
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 268

The Royal Conservatoire of Scotland Order of Council 2014

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

1. This Order may be cited as the Royal Conservatoire of Scotland Order of Council 2014 and comes into force on 1st December 2014.

Interpretation

2. In this Order—

“the 2006 Act” means the Companies Act 2006⁽¹⁾;

“the 1995 Order” means the Royal Scottish Academy of Music and Drama (Scotland) Order of Council 1995⁽²⁾;

“Academic Board” means the body of persons appointed in accordance with article 19;

“the Articles” means the articles of association of the Company;

“the Board” means the Board of Governors for the time being of the Company or the Governors present at a duly convened meeting of the Governors at which a quorum is present, and includes any validly constituted committee of the Governors;

“the Company” means Royal Conservatoire of Scotland, a company limited by guarantee (registered in Scotland with company number SC 004703);

“Conflict” means a situation where a Governor has, or could have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company;

“Deputy Principal” means the deputy principal, or any person authorised, whether for the purposes of this Order or otherwise, for the time being to act as deputy principal, of the Institution;

“the Institution” means the Company, being an institution designated under section 44 of the Further and Higher Education (Scotland) Act 1992;

“the nominated Vice-Chair” means the Vice-Chair nominated under article 5(4);

“the Office” means the registered office of the Company;

“Principal” means the principal, or any person authorised, whether for the purposes of this Order or otherwise, for the time being to act as principal, of the Institution;

“the Secretary” means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary; and

(1) 2006 c.46.

(2) S.I. 1995/2261.

“Senior Academic Manager” means a person appointed by the Principal to hold office as senior academic manager of an academic unit of the Institution which has been designated as such by the Academic Board.

PART 2

BOARD OF GOVERNORS

Membership of the Board of Governors

- 3.—(1) The membership of the Board is composed of—
- (a) Governors of a number determined in accordance with paragraph (2), being not less than 11 and not more than 19, who are appointed by the Board from among persons appearing to them to have experience of, and to have shown capacity in, industrial, commercial or employment matters, the performing arts or the practice of any profession;
 - (b)
 - (i) the Principal;
 - (ii) the Deputy Principal;
 - (iii) 2 student members, being the president of the students’ association of the Institution and one other office-bearer of the association to be selected by the association;all as Governors *ex officio*; and
 - (c) staff Governors appointed as follows—
 - (i) one appointed by the Academic Board from among the members of the full-time academic staff of the Institution who are members of the Academic Board;
 - (ii) one elected by the full-time academic staff of the Institution from among such staff; and
 - (iii) one elected by the full-time support staff of the Institution from among such staff.
- (2) The Board is to determine from time to time by resolution, subject to the limits stated in paragraph (1)(a), the number of Governors to be appointed under that paragraph.
- (3) A resolution under paragraph (2) does not have effect so as to terminate the appointment of any person who is a Governor at the time when it takes effect.

Election of certain Governors

- 4.—(1) The Board, after consultation with the full-time academic staff of the Institution, is to make rules for the election of Governors to be elected by the full-time academic staff from among such staff under article 3(1)(c)(ii).
- (2) The Board, after consultation with the full-time support staff of the Institution, is to make rules for the election of the Governors to be elected by the full-time support staff from among such staff under article 3(1)(c)(iii).
- (3) Any rules made by the Board under paragraphs (1) and (2) may, after consultation with the full-time academic staff of the Institution, or with the full-time support staff of the Institution, whichever is appropriate, be revoked and replaced, or varied, by further rules made by the Board.
- (4) The Board is responsible for the holding and conduct of any election for the appointment of Governors under article 3(1)(c)(ii) or (iii).

Appointment of Chair and Vice-Chair

5.—(1) The Board is to appoint a Chair and such number of Vice-Chair as the Board may require from time to time, from among the Governors appointed under article 3(1)(a).

