

*Status: Point in time view as at 06/04/2008.*

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## SCHEDULES

### SCHEDULE 7

Section 123.

#### THE HIGHER EDUCATION CORPORATIONS

##### *Preliminary*

- 1 (1) A higher education corporation established under section 121 of this Act for the purpose of conducting any institution shall be established initially under the name given as the name of that institution in the order under that section specifying that institution.
- (2) A higher education corporation established under section 122 of this Act shall be established initially under the name given in the order under that section establishing the corporation.
- (3) Below in this Schedule—
- (a) references to a corporation are references to any higher education corporation; and
  - (b) references, in relation to a corporation, to the institution are references—
    - (i) in relation to any time before the transfer date applicable in relation to the corporation, to the institution the corporation is established to conduct; and
    - (ii) in relation to any later time, to any institution for the time being conducted by the corporation in exercise of their powers under this Act.
- [<sup>F1</sup>(4) A corporation may change their name with the consent of the Privy Council.]

##### **Textual Amendments**

- F1** Sch. 7 para. 1(4) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), Sch. 8 Pt. I para. 59(a); S.I. 1992/831, art. 2, Sch.1.

##### *Initial constitution*

- 2 (1) Paragraphs 3 and 4 below provide for the initial constitution of a corporation and are subject to paragraph 6 below.
- (2) References below in this Schedule, in relation to a corporation, to a variable category of members are references to any category of members in relation to which the number applicable in accordance with paragraphs 3 and 4 below is subject to variation.
- 3 (1) A corporation shall consist of—
- (a) not less than twelve and not more than twenty-four members appointed in accordance with the following provisions of this Schedule; and

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- (b) the person who is for the time being the principal of the institution, unless he chooses not to be a member.
- (2) Of the appointed members—
- (a) up to thirteen (referred to below in this Schedule as the independent members) shall be persons appearing to the appointing authority to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession;
- (b) not less than four and not more than eight (referred to below in this Schedule as the initial nominee members) shall be persons nominated in accordance with this Schedule otherwise than by other members of the corporation;
- (c) at least one and not more than four (referred to below in this Schedule as the additional nominee members) shall be persons nominated in accordance with this Schedule by the members of the corporation who are either independent members or initial nominee members and the principal of the institution (if he is a member).
- (3) The members of the corporation for the time being shall be known as the board of governors of the institution.
- 4 (1) The initial nominee members of a corporation shall consist of—
- (a) at least one and not more than three local authority nominees;
- (b) one teacher nominee;
- (c) one general staff nominee; and
- (d) one student nominee;
- and may include up to two academic nominees.
- (2) In this Schedule—
- “local authority nominee” means a person, other than a person employed at the institution (whether or not as a teacher) or a student at the institution, nominated by a local authority specified in relation to the corporation in an order made by the Secretary of State;
- “teacher nominee” means a teacher at the institution nominated by the teachers at the institution;
- “general staff nominee” means a person employed at the institution otherwise than as a teacher and nominated by the persons so employed;
- “student nominee” means a student at the institution nominated by the students at the institution; and
- “academic nominee” means a teacher at the institution nominated by the academic board.
- (3) Of the additional nominee members of a corporation—
- (a) the one required by paragraph 3(2)(c) above shall be a person who has experience in the provision of education; and
- (b) the three others permitted by paragraph 3(2)(c) are—
- (i) one person who has such experience; and
- (ii) two persons who need not have such experience.
- (4) In the case of any corporation, a person who is—
- (a) employed at the institution (whether or not as a teacher);
- (b) a full-time student at the institution; or

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- (c) an elected member of any local authority;  
is not eligible for appointment as an independent member or as an additional nominee member of the corporation.
- (5) For the purposes of this paragraph, a person who is not for the time being enrolled as a student at the institution shall be treated as such a student during any period when he has been granted leave of absence from the institution for the purposes of study or travel or for carrying out the duties of any office held by him in the student union at the institution.
- (6) It shall be for the appointing authority to determine any question as to whether any person is qualified in accordance with the preceding provisions of this paragraph for appointment as a member of a corporation of any description or category.
- (7) Before making an order specifying local authorities in relation to any corporation for the purposes of sub-paragraph (1)(a) above, the Secretary of State shall consult such associations of local authorities as appear to him to be concerned.

