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STATUTORY INSTRUMENTS

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**2016 No. 834**

**EDUCATION, ENGLAND**

**The National College for the Creative and Cultural Industries (Government) Regulations 2016**

<i>Made</i>	- - - -	<i>5th August 2016</i>
<i>Laid before Parliament</i>		<i>8th August 2016</i>
<i>Coming into force</i>	- -	<i>1st September 2016</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 20(2) and 21(1) of, and Schedule 4 to, the Further and Higher Education Act 1992<sup>(1)</sup>.

1. These Regulations may be cited as the National College for the Creative and Cultural Industries (Government) Regulations 2016 and come into force on 1st September 2016.

2. The instrument of government and the articles of government of the further education corporation called “the National College for the Creative and Cultural Industries” are set out in Schedules 1 and 2 to these Regulations respectively.

5th August 2016

*Joseph Johnson*  
Minister of State  
Department for Education

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(1) 1992 c.13; section 20(2) was amended by section 2(1) of the Further and Higher Education (Governance and Information) (Wales) Act 2014 anaw. 1. See section 61(1) for the definition of “regulations”.

SCHEDULE 1

Regulation 2

INSTRUMENT OF GOVERNMENT

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**Interpretation of the terms used**

1. In this Instrument of Government—
  - (a) “business day” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
  - (b) “Chair” means the Chair of the Corporation appointed in accordance with clause 4;
  - (c) any reference to the “Chief Executive” shall include a person acting as Principal or Chief Executive;
  - (d) “Chief Financial Officer” means the Chief Financial Officer to the Corporation;
  - (e) “Clerk” means the Clerk to the Corporation;
  - (f) “connected person” has the meaning set out in clause 188 of the Charities Act 2011(2);
  - (g) “Corporation” means the further education corporation to which this Instrument applies and any subsidiary company of the Corporation;

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(2) 2011 c.25.

- (h) “electronic form” or “electronic means” have the meaning set out in section 1168(3) to (6) (inclusive) of the Companies Act 2006(3);
- (i) “general member”, “staff member” and “student member” have the meanings given to them in clause 2;
- (j) “institution” means the institution which the Corporation is established to conduct and any institution for the time being conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992(4);
- (k) “Instrument” means this Instrument of Government;
- (l) “members” means the general members, the Chief Executive (unless the Chief Executive chooses not to be a member), the staff member and the student member;
- (m) “meeting” includes a meeting at which the members participate from more than one place, provided that it is possible for every participating member to communicate with each other as set out in paragraph 11(8);
- (n) “necessary skills” means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have taking account, if appropriate, of the category of that member;
- (o) “Secretary of State” means the Secretary of State for Education (or any successor responsible for further education);
- (p) “special meeting” has the meaning given in paragraph 11(5);
- (q) “staff” means persons who have a contract of employment with the Corporation or with its subsidiaries (if any);
- (r) “staff matters” means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff;
- (s) “student” means a student of the institution;
- (t) “students’ association” means any association of students of the institution formed to further the educational purposes of the institution and the interests of students, as students;
- (u) “subsidiary” means a subsidiary as defined in section 1159 of the Companies Act 2006;
- (v) “Vice-Chair” means the Vice-Chair of the Corporation appointed in accordance with clause 4;
- (w) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

### **Composition of the Corporation**

2.—(1) Subject to the transitional arrangements set out in paragraph 2(3), the Corporation shall consist of the following categories of members—

- (a) not less than seven nor more than twelve members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions under article 3 of the Articles of Government (“general member”);
- (b) the Chief Executive, unless the Chief Executive chooses not to be a member;
- (c) one member who is a member of staff who has been nominated and elected by his or her fellow members of staff in such manner as the staff approve from time to time (“staff member”); and

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(3) 2006 c.46.

(4) 1992 c.13.

(d) one member who is a student enrolled on a course of at least a one year duration who has been nominated and elected by his or her fellow students, in such manner as the students approve from time to time, or if the Corporation so decides, by a recognised association representing the students (“student member”).

(2) A person who is not for the time being enrolled as a student, shall nevertheless be treated as a student during any period of authorised absence from the institution for study, travel or for carrying out the duties of any office held by that person in the institution’s students’ association.