(2) The following provisions apply to any Chair or Vice-Chair appointed under paragraph (1)—

- (a) that person holds office for such period as may be determined by the Board;
- (b) the period of that person's office does not extend beyond that person's period of office as Governor;
- (c) that person may resign from office;
- (d) that person may be removed from office by resolution of the Board; and
- (e) that person ceases to hold office if deemed to have vacated office as a Governor under article 8.

(3) The Chair presides at meetings of the Board.

(4) In the absence of the Chair, a Vice-Chair appointed under paragraph (1) and nominated by the Chair by prior written notice to the Board presides at meetings of the Board.

(5) In the absence of both the Chair and the nominated Vice-Chair, the Board may nominate another Vice-Chair (if more than one Vice Chair has been appointed under paragraph (1)) to preside, whom failing they must appoint one of their own number who has been appointed under article 3(1)(a) to preside at any meeting.

Period of office of Governors

6.—(1) Any Governor *ex officio* specified in article 3(1)(b) holds office as Governor for the duration of tenure of the office by virtue of which that person is such a Governor.

(2) Any Governor appointed to the Board under article 3(1)(a) or (c) may be further appointed to the Board on expiry of that person's term of office, if still eligible in accordance with this Order and provided that person's appointment is not precluded by paragraph (3).

(3) A person may not be appointed to the Board where that person's term of office, if aggregated with any previous terms of office, would cause that person to serve for more than 12 years as a Governor.

(4) For the purposes of paragraph (3), a term of office includes any term of office as a Governor, whether served before or after the coming into force of this Order and whether taken by appointment under article 3(1)(a) or (c), or otherwise, but not any term of office served *ex officio* under article 3(1)(b).

(5) Subject to paragraphs (6) and (7), the Board is to make rules for the duration of the terms of office of Governors appointed under article 3(1)(a) or (c), which rules may be revoked and replaced, or varied, by further rules made by the Board.

(6) No Governor may be appointed for a term of office of more than 4 years.

(7) No variation or revocation of rules for the duration of the terms of office of Governors has effect so as to vary or terminate the period of office of any person who is a Governor at the time when that variation or revocation takes effect.

Ineligibility of staff to be Governors

7. A person is ineligible to be appointed as a Governor or, where appropriate, to remain in office as a Governor other than in the case of a Governor *ex officio* by virtue of holding office in accordance with article 3(1)(b) or a Governor appointed in accordance with article 3(1)(c), if that person is a member of the staff of the Institution.

Vacation of office of Governor

8. A Governor is deemed to have vacated office as Governor and the Board must declare that person's place vacant, in any of the following circumstances—

- (a) where that person intimates in writing to the Board their resignation as a Governor;
- (b) where that person has, by operation of the 2006 Act, been removed as a director of the Company;
- (c) where that person's estate is sequestrated or a bankruptcy order is made against that person or that person has granted a trust deed for, or entered into an arrangement with, that person's creditors;
- (d) where that person becomes unable to carry out their duties as a Governor by reason of physical or mental illness;
- (e) where that person has failed to attend any meetings of the Board or any of its committees or sub-committees for a period longer than 6 consecutive months otherwise than for a reason approved by the Board;
- (f) in the case of a staff Governor whose appointment falls to be made under article 3(1)(c) either from among the members of the Academic Board or from the full-time academic or support staff of the Institution, where that person ceases to be a member of the Academic Board or the full-time academic or support staff, as the case may be;
- (g) where in accordance with article 7 that person becomes ineligible to remain in office as a Governor.

Filling of vacancies

9.—(1) Where the place of a Governor who has been appointed to the office of Governor under article 3(1)(a) or (c) has been declared vacant under article 8, or where such a Governor has died, a Governor must be appointed to fill the vacancy in accordance with the procedure in article 3 that is relevant to that vacancy.

