

## SCHEDULE 1

Regulation 2

### INSTRUMENT OF GOVERNMENT

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### Interpretation

#### 1. In this Instrument of Government—

- (a) “The Council” means the Learning and Skills Council for England,  
“the Corporation” means the further education corporation known as Derby College,  
“this Instrument” means this Instrument of Government,  
“LSC member” means a member of the Corporation appointed by the Council under section 11 of the Learning and Skills Act 2000,  
“meeting” includes a meeting at which the members attending are present in more than one room provided that, by the use of video-conferencing or similar facilities, it is possible for every person present at the meeting to see and hear each other,  
“the Secretary of State” means the Secretary of State for Education and Skills;
- (b) “business member”, “community member”, “co-opted member”, “local authority member”, “parent member”, “staff member” and “student member” have the meanings given to them in clause 2;
- (c) references to the institution are references to the institution which the Corporation is established to conduct and to any institution for the time being

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conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992;

- (d) references, in relation to the Corporation, to a variable category are references to any category of members, the determined number of which is subject to variation in accordance with clauses 2 and 3.

## **Composition of the Corporation**

2.—(1) The Corporation shall consist of—

- (a) not more than 7 members who are, or have been, engaged or employed in business, industry or any profession, or in any other field of employment relevant to the activities of the institution (to be known as “business members”);
- (b) not more than 3 members (to be known as “co-opted members”) co-opted by the members of the Corporation;
- (c) at least one and not more than 3 members who are members of the staff of the institution elected and nominated as specified in paragraph (4) (to be known as “staff members”);
- (d) at least one and not more than 3 members who are students at the institution elected and nominated by such students or (as the Corporation may determine) elected and nominated by a recognised association representing such students (to be known as “student members”);
- (e) not more than 2 members who are parents of students under the age of 19 years attending the institution, elected and nominated by other such parents or (as the Corporation may determine) elected and nominated by a recognised association representing such parents (to be known as “parent members”);
- (f) at least one and not more than 3 members nominated by such local authorities as the Corporation may nominate (to be known as “local authority members”);
- (g) at least one and not more than 3 members nominated by a voluntary body or bodies appearing to the other members of the Corporation to represent the interests of a section of the local community nominated by the other members of the Corporation (to be known as “community members”);
- (h) the Principal of the institution (unless he chooses not to be a member);
- (i) LSC members (if any).

(2) It shall be for the appointing authority as specified in clause 3 or, as the case may be, clause 5 to determine any question as to whether any person is qualified in accordance with paragraph (1) for appointment as a member of the Corporation of any description or category.

(3) For the purpose of this Instrument, 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 any students' union at the institution.

(4) Every staff member shall be elected and nominated by the staff of the institution, save that where paragraph (5) applies—

- (a) one may be a member of the academic staff elected and nominated only by the academic staff; and
- (b) the other or (as the case may be) one other may be a member of the staff other than the academic staff elected and nominated only by the staff other than the academic staff.

(5) This paragraph applies where the Corporation has determined or determine—

- (a) (pursuant to clause 4) that there are to be 2 or 3 staff members; and

- (b) that both or (as the case may be) 2 of those members are to be elected and nominated as specified in paragraph (4)(a) and (b).
- (6) In paragraph (1)(g) “voluntary body” includes any association not conducted for profit.

### **Initial Appointments**

3.—(1) The Secretary of State is the appointing authority for the purpose of this Instrument in relation to the appointment of the first members of the Corporation.

(2) In determining the number of members to appoint within each variable category she shall secure that the number of business members of the Corporation as first constituted shall be equal to one third of the total number of members other than LSC members rounded up to the nearest whole number.

### **Determination of Membership Numbers**

4.—(1) At its first meeting the Corporation shall make a determination with respect to its membership numbers, which shall be not less than 12 but not more than 20 other than LSC members.

(2) Such a determination shall fix the numbers of members of each variable category of which the Corporation is to consist, subject to the limit which applies to each category set out in clause 2.