(3) Where the number of members of the Corporation or the number of members in any category do not comply with the requirements of paragraph 2(1), or any subsequent determination, the Corporation shall make new appointments so that its composition conforms to the determination as soon as possible, and all decisions of the Corporation in the interim shall be valid.

### **Appointment of the members of the Corporation**

3.—(1) The Secretary of State shall be the appointing authority for the first members. Subject thereto the Corporation is the appointing authority in relation to subsequent appointments of its members.

(2) The appointing authority may decline to appoint a person as a member if—

- (a) it is satisfied that the person has been removed from office as a member of a further education corporation in the previous ten years;
- (b) the appointment of the person would contravene paragraph 7(3) or any rule or bye-law made under article 16 of the Articles of Government concerning the number of terms of office which a person may serve, provided that such rules or bye-laws make the same provision for each category of members appointed by the appointing authority; or
- (c) the person is ineligible to be a member under the provisions of clause 6.

(3) Where the office of any member becomes vacant the relevant appointing authority shall as soon as practicable take all necessary steps to appoint a new member to fill the vacancy. Any vacancy of any of the offices of member shall not prevent the members from exercising all of the powers of the Corporation during such vacancy.

(4) If the number of general members falls below the minimum set out in paragraph 2(1)(a), the Clerk shall call a meeting of the members to appoint persons to general membership sufficient to equal or exceed that minimum number.

(5) 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 those members needed for a quorum.

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

4.—(1) The members of the Corporation shall appoint a Chair, and if the Corporation determines from time to time, a Vice-Chair, from among the general members. The Chair (or in the Chair’s absence, the Vice-Chair) shall chair meetings of the Corporation.

(2) If both the Chair and the Vice-Chair are absent from any meeting of the Corporation, the members present shall choose someone from among the general members present to act as Chair for that meeting.

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

(4) The Chair and Vice-Chair may resign from office at any time by giving notice in writing to the Clerk.

(5) If the Corporation is satisfied that the Chair or Vice-Chair (as the case may be) is unfit or unable to carry out the functions of office, it may give written notice, removing the Chair or Vice-Chair (as the case may be) from office and the office shall then be vacant.

(6) At the last meeting before the end of the term of office of the Chair or Vice-Chair (as the case may be), or at the first meeting following the Chair's or Vice-Chair's (as the case may be) resignation or removal from office, the members shall appoint a replacement from among the general members.

(7) Unless the Corporation otherwise resolves from time to time at the end of their respective terms of office, the Chair and Vice-Chair shall be eligible for reappointment subject to any maximum terms of office approved by the Corporation from time to time.

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

5.—(1) The Corporation shall appoint a person to serve as its Clerk. Neither the Chief Executive nor the Chief Financial Officer may be appointed as Clerk.

(2) In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk, but the Chief Executive and the Chief Financial Officer may not be appointed as temporary Clerk.

(3) Any reference in this Instrument to the Clerk shall include a temporary Clerk appointed under paragraph 5(2).

(4) The Clerk may also be a member of staff.

### **Persons who are ineligible to be members**

6.—(1) No one under the age of 18 years may be a member.

(2) Only natural persons may be members.

(3) The Chief Financial Officer and the Clerk may not be members.

(4) A person who is a member of staff may not be, or continue as, a member, except as a staff member or as the Chief Executive.

(5) A person who is a student may not be, or continue to as, a member, except as a student member.

(6) Paragraph 6(4) does not apply to a student who is employed or engaged by the Corporation in connection with the student's role as an officer of a students' association.

(7) A person shall be disqualified from holding, or from continuing to hold, office as a member if—

(a) that person is disqualified from acting as a charity trustee by virtue of section 178 – 179 of the Charities Act 2011;

(b) that person is certified by a registered medical practitioner as being physically or mentally incapable of discharging his duties as a member and will remain so for more than three months;

(c) a resolution to remove that person from office is proposed at a properly convened meeting of the members called for that purpose and passed by a two thirds majority of votes cast at the meeting that the person is unfit or unable to discharge his functions as a member or his conduct calls himself or the institution in to disrepute or that person breaches any code of conduct applying to members of the Corporation from time to time; or

(d) that person without the consent of the Corporation is absent from two or more consecutive meetings of the Corporation and the Corporation resolves to remove that member from office.