#### *Initial appointments*

- 5 (1) The Secretary of State is the appointing authority for the purposes of this Schedule in relation to the appointment of the first members of a corporation.
- (2) In determining the number of members to appoint within each variable category, he shall secure that at least half of all the members of the corporation as first constituted are independent members.

#### *Determination of membership numbers*

- 6 (1) Following the appointment by the Secretary of State of the first members of a corporation, the corporation shall make a determination with respect to their membership numbers under this paragraph.
- (2) Such a determination shall fix the number of members of each variable category of which the corporation are to consist, subject to the limits applicable in relation to that category under paragraphs 3 and 4 above.
- (3) In making a determination under this paragraph, the corporation shall secure that at least half of all the members of the corporation, when constituted in accordance with the determination, will be independent members.
- (4) A determination under this paragraph shall not have effect so as to terminate the appointment of any person who is a member of the corporation at the time when it takes effect.
- (5) A determination under this paragraph may be varied by a subsequent determination under this paragraph.

#### *Subsequent appointments*

- 7 (1) Appointments of members of a corporation at any time after the appointment by the Secretary of State of the first members shall be subject to this paragraph.
- (2) No such appointment may be made before the first determination of the corporation under paragraph 6 above takes effect.

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- (3) The corporation are the appointing authority for the purposes of this Schedule in relation to the appointment of any member of the corporation other than an independent member.
- (4) Where an appointment of an additional independent member of the corporation falls to be made in consequence of a determination under paragraph 6 above, the appointing authority for the purposes of this Schedule in relation to the appointment—
- (a) shall be the corporation if the appointment is made within the period of three months beginning with the date of the determination; or
  - (b) if the appointment is not made within that period, shall be the current independent members of the corporation.
- (5) Where a vacancy in the office of an independent member of the corporation arises on any existing independent member ceasing to hold office on the expiry of his term of office—
- (a) his successor shall not be appointed more than six months before the expiry of that term; and
  - (b) the appointing authority for the purposes of this Schedule in relation to the appointment of his successor—
    - (i) shall be the corporation if the appointment is made not less than three months before the expiry of that term; or
    - (ii) if the appointment is not so made, shall be the current independent members of the corporation.
- (6) Where a vacancy in the office of an independent member of the corporation arises on the death of any such member or on any such member ceasing to hold office under paragraph 8(2) or 10 below, the appointing authority for the purposes of this Schedule in relation to the appointment of his successor—
- (a) shall be the corporation if the appointment is made within the period of three months beginning with the date of death or the date of the notice under paragraph 8(2) or 10 below (as the case may be); or
  - (b) if the appointment is not made within that period, shall be the current independent members of the corporation.
- (7) No appointment of an independent member of the corporation by the corporation under sub-paragraph (4)(a), (5)(a) or (6)(a) above shall be made unless the appointment has been approved by the current independent members of the corporation.
- [<sup>F2</sup>(8) If the number of independent members of the corporation falls below the number needed in accordance with its articles of government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum]

#### Textual Amendments

- F2** Sch. 7 para. 7(8) added (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 71(3)(a); S.I. 1992/831, art. 2, Sch.1.

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*General provisions with respect to qualifications of members and tenure of office*

- 8 (1) A member of a corporation shall hold and vacate office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.
- (2) A member of a corporation may at any time by notice in writing to the corporation resign his office.
- (3) Where a member of a corporation appointed as a teacher nominee, an academic nominee, a general staff nominee or a student nominee ceases before the end of his term of office to be qualified in accordance with paragraph 4 above for appointment as a nominee of the description in question his office shall thereupon become vacant.
- 9 (1) Subject to the following provisions of this paragraph, a person is not qualified for appointment as a member of a corporation at any time when he is under the age of eighteen or over the age of seventy.
- (2) A person over the age of seventy shall not by virtue of sub-paragraph (1) above be disqualified for appointment as a member of the corporation where—
- (a) the appointing authority in relation to the appointment is the Secretary of State; or
- (b) the appointing authority in relation to the appointment determine to make the appointment by a vote representing an absolute majority of all the members of that authority (whether or not taking part in the vote).
- (3) It shall be for the appointing authority in relation to the appointment in question to determine any question arising under sub-paragraph (1) above with respect to a person's qualification for appointment as a member of the corporation.
- 10 If at any time a corporation are satisfied that any member of the corporation—
- (a) has been absent from meetings of the corporation for a period longer than twelve consecutive months without the permission of the corporation; or
- (b) is unable or unfit to discharge the functions of a member;
- the corporation may by notice in writing to that member remove him from office; and thereupon the office shall become vacant.

