

Status: Point in time view as at 01/05/2003.

Changes to legislation: There are currently no known outstanding effects for the Further and Higher Education (Scotland) Act 1992, SCHEDULE 2. (See end of Document for details)

SCHEDULES

^{F1}SCHEDULE 2 **S**

Section 12.

CONSTITUTION AND PROCEEDINGS OF BOARDS OF MANAGEMENT

Textual Amendments

F1 Sch. 2 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Status

- ^{F2}₁ A board of management (in this Schedule referred to as “the board”) shall not—
- (a) be regarded as the servants or agents of the Crown;
 - (b) have any status, immunity or privilege of the Crown,
- and their property shall not be regarded as property of, or held on behalf of, the Crown.

Textual Amendments

F2 Sch. 2 para. 1 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Membership

- ^{F3}₂ The board shall consist of not less than ten nor more than sixteen persons.

Textual Amendments

F3 Sch. 2 para. 2 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

- ^{F4}₃ (1) Subject to paragraph 4 below, this paragraph shall have effect as regards the membership of the board.
- (2) The board shall include—
- (a) the person who is, for the time being, the principal of the college;
 - (b) a person appointed by being elected by the teaching staff of the college from among their own number;
 - (c) a person appointed by being elected by the non-teaching staff of the college from among their own number;
 - (d) a person appointed by being nominated by the students’ association of the college from among students of the college.
- (3) Not less than one half of the total number of members of the board shall be appointed by the board from among persons, not being members of the staff or full-time students of the college, appearing to them to have experience of, and to have shown capacity

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in, industrial, commercial or employment matters or the practice of any profession; and one such person shall be a person nominated by the local enterprise company for the area in which the college is located.

- (4) The remaining members shall be appointed by the board from among persons appearing to them to have, or to represent persons who have, an interest in the work of the college, having regard to the interests of the education authority for the area in which the college is situated in relation to the provision of any form of further education in their area.
- (5) In this paragraph, “local enterprise company” means any person with whom an agreement (not being one which has terminated) has been made in pursuance of section 19 of the ^{M1}Enterprise and New Towns (Scotland) Act 1990 by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that person of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise.
- (6) Any election to be held in pursuance of this paragraph shall be conducted in accordance with rules made by the board after consultation with such persons as appear to the board to be representative of each category of persons entitled to elect a person under this paragraph; and rules made in accordance with this sub-paragraph may be substituted or varied by further such rules.

Textual Amendments

F4 Sch. 2 para. 3 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Marginal Citations

M1 1990 c. 35.

- ^{F54} (1) This paragraph shall have effect as regards the membership of the board with effect from the first transfer date.
- (2) The persons who are, immediately before the first transfer date, the members of the college council for a college of further education by virtue of Schedule 6 to this Act shall become, on that date, the first members of the board of management of the college.
 - (3) Where a person becomes a member of the board in pursuance of sub-paragraph (2) above, he shall be taken to have become a member of the board in pursuance of the provision of paragraph 3 above in accordance with which, by virtue of paragraph 1 of Schedule 6 to this Act, he became a member of the college council.
 - (4) Where the number of persons who become the first members of the board in pursuance of sub-paragraph (2) above is less than sixteen, the board may appoint, in accordance with and having regard to the requirements of paragraph 3 above, such additional members as appears to them to be appropriate; provided that the total number of members of the board shall not at any time exceed sixteen.
 - (5) As soon as is practicable after the first transfer date and any appointment made under sub-paragraph (4) above, the members of the board shall determine by agreement among them, or failing agreement by ballot, that the persons who occupy the positions on the board mentioned in sub-paragraph (6) below shall hold office for a period of two years.

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- (6) The positions referred to in sub-paragraph (5) above are seven positions (other than the positions held by the principal and the person appointed by being nominated by the students' association of the college), whether or not at the time the board makes its determination any or all of such positions are occupied, identified in such manner as the board may so determine.

Textual Amendments

F5 Sch. 2 para. 4 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Qualifications and tenure of office

- 5 (1) Subject to this paragraph and paragraphs 6 to 10 below, a member of the board shall hold and vacate office in accordance with the terms of his appointment, and, on such appointment ceasing, shall be eligible for re-appointment.
- (2) Subject to paragraph 4(5) above, a member of the board, other than the person who is, for the time being, the principal of the college and the person appointed by being nominated by the students' association of the college, shall hold office for a period of four years.
- (3) The person who is, for the time being, the principal of the college shall remain a member of the board while he is the principal; and nothing in paragraphs 6 to 9 below shall apply to the principal in his capacity as a member of the board.
- (4) A person who is appointed by being nominated by the students' association of the college shall hold office until 31st August following his appointment.
- (5) A member of the board, other than the principal of the college, may resign his office at any time by giving notice in writing to such person as the board may appoint for the purpose.