(8) Upon a member becoming disqualified from continuing to hold office, the member shall immediately give notice of that fact to the Clerk.

### **The term of office of a member**

- 7.—(1) A member shall hold and vacate office in accordance with the terms of the appointment.
- (2) The length of the term of office (other than the Chief Executive) shall not exceed three years.
- (3) Members retiring at the end of their term of office shall be eligible for reappointment for a further two consecutive periods of up to three years, and clause 3 shall apply to the reappointment of a member as it does to the appointment of a member. Thereafter a member shall not be eligible to be or remain as a member.

### **Duties and liabilities of members**

- 8.—(1) It is the duty of each member to exercise his or her powers as a member in the way he or she decides in good faith would be most likely to further the purposes of the Corporation.
- (2) The members shall manage the affairs of the Corporation and may for that purpose exercise all the powers of the Corporation.
- (3) Membership is not transferrable.
- (4) If the Corporation is wound up, the members have no liability to contribute to the assets and no personal responsibility for settling its debts and liabilities.

### **Termination of membership**

- 9.—(1) A member ceases to hold office if that member dies, or resigns from office by giving notice in writing to the Clerk.
- (2) A staff member shall cease to hold office upon ceasing to be a member of staff and the office shall then be vacant.
- (3) The Chief Executive shall cease to hold office upon ceasing to be a member of staff and the office shall then be vacant.
- (4) A student member shall cease to hold office—
- (a) at the end of the student's final academic year at the institution, or at such other time in the year after ceasing to be a student at the institution as the Corporation may decide; or
  - (b) if expelled from the institution,
- and the office shall then be vacant.

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

- 10.—(1) A member to whom paragraph 10(2) applies shall—
- (a) disclose to the Corporation the nature and extent of the interest;
  - (b) if present at any discussions or meetings of the Corporation, or of any of its committees, at which it is possible that a conflict of interest will arise between the member's duty to act solely in the interests of the Corporation and any personal interest, to absent him or herself from that meeting and not take part in the consideration or vote on any question with respect to it; and
  - (c) not be counted in the quorum present at the meeting in relation to a resolution on which that member is not entitled to vote.
- (2) This paragraph applies to a member who has any direct or indirect interest in a proposed transaction or arrangement with the Corporation or in any transaction or arrangement entered into by the Corporation which has not been previously declared including—
- (a) the supply of goods or services to the Corporation;

- (b) any contract or proposed contract concerning the Corporation;
- (c) any other matter relating to the Corporation; or
- (d) any other interest of a type specified by the Corporation in any matter relating to the Corporation.

(3) This clause 10 shall not prevent the members considering and voting upon proposals for the Corporation to insure them against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.

(4) Where the matter under consideration by the Corporation or any of its committees relates to the pay and conditions of all staff, or all staff in a particular class, a staff member need not disclose a financial interest, and—

- (a) may take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum present at that meeting, provided that in so doing, the staff member acts in the best interests of the Corporation as a whole and does not seek to represent the interests of any other person or body; but
- (b) shall withdraw from the meeting if the matter is under negotiation with staff and the staff member is representing any of the staff concerned in those negotiations.

(5) The Clerk shall maintain a register of the interests of the members that have been disclosed and the register shall be made available during normal office hours at the institution to any person wishing to inspect it.

(6) Subject to paragraph 10(7) , no member or person connected to a member shall receive a financial benefit from the Corporation.

(7) A member or connected person may—

- (a) receive reasonable and proper expenses incurred by them when acting on behalf of the Corporation;
- (b) receive a benefit from the Corporation as a beneficiary of the institution (whether as a student or otherwise) provided that a majority of the members do not benefit in this manner;
- (c) receive reasonable and proper remuneration for services provided as a member of staff (if the member is a staff member or the Chief Executive) or as a student or officer of a students' association (if the member is a student member);
- (d) receive interest on money lent to the Corporation at a reasonable and proper rate which must be not more than two per cent less than the published base lending rate of a clearing bank to be selected by the Corporation;
- (e) receive reasonable and proper rent for premises demised or let to the Corporation; and
- (f) take part in the normal trading and fundraising activities of the Corporation on the same terms as members of the public.