*Allowances to members*

- 11 A corporation shall have power to pay to the members of the corporation such travelling, subsistence or other allowances as the corporation may determine.

*Election of chairman*

- 12 (1) The members of a corporation shall elect a chairman from among their number.
- (2) The chairman shall hold office for such period as the corporation may determine.
- (3) A member of a corporation who is employed at the institution or a student at the institution is not eligible for election as chairman of the corporation.

*Committees*

- 13 (1) A corporation may establish a committee for any purpose.

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- (2) The number of members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the corporation.
- (3) Such a committee may include persons who are not members of the corporation.

#### *Proceedings*

- 14 The validity of any proceedings of a corporation or of any committee of a corporation shall not be affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member.
- 15 In the event of an equality of votes at any meeting of a corporation the chairman of the corporation shall have a second or casting vote.

#### *Application of seal and proof of instruments*

- 16 The application of the seal of the corporation shall be authenticated by the signature of the chairman of the corporation or of some other member authorised either generally or specially by the corporation to act for that purpose together with that of any other member.
- 17 Every document purporting to be an instrument made or issued by or on behalf of a corporation and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

#### *Accounts*

- 18 (1) It shall be the duty of each corporation—
  - (a) to keep proper accounts and proper records in relation to the accounts; and
  - (b) to prepare in respect of each financial year of the corporation a statement of accounts.
- (2) The statement shall—
  - (a) give a true and fair account of the state of the corporation's affairs at the end of the financial year and of the corporation's income and expenditure in the financial year; and
  - (b) comply with any directions given by [<sup>F3</sup>the higher education funding council] as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.
- [<sup>F4</sup>(2A) The corporation shall supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit.]
- (3) The accounts (including any statement prepared under this paragraph) shall be audited by persons appointed in respect of each financial year by the corporation.
- (4) The corporation shall consult, and take into account any advice given by, the Audit Commission for Local Authorities in England and Wales before appointing any auditor under sub-paragraph (3) above in respect of their first financial year.

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[<sup>F5</sup>(5) No person shall be qualified to be appointed auditor under that sub-paragraph except—

- (a) an individual, or firm, eligible for appointment as a [<sup>F6</sup>statutory auditor under Part 42 of the Companies Act 2006];
- (b) a member of the Chartered Institute of Public Finance and Accountancy; or
- (c) a firm each of the members of which is a member of that institute.]

(6) In this paragraph, in relation to a corporation—

“the first financial year” means the period commencing with the date on which the corporation is established and ending with the second 31st March following that date; and

“financial year” means that period and each successive period of twelve months.

#### Textual Amendments

- F3** Words in Sch. 7 para. 18(2)(b) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 59(b)(i)**; S.I. 1992/831, art. 2, **Sch.1**.
- F4** Sch. 7 para. 18(2A) inserted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 71(3)(b); S.I. 1992/831, art. 2, **Sch.1**.
- F5** Sch. 7 para. 18(5) substituted (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 93(1), **Sch. 8 Pt. I para. 59(b)(ii)**; S.I. 1992/831, art. 2, **Sch.1**.
- F6** Words in Sch. 7 para. 18(5)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 1(kk)(ii)** (with arts. 6, 11, 12)

#### Modifications etc. (not altering text)

- C1** Sch. 7 para. 18: power to exclude conferred (6. 5. 1992) by Further and Higher Education Act 1992 (c. 13), s. 78(2); S.I. 1992/831, art. 2, **Sch.1**.

### *Efficiency studies*

<sup>F7</sup>19 .....

#### Textual Amendments

- F7** Sch. 7 para. 19 repealed (6. 5. 92) by Further and Higher Education Act 1992 (c. 13), s. 93, Sch. 8 Pt. I para. 59(c), **Sch.9**; S.I. 1992/831, art. 2, **Sch.1**.

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