Commencement Information

II Sch. 2 para. 5 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

- ^{F6} (1) A person shall not be eligible for appointment as a member of the board—
- (a) at any time when he is under the age of sixteen or over the age of seventy; but a person who attains the age of seventy during his appointment shall be entitled to remain in office until his term of office otherwise expires in accordance with this Schedule; or
- (b) where the total number of years of any previous terms of office (whether or not consecutive) served as a member of that board exceeds eight.
- (2) For the purposes of sub-paragraph (1)(b) above, in calculating the number of years served no account shall be taken of any term of office served as a member of a college council.

Textual Amendments

F6 Sch. 2 para. 6 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

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- ^{F77} (1) A person is not eligible for appointment as a member of the board if—
- (a) he has, within five years of the date his appointment would take effect, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;
 - (b) his estate has been sequestrated, he has made an arrangement with his creditors, he has been adjudged bankrupt, he has granted a trust deed for his creditors or a composition contract;
 - (c) he is incapacitated by mental illness; or
 - (d) he has been removed from office by the Secretary of State under section 24 of this Act.
- (2) Where a person is disqualified under sub-paragraph (1)(b) above by reason of having had his estate sequestrated, the disqualification shall cease if and when—
- (a) the sequestration of his estate is recalled or reduced; or
 - (b) he is discharged under or by virtue of the ^{M2}Bankruptcy (Scotland) Act 1985.
- (3) Where a person is disqualified under that sub-paragraph by reason of having been adjudged bankrupt, the disqualification shall cease—
- (a) unless the bankruptcy order made against him is previously annulled, on his discharge from bankruptcy; and
 - (b) if the bankruptcy order is so annulled, on the date of the annulment.
- (4) Where a person is disqualified under that sub-paragraph by reason of his having made an arrangement with his creditors or granted a trust deed for his creditors or a composition contract, the disqualification shall cease when the arrangement or, as the case may be, trust deed or composition contract is no longer in force.

Textual Amendments

F7 Sch. 2 para. 7 wholly in force at 16.5.1992 see s. 63(2) and [S.I. 1992/817, art. 3\(2\)](#), [Sch. 1](#).

Marginal Citations

M2 [1985 c. 66](#).

- ^{F88} If at any time the board are satisfied that any of their members—
- (a) has been convicted as mentioned in sub-paragraph (a) of paragraph 7(1) above or has become a person to whom either of sub-paragraphs (b) and (c) of paragraph 7(1) above applies;
 - (b) has been absent, without the permission of the board, from all meetings of the board or any committee of theirs to which he has been appointed for a period longer than six consecutive months; or
 - (c) having been appointed in pursuance of paragraph 3(3) above, becomes a full-time student of the college or a member of the staff of the college,
- the board shall, by notice given in writing to that person, remove him from office; and thereupon the office shall become vacant.

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Textual Amendments

F8 Sch. 2 para. 8 wholly in force at 16.5.1992 see s. 63(2) and [S.I. 1992/817, art. 3\(2\)](#), [Sch. 1](#).

- ^{F9} If at any time the board are satisfied that any of their members—
- ^{F10}(a)
 - (b) having been appointed by reason of being a student of the college or a member of the staff of the college, ceases to be such student or member of staff; or
 - (c) without prejudice to paragraph 8 above, has become unable or unfit to discharge his functions as a member of the board [^{F11}except where such inability or unfitness relates to a contravention or alleged contravention of a member's code as defined in section 3(8) of the Ethical Standards in Public Life etc. (Scotland) Act 2000,],
- the board may, by notice given in writing to that person, remove him from office; and thereupon the office shall become vacant.

Textual Amendments

F9 Sch. 2 para. 9 wholly in force at 16.5.1992 see s. 63(2) and [S.I. 1992/817, art. 3\(2\)](#), [Sch. 1](#).

