

Education, Children and Young People Committee

30th Meeting, 2023 (Session 6), Wednesday 22 November 2023

Subordinate legislation

1. This note provides information about the [Colleges of Further Education and Regional Strategic Bodies \(Membership of Boards\) \(Scotland\) Order 2023 \[draft\]](#).
2. These regulations are being considered under the affirmative procedure.

Committee meeting

3. At this meeting, the Committee will take evidence from—
 - Graeme Dey, Minister for Higher and Further Education; and Minister for Veterans;
 - Adam Mackie, Senior Policy Officer, Institutional Governance and Reform Unit; and
 - Alison Martin, Solicitor, Scottish Government Legal Directorate.

Timeline for Consideration

4. The regulations were laid before the Scottish Parliament on 30 October 2023 and, if agreed, will come into force on 31 January 2024.
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on 7 November 2023. That Committee published [its report](#) on 8 November 2023. No points were raised.
6. The regulations will be considered by the Education, Children and Young People Committee at its meeting on 22 November 2023.
7. The Committee is required to report on the regulations by **8 December 2023**.

Formal Procedure

8. As the draft regulations (also known as draft Scottish Statutory Instruments or draft SSIs) are being considered under the affirmative procedure, usual practice is for the committee to hear evidence from the Minister in charge, prior to the Committee formally considering the draft regulations.

9. The Committee may also hear evidence from Scottish Government officials who have been working on the draft regulations.
10. After taking evidence from the Scottish Government, the Committee will formally consider the SSI. The Committee will do this at its meeting on 22 November 2023.
11. The Minister responsible for the draft regulations will propose, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The Motion to approve these regulations is [S6M-11026](#).
12. The Committee then has up to 90 minutes to debate the motion, before voting on whether to approve the draft regulations.
13. The lead committee must report its recommendation to the Parliament.
14. Where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion for agreement by the whole Parliament that the instrument be agreed.

Purpose of the regulations

15. The purpose of the regulations is to require that there to be two trade union nominee board members, one from college teaching staff and one from support staff, on the boards of management of regional and incorporated colleges, the board of management of New College Lanarkshire and on the Glasgow Colleges Regional Board.
16. The draft Policy Note states that—

“The addition of trade union nominees to the boards of these college institutions will improve college governance and further the Scottish Government’s Fair Work Agenda.

This furthers one of the key principles of Fair Work, effective voice, by giving trade unions a route to raise issues directly with boards of management, with the aim of improving relations between trade unions and college management. By improving the representation of trade union views in college governance decisions, this will strengthen college governance and improve confidence in the processes underpinning decision-making.”

17. A copy of the draft Policy Note is included at the Annexe.

Consultation

18. The draft Policy Note states that a public consultation was carried out between 1 December 2022 to 27 January 2023 and that the requirement to consult on changes to regional boards, as set out in paragraph 18(2) of schedule 2B of the 2005 Act, was complied with in the course of the public consultation.

Impact Assessments

19. The draft Policy Note highlights that [An Equality Impact Assessment, Child Rights and Wellbeing Impact Assessment \(CRWIA\)](#), [a Fairer Scotland Duty Assessment](#) and an [Islands Communities Impact Assessment](#) have been completed on the SSI.

Financial Effects

20. The draft Policy Note states that Trade union nominee board members will be non-remunerated positions.

For decision

21. The Committee is invited to—

- **consider the instrument and then;**
- **delegate authority to the Convener to sign off the Committee's report to Parliament on the instrument.**

**Education, Children and Young People Committee
17 November 2023**

POLICY NOTE**THE COLLEGES OF FURTHER EDUCATION AND REGIONAL
STRATEGIC BODIES (MEMBERSHIP OF BOARDS) (SCOTLAND)
ORDER 2023****SSI 2023/XXX**

The above instrument was made in exercise of the powers conferred by sections 3(5) and 60(3) of the Further and Higher Education (Scotland) Act 1992 and section 34(2) and paragraph 18(1) of schedule 2B of the Further and Higher Education (Scotland) Act 2005. The instrument is subject to affirmative procedure.

