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STATUTORY INSTRUMENTS

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1985 No. 1163 (S.90)

EDUCATION, SCOTLAND

The Napier College of Commerce and Technology  
(No. 2) Regulations 1985

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| <i>Made</i> - - - - -         | 23rd July 1985     |
| <i>Laid before Parliament</i> | 31st July 1985     |
| <i>Coming into Operation</i>  | 1st September 1985 |

ARRANGEMENT OF REGULATIONS

REGULATION

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In exercise of the powers conferred upon me by section 77(1), (2) and (4) of the Education (Scotland) Act 1980(a) and all other powers enabling me in that behalf, I hereby make the following regulations:—

*Citation, construction and commencement*

1. These regulations, which may be cited as the Napier College of Commerce and Technology (No. 2) Regulations 1985, shall come into operation on 1st September 1985 and shall, so far as not inconsistent with them, be construed as one with the Central Institutions (Scotland) Regulations 1972(b), with the Central Institutions (Scotland) Regulations 1974(c), with the Central Institutions (Scotland) Amendment Regulations 1974(d), with the Central Institutions

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(a) 1980 c. 44; section 77(1) was amended by paragraph 2 of Schedule 6 to the Education (Scotland) Act 1981 (c. 58).

(b) S.I. 1972/1753.

(c) S.I. 1974/102.

(d) S.I. 1974/1410.

(Scotland) Amendment Regulations 1975(a), with the Central Institutions (Scotland) Amendment Regulations 1976(b), with the Central Institutions (Scotland) Amendment Regulations 1981(c), and with the Central Institutions (Scotland) Amendment Regulations 1985(d).

*Interpretation*

2. In these regulations, unless the context otherwise requires—

“academic board” means the academic board as presently constituted at Napier College of Commerce and Technology, and for the purposes of these regulations, the words “academic council” in the Central Institutions (Scotland) Regulations referred to in regulation 1 of these regulations shall be read as “academic board”;

“College” means Napier College of Commerce and Technology;

“governing body” means the Governors of Napier College of Commerce and Technology;

“local authority” means Lothian Regional Council;

“member of staff” means an employee of the local authority who is employed by the local authority in the College, wholly or mainly in connection with the activities of the College.

*Continuation of governing body*

3. The governing body of Napier College of Commerce and Technology constituted in terms of regulation 3 of the Napier College of Commerce and Technology Regulations 1985(e) under the name of “The Governors of Napier College of Commerce and Technology” shall be and is hereby continued under the said name as a body corporate with perpetual succession and a common seal and with power to purchase, acquire, hold and dispose of lands and other property, heritable and moveable, and to sue and be sued, and with all other rights, powers and privileges of a body corporate.

*Composition of governing body*

4. The governing body shall consist of—

(1) Three governors appointed *ex officio* who shall be—

(a) the Principal of the College;

(b) the senior Depute Principal of the College; and

(c) the President of the Students' Association in the College.

(2) Persons appointed as governors who shall be—

(a) two persons appointed by Lothian Regional Council;

(b) three persons appointed as follows:—

(i) such number of persons as may be decided by the governing body but not exceeding two to be appointed by the academic board of the College from among the members of the academic staff of the College who are members of the academic board; and

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(a) S.I. 1975/520.

(b) S.I. 1976/66.

(c) S.I. 1981/1221.

(d) S.I. 1985/866.

(e) S.I. 1985/543.

- (ii) such number of persons as may be decided by the governing body but not exceeding two to be appointed by the academic staff of the College from their own number in a manner to be specified by the governing body;
  - (c) one person appointed by the non-academic staff from their own number in a manner to be specified by the governing body;
  - (d) three persons appointed by the Secretary of State;
  - (e) one person appointed by the matriculated students of the College from their own number in a manner (whether involving an election or otherwise, but, in the case of an election, not including the manner of the election) to be specified in a scheme made by the Students' Association in the College and to be approved by the governing body;
  - (f) one person appointed by the Company of Merchants of the City of Edinburgh;
  - (g) two persons appointed by the Edinburgh Chamber of Commerce and Manufacturers;
  - (h) two persons appointed by the Scottish Council of the Confederation of British Industry;
  - (i) one person appointed by the Institute of Bankers in Scotland;
  - (j) one person appointed by the Lothian Headteachers' Association;
  - (k) two persons appointed by the Scottish Trades Union Congress;
  - (l) one person appointed by the Senatus Academicus of the University of Edinburgh;
  - (m) one person appointed by the Senate of Heriot-Watt University; and
  - (n) one person appointed by the Scottish Engineering Employers' Association.
- (3) Up to three persons who may be co-opted by the governing body of the College.

