

*At the Council Chamber,
Whitehall*

THE 21st DAY OF SEPTEMBER 2015

PRESENT

BY THE LORDS OF HER MAJESTY'S MOST
HONOURABLE PRIVY COUNCIL

In accordance with section 124A(3) and (4) of the Education Reform Act 1988^(a) (hereinafter referred to as "the Act") the Privy Council by Order dated 26th April 1993 made an instrument of government for the De Montfort University, being a higher education corporation with respect to which Schedule 7 to the Act has effect.

Section 124A(3)(b) of the Act provides that the Privy Council may by Order modify such an instrument of government of any such higher education corporation.

Accordingly, Their Lordships, in exercise of the powers conferred on Them by the said section 124A(3)(b) of the Act are pleased to modify the instrument of government in accordance with the provisions set out in the Schedule to this Order

SCHEDULE

INSTRUMENT OF GOVERNMENT OF THE DE MONTFORT UNIVERSITY

1. **INTERPRETATION**

In this Instrument, the following words and expressions shall have the meanings indicated in this paragraph:

- 1.1 "the Academic Board" means the Academic Board of the University constituted in accordance with the Articles;
- 1.2 "the Articles" means the Articles of Government in accordance with which the University is conducted;
- 1.3 "the Board of Governors" means the members of the Corporation;

^(a)1988 c40, section 124A was inserted by section 71 of the Higher Education Act 1992(c13)

- 1.4 “the Chair” means the Chairman of the Board of Governors, appointed in accordance with paragraph 5.1;
- 1.5 “the Clerk” means the person appointed to the office of the Clerk to the Board of Governors under the Articles;
- 1.6 “the Co-opted Member” means the member of the Corporation appointed under paragraph 3.2.4;
- 1.7 “the Corporation” means the De Montfort University higher education corporation;
- 1.8 “the Independent Members” means the members of the Corporation appointed under paragraph 3.2.5;
- 1.9 “the Instrument” means the Instrument of Government of the Corporation;
- 1.10 “the Secretary of State” means the Secretary of State for Business, Innovation and Skills;
- 1.11 “the Staff Members” means the members of the Corporation appointed under paragraph 3.2.2;
- 1.12 “the Student Member” means the member of the Corporation appointed under paragraph 3.2.3;
- 1.13 “the Students’ Union” means the union of students of the University;
- 1.14 “the University” means the De Montfort University conducted by the Corporation; and
- 1.15 “the Principal” means the chief executive and Vice-Chancellor of the University or any person required by the Board of Governors to act in this capacity.

2. NAME OF THE CORPORATION

- 2.1 The Board of Governors may, by resolution, change the name of the Corporation with the consent of the Privy Council.

3. MEMBERSHIP OF THE BOARD OF GOVERNORS

- 3.1 The Board of Governors shall determine its membership numbers and, in accordance with paragraph 3.2, the number of Independent Members, Co-opted Members, Staff Members and Student Members from time to time. The Board of Governors shall always consist of not less than twelve and not more than twenty four members, of whom a majority shall be Independent Members.

- 3.2 The Board of Governors shall consist of:

- 3.2.1 the Principal of the University, unless he or she chooses not to be a member;
 - 3.2.2 at least one member of academic staff of the University, nominated by the Academic Board;
 - 3.2.3 at least one representative of the Students' Union, nominated by the Students' Union;
 - 3.2.4 up to nine Co-opted members who have experience in the provision of education, and who have been nominated by the members of the Corporation who are not co-opted members of the Board of Governors; and
 - 3.2.5 at least eight persons who have experience of and have shown capacity in industrial, commercial or employment matters or the practice of a profession.
- 3.3 An Independent Member must not be a person who is:
- 3.3.1 employed at the University; or
 - 3.3.2 a full-time student at the University (which includes a full-time student who has been granted leave of absence for the purposes of study or travel or for carrying out the duties of any office held in the Students' Union); or
 - 3.3.3 an elected member of any local authority (which shall include a non-metropolitan district council for an area for which there is a county council).
- 3.4 If a vacancy arises for any reason in the number of Independent Members, then the Board of Governors shall within three months of the vacancy arising appoint a person to fill that vacancy, provided that the current Independent Members have approved the appointment. If the Board of Governors fails to fill such a vacancy within three months of it arising, then the Independent Members shall appoint a person to fill the vacancy.
- 3.5 A person may only be appointed to replace an existing Independent Member less than six months before the expiry of the existing Independent Member's term of office.
- 3.6 If the number of Independent Members of the Board of Governors falls below the number needed in accordance with the Articles of Government ("the Articles") made pursuant to this Instrument, then the Secretary of State shall appoint as many Independent Members as are required.
- 3.7 Copies of the Instrument of Government shall be provided to each member of the Board of Governors.

4. **TENURE OF OFFICE OF MEMBERS OF THE BOARD OF GOVERNORS**

4.1 The Board of Governors shall determine the period of office of members in each of the categories set out in paragraphs 3.2.2 to 3.2.5. Such members shall, subject to remaining a member of the class of person eligible to hold that position, hold office in accordance with the terms of their appointment and shall be eligible for reappointment.

4.2 A member of the Board of Governors may at any time by notice in writing to the Clerk resign his or her office.

4.3 If at any time the Board of Governors are satisfied that any member of the Board of Governors:-

4.3.1 has been absent from meetings of the Board of Governors for a period of six months without the permission of the Board of Governors; or

4.3.2 is unable or unfit to discharge the functions of a member; or

4.3.3 has acted in a way which could bring the University into disrepute or which is not in the best interests of the University,

the Board of Governors may by notice in writing to that member remove him or her from office.