(3) In making such a determination, the Corporation shall secure that the number of business members of the Corporation, when constituted in accordance with that determination, shall be equal to one third of the total number of members other than LSC members rounded up to the nearest whole number.

(4) Such a determination shall not have effect so as to terminate the appointment of any person who is already a member of the Corporation at the time when it takes effect.

(5) Such a determination may be varied by a subsequent determination, to which paragraphs (1) to (4) shall apply.

### **Subsequent Appointments**

5.—(1) Subject to paragraph (4) the Corporation is the appointing authority in relation to the appointment of any member of the Corporation at any time after the appointment by the Secretary of State of the first members.

(2) The Corporation may not make any such appointment before it has made the first determination under clause 4.

(3) If the number of members falls below the number needed for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of members as is required for the quorum.

(4) The appointing authority may decline to appoint a person as a local authority or community member if the person does not have the specified skills and experience.

(5) The appointing authority may decline to appoint a person as a parent, staff, student, local authority or community member if—

- (a) they are satisfied that the person has, within ten years before his appointment would otherwise have taken effect, been removed from office as a member of a further education corporation, or
- (b) the appointment of the person would contravene any provision of any rules or bye-laws made under article 21 of the Articles of Government relating to the number of consecutive terms for which a member may hold office, provided that such rules or bye-laws make the same provision for each category of members appointed by the appointing authority.

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(6) Except as provided in paragraphs (4) and (5) paragraph (1) shall not entitle the Corporation to decline to appoint any person as a parent, staff, student, local authority or community member unless the person is ineligible to be a member of the Corporation by virtue of clause 8.

(7) Where the office of any appointed member becomes vacant the Corporation (where it is the appointing authority) shall as soon as practicable take all necessary steps to appoint a new member to fill the vacancy.

(8) Nothing in this clause shall entitle the Corporation to request more than one nomination from any of the bodies referred to in clause 2(1)(c) to (g) to fill any particular vacancy.

(9) In this clause “specified skills and experience” means skills and experience (other than professional qualifications) specified by the Corporation as appropriate for members of the Corporation after consultation with the local authorities nominated under clause 2(1)(f) and the voluntary body or bodies nominated under clause 2(1)(g).

### **Appointment of Chair and Vice-Chair**

6.—(1) The members shall appoint a Chair and a Vice-Chair from among their number.

(2) Neither the Principal nor any staff or student member shall be eligible to be appointed Chair or Vice-Chair.

(3) The Chair and Vice-Chair shall hold office for such a period as the Corporation may determine.

(4) If both the Chair and the Vice-Chair are absent from any meeting of the Corporation, the members present shall choose one of their number to act as Chair for that meeting, provided that the member chosen shall not be the Principal or a staff or student member.

(5) The Chair or Vice-Chair may resign his office at any time by giving notice in writing to the Clerk to the Corporation.

(6) If at any time the Corporation is satisfied that the Chair or Vice-Chair is unable or unfit to discharge the functions of Chair or Vice-Chair (as the case may be) the Corporation may by notice in writing to the Chair or Vice-Chair remove him from his office and thereupon the office shall be vacant.

(7) At the last meeting before the expiry of the term of office of the Chair or the Vice-Chair, or following the resignation or removal from office of the Chair or the Vice-Chair, the members shall appoint a new Chair or Vice-Chair, as the case may be, from among their number.

(8) At the expiry of their term of office the Chair or Vice-Chair shall be eligible for reappointment.

### **Appointment of the Clerk to the Corporation**

7.—(1) Subject to paragraph (4) the Corporation shall appoint a person to serve as Clerk to the Corporation.

(2) Subject to clause 14 the Clerk to the Corporation shall be entitled to attend all meetings of the Corporation (including all meetings of any committee of the Corporation).