## Meetings

11.—(1) The Corporation shall meet at least three times during each calendar year, and shall hold such other meetings as may be necessary.

(2) Subject to clause 14, the Chief Financial Officer and the Clerk shall be entitled to attend and speak, or otherwise communicate, at all meetings of the Corporation and any of its committees.

(3) Subject to paragraphs 11(4) and 11(5) and to paragraph 13(4), all meetings shall be called by the Clerk, who shall, at least seven calendar days before the date of the meeting, send to the members of the Corporation written notice of the meeting and a copy of the proposed agenda.

(4) If it is proposed to consider at any meeting the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the Clerk, the Chair shall, at least seven calendar days before the date of the meeting, send to the members a copy of the agenda item concerned, together with any relevant papers.

(5) A meeting of the Corporation, called a “special meeting”, may be called at any time by the Chair or at the request in writing of any five members. In either case, subject to paragraph 11(6), the Chair or the Clerk shall send to the members of the Corporation written notice of the meeting and a copy of the proposed agenda at least seven calendar days before the date of the meeting.

(6) Where the Chair, or in the Chair’s absence the Vice-Chair, decides that there are matters requiring urgent consideration, written notice convening the special meeting and a copy of the proposed agenda may be sent to members less than seven calendar days before the date of the meeting.

(7) Every member shall act in accordance with any code of conduct applying to members and shall not be bound to speak or vote by mandates given by any other body or person.

(8) A meeting may be held by suitable electronic means agreed by the members in which each participant may communicate with all the other participants. A member shall qualify as being present at the meeting, if that member may communicate with all the other participants, and the meeting shall be deemed to take place wherever the Chair (or in the Chair’s absence the Vice-Chair) participates from.

#### **Written resolutions and electronic communications**

**12.—**(1) Any decision that could be made by a meeting of the Corporation or any of its committees shall be capable of being validly made if a resolution in writing or by electronic means is agreed by such number of persons being at least the minimum number required to pass a resolution and each being eligible to vote on such a resolution at a meeting of the Corporation or committee (as the case may be).

(2) Any communication with a member or any of its committees may be sent, given, delivered, provided or received in electronic form or by electronic means.

#### **Quorum**

**13.—**(1) No business may be transacted at any meeting of the Corporation unless a quorum is present when the meeting starts. Subject to paragraph 13(2), meetings of the Corporation shall be quorate if at least seven or 50% of the members (whichever is the greater) are present.

(2) If the number of members present for a meeting of the Corporation does not constitute a quorum, the meeting shall not be held unless, if the number of members is below that needed to form a quorum, it is held for the purpose of appointing additional members in order to fill vacancies to have sufficient members to constitute a quorum.

(3) If during a meeting of the Corporation there ceases to be a quorum, the meeting shall be terminated at once.

(4) If a meeting cannot be held or cannot continue for lack of a quorum, the Chair may call a special meeting as soon as it is convenient.

#### **Proceedings of meetings**

**14.—**(1) Every question to be decided at a meeting of the Corporation shall be decided by a majority of the votes cast by members present and entitled to vote on the question.

(2) Where, at a meeting of the Corporation, there is an equal division of votes on a question to be decided, the Chair of the meeting shall not have a second or casting vote.

