

# **JOHN WHEATLEY COLLEGE**

## **CONSTITUTION AND PROCEEDINGS OF**

### **THE BOARD OF MANAGEMENT**

*(As defined by Schedule 2 of  
Further and Higher Education (Scotland) Act 1992)*

#### **STATUS**

- 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.

#### **MEMBERSHIP**

- 2 The Board shall consist of not less than ten or more than sixteen persons.
- 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 the 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 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 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.
- 4
- (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.
  - (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 such positions are occupied, identified in such manner as the Board may so determine.

### **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 31<sup>st</sup> 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.
- 6
- (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 purpose 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.
- 7
- (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 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.

**8** 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 of 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.

- 9** If at any time the Board are satisfied that any of their members:-
- (a) 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
  - (b) without prejudice to paragraph 8 above, has become unable or unfit to discharge his functions as a member of the Board [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 of 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.

- 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.

### **PROCEEDINGS**

**11** [...] <sup>48</sup>

### **CHAIRMAN**

- 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.

### **COMMITTEES**

- 13**
- (1) The Board may establish committees for any purpose and any such committee may appoint sub-committees.

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<sup>48</sup> repealed by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Modification of Enactments) Order 2003/1999 (Scottish SI) Sch. 1 para 1

- (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.
- (3) The principal of the college shall be entitled to attend and speak at any meeting of a committee of the Board; but 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.

### **CONFLICTS OF INTEREST**

14 [...] <sup>49</sup>

### **CONFIDENTIALITY OF INFORMATION**

15 [...] <sup>50</sup>

### **STAFF**

- 16 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.
- 17 (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
  - (c) make such arrangements for 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.

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<sup>49</sup> repealed by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Modification of Enactments) Order 2003/1999 (Scottish SI) Sch. 1 para 1

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- (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 the way of compensation to or in respect of any such employee who suffers loss of office or employment.

## **ACCOUNTS**

- 18** (1) It shall be the duty of the board to keep proper accounts and other records.
- (2) The accounts shall be prepared in respect of each financial year in such manner as the Scottish Ministers may direct and the accounts shall be submitted to the Scottish Ministers by such time as they may direct.
- [(2a) The Scottish Ministers shall send the accounts to the Auditor General for Scotland for Auditing.]<sup>51</sup>
- (3) The financial year of the board shall be from 1<sup>st</sup> April to 31<sup>st</sup> March.
- (4) The Secretary of State may by order provide that the board shall have a different financial year, and on order this sub-paragraph may make such consequential provision as appears to the Secretary of State to be necessary or expedient.
- 19** The accounts of the board shall be open to the inspection of the Comptroller and Auditor General, but -
- (a) the power conferred by the paragraph; and
- (b) the powers under sections 6 and 8 of the 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.

## **EXECUTION OF DOCUMENTS**

- 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.

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<sup>51</sup> added by Public Finance and Accountability (Scotland) Act 2000 asp 1 (Scottish Act) Sch. 4 para 11 (3) (b)

- (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.

### **PROVISION OF SERVICES**

- 21** The 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.

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