(3) In the event of a temporary absence of the Clerk to the Corporation, the Corporation shall appoint a person to serve as a temporary Clerk to the Corporation; and any reference in this Instrument to the Clerk to the Corporation shall include a temporary Clerk appointed under this paragraph.

(4) The Principal shall be ineligible to be appointed as Clerk to the Corporation or as a temporary Clerk to the Corporation.

### **Persons Ineligible to be Members**

8.—(1) Any person who is under the age of 18 years shall be ineligible for appointment as a member except as a student member.

(2) A person who is a member of staff of the institution shall be ineligible for appointment as a member except as a staff member or in his capacity as Principal.

(3) A student at the institution shall be ineligible to be appointed as a member except as a student member. A person who is already a member other than a student member shall not be required to resign if during his term of office he enrolls on a part-time course at the institution, but if he enrolls on a full-time course at the institution he shall cease to be a member of the Corporation and thereupon his office shall become vacant.

(4) The Clerk to the Corporation shall be ineligible to be a member.

(5) Subject to paragraphs (6) and (7), a person shall be disqualified from holding, or from continuing to hold, office as a member if that person has been adjudged bankrupt or has made a composition or arrangement with his creditors.

(6) Where a person is disqualified by reason of his having been adjudged bankrupt, that disqualification shall cease—

- (a) unless the bankruptcy order made against that person is previously annulled, on his discharge from bankruptcy; and
- (b) if the bankruptcy order is so annulled, on the date of the annulment.

(7) Where a person is disqualified by reason of his having made a composition or arrangement with his creditors and he pays his debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of 3 years from the date on which the terms of the deed of composition or arrangement are fulfilled.

(8) A person shall be disqualified from holding, or from continuing to hold, office as a member if, within 5 years before his appointment would otherwise have taken effect, or since his appointment, he has been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months without the option of a fine.

(9) Upon a member of the Corporation becoming disqualified from continuing to hold office by virtue of paragraph (5) or (8), he shall forthwith give notice of the fact to the Clerk to the Corporation.

### **Term of Office**

9.—(1) A member of the Corporation shall hold and vacate office in accordance with the terms of his appointment, but the length of his term of office shall not exceed 4 years.

(2) Members retiring at the end of their term of office shall be eligible for reappointment, and clause 5 shall apply to the reappointment of a member as it does to the appointment of a member's successor.

### **Determination of Membership**

10.—(1) A member may resign his office at any time by giving notice in writing to the Clerk to the Corporation.

(2) If at any time the Corporation is satisfied that any member—

- (a) has been absent from meetings of the Corporation for a period longer than 6 consecutive months without the permission of the Corporation; or
- (b) is unable or unfit to discharge the functions of a member,

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the Corporation may by notice in writing to that member remove him from office and thereupon the office shall become vacant.

(3) Any person who is a member of the Corporation by virtue of being a member of the staff (including the Principal) of the institution shall cease to hold office if he ceases to be a member of the staff of the institution; and thereupon the office shall become vacant.

(4) A student member shall cease to hold office—

(a) at the end of the academic year in which he ceased to be a student or at such other time in the year after he has ceased to be a student as the Corporation may determine; or

(b) if he is expelled from the institution,

and thereupon the office shall become vacant.

### **Members not to hold interests in matters relating to the Institution**

**11.**—(1) Except with the approval in writing of the Secretary of State no member shall take or hold any interest in any property held or used for the purpose of the institution.

(2) A member who has any financial interest in the supply of work or goods to or for the purposes of the institution, any contract or proposed contract concerning the institution, or any other matter relating to the institution or who has any other interest of a description specified by the Corporation in any matter relating to the Institution shall—

(a) disclose to the Corporation the nature and extent of his interest; and

(b) if he is present at a meeting of the Corporation or of any committee of the Corporation at which such supply, contract or other matter is to be considered, shall not take part in the consideration or vote on any question with respect to it and shall not be counted in the quorum present at the meeting in relation to a resolution on which he is not entitled to vote.

