



# **Board of Management Constitution and Proceedings**

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## **1. Status**

The College is a further education incorporation created under the provisions of the Further and Higher Education (Scotland) Act 1992 as amended by the Post-16 Education (Scotland) Act 2013 ('the Acts'). Its structure of governance is laid down in the instrument and articles of government, which may only be amended by application to the First Minister.

The legal status of the Board is defined in Schedule 2 of the Acts. Specifically, 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,

The College is an exempt charity by virtue of the Charities Act 1993.

In the event of any conflict between the Constitution and Proceedings and Statutory Regulations, the Provisions of Statute will prevail.

## **2. Definitions**

In these Constitution and Proceedings, the meanings assigned to words and expressions are:

“The Act” means the Further and Higher Education (Scotland) Act 1992 as amended by the Post-16 Education (Scotland) Act 2013;

“College” means Moray College UHI;

“Board” means the Board of Management of Moray College UHI

‘Regional strategic body’ means the University of the Highlands and Islands in its role as a regional strategic body.

“SFC” means the Scottish Funding Council

“He” embraces “She”.

### **3. Membership**

- (1) Membership of the Board shall consist of no fewer than thirteen and no more than eighteen members.
- (2) The board is to be comprised of:
  - (a) a person appointed by the regional strategic body to chair meetings of the board (the 'chairing member');
  - (b) the principal of the college;
  - (c) a person appointed by being elected by the teaching staff of the college;
  - (d) a person appointed by being elected by the non- teaching staff of the college
  - (e) two persons appointed by being nominated by the students' association of the college; and
  - (f) other members appointed by the regional strategic body.
- (3) Elections to appoint teaching and non-teaching staff members of the board will be conducted in accordance with rules made by the board. Before making, varying or replacing rules about elections for teaching or non- teaching staff, the board must consult the representatives of any trade union which the board recognises as being, or which otherwise appears to the board to be, representative of the staff of the college.
- (4) Less than half of members of the board may receive remuneration from the board. Members receiving remuneration include any salaried members of staff on the board, including the principal; and any sabbatical student members (whether remunerated directly by the college or by the college's student association).

### **4 Qualification(s) and tenure of office**

- (1) Subject to this paragraph and paragraphs below, a member of the Board, other than the Principal, will hold and vacate office on such terms as the regional strategic body may determine; and is, on ceasing to hold office, eligible for re-appointment.
- (2) A member of the board appointed by being elected by the teaching or non-teaching staff of the college is to hold office for 4 years;
- (3) A member appointed by being nominated by the students' association is to hold office until 31 August following appointment;

- (4) Each other member of the board (including the chairing member) is to hold office for such period (not exceeding 4 years) as is specified in the member's terms of appointment as determined by the regional strategic body. The regional strategic body may extend the period of appointment for a single further period not exceeding 4 years. Thereafter, a member is eligible to be appointed again (which can again be extended for a single period of up to 4 years) and is then eligible to be appointed again, without limit to the number of appointments.
- (5) The principal of the college is to vacate office on ceasing to be the principal.
- (6) A member of the board appointed by being elected by the teaching or non-teaching staff of the college is to vacate office if he ceases to be a member of the teaching or, as the case may be, non-teaching staff of the college before the members period of appointment ends.
- (7) A member of the board appointed by being nominated by the students' association is to vacate office if he ceases to be a student of the college before the member's period of appointment ends.

## **5. Resignation**

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 the regional strategic body.

## **6. Exclusion from membership**

- (1) A person is not eligible for appointment as a member of the board if the person—
  - (a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine;
  - (b) is an undischarged bankrupt; or
  - (c) has been removed from office under section 24 of the Act (see Section 8 Mismanagement by Board).

- (2) “Undischarged bankrupt” means a person—
- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);
  - (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it);
  - (c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986;
  - (d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;
  - (e) who has been adjudged bankrupt (and has not been discharged); or
  - (f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

## **7 Removal from Office**

- (1) The regional strategic body must remove a member of the board from office (by giving notice in writing to the member) if—
- (a) the member—
    - (i) is sentenced (following conviction) for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine or
    - (ii) has become an undischarged bankrupt under the terms outlined in 6 (2) above or
  - (b) the regional strategic body is satisfied that the member—
    - (i) has been absent from meetings of the board for a period longer than 6 consecutive months without the permission of the board; or
    - (ii) is otherwise unable or unfit to discharge the member’s functions.

- (2) The Scottish Ministers must, by giving notice in writing to the member, remove a member from office if the member is removed from office under section 24 of the Act.
- (3) Sections 6 and 7 do not apply in relation to the principal of the college.

## **8 Mismanagement by Board**

- (1) This section applies where-
  - (a) it appears to the Scottish Ministers that the board of management of any college of further education—
    - (i) have committed or are committing a serious breach of any term or condition of a grant made to them by the regional strategic body under section 12 or 12B of the Further and Higher Education (Scotland) Act 2005 (“the 2005 Act”);
    - (ii) have committed or are committing repeated breaches of such terms or conditions;
    - (iii) have failed, or are failing, to provide or secure the provision of education of such standard as the Scottish Ministers consider appropriate;
    - (iv) have failed, or are failing, to discharge any of their duties properly; or
    - (v) have mismanaged, or are mismanaging, their financial or other affairs; or
    - (vi) SFC has informed the Scottish Ministers that a college of further education whose board of management is established in pursuance of this Part is not, or is no longer, a body for which there are suitable provisions, procedures and arrangements of the type described by or under section 7(2) of the 2005 Act.
- (2) Where this section applies, the Scottish Ministers may by order remove any or all of the members of the board (other than the principal of the college);
- (3) Before making an order, the Scottish Ministers must consult SFC
- (4) The Scottish Ministers must give notice of exercise of the power of removal to the board and the member

- (5) Where a member removed under this section was a member appointed by the regional strategic body, the Scottish Ministers may appoint another person in place of the removed member. The appointment has effect as made under the provision under which the removed member was appointed.

## **9 Proceedings**

- (1) The board may regulate its 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) The board shall make available for inspection at the college at all reasonable times by anyone who wishes to inspect them copies of the following documents.
  - (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.
- (4) The 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.

## **10. Committees**

- (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.
- (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 document to a committee of the board shall include a reference to any sub-committee appointed by such committee.

## **11 Staff**

- (1) Subject to paragraph 11 (2) below, the board may appoint on such terms and conditions as they may determine such employees as they think fit.
- (2) The appointment of the principal of the college and the terms and conditions of the appointment, have effect only if approved by the regional strategic body.
- (3) The board may, in the case of such of its employees or former employees as they may, subject to sub-paragraph (4) 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 the provision and maintenance of such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities, as they think fit.
- (4) Sub-paragraph (3) above shall not apply to any person who becomes an employee of the board under or by virtue of any provision of this Act (unless that person, by notice given in writing, informs the board that he wishes it so to apply).
- (5) The reference in sub-paragraph (3) 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.

## **12 Accounts**

- (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 the Regional Strategic Body by such time as they may direct. 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 August to 31st July.
- (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.
- (5) 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
  - (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.

### **13 Execution of documents**

- (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.

### **14 Provision of services**

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.

### **15 Code of Conduct**

The Ethical Standards in Public Life etc. (Scotland) Act 2000, provides for a Code of Conduct for the Board of Management.

Members of the Board of Management have a responsibility ensure that they are familiar with, and that their actions comply with, the provisions of this Code of Conduct.