- (3) A member may not vote by proxy or appoint an alternate.
- (4) 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.
- (5) Except as provided by rules or procedures made in accordance with article 10(1) of the Articles of Government, a member who is a member of staff, including the Chief Executive, the Chief Financial Officer and the Clerk shall withdraw—
- (a) from that part of any meeting of the Corporation, or any of its committees, at which staff matters relating solely to that member of 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 of its committees, at which that member's reappointment or the appointment of that member's successor is to be considered;
  - (c) from that part of any meeting of the Corporation, or any of its committees, at which the matter under consideration concerns the pay or conditions of service of all members of staff, or all members of staff in a particular class where the member of staff is acting as a representative (whether or not on behalf of a recognised trade union) of all members of staff or the class of staff (as the case may be); and
  - (d) if so required by a resolution of the other members present, from that part of any meeting of the Corporation or any of its committees, at which staff matters relating to any member of staff holding a post senior to that member's are to be considered, except those relating to the pay and conditions of all staff or all staff in a particular class.
- (6) Except as provided by any rules made under article 12(2) of the Articles of Government relating to appeals and representations by students in disciplinary cases, a student member shall withdraw from that part of any meeting of the Corporation or any of its committees, at which a student's conduct, suspension or expulsion is to be considered, or at which that student member's successor is to be considered.
- (7) In any case where the Corporation, or any of its committees, is to discuss staff matters relating to a member or prospective member of staff of the institution, a student member shall—
- (a) take no part in the consideration or discussion of that matter and not vote on any question with respect to it; and
  - (b) where required to do so by a majority of the members, other than student member, of the Corporation or committee present at the meeting, withdraw from the meeting.
- (8) The Clerk—
- (a) shall withdraw from that part of any meeting of the Corporation, or any of its committees, at which the Clerk's remuneration, conditions of service, conduct, suspension, dismissal, retirement or successor are to be considered; and
  - (b) where the Clerk is a member of staff of the institution, shall withdraw in any case where a member is required to withdraw under paragraph 14(5).
- (9) If the Clerk withdraws from a meeting, or part of a meeting under paragraph 14(8), the members present at that meeting shall appoint a person from among themselves to act as Clerk during this absence.

## Minutes

15.—(1) Written minutes of every meeting of the Corporation shall be prepared, and, subject to paragraph 15(2), at every meeting of the Corporation the minutes of the last meeting shall be taken as an agenda item.

(2) Paragraph 15(1) shall not require the minutes of the last meeting to be taken as an agenda item at a special meeting, but where they are not taken, they shall be taken as an agenda item at the next meeting which is not a special meeting.

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

(4) Separate minutes shall be taken of those parts of meetings from which the staff member, the Chief Executive, Chief Financial Officer, student member or the Clerk have withdrawn in accordance with paragraph 14(5), 14(6), 14(7)(b) or 14(8), and such persons shall not be entitled to see the minutes of that part of the meeting or any papers relating to it.

### **Access to meetings**

16. The Corporation shall decide any question as to whether a person should be allowed to attend any of its meetings where that person is not a member, the Chief Financial Officer or the Clerk.

### **Publication of minutes and papers**

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

- (a) the agenda for every meeting of the Corporation;
- (b) the signed minutes of every such meeting;
- (c) any report, document or other paper considered at any such meeting,

shall 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 made available for inspection any material relating to—

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

(3) The Corporation shall ensure that a copy of the signed minutes of every meeting of the Corporation, under paragraph 17(1) (but subject always to paragraph 17(2)) shall be placed on the institution's website (or similar publically accessible electronic platform), and shall, despite any rules the Corporation may make regarding the archiving of such material, remain available for a minimum period of 12 months.

(4) The Corporation shall review regularly all material excluded from inspection under paragraph 17(2)(e) and make any such material available for inspection where it is satisfied that the reason for dealing with the matter on a confidential basis no longer applies, or where it considers that the public interest in disclosure outweighs that reason.

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

18. A copy of this Instrument shall be given free of charge to every member and at a charge not exceeding the cost of copying to any other person who so requests a copy, and shall be available for inspection at the institution upon request, during business hours, to every member of staff and every student.

### **Change of name of the Corporation**

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

### **Indemnity**

20. The members shall be entitled to be indemnified out of the assets of the Corporation against any liability properly incurred by that member for acting as member subject to any limitations imposed by law from time to time.

### **Notices**

21. Any notice given by post shall be deemed to be delivered on the business day following its posting. Notices served by hand or in electronic form or by electronic means shall be deemed to be delivered on the business day of delivery or if not a business day then the next business day.

### **Execution of documents and application of the seal**

22.—(1) The Corporation shall execute documents either by signature or by affixing its seal.

(2) A document is validly executed by signature if it is signed by—

- (a) a member, the Chief Financial Officer or the Clerk; and
- (b) another member.

(3) 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.