(3) The Clerk to the Corporation shall maintain a register of the interests of the members of the Corporation which are disclosed to the Corporation, and the register shall be made available during normal office hours at the institution to any person wishing to inspect it.

(4) This clause shall not prevent the members of the Corporation considering and voting upon proposals for the Corporation to insure the members against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.

### **Meetings**

**12.**—(1) The Corporation shall meet at least once in every term, and shall hold such other meetings as may be necessary.

(2) Subject to paragraph (3), all meetings shall be summoned by the Clerk to the Corporation, who shall, at least 7 calendar days before the date of the meeting, send to the members written notice of the meeting and a copy of the proposed agenda.

(3) However, if it is proposed to consider at any meeting the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the Clerk to the Corporation, the Chair (and not the Clerk) shall, at least 7 calendar days before the date of the meeting, send to the members a copy of the agenda item concerned together with any relevant papers.

(4) A special meeting of the Corporation may be called at any time by the Chair or at the request in writing of any 5 members. Where the Chair or, in his absence, the Vice-Chair so directs on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice convening the meeting and the proposed agenda are given within such period, being less than 7 calendar days, as he specifies.

(5) Every member of the Corporation shall act in the best interests of the Corporation and accordingly shall not be bound in speaking and voting by mandates given to him by any other body or person.

### **Quorum**

**13.**—(1) Meetings of the Corporation shall be quorate if the number of members present is at least 40% of the membership numbers (that is to say the aggregate of the number determined in accordance with clause 4 and the number of any LSC members).

(2) If the number of members assembled for a meeting of the Corporation does not constitute a quorum therefor the meeting shall not be held. If in the course of a meeting of the Corporation the number of members thereof present ceases to constitute a quorum, the meeting shall be terminated forthwith.

(3) If for lack of a quorum a meeting cannot be held or, as the case may be, cannot continue, the Chair shall, if he thinks fit, cause a special meeting to be summoned as soon as conveniently may be.

### **Proceedings of Meetings**

**14.**—(1) Every question to be decided at a meeting of the Corporation shall be determined by a majority of the votes of the members present and voting on the question. Where there is an equal division of votes the chair of the meeting shall have a second or casting vote.

(2) A member may not vote by proxy or by way of postal vote.

(3) No resolution of the members may be rescinded or varied at a subsequent meeting unless consideration of the rescission or variation is a specific item of business on the agenda for that meeting.

(4) Except as provided by Articles 12 and 13 of the Articles of Government (relating to appeals and representations about staff discipline and dismissal), a member of the Corporation who is a member of staff of the institution (including the Principal) shall withdraw—

- (a) from that part of any meeting of the Corporation or any committee of the Corporation at which staff matters relating solely to that member of the staff (as distinct from staff matters relating to all members of staff, or all members of staff in a particular class) are to be considered;
- (b) from that part of any meeting of the Corporation or any committee of the Corporation at which his reappointment or the appointment of his successor is to be considered; and
- (c) if so required by a resolution of the other members present, from that part of any meeting of the Corporation or of any committee of the Corporation at which staff matters relating to any member of staff holding a post senior to his own are to be considered.

(5) A Principal who has chosen not to be a member of the Corporation shall still be entitled to attend and speak at all meetings of the Corporation and any committee of the Corporation, except that he shall withdraw in any case where he would be required to withdraw under paragraph (4) if he were attending as a member.

(6) A student member who is under the age of 18 shall not vote (whether at a meeting of the Corporation or at a meeting of any committee of the Corporation) on any question concerning any proposal—

- (a) for the expenditure of money by the Corporation; or
- (b) under which the Corporation, or any members of the Corporation, would enter into any contract, or would incur any debt or liability (whether immediate, contingent or otherwise).

(7) Except as provided by rules made under article 16(2) of the Articles of Government relating to appeals and representations by students in disciplinary cases, a student member shall withdraw

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from that part of any meeting of the Corporation or any committee of the Corporation at which his conduct, suspension or expulsion is to be considered.