Summary Box

This instrument will require there to be two trade union nominee board members, one from college teaching staff and one from support staff, on the boards of management of regional and incorporated colleges, the board of management of New College Lanarkshire and on the Glasgow Colleges Regional Board.

Policy Objectives

Following the Education Secretary's Good Governance Task Group Report, published in 2016, on the lessons learned regarding governance issues at Glasgow Clyde, North Glasgow and Coatbridge Colleges, the Scottish Government committed to introducing trade union nominees to the boards of the incorporated colleges, the Glasgow Colleges' Regional Board and New College Lanarkshire (NCL) (also known as "the Lanarkshire Board") to improve the governance of Scotland's colleges.

The addition of trade union nominees to the boards of these college institutions will improve college governance and further the Scottish Government's Fair Work Agenda.

This furthers one of the key principles of Fair Work, effective voice, by giving trade unions a route to raise issues directly with boards of

management, with the aim of improving relations between trade unions and college management. By improving the representation of trade union views in college governance decisions, this will strengthen college governance and improve confidence in the processes underpinning decision-making.

Background to the boards of college institutions

College regionalisation was introduced by the Post-16 Education (Scotland) Act 2013. In most of the Scottish regions there is a single college incorporated under the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”) which is a “regional college” within the meaning of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”).

There are several regions where there are more than one incorporated college and in which the strategic oversight and funding arrangements for further education are managed by a “regional strategic body” under the 2005 Act. Colleges within these regions are assigned to the regional strategic body and referred to as “assigned colleges”. Due to the different types of regional college institutions in Scotland, this Order makes amendments to three pieces of legislation all for the same purpose of ensuring there are two trade union nominee members, one teaching staff nominee and one support staff nominee, on the relevant boards.

Changes made to boards of management of regional and assigned colleges

Article 2 of the Order makes changes to schedule 2 of the 1992 Act which governs the boards of management of the regional and assigned incorporated colleges. The boards of management of the regional and assigned colleges have broadly similar mandatory membership with the key difference being that regional colleges have a Chair appointed by the Scottish Ministers and in the case of the assigned colleges the Chair is appointed by the regional strategic body to which they are assigned. The Order adds trade union nominee members (one from the teaching staff of the college and one from the support staff) to the regional and assigned incorporated college boards.

The maximum number of board members in both cases is increased to accommodate the new members and ensure there is balance with the independent members appointed to the board (those not otherwise holding college positions). The minimum number of assigned college board

members is also increased to give effect to this. Regional colleges already have a higher minimum number of board members.

Changes made to regional boards

Article 3 of the Order makes changes to the composition of regional boards under the 2005 Act. Regional boards are a type of regional strategic body under the 2005 Act, there is currently only one such board – the Glasgow Colleges Regional Board (“GCRB”).

The composition of a regional board is similar to a regional college, with the Chair appointed by the Scottish Ministers. Additional members are the Chair of each of the assigned colleges. There are three colleges assigned to the GCRB.

The Order adds two trade union nominee members, one from among the staff of the assigned colleges and one from among the support staff of the assigned colleges. The maximum and minimum numbers of board members are accordingly also increased.

Changes made to the board of management of New College Lanarkshire

New College Lanarkshire is a regional college as well as the regional strategic body for the Lanarkshire region. South Lanarkshire College is assigned to NCL and there is a bespoke set of arrangements for the composition of this board of management to ensure balanced representation on the board across both colleges which was achieved by the Lanarkshire Colleges Order 2014 (“the 2014 Order”) which modified the 1992 Act as it applies to New College Lanarkshire as a regional college.

Article 4 of the Order amends the 2014 Order to add trade union nominee members, one from the teaching staff of New College Lanarkshire and South Lanarkshire College and one from the support staff of the colleges.

Tenure

In all cases the trade union nominee members of the various boards are to vacate their board membership on ceasing to be a member of staff of the

particular college, or colleges, or on ceasing to be a member of a branch of a trade union having a connection with the college.

The period of appointment will be four years and trade union nominee members will be eligible for reappointment.