*Appointment or election of representative governors*

5.—(1) The governing body shall—

- (a) after consultation with the academic staff of the College, make rules for the appointment or election of the governors to be appointed by the academic staff under the provisions of regulation 4(2)(b)(ii);
- (b) after consultation with the non-academic staff of the College, make rules for the appointment or election of the governor to be appointed by the non-academic staff under the provisions of regulation 4(2)(c);
- (c) after consultation with the Students' Association in the College make rules for the appointment or election of the governor by the matriculated students of the College under the provisions of regulation 4(2)(e).

(2) Any rules made by the governing body under this regulation may, after consultation with the academic staff of the College or with the non-academic staff of the College or with the Students' Association in the College, whichever

is appropriate, be revoked and replaced, or varied, by further rules made by the governing body under this regulation.

(3) The governing body shall, at least three months before the date on which any appointed governor specified in regulation 4(2) requires to be appointed, or elected, as the case may be, for the purposes of these regulations, notify the appointing body specified in relation to that appointed governor of the impending appointment and of the said date, and such appointing body shall as soon as practicable notify the governing body of the person appointed by them as such a governor.

#### *Administrative arrangements*

6.—(1) The Secretary of State shall appoint the Chairman of the governing body. The governing body shall as the need arises appoint a Vice-Chairman from their own number. In the absence of both the Chairman and the Vice-Chairman the governing body shall appoint one of their own number to preside at any meeting.

(2) The governing body may appoint such committees of their own number as they think fit, and may appoint, as additional members of any committee, persons, not being governors, whom they consider specially fitted to assist the work of the committee. The governing body may, except where contrary provision is made elsewhere in these regulations, delegate such of their functions as they consider expedient to any such committee.

(3) The governing body shall hold at least four ordinary meetings in the year, at such times and places as they may determine.

(4) The Chairman or any three governors may, for any cause which seems to him or them sufficient, require a special meeting to be convened by giving notice in writing to the secretary of the governing body specifying the business to be transacted.

(5) At least seven days' notice of meetings shall be given and such notice shall specify the date, time and place of the meeting and the business to be transacted.

(6) At all meetings of the governing body one-third of the current membership of the governing body shall be a quorum. All questions shall be determined by a majority of the governors present, and the Chairman of any meeting shall have both a deliberative vote and a casting vote. If at any time appointed for a meeting, or if before the business of any meeting has been completed, the number of governors present is less than the said one-third, the governors present shall adjourn the meeting to such day or time as they may determine and the meeting may be re-convened on less than seven days' notice.

(7) A minute book shall be kept by the governing body and minutes of all proceedings of the governing body shall be entered therein, including resolutions authorising writings or deeds to be executed on behalf of the governing body.

(8) All deeds and other writings, sealed by the common seal and signed by two governors and the secretary or other officer of the governing body

appointed for the purpose, shall be held to be validly executed on behalf of the governing body.

(9) The governing body may make such arrangements as they think fit for the custody of all deeds and other documents belonging to them, for the deposit of money and for drawing cheques, and all cheques shall be signed by at least one governor and the secretary or other officer of the governing body appointed for the purpose.

(10) The governing body may make such rules and standing orders as they think fit for the exercise of their functions under these regulations, and such rules and standing orders shall be consistent with the provisions of these regulations.

(11) No failure or defect in the appointment or co-option of any governor and no vacancy in the office of governor shall prevent the governing body from acting in the execution of these regulations, nor shall any act or proceeding of the governing body or of any committee appointed by them be invalidated or be illegal by reason of or in consequence of any such vacancy or of any such defect in the appointment or co-option of any one or more governors:

Provided that the number of governors entitled to act shall not thereby be reduced below fifteen.

#### *Transfer arrangements*

7.—(1) From and after 1 September 1985 the whole property, heritable and moveable, of the local authority wholly or mainly used in connection with the functions of the College or belonging to or vested in the College or its governing body as constituted in terms of regulation 3 of the Napier College of Commerce and Technology Regulations 1985<sup>(a)</sup> together with all rights, interests, liabilities and obligations therein shall be transferred to and vested in the governing body and shall be held, administered and applied exclusively in accordance with the conditions and provisions of these regulations.