F10 Sch. 2 para. 9(a) omitted (1.5.2003) by virtue of [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(Modification of Enactments\) Order 2003 \(S.S.I. 2003/199\)](#), arts. 1, 2, [Sch.](#)

F11 Words in Sch. 2 para. 9(c) inserted (1.5.2003) by [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(Modification of Enactments\) Order 2003 \(S.S.I. 2003/199\)](#), arts. 1, 2, [Sch.](#)

- ^{F12}10 (1) Any casual vacancy among the members of the board may be filled by their appointing a person to fill the vacancy in like manner to that by which the person to be replaced was appointed.
- (2) Notwithstanding paragraph 5 above, a person appointed in pursuance of this paragraph shall hold office until the expiry of the period of office of the person he was appointed to replace.

Textual Amendments

F12 Sch. 2 para. 10 wholly in force at 16.5.1992 see s. 63(2) and [S.I. 1992/817, art. 3\(2\)](#), [Sch. 1](#).

Proceedings

- ^{F13}11 (1) Subject to paragraphs 12 [^{F14}and 13] below, the board may regulate their own proceedings and those of any committee appointed by them.
- (2) The validity of any proceedings of the board or of any committee appointed by them shall not be affected by any defect in the appointment of any member of the board or any member of such committee or by a vacancy amongst the members of the board.
- (3) Subject to sub-paragraph (5) below, the board shall make available for inspection at the college at all reasonable times by anyone who wishes to inspect them copies of the documents to which this sub-paragraph applies.
- (4) The documents to which sub-paragraph (3) above applies are—

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- (a) the agenda for any meeting of the board or of any committee of theirs;
 - (b) the draft minutes of any such meeting as approved by the chairman of the meeting;
 - (c) the minutes of such meeting as agreed by the board or, as the case may be, committee; and
 - (d) any report or other document considered by such meeting.
- (5) Sub-paragraph (3) above shall not apply to any document or part thereof which relates to—
- (a) an employee, former employee or applicant for employment in relation to the college;
 - (b) a person who is, has been, or is likely to be a student of the college;
 - (c) any information the disclosure of which is prohibited by anything in any enactment (including this Act and an enactment contained in a subordinate instrument) or rule of law;
 - (d) anything which it appears to the board should be treated as confidential because of its commercial nature or otherwise.

Textual Amendments

F13 Sch. 2 para. 11 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **sch. 1**.

F14 Words in Sch. 2 para. 11(1) substituted (1.5.2003) by [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(Modification of Enactments\) Order 2003 \(S.S.I. 2003/199\)](#), arts. 1, 2, **Sch.**

Chairman

- ^{F15}12 (1) The board shall appoint one of their members, not being a person who is—
- (a) a student of the college;
 - (b) an employee of the board;
 - (c) the principal for the time being of the college; or
 - (d) a member (whether elected or appointed) or an employee of a local authority, to be chairman.
- (2) The board shall determine the period of appointment of the chairman and may remove him from office as chairman.
- (3) Where the chairman ceases to be a member of the board, he shall cease to be chairman.

Textual Amendments

F15 Sch. 2 para. 12 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), **Sch. 1**.

Committees

- ^{F16}13 (1) The board may establish committees for any purpose and any such committee may appoint sub-committees.
- (2) Such committees may include persons who are not members of the board; but such persons shall not be entitled to vote at meetings of a committee.

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- (3) The principal of the college shall be entitled to attend and speak at any meeting of a committee of the board; but he shall be entitled to vote at such meeting only if he is a member of such committee.
- (4) The board may pay to the members of such committees (whether or not they are also members of the board) such allowances and expenses as they may determine; and any allowances and expenses to be paid by virtue of this sub-paragraph shall be calculated by reference to such criteria as the Secretary of State may determine.
- (5) Any reference in this Schedule to a committee of the board shall include a reference to any sub-committee appointed by such committee.

Textual Amendments

F16 Sch. 2 para. 13 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Conflict of interest

F17¹⁴

Textual Amendments

F17 Sch. 2 para. 14 omitted (1.5.2003) by virtue of *Ethical Standards in Public Life etc. (Scotland) Act 2000 (Modification of Enactments) Order 2003* (S.S.I. 2003/199), arts. 1, 2, Sch.

Confidentiality of information

F18¹⁵

Textual Amendments

F18 Sch. 2 para. 15 omitted (1.5.2003) by virtue of *Ethical Standards in Public Life etc. (Scotland) Act 2000 (Modification of Enactments) Order 2003* (S.S.I. 2003/199), arts. 1, 2, Sch.

