the powers conferred on them by sections 3(5) and 60(3) of the Further and Higher Education (Scotland) Act 1992⁽¹⁾ and section 34(2) and paragraph 18(1) of schedule 2B of the Further and Higher Education (Scotland) Act 2005⁽²⁾ and all other powers enabling them to do so.

In accordance with paragraph 18(2) of schedule 2B of the Further and Higher Education (Scotland) Act 2005, they have consulted with the regional board to which this Order relates, and other such persons as they considered appropriate.

In accordance with section 60(2B) of the Further and Higher Education (Scotland) Act 1992⁽³⁾ and section 34(4)(ca) of the Further and Higher Education (Scotland) Act 2005⁽⁴⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Colleges of Further Education and Regional Strategic Bodies (Membership of Boards) (Scotland) Order 2023 and comes into force on 31 January 2024.

Amendment of the Further and Higher Education (Scotland) Act 1992

2.—(1) Schedule 2 of the Further and Higher Education (Scotland) Act 1992 (constitution and proceedings of boards of management)⁽⁵⁾ is amended as follows.

(1) 1992 c. 37. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
(2) 2005 asp 6. Schedule 2B was inserted by section 11(2) of the Post-16 Education (Scotland) Act 2013 (asp 12) (“the 2013 Act”).
(3) Section 60(2A) was inserted by paragraph 2(6)(b) of the schedule of the 2013 Act.
(4) Section 34(4)(ca) was inserted by paragraph 8(22)(d) of the schedule of the 2013 Act.
(5) Schedule 2 was amended by paragraph 11(3) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1), section 6(1) and paragraph 2(7) of the schedule of the 2013 Act and S.S.I. 2003/199, S.S.I. 2014/21 and S.S.I. 2015/153.

- (2) In paragraph 3—
- (a) in sub-paragraph (1), for “18” substitute “20”,
 - (b) after sub-paragraph (2)(d), insert—
 - “(da) a person appointed by being nominated by a trade union from among the teaching staff of the college who are members of a branch of a trade union that has a connection with the college;
 - (db) a person appointed by being nominated by a trade union from among the non-teaching staff of the college who are members of a branch of a trade union that has a connection with the college;”
 - (c) after sub-paragraph (2), insert—
 - “(2A) For the purposes of sub-paragraph (2)(da) and (db), a trade union nominating a person from among a category of staff must be one that—
 - (a) is recognised by the board in relation to the category of staff (within the meaning of section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁶⁾); or
 - (b) otherwise appears to the board to be representative of the category of staff, having regard to all relevant factors.”
- (3) In paragraph 3A(7)—
- (a) in sub-paragraph (1)—
 - (i) for “13” substitute “15”, and
 - (ii) for “18” substitute “20”,
 - (b) after sub-paragraph (2)(d), insert—
 - “(da) a person appointed by being nominated by a trade union from among the teaching staff of the college who are members of a branch of a trade union that has a connection with the college;
 - (db) a person appointed by being nominated by a trade union from among the non-teaching staff of the college who are members of a branch of a trade union that has a connection with the college;”
 - (c) after sub-paragraph (2), insert—
 - “(3) for the purposes of sub-paragraph (2)(da) and (db), a trade union nominating a person from among a category of staff must be one that—
 - (a) is recognised by the board in relation to the category of staff (within the meaning of section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992); or
 - (b) otherwise appears to the board to be representative of the category of staff, having regard to all relevant factors.”
- (4) In paragraph 5—
- (a) after sub-paragraph (2)(a) insert—
 - “(aa) a member appointed in pursuance of paragraph 3(2)(da) or (db) or paragraph 3A(2)(da) or (db) is to hold office for 4 years;”
 - (b) after sub-paragraph (2F)⁽⁸⁾ insert—

⁽⁶⁾ 1992 c. 52.

⁽⁷⁾ Paragraph 3A was inserted by section 6(1) of the 2013 Act.

⁽⁸⁾ Paragraph 5(2F) was inserted by paragraph 2(7)(b)(ii) of the schedule of the 2013 Act.

“(2FA) A member appointed in pursuance of paragraph 3(2)(da) or (db) or paragraph 3A(2)(da) or (db) is to vacate office if—

- (a) the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of the college; or
- (b) the member ceases to be a member of a branch of a trade union that has a connection with the college;

before the member’s period of appointment ends.”.

Amendment of the Further and Higher Education (Scotland) Act 2005

3.—(1) Schedule 2B of the Further and Higher Education (Scotland) Act 2005 (regional boards)(9) is amended as follows.

(2) In paragraph 3 (membership)—

- (a) in sub-paragraph (1), for “15” substitute “19”,
- (b) after sub-paragraph (2)(d), insert—

“(da) a person appointed by being nominated by a trade union from among the teaching staff of the board’s colleges who are members of a branch of a trade union that has a connection with the board’s colleges;

(db) a person appointed by being nominated by a trade union from among the non-teaching staff of the board’s colleges who are members of a branch of a trade union that has a connection with the board’s colleges;”.

- (c) in sub-paragraph (2)(f), for “10” substitute “12”,
- (d) after sub-paragraph (4), insert—

“(4A) For the purposes of sub-paragraph (2)(da) and (db), a trade union nominating a person from a category of staff must be one that—

- (a) is recognised by the board in relation to the category of staff (within the meaning of section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992); or
- (b) otherwise appears to the board to be representative of the category of staff, having regard to all relevant factors.”.

(3) In paragraph 7 (terms and conditions)—

(a) after sub-paragraph (2)(c) insert—

“(ca) a member appointed in pursuance of paragraph 3(2)(da) or (db) is to hold office for 4 years;”.