(2) Without prejudice to anything contained in this regulation, if the governing body think fit to complete a title to any part of the heritable property transferred to and vested in the governing body by virtue of these regulations by expeding a notarial instrument or notice of title or otherwise, these regulations shall be deemed to be and may be used as a general disposition or assignation of such heritable property in favour of the governing body.

(3) Without prejudice to anything contained in this regulation, any person in whose name any part of the moveable property transferred to the governing body by virtue of these regulations is registered shall if so required by the governing body execute a transfer of the property in favour of the governing body.

(4)(a) Subject to subparagraph (b) below, any agreement made, transaction effected or other thing done in connection with the College by, to or in relation to the local authority which is in force or effective immediately before 1st September 1985 other than any delictual liability or any liability arising through breach of contract shall have effect from or after that date as if made, effected

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<sup>(a)</sup> S.I. 1985/543.

or done in connection with the College by, to or in relation to the governing body in all respects as if the governing body were the same person in law as the local authority; and accordingly, references to the local authority in any agreement, whether or not in writing, and in any deed, bond, instrument or notice or any other document whatsoever (other than an enactment) shall be taken from and after 1st September 1985 as referring to the governing body;

- (b) subject to subparagraph (c) below, any action or proceedings pending or existing on 1st September 1985 before any court or tribunal in connection with, or affecting, the college by or against the local authority shall be continued by or against the local authority and no liability arising out of such action or proceeding or any right or action still to be exercised in any court or tribunal by the local authority shall fall on or pass to the governing body;
  - (c) notwithstanding subparagraph (b) above, the governing body may by agreement with the local authority assume the role of pursuer or defender in any action or proceedings referred to in that subparagraph where the governing body consider that it would be in the best interests of the College to do so.
- (5) Without prejudice to the generality of the preceding paragraphs—
- (a) the rights, liabilities and obligations of the local authority under any contract of employment in force immediately before 1st September 1985 between the local authority and any member of the staff of the College shall continue in being, except that any such contract of employment shall be modified by substituting for any reference therein to the local authority a reference to the governing body;
  - (b) without prejudice to paragraph (a) above, for the purposes of any such contract of employment (as it has effect by virtue of the preceding paragraphs of this regulation in relation to the governing body) any period of employment with the local authority under that contract shall count as employment with the governing body;
  - (c) nothing in these regulations shall have the effect of terminating any such contract of employment or of varying it in any way so as to render its terms less favourable to any member of the staff of the College.

#### *Financial arrangements*

8.—(1) Subject to these regulations and to any conditions of grant which may be prescribed by the Secretary of State, the governing body shall make such arrangements as they think fit for the conduct of the financial affairs of the College.

(2) The governing body may accept donations, legacies, annuities, subscriptions and other gifts for purposes connected with the College and shall apply them in accordance with the wishes of the respective testators or donors.

(3) The governing body shall, after paying any necessary expenses of management and the burdens and taxes affecting each of the funds to which the Schedule relates, apply the free income of each fund for the purposes specified in column (3) of the Schedule against the name of that fund. If at

the end of any financial year there is an unexpended balance of income on any of the said funds it shall be in the power of the governing body to carry the said balance or part thereof forward to the following financial year or to add the said balance or part thereof to the capital of the said fund.

(4) Where any heritable property in the possession of the governing body is in the opinion of the Secretary of State no longer required by the governing body, the governing body shall with the consent of the Secretary of State and as suitable opportunity offers, sell or otherwise dispose of the said property, and shall repay to him such part as he may require of any proceeds of the sale or disposal.

#### *The College*

9.—(1) The governing body shall provide, maintain, furnish, equip and administer Napier College of Commerce and Technology for education and instruction in any subject approved by the Secretary of State and shall, subject to the provisions of these regulations, have all the rights, powers and privileges necessary or expedient to enable them to carry this regulation into effect.

(2) Without prejudice to the generality of their powers under the foregoing paragraph, it shall be in the power of the governing body—

- (a) to provide, equip, maintain, administer and conduct any facilities for sports, social and recreational purposes, libraries and reading rooms, and residential accommodation for students and members of staff of the College;
- (b) to award diplomas and certificates under their common seal upon such conditions and under such rules as they may make;
- (c) to undertake, or to assist such bodies and persons as may be approved by them to undertake, research and educational experiments related to the objects of the College;
- (d) to provide consultancy services, laboratory services or similar services to such bodies and persons as they may approve provided that such services shall be related to the objects of the College, and provided that charges shall be made for such services which cover the cost to the College of their provision;
- (e) to arrange for the affiliation of the College with, or the affiliation to the College of, or to enter into arrangements or cooperation with, any educational institution, association or other body for purposes connected with the functions of the governing body, upon such terms and conditions as may be arranged.