The effect of the changes on the composition of the various boards is illustrated in the table below.

Illustration of Changes to College Boards

		Current Arrangements		Board composition from 31 January 2024	
Colleges incorporated under the 1992 Act	Assigned Colleges	Min: 13 Max: 18	<ul style="list-style-type: none"> • Chair (appointed by the regional strategic body) • Principal • Elected Teaching Staff • Elected Support Staff • Student Member 1 • Student Member 2 • 7-12 Independent Members 	Min: 15 Max: 20	<ul style="list-style-type: none"> • Chair • Principal • Elected Support Staff Member • Elected Teaching Staff Member • Student Member 1 • Student Member 2 • Teaching Staff Trade Union Nominee • Support Staff Trade Union Nominee • 9-12 Independent Members
	Regional Colleges	Min: 15 Max: 18	<ul style="list-style-type: none"> • Chair (appointed by the Scottish Ministers) • Principal • Elected Teaching Staff • Elected Support Staff • Student Member 1 • Student Member 2 • 9-12 Independent Members 	Min: 15 Max: 20	<ul style="list-style-type: none"> • Chair • Principal • Elected Teaching Staff • Elected Support Staff • Student Member 1 • Student Member 2 • Teaching Staff Trade Union Nominee • Support Staff Trade Union Nominee • 9-12 Independent Members

Regional Boards (GCRB)	Min: 15 Max: 18	<ul style="list-style-type: none"> • Chair (appointed by the Scottish Ministers) • Chair of the Assigned Colleges Boards (x3) • Elected Teaching Staff • Elected Support Staff • Student Member 1 • Student Member 2 • 7-10 Independent Members 	Min: 19 Max: 22	<ul style="list-style-type: none"> • Chair • Chair of the Assigned College Boards (x3) • Elected Support Staff • Elected Teaching Staff • Student Member 1 • Student Member 2 • Teaching Staff Trade Union Nominee • Support Staff Trade Union Nominee • 9-12 Independent Members
New College Lanarkshire (NCL)	Min: 19 Max: 22	<ul style="list-style-type: none"> • Chair (appointed by the Scottish Ministers) • Chair of South Lanarkshire College (SLC) • Principal of NCL • Principal of SLC • Elected Teaching Staff NCL • Elected Teaching Staff SLC • Elected Support Staff NCL • Elected Support Staff SLC • Student Member NCL • Student Member SLC • 9-12 Independent Members 	Min: 23 Max: 26	<ul style="list-style-type: none"> • Chair • Chair of SLC • Principal of NCL • Principal of SLC • Elected Teaching Staff NCL • Elected Teaching Staff SLC • Elected Support Staff NCL • Elected Support Staff SLC • Student Member NCL • Student Member SLC • Teaching Staff Trade Union Nominee • Support Staff Trade Union Nominee • 11-14 Independent Members

EU Alignment

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

A public consultation was carried out between 1 December 2022 to 27 January 2023. This consultation was on policy proposals that

have been discussed and developed through engagement between the Scottish Government and the Good College Governance Steering Group, which includes governance professionals, chairs of boards of management of colleges, representatives from Colleges Scotland and trade unions. The requirement to consult on changes to regional boards, as set out in paragraph 18(2) of schedule 2B of the 2005 Act, was complied with in the course of the public consultation.

Over 70% of the respondents to the consultation approved of the proposals. The main concerns raised by respondents related to the terminology used when referring to nominees and also the balance of executive and non-executive members on colleges boards. The Scottish Ministers are satisfied that the measures proposed address these concerns.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website.

Impact Assessments

An Equality Impact Assessment, Child Rights and Wellbeing Impact Assessment (CRWIA), a Fairer Scotland Duty Assessment and an Islands Communities Impact Assessment have been completed on the SSI and are attached.

There are no negative impacts, as a result of the addition of two trade union nominee members to the boards of management of the incorporated (assigned and regional) colleges and to regional boards, identified by any of the Impact Assessments.

Financial Effects

Trade union nominee board members will be non-remunerated positions.

Scottish Government
Lifelong Learning & Skills Directorate
October 2023