(b) after sub-paragraph (6) insert—

“(6A) A member appointed in pursuance of paragraph 3(2)(da) or (db) is to vacate office if—

- (a) the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of the board’s colleges; or
- (b) the member ceases to be a member of a branch of a trade union that has a connection with the board’s colleges;

before the member’s period of appointment ends.”.

(9) Schedule 2B was inserted by section 11(2) of the 2013 Act and amended by paragraph 21 of schedule 8 of the Bankruptcy (Scotland) Act 2016 (asp 21).

Amendment of the Lanarkshire Colleges Order 2014

4.—(1) The Lanarkshire Colleges Order 2014(10) is amended as follows.

(2) In article 5(2)—

- (a) in sub-paragraph (a)(i), for “19” substitute “23”,
- (b) for sub-paragraph (a)(ii) substitute—
 - “(ii) for “20” substitute “26”;
- (c) after sub-paragraph (a) insert—
 - “(aa) omit paragraph 3(2)(da) and (db);”;
- (d) for sub-paragraph (c) substitute—
 - “(c) insert the following paragraphs at the end of paragraph 3(2)(e) immediately before “and”—
 - “(ea) the chairing member of the board of South Lanarkshire College appointed under paragraph 3A(2)(a);
 - (eb) subject to sub-paragraph (4A), the principal of South Lanarkshire College;
 - (ec) the person appointed under paragraph 3A(2)(c) to the board of South Lanarkshire College;
 - (ed) the person appointed under paragraph 3A(2)(d) to the board of South Lanarkshire College;
 - (ee) a person appointed by being nominated by the students’ association of South Lanarkshire College from among the students of South Lanarkshire College;
 - (ef) a person appointed by being nominated by a trade union from among the teaching staff of New College Lanarkshire and South Lanarkshire College who are members of a branch of a trade union that has a connection with the colleges;
 - (eg) a person appointed by being nominated by a trade union from among the non-teaching staff of New College Lanarkshire and South Lanarkshire College who are members of a branch of a trade union that has a connection with the colleges;”;
- (e) after sub-paragraph (c) insert—
 - “(ca) in paragraph 3(2A), for “(2)(da) and (db)” substitute “(2)(ef) and (eg)”;

(3) In article 5(4)—

- (a) after sub-paragraph (a) insert—
 - “(aa) in paragraph 5(2)(aa), for “3(2)(da) or (db)” substitute “3(2)(ef) or (eg)”;
- (b) after sub-paragraph (c) insert—
 - “(ca) omit paragraph 5(2FA);”;
- (c) for sub-paragraph (d) substitute—
 - “(d) after paragraph 5(2G), insert—
 - “(2H) A member appointed in pursuance of paragraph 3(2)(ee) is to vacate office if the member ceases to be a student of South Lanarkshire College before the member’s period of appointment ends.

(2I) A member appointed in pursuance of paragraph 3(2)(ef) or (eg) is to vacate office if—

- (a) the member ceases to be a member of the teaching or, as the case may be, non-teaching staff of New College Lanarkshire or South Lanarkshire College; or
- (b) the member ceases to be a member of a branch of a trade union that has a connection with the colleges;

before the member’s period of appointment ends.””

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends schedule 2 of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”), schedule 2B of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”) and the Lanarkshire Colleges Order 2014 (“the 2014 Order”).

Article 2 amends schedule 2 of the 1992 Act. It increases the maximum number of members of a board of management of a regional college. It also increases the minimum and the maximum number of members of a board of management of a college, incorporated under Part 1 of the 1992 Act, which is not a regional college. In addition, provision is made to require trade union nominees on the boards of management of both types of college, namely one person nominated by a trade union from among the teaching staff of the college, and one person nominated by a trade union from among the support staff of the college. The nominating trade union must either be recognised by the board of management or appear to that board to be representative of the staff of the college. Trade union nominee members of a board of management are to hold office for 4 years and must vacate office on ceasing to be a member of staff of the college or a member of a branch of a trade union with a connection to the college.

Article 3 amends schedule 2B of the 2005 Act. It increases the minimum number of members of a regional board and increases the maximum number of other members which the board can appoint. It also makes provision to require trade union nominees on a regional board, namely one person nominated by a trade union from among the teaching staff, and one person nominated by a trade union from among the support staff, from among the regional board’s colleges. The nominating trade union must either be recognised by the regional board or appear to that board to be representative of the staff of the board’s colleges. Trade union nominee members of a regional board are to hold office for 4 years and must vacate office on ceasing to be a member of staff of the board’s colleges or on ceasing to be a member of a branch of a trade union with a connection to the board’s colleges.

Article 4 makes provision under the 1992 Act to amend the 2014 Order which modifies schedule 2 of the 1992 Act in respect of the board of management of New College Lanarkshire. Further modifications made by this Order increase the minimum and maximum number of members of the board of management of New College Lanarkshire. Provision is also made to require trade union nominees on the board of management of New College Lanarkshire. There is to be one person nominated by a trade union from among the teaching staff of New College Lanarkshire and South Lanarkshire College and one person nominated by a trade union from among the support staff of New College Lanarkshire and South Lanarkshire College. The nominating trade union must either be recognised by the board of management of New College Lanarkshire or appear to that board to be representative of the staff of the colleges. Trade union nominee members of the board of New College Lanarkshire are to hold office for 4 years and must vacate office on ceasing to be a member of staff of New College Lanarkshire or South Lanarkshire College or on ceasing to be a member of a trade union with a connection to the colleges.