(8) In any case where the Corporation or any committee of the Corporation is to discuss staff matters relating to a member or prospective member of the staff of the institution, a student member shall—

- (a) take no part in the consideration or discussion of the matter in question and not vote on any question with respect to that matter; and
- (b) where required to do so by a majority of the members, other than student members, of the Corporation or committee present at the meeting, withdraw from the meeting.

(9) The Clerk to the Corporation—

- (a) shall withdraw from that part of any meeting of the Corporation or any committee of the Corporation at which his remuneration, conditions of service, conduct, suspension, dismissal or retirement in his capacity as clerk are to be considered; and
- (b) if he is a member of the staff of the institution, shall withdraw in any case where he would be required to withdraw under paragraph (4) if he were attending as a member of the Corporation.

(10) If the Clerk to the Corporation withdraws from a meeting or part of it under paragraph (9)—

- (a) the Corporation shall appoint from their number a person to act as Clerk to the Corporation; or (as the case may be)
- (b) the committee in question shall appoint from their number a person to act as Clerk to the committee,

for the duration of such a meeting or part of a meeting.

(11) In this clause “staff matters” means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff.

## **Minutes**

**15.**—(1) Subject to paragraph (2) at every meeting of the Corporation the minutes of the last meeting shall be taken as an agenda item.

(2) Paragraph (1) shall not require the minutes of the last meeting to be taken as an agenda item of a meeting called under clause 12(4), and where the minutes of the last meeting are, pursuant to this paragraph, not taken as an agenda item of such a meeting they shall be taken as an agenda item at the next meeting which is not called under clause 12(4).

(3) Where minutes of a meeting are taken as an agenda item and agreed to be accurate, those minutes shall be signed as a true record by the Chair of the meeting.

(4) Separate minutes shall be taken of those parts of meetings from which staff or student members or the Clerk to the Corporation have withdrawn. A member of the Corporation who is a member of staff of the institution, a student member or the Clerk to the Corporation who has withdrawn from a meeting in accordance with clause 14(4), (6), (7) or (9) shall not be entitled to see the minutes of that part of the meeting or any papers in relation thereto.

## **Public Access to Meetings**

**16.** Subject to clause 14(5) any question whether any person who is not—

- (a) a member of the Corporation; or
- (b) the Clerk to the Corporation

should be allowed to attend a meeting of the Corporation, shall be determined by the Corporation.

### **Publication of Minutes and Papers**

17.—(1) Subject to paragraph (2), the Corporation shall ensure that a copy of—

- (a) the agenda for every meeting of the Corporation;
- (b) the draft minutes of every such meeting, if they have been approved by the Chair of the meeting;
- (c) the signed minutes of every such meeting; and
- (d) any report, document or other paper considered at any such meeting,

shall, in each case as soon as may be, be made available during normal office hours at the institution to any person wishing to inspect them.

(2) There shall be excluded from any item required to be made available in pursuance of paragraph (1), any material relating to—

- (a) a named person employed at or proposed to be employed at the institution;
- (b) a named student at, or candidate for admission to, the institution;
- (c) the Clerk to the Corporation; or
- (d) any matter which, by reason of its nature, the Corporation is satisfied should be dealt with on a confidential basis.

### **Allowances to Members**

18. The Corporation shall have the power to pay to the members of the Corporation such travelling, subsistence or other allowances as the Corporation may determine, but shall not without the approval in writing of the Secretary of State pay allowances which remunerate the members for their services as members.

### **Copies of Instrument of Government**

19. A copy of this Instrument shall be given to every member, and shall be available for inspection upon request during normal office hours to every member of staff and every student.

### **Change of Name**

20. The Corporation may change its name with the approval of the Secretary of State.

### **Application of Seal**

21. The application of the seal of the Corporation shall be authenticated by—

- (a) the signature of either the Chair or of some other member authorised either generally or specially by the Corporation to act for that purpose; and
- (b) the signature of any other member.