## SCHEDULE 2

Regulation 2

## ARTICLES OF GOVERNMENT

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- Signature  
Explanatory Note

### **Interpretation of the terms used**

1. In these Articles of Government—
  - (a) words defined in the Instrument shall have the same meaning in these Articles;
  - (b) the rules of interpretation set out in the Instrument shall also apply to these Articles;
  - (c) these “Articles” means these Articles of Government;
  - (d) “Instrument” means the Instrument of Government of the Corporation; and
  - (e) “senior post” means the posts of Chief Executive, Chief Financial Officer and Clerk;

### **Conduct of the institution**

2.—(1) The object of the Corporation shall be the promotion of education and training for the creative and cultural industries.

(2) The institution shall be conducted in accordance with the provisions of the Instrument, these Articles, and any rules or bye-laws made under these Articles.

(3) The Corporation has power as granted by and as subject to the Further and Higher Education Act 1992<sup>(5)</sup> to do anything which is calculated to further its object or is conducive or incidental to doing so. In particular, the Corporation’s powers include power to—

- (a) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed, in compliance with section 125 of the Charities Act 2011<sup>(6)</sup> in relation to a mortgage of land;
- (b) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (c) sell, lease or otherwise dispose of all or any part of the property belonging to the Corporation in compliance with sections 122-123 of the Charities Act 2011;
- (d) employ and remunerate such staff as are necessary for carrying out the work of the Corporation; and
- (e) deposit or invest funds, employ a professional fund manager, and arrange for the investments or other property of the Corporation to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000<sup>(7)</sup>.

### **Responsibilities of the Corporation, the Chief Executive, Chief Financial Officer and the Clerk**

- 3.—(1) The Corporation shall be responsible for the following functions—

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(5) 1992 c.13.  
(6) 2011 c.25.  
(7) 2000 c.29.

- (a) the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
  - (b) publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
  - (c) approving a quality strategy of the institution; and
  - (d) the effective and efficient use of resources, the solvency of the Corporation and the safeguarding of its assets;
  - (e) approving annual estimates of income and expenditure;
  - (f) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the senior post holders;
  - (g) setting a framework for the pay and conditions of service of all other staff; and
  - (h) the maintenance and periodic review of a risk register for the Corporation from time to time.
- (2) Subject to the responsibilities of the Corporation, the Chief Executive shall be the chief executive and Principal of the institution, and shall be responsible for the following functions—
- (a) making proposals to the Corporation about the educational character and mission of the institution and implementing the decisions of the Corporation;
  - (b) the determination of the institution’s academic and other activities including all curriculum matters;
  - (c) the organisation, direction and management of the institution and leadership of the staff;
  - (d) the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts;
  - (e) representing the interests of the institution externally; and
  - (f) maintaining student discipline and, within the rules and procedures provided for within these Articles, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.
- (3) The Chief Financial Officer shall be responsible for preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation.
- (4) The Clerk shall be responsible for advising the Corporation with regard to the operation of its powers, procedural matters, the conduct of its business and matters of governance practice.

#### **The establishment of committees and delegation of functions generally**

- 4.—(1) Subject to article 8, the Corporation may establish committees for any purpose or function, other than those assigned in these Articles to the senior post holders, and may delegate powers to—
- (a) such committees; or
  - (b) the Chair, or in the Chair’s absence, the Vice-Chair; or
  - (c) the Chief Executive; or
  - (d) the Chief Financial Officer.
- (2) Without prejudice to paragraph 4(1)(b), the Chair (and in the Chair’s absence the Vice-Chair) shall, on terms specified in rules and bye-laws from time to time, be empowered to act for the

Corporation between meetings of the Corporation where action is required to be taken between such meetings.

(3) The number of members of a committee and the terms on which they are to hold and to vacate office, shall be decided by the Corporation.

(4) The Corporation may also establish committees under collaboration arrangements made with other further education institutions or maintained schools (or with both), and such joint committees shall be subject to any regulations made under section 166 of the Education and Inspections Act 2006<sup>(8)</sup> governing such arrangements.

(5) Subject to paragraph 8(2) any committee established by the Corporation may include persons who are not members.

### **The search committee**

5.—(1) The Corporation shall establish a committee, to be known as the “search committee”, to advise on—

- (a) the appointment of members (other than as a staff or student member); and
- (b) such other matters relating to membership and appointments as the Corporation may ask it to.