- (2) In exercise of the duty in paragraph (1)—
 - (a) in the case of a Governor appointed under article 3(1)(c)(i), the Board is to intimate the vacancy to the Academic Board who must appoint a Governor to fill the vacancy; and
 - (b) in the case of a Governor elected under article 3(1)(c)(ii) or (iii) an election must be held to fill the vacancy in accordance with article 4 and the relevant rules made under that article.

Powers of the Board

10.—(1) Subject to the provisions of the 2006 Act and the Articles and to any directions given by special resolution of the Company, the business of the Company is managed by the Board who may exercise all the powers of the Company.

(2) No alteration of the Articles and no such direction invalidates any prior act of the Board which would have been valid if that alteration had not been made or that direction had not been given.

(3) The powers given by this article are not limited by any special power given to the Board by this Order or by the Articles.

(4) The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of its powers.

Delegation of Board's powers

11.—(1) The Board may delegate any powers to any committee consisting of one or more Governors.

(2) Without prejudice to articles 18 and 19(3), the Board may also delegate to the Principal or any Governor holding any other executive office such powers as it considers desirable to be exercised by that person.

(3) Any delegation may be made subject to any conditions the Board may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered.

(4) Subject to any conditions imposed under paragraph (3), the proceedings of a committee with two or more members are governed by the Articles regulating the proceedings of the Board so far as they are capable of applying.

Reserved areas of business

12.—(1) Where any meeting of the Board or of any committee of the Board, is to consider any of the matters specified in paragraph (2), any Governor who is a governor *ex officio* by virtue of holding office as a student member in accordance with article 3(1)(b) and any Governor appointed under article 3(1)(c) must withdraw from the meeting, or that part of the meeting at which any of those matters are to be considered, unless invited to remain by virtue of a resolution of the other members of the Board or committee present at the meeting.

(2) The matters specified for the purposes of paragraph (1) are the salary, conditions of service, appointment, promotion, suspension or dismissal of any member of the staff of the Institution.

Validity of proceedings of the Board

13. No failure or defect in the appointment of any Governor and no vacancy in the office of Governor prevents the Board from acting in the execution of its functions, nor is any act or proceeding of the Board or of any committee appointed by the Board invalidated or illegal by reason of or in consequence of any such vacancy or of any such defect in the appointment of any one or more Governors.

Allowances to members of the Board

14. The Board may pay to any of its members such financial loss allowances and travelling and subsistence allowances as it thinks appropriate.

Staff

15.—(1) Without prejudice to the general powers in article 10, the Board has power to employ staff on such terms and conditions as the Board may determine.

(2) The Board has power to pay such sum or sums by way of pension, allowance or gratuity as it thinks fit to—

(a) any member of the staff of the Institution, on retirement through age or permanent incapacity, from the employment of the Institution; or

(b) the surviving spouse or any dependant of any member of the staff of the Institution in the event of the death of the staff member in the employment of the Institution,

in respect of any period of such staff member's service in the employment of the Institution.

(3) In paragraph (2), the reference to the permanent incapacity of a member of the staff of the Institution is a reference to a disability of mind or body of such a nature or to such an extent as, in

the opinion of the Board, renders that staff member permanently incapable of continuing to serve efficiently in the Institution's employment.

Governors' interests

16.—(1) The Board may, in accordance with the requirements set out in this article, authorise any matter proposed to it by any Governor which would, if not authorised, involve a Governor breaching that Governor's duty under article 17(12) to avoid a Conflict.

(2) Any authorisation under paragraph (1) will be effective only if—

- (a) the matter in question has been proposed by any Governor for consideration at a meeting of the Board in the same way that any other matter may be proposed to the Board under the provisions of this Order or in such other manner as the Board may determine;
- (b) any requirement as to the quorum at the meeting of the Board at which the matter is considered is met without counting the Governor in question; and
- (c) the matter was agreed to without the Governor in question voting or would have been agreed to if that Governor's vote had not been counted.