#### *Staff of the College*

10. The governing body shall as the need arises appoint a Principal of the College, a Secretary of the College, and such Depute Principals and Assistant Principals and other staff as they consider necessary for the discharge of their functions under these regulations.

#### *Admission to the College*

11.—(1) The governing body shall admit to the College all students for whom a place on a course of study is available and who, in the opinion of

the academic board, are qualified to benefit from the education provided at the College, but it shall be in the power of the governing body to exclude any person from admission to any course at the College, or part thereof, if in the opinion of the governing body the admission of the said person would be likely to prejudice the College.

(2) The governing body shall charge such fees as the Secretary of State considers reasonable for attendance at the College.

*Students' Association*

12. The governing body shall, in consultation with representatives of students attending the College, make a scheme for the constitution and functions of the Students' Association in the College; and the scheme shall prescribe rules under which that Association shall be entitled to make representations to the governing body.

*Condition of grant*

13. It shall be a condition of the payment of any grant under section 73(c) of the Education (Scotland) Act 1980(a) to the governing body of the College that the governing body shall comply with the requirements imposed on the governing body by these regulations, the Central Institutions (Scotland) Regulations referred to in regulation 1 of these regulations and the Further Education (Scotland) Regulations 1959 to 1979(b).

*Revocation of regulations*

14. The Napier College of Commerce and Technology Regulations 1985(c) are hereby revoked.

New St Andrew's House,  
Edinburgh.  
23rd July 1985.

*George Younger,*  
One of Her Majesty's Principal  
Secretaries of State.

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(a) 1980 c. 44.

(b) S.I. 1959/477, 1968/1849, 1972/1753, 1973/321 and 1979/1185.

(c) S.I. 1985/543.



## SCHEDULE

Regulation 8(3)

## SPECIAL FUNDS CONNECTED WITH THE COLLEGE

| Serial No.<br>(1) | Name of fund<br>(2)                             | Purposes<br>(3)  |
|-------------------|---|--|
| 1.                | James Dick Memorial Prize                       | To provide a prize for the best student in Medical Microbiology.   |
| 2.                | Clark Bequest                                   | To provide a travelling bursary for students in the Department of Print Media, Publishing and Communication. |
| 3.                | Heriot-Watt College Prize                       | To provide prizes for Napier students.   |
| 4.                | Heriot-Watt College Printing Prize Fund         | To provide prizes for students attending printing classes.   |
| 5.                | Frank P Restall, Heriot-Watt College Prize Fund | To provide prizes for students attending printing classes.   |
| 6.                | Blyth and Blyth Service Co Fund                 | To provide prizes for students in the Civil Engineering Department.  |
| 7.                | J B Scott Memorial Prize Fund                   | To provide a prize for the best Engineering student at Napier.   |
| 8.                | John Napier Memorial Prize                      | To provide a prize for the most promising student in the Energy Engineering Degree Course.                   |
| 9.                | David McMillan Memorial Prize Fund              | To provide a prize for the best student in Music.  |

## EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These regulations continue the governing body of Napier College of Commerce and Technology which was constituted on 23rd April 1985 and they specify that body's powers and obligations in relation to the management of the College. They provide for the transfer of the College from Lothian Regional Council to the management of the Governing Body from 1st September 1985 and require the Governing Body to make appropriate financial arrangements for administering the grant which, as a Scottish Central Institution, the College will receive from the Scottish Education Department after that date. The regulations also make provision for the transfer of College property from Lothian Regional Council to the governing body, and specify the educational functions and objectives of the College.

SI's 1959/477, 1968/1849, 1972/1753, 1973/321, 1976/66 and 1979/1185 referred to in these regulations are all now out of print. Photocopies can be obtained from the British Library Lending Division (BLLD) via HMSO (Photocopies), PO Box 276, London SW8 5DT at a cost of £2.50 per complete copy required. Alternatively, photocopies can be obtained from the Scottish Education Department, Division V/2, Room 3/118, New St Andrew's House, Edinburgh EH1 3SY.