(2) The Corporation shall not appoint any person as a member (other than as a staff or student member) without first consulting and considering the advice of the search committee.

(3) The Corporation may make rules specifying the way in which the search committee is to be conducted.

### **The audit committee**

6.—(1) The Corporation shall establish a committee, to be known as the “audit committee”, to advise on matters relating to the Corporation’s audit arrangements and systems of internal control.

(2) The audit committee shall consist of at least three persons, and may include staff with the exception of the senior post holders. Otherwise the Corporation may make rules specifying the way in which the audit committee is to be conducted.

### **Access to committees by non-members and publication of minutes**

7. The Corporation shall publish (in electronic form) and shall make available for inspection at the institution by any person, during business days:

- (a) its policy regarding attendance at committee meetings by persons who are not committee members; and
- (b) the approved minutes of committee meetings.

### **Delegable and non-delegable functions**

8.—(1) The Corporation shall not delegate the following functions—

- (a) the determination of the educational character and mission of the institution;
- (b) the approval of the annual estimates of income and expenditure;
- (c) the responsibility for ensuring the solvency of the Corporation and for safeguarding its assets;

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(8) 2006 c.40; section 166 was amended by section 9(4) of the Education (Wales) Measure 2011 (c.07) and paragraph 104 of Schedule 1 to the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order (S.I. 2010/1080).

- (d) the appointment of the senior post holders (including, where the Clerk is, or is to be, appointed as a member of staff, the Clerk's appointment in the capacity of a member of staff); and
  - (e) the modification or revocation of the Instrument or these Articles.
- (2) The Corporation may not delegate—
- (a) the consideration of the case for dismissal; or
  - (b) the power to determine an appeal in connection with the dismissal,
- of senior post holders, other than to a committee of members of the Corporation.
- (3) The Corporation shall from time to time make such reasonable and proper rules and bye laws specifying the way in which a committee having functions under paragraph 8(2) shall be established and conducted.
- (4) The Chief Executive may delegate functions to the other senior post holders other than any functions that have been delegated to the Chief Executive by the Corporation.

#### **Appointment and promotion of staff**

- 9.—(1) Where there is a vacancy or expected vacancy in a senior post, the Corporation shall—
- (a) seek to appoint an appropriate person using such methodology as it sees fit; and
  - (b) appoint a selection panel consisting of such persons as it might approve from time to time.
- (2) The members of the selection panel shall—
- (a) decide on the arrangements for selecting the applicants for interview;
  - (b) interview the applicants; and
  - (c) where they consider it appropriate to do so, recommend to the Corporation for appointment one of the applicants they have interviewed.
- (3) If the Corporation approves the recommendation of the selection panel, that person shall be appointed.
- (4) If the members of the selection panel are unable to agree on a person to recommend to the Corporation, or if the Corporation does not approve their recommendation, the Corporation may make an appointment itself of a person from amongst those interviewed, or it may require the panel to repeat the steps specified in paragraph 9(2), with or without first re-advertising the vacancy.
- (5) Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff—
- (a) may be required to act as a senior post holder; and
  - (b) if so required, shall have all the duties and responsibilities of that senior post during the period of the vacancy or temporary absence.
- (6) The Chief Executive shall have responsibility for selecting for appointment all members of staff being members of the senior leadership team of the institution (as designated by the Corporation from time to time, and not being senior post holders). All other staff of the institution shall be appointed in such manner as the Corporation shall approve from time to time.

#### **Rules relating to staff**

- 10.—(1) After consultation with staff, the Corporation shall make rules relating to their conduct.
- (2) In making rules under paragraph 10(1), the Corporation shall have regard to the need to ensure that academic staff at the institution have freedom within the law to question and test received

wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the institution.

(3) After consultation with staff, the Corporation shall make rules setting out—

- (a) grievance procedures for all staff;
- (b) procedures for the suspension of all staff; and
- (c) disciplinary and dismissal procedures for all staff.

(4) Any rules made under paragraph 10(3)(b) shall include provision that were a person has been suspended without pay, any appeal against such suspension shall be heard and action taken in a timely manner.