(3) Any authorisation of a Conflict under paragraph (1) may (whether at the time of giving the authorisation or subsequently)—

- (a) extend to any actual or potential Conflict which may reasonably be expected to arise out of the Conflict so authorised;
- (b) be subject to such terms and for such duration, or impose such limits or conditions as the Board may determine; and
- (c) be terminated or varied by the Board at any time.

(4) An authorisation under paragraph (3) will not affect anything done by the Governor in question prior to such termination or variation in accordance with the terms of the authorisation.

(5) In authorising a Conflict the Board may decide (whether at the time of giving the authorisation or subsequently) that if a Governor has obtained any information through involvement in the Conflict otherwise than as a Governor of the Company and in respect of which that Governor owes a duty of confidentiality to another person that Governor is under no obligation to—

- (a) disclose such information to the Board or to any Governor or other officer or employee of the Company; or
- (b) use or apply any such information in performing duties as a Governor,

where to do so would amount to a breach of that confidence.

(6) Where the Board authorises a Conflict it may provide, without limitation (whether at the time of giving the authorisation or subsequently), that the Governor in question—

- (a) is to be excluded from discussions (whether at meetings of the Board or otherwise) related to the Conflict;
- (b) is not to be given any documents or other information relating to the Conflict; and
- (c) may or may not vote (or may or may not be counted in the quorum) at any future meeting of the Board in relation to any resolution relating to the Conflict.

(7) Where the Board authorises a Conflict—

- (a) the Governor in question will be obliged to act in accordance with any terms imposed by the Board in relation to the Conflict; and
- (b) the Governor in question will not infringe any duty owed to the Company by virtue of sections 171 to 177 of the 2006 Act provided the Governor acts in accordance with such terms, limits and conditions, if any, as the Board imposes in respect of that authorisation.

(8) A Governor is not required, by reason of being a Governor (or because of the fiduciary relationship established by reason of being a Governor), to account to the Company for any remuneration, profit or other benefit which that Governor derives from or in connection with a relationship involving a Conflict which has been authorised by the Board or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract is liable to be avoided on such grounds.

PART 3

PROCEEDINGS OF THE BOARD

Proceedings of the Board

17.—(1) Subject to the provisions of the Articles and this Order, the Board may regulate proceedings as it thinks fit.

(2) A Governor may, and the Secretary at the request of a Governor must, call a meeting of the Board.

(3) It is not necessary to give notice of a meeting to a Governor who is absent from the United Kingdom.

(4) Questions arising at a meeting will be decided by a majority of votes.

(5) In the case of an equality of votes, the Chair (or as the case may be, such person as has been nominated pursuant to article 5(4) or (5)) has a second or casting vote.

(6) The Governors may conduct proceedings by telephone and any reference to a meeting of the Board in the Articles and this Order includes any such proceedings conducted by telephone.

(7) Any proceedings must be minuted in accordance with the Articles.

(8) The quorum for the transaction of the business of the Board may be fixed by the Board and, unless so fixed at any other number, is four.

(9) The continuing Governors or a sole continuing Governor may act notwithstanding any vacancies in their number, but, if the number of Governors is less than the number fixed as the quorum, the continuing Governors or Governor may act only for the purpose of filling vacancies or of calling a general meeting.

(10) As regards third parties dealing with the Company in good faith, all acts done by a meeting of the Board, or by a committee of the Board, or by a person acting as a Governor are, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Governor or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, as valid as if every such person had been duly appointed and was qualified and had continued to be a Governor and had been entitled to vote.

(11) A resolution in writing signed by all the Governors entitled to receive notice of a meeting of the Board or of a committee of the Board is as valid and effectual as if it had been passed at a meeting of the Board or (as the case may be) a committee of the Board duly convened and held and may consist of several documents in the like form each signed by one or more Governors.