Staff

F19¹⁶ Subject to section 15 of this Act, the board may appoint on such terms and conditions as they may determine such employees as they think fit.

Textual Amendments

F19 Sch. 2 para. 16 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

F20¹⁷ (1) The board may, in the case of such of its employees or former employees as they may, subject to sub-paragraph (2) below, determine—

- (a) pay such pensions, allowances or gratuities to or in respect of those employees;
- (b) make such payments towards provision of such pensions, allowances or gratuities; or

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- (c) make such arrangements for the provision and maintenance of such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities,
as they think fit.
- (2) Sub-paragraph (1) above shall not apply to any person who becomes an employee of the board under or by virtue of any provision of this Act (other than paragraph 16 above) unless that person, by notice given in writing, informs the board that he wishes it so to apply.
- (3) The reference in sub-paragraph (1) above to pensions, allowances or gratuities in respect of employees of the board includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.

Textual Amendments

F20 Sch. 2 para. 17 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Accounts

- ^{F21}18 (1) It shall be the duty of the board to keep proper accounts and other records.
- (2) The accounts shall be prepared ^{F22} . . . in respect of each financial year in such manner as the [^{F23}Scottish Ministers] may direct and the accounts shall be submitted to the [^{F24}Scottish Ministers by such time as they may direct].
- [^{F25}(2A) The Scottish Ministers shall send the accounts to the Auditor General for Scotland for auditing.]
- (3) The financial year of the board shall be from 1st April to 31st March.
- (4) The Secretary of State may by order provide that the board shall have a different financial year, and an order under this sub-paragraph may make such consequential provision as appears to the Secretary of State to be necessary or expedient.

Textual Amendments

F21 Sch. 2 para. 18 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

F22 Words in Sch. 2 para. 18(2) repealed (1.4.2000) by 2000 asp 1, s. 26(1), Sch. 4 para. 11(3)(a)(i); S.S.I. 2000/10, art. 2(3)

F23 Words in Sch. 2 para. 18(2) substituted (1.4.2000) by 2000 asp 1, s. 26(1), Sch. 4 para. 11(3)(a)(ii); S.S.I. 2000/10, art. 2(3)

F24 Words in Sch. 2 para. 18(2) substituted (1.4.2000) by 2000 asp 1, s. 26(1), Sch. 4 para. 11(3)(a)(iii); S.S.I. 2000/10, art. 2(3)

F25 Sch. 2 para. 18(2A) inserted (1.4.2000) by 2000 asp 1, s. 26(1), Sch. 4 para. 11(3)(b); S.S.I. 2000/10, art. 2(3)

- ^{F26}19 The accounts of the board shall be open to the inspection of the Comptroller and Auditor General, but—
- (a) the power conferred by this paragraph; and

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(b) the powers under sections 6 and 8 of the ^{M3}National Audit Act 1983 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information) conferred on the Comptroller and Auditor General by virtue of section 6(3)(c) of that Act, shall be exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the board in respect of which grants, loans or other payments are made to them under this Part of this Act.

Textual Amendments

F26 Sch. 2 para. 19 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Marginal Citations

M3 1983 c. 44.

Execution of documents

- ^{F27}20 (1) For any purpose other than those mentioned in sub-paragraph (2) below, a document is validly executed by the board if it is signed on their behalf by a member of the board or by their secretary (or any person performing the duties of secretary to the board) or by any person authorised to sign the document on their behalf.
- (2) For the purposes of any enactment or rule of law relating to the authentication of documents, a document is validly executed by the board if it is subscribed on their behalf by being executed in accordance with the provisions of sub-paragraph (1) above.
- (3) A document which bears to have been executed by the board in accordance with sub-paragraph (2) above shall, in relation to such execution, be a probative document if the subscription of the document bears to have been attested by at least one witness.

Textual Amendments

F27 Sch. 2 para. 20 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Provision of services

- ^{F28}21 The ^{M4}Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to certain public bodies) shall have effect as if the board were a public body within the meaning of that Act.

Textual Amendments

F28 Sch. 2 para. 21 wholly in force at 16.5.1992 see s. 63(2) and S.I. 1992/817, art. 3(2), Sch. 1.

Marginal Citations

M4 1970 c. 39.

Status:

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Changes to legislation:

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