(5) Any rules made under paragraph 10(3)(c) shall include a provision that where the Corporation considers that it may be appropriate to dismiss a person, a preliminary investigation shall be conducted to examine and determine the case for dismissal.

### **Suspension and dismissal of the Clerk**

11. Where the Clerk is suspended or dismissed as a member of staff under article 10, that suspension or dismissal shall not affect the position of the Clerk in the separate role of Clerk to the Corporation.

### **Students**

12.—(1) The students shall be entitled to form a students' association in accordance with a constitution approved by the students.

(2) After consultation with representatives of any students' association formed under paragraph 12(1), the Corporation shall make rules concerning the conduct of students, including procedures for their suspension and expulsion (including expulsion for an unsatisfactory standard of work or other academic reason).

### **Financial matters**

13.—(1) The Corporation shall set the policy by which the tuition and other fees payable to it are determined, subject to any terms and conditions attached to grants, loans or other payments paid or made by the Secretary of State.

(2) The Corporation shall co-operate with any person who has been authorised by the Secretary of State to audit any returns of numbers of students or claims for financial assistance and shall give any such person access to any documents or records held by the Corporation, including computer records.

### **Internal audit**

14.—(1) The Corporation shall, at such times as it considers appropriate, examine and evaluate its systems of internal financial and other control to ensure that they contribute to the proper, economic, efficient and effective use of the Corporation's resources.

(2) The Corporation may arrange for the examination and evaluation mentioned in paragraph 14(1) to be carried out on its behalf by internal auditors.

(3) The Corporation shall not appoint persons as internal auditors to carry out the activities referred to in paragraph 14(1) if those persons are already appointed as external auditors under paragraph 15(3).

### **Accounts and audit of accounts**

15.—(1) The Corporation shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts for each financial year of the Corporation.

(2) The statement shall give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of its income and expenditure in the financial year.

(3) The accounts and the statement of accounts shall be audited by external auditors appointed by the Corporation in respect of each financial year.

(4) The Corporation shall not appoint persons as external auditors in respect of any financial year if those persons are already appointed as internal auditors under paragraph 14(2).

(5) The "financial year" means the first financial year and, except as provided for in paragraph 15(7), each successive period of twelve months.

(6) The "first financial year" means the period from the date the Corporation was established up to the first 31st July following that date.

(7) If the Corporation is dissolved—

- (a) The last financial year shall end on the date of dissolution; and
- (b) the Corporation may decide that what would otherwise be the last two financial years, shall be a single financial year for the purpose of this article.

### **Rules and bye-laws**

16. The Corporation shall have power to make rules and bye laws relating to the governance, conduct and management of the Corporation but such rules or bye laws must not be inconsistent with any provision of the Instrument and these Articles.

### **Copies of Articles of Government and rules and bye-laws**

17. A copy of these Articles and all rules and bye laws shall be given free of charge to every member and at a charge not exceeding the cost of copying to any other person who requests a copy and shall be available for inspection at the institution upon request, during business hours, to every member of staff and every student.

### **Modification or replacement of the Instrument and Articles of Government**

18.—(1) Subject to paragraph 18(2), the Corporation may by resolution passed by a 75% majority of the votes cast at a meeting of the members, modify or replace its Instrument or Articles, after consultation with any other persons who, in the Corporation's view, are likely to be affected by the proposed changes.

(2) The Corporation shall not make changes to the Instrument or Articles that would result in the Corporation ceasing to be a charity.

### **Dissolution of the Corporation**

19.—(1) The Corporation may be dissolved by a resolution of the members passed by a 75% majority of the votes cast at a meeting of the members.

(2) Subject to the payment of all of the Corporation's debts, any resolution for the dissolution of the Corporation may contain a provision directing how any remaining assets of the Corporation shall be applied, provided that, the remaining assets must be applied for charitable purposes similar to the objects of the Corporation.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe, for the newly established further education corporation called the National College for the Creative and Cultural Industries, the first provisions of the instrument of government providing for the constitution of the corporation, and those of the articles of government in accordance with which the corporation, and the institution it will run, are to be conducted.

An impact assessment has not been produced for this instrument as it has no wider impact on the costs of business, charities or voluntary bodies. The impact on the public sector is minimal. The Explanatory Memorandum is published alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).