(12) Subject to article 16, a Governor may not vote at a meeting of the Board or of a committee of the Board on any resolution concerning a matter in which that Governor has a Conflict other than where the Conflict arises only because one or more of the following sub-paragraphs applies—

- (a) the resolution relates to the giving to that Governor of a guarantee, security or indemnity in respect of money lent to, or an obligation incurred by that Governor for the benefit of, the Company or any of its subsidiaries;

- (b) the resolution relates to the giving to a third party of a guarantee, security or indemnity in respect of an obligation of the Company or any of its subsidiaries for which the Governor has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
 - (c) the Conflict arises by virtue of that Governor subscribing or agreeing to subscribe for any shares, debentures or other securities of the Company or any of its subsidiaries, or by virtue of that Governor being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such shares, debentures, or other securities by the Company or any of its subsidiaries for subscription, purchase or exchange; or
 - (d) the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by Her Majesty's Revenue and Customs for taxation purposes.
- (13) For the purposes of paragraph (12), a situation described in paragraph (14) relating to a person who is, for any purpose of the 2006 Act, connected with a Governor shall be treated as an interest of that Governor.
- (14) The situation is where a person has, or could have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.
- (15) A Governor is not counted in the quorum present at a meeting in relation to a resolution on which that Governor is not entitled to vote.
- (16) The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the Articles prohibiting a Governor from voting at a meeting of the Board or of a committee of the Board.
- (17) Where proposals are under consideration concerning the appointment of two or more Governors to offices or employments with the Company or any body corporate in which the Company is interested the proposals may be divided and considered in relation to each Governor separately and (provided the Governor is not for another reason precluded from voting) each of the Governors concerned is entitled to vote and be counted in the quorum in respect of each resolution except that concerning the Governor's own appointment.
- (18) If a question arises at a meeting of the Board or of a committee of the Board as to the right of a Governor to vote, the question may, before the conclusion of the meeting, be referred to the Chair of the meeting and the Chair's ruling in relation to any Governor other than the Chair is final and conclusive.

PART 4

THE PRINCIPAL AND THE ACADEMIC BOARD

Discharge of functions by the Principal

18.—(1) The Board must make arrangements to secure that such functions as are specified in paragraph (2) are discharged on its behalf by the Principal.

(2) The Principal is to discharge the functions of the Board (other than those specified in article 19(3)) relating to the strategic direction and operational management of the Institution.

(3) In discharging the functions specified in paragraph (2), the Principal is subject to the general control and direction of the Board but otherwise the Principal has all the powers and duties of the Board in relation to those functions.

Academic Board

19.—(1) Subject to paragraph (2), the Board is to appoint, and maintain by further appointment, an Academic Board in the manner specified in Part I of Schedule 1.

(2) The proceedings of the Academic Board are regulated in accordance with Part II of Schedule 1.

(3) The Academic Board is to discharge the following functions of the Board—

(a) functions relating to the overall planning, co-ordination, development and supervision of the academic work of the Institution; and

(b) such other functions as may be assigned to the Academic Board by the Board,

provided that those functions are discharged by the Academic Board subject to the general control and direction of the Board.

(4) In discharging the functions specified in paragraph (3), the Academic Board has all the powers and duties of the Board in relation to those functions and has the power to make any recommendation to the Board on such matters relating to those functions as the Academic Board may think fit.

PART 5

VARIATION, REVOCATION, SAVINGS AND TRANSITIONAL

Variation and revocation of Articles

20. The provisions of the Articles are varied or revoked, as the case may be, to the extent specified in Schedule 2.

Revocation of the 1995 Order

21. The 1995 Order is revoked.

Savings and transitional provisions

22.—(1) Any Governors in office at the commencement of this Order in accordance with any provision of the 1995 Order continue as Governors for the remainder of their period of office as if they had become Governors in accordance with the corresponding provision of this Order.

(2) Any members of the Academic Board in office at the commencement of this Order in accordance with any provision of the 1995 Order continue as members of the Academic Board for the remainder of their period of office as if they had become members of the Academic Board in accordance with the corresponding provision of this Order.

Richard Tilbrook
Clerk of the Privy Council