5. **OFFICERS, COMMITTEES, ALLOWANCES AND THE SEAL**

5.1 The Board of Governors shall appoint from among their members a Chair and any other officers which the Board of Governors may determine.

5.2 The Board of Governors may establish committees and permit such committees to include persons who are not members of the Board of Governors.

5.3 The University may only confer benefits on members of the Board of Governors if the benefit has been authorised by the Board of Governors in accordance with the Board of Governors Bye Law "Benefits for Members of the Board of Governors". In this paragraph "benefit" includes :

5.3.1 buying any goods or services from the University;

5.3.2 selling goods, services, or any interest in land to the University;

5.3.3 being employed by, or receiving any remuneration from the University; or

5.3.4 receiving any other financial benefit from the University.

5.4 The application of the seal of the Corporation shall be authenticated by the signature of the Chair or some other member authorised generally or specifically by the Board

of Governors to act for that purpose together with that of any other member of the Board of Governors.

BYE LAW OF THE BOARD OF GOVERNORS

BENEFITS FOR MEMBERS OF THE BOARD OF GOVERNORS

1. For the purposes of paragraph 5.3 of the Instrument of Government the following are permitted:
 - 1.1 the benefit described by clause 2;
 - 1.2 the benefit described by clause 3 provided that the Board of Governors follows the procedure and observes the conditions set out in clause 4 of this bye law; or
 - 1.3 any benefit authorised in writing by Board of Governorsand in this bye law, benefit has the same meaning as paragraph 5.3 of the Instrument of Government.
2. A member of the Board of Governors may enter into a contract for the supply of goods or services to the University where that is permitted in accordance with, and subject to the conditions in section 73A, of the Charities Act 1993.
3.
 - 3.1 A member of the Board of Governors may receive a benefit from the University in the capacity of a beneficiary of the University.
 - 3.2 Subject to paragraph 3.3.1 of the Instrument of Government, a member of the Board of Governors may be employed by the University other than for acting as a member of the Board of Governors.
 - 3.3 A member of the Board of Governors may receive benefits for acting as a member of the Board of Governors provided the members of the Board of Governors have in addition to meeting the requirements of clause 4:
 - 3.3.1 read considered and taken into account the published guidance of the Charity Commission (and of any other body which regulates the University) relating to the remuneration of charity trustees for acting as such;
 - 3.3.2 resolved that the remuneration is clearly in the interests of the University that the member of the Board of Governors in question be awarded the remuneration in question; and
 - 3.3.3 resolved after taking reasonable steps to identify and consider all other reasonably available options for recruiting or retaining a suitable candidate for the role of member of the Board of Governors, that offering the

remuneration in question provides a significant and clear advantage over all the other options available.

- 3.4 A company of which a member of the Board of Governors is a member may receive fees remuneration or other benefit in money or money's worth provided that the shares of the company are listed on a recognised stock exchange and the member of the Board of Governors holds no more than 1% of the issued capital of that company.
4. The University and its members of the Board of Governors may only rely upon the authority provided by clause 3 if each of the following conditions is satisfied:
 - 4.1 The remuneration or other sums paid to the member of the Board of Governors do not exceed an amount that is reasonable in all the circumstances.
 - 4.2 The conflicted members of the Board of Governors are absent from the part of any meeting at which there is discussion of:
 - 4.2.1 his or her employment or remuneration, or any matter concerning the contract or arrangement; or
 - 4.2.2 his or her performance in the employment or office, or his or her performance of the contract; or
 - 4.2.3 any proposal to enter into any other contract or arrangement with him or her or to confer any benefit upon him or her that would be permitted under clause 3;
 - 4.2.4 if applicable, the matters described in clause 3.3; or.
 - 4.2.5 any other matter relating to a payment or the conferring of any benefit permitted by clause 3.
 - 4.3 The conflicted members of the Board of Governors do not vote on any such matter and are not to be counted when calculating whether a quorum of members of the Board of Governors is present at the meeting.
 - 4.4 The non-conflicted members of the Board of Governors are satisfied that it is in the interests of the University to employ or to contract with that member of the Board of Governors rather than with someone who is not a member of the Board of Governors. In reaching that decision the non-conflicted members of the Board of Governors must balance the advantage of employing a member of the Board of Governors against that disadvantages of doing so (especially the loss of the member of the Board of Governors' services as a result of dealing with the member of the Board of Governors' conflict of interest).

- 4.5 The reason for their decision is recorded by the non-conflicted members of the Board of Governors.
- 4.6 A majority of the members of the Board of Governors then in office are non-conflicted.
- 4.7 If a member of the Board of Governors receives remuneration it shall be disclosed in the accounts at least to the extent of any other related party transaction.
5. In clauses 1-4 of this bye law:
- 5.1.1 The employment or remuneration of a member of the Board of Governors includes the engagement or remuneration of any firm or company in which the member of the Board of Governors is:
- 5.1.1.1 a partner;
- 5.1.1.2 an employee;
- 5.1.1.3 a consultant;
- 5.1.1.4 a director; or
- 5.1.1.5 a shareholder, unless the shares of the company are listed on a recognised stock exchange and the member of the Board of Governors holds less than 1% of the issued capital.
- 5.1.2 "University" shall include any company in which the University:
- 5.1.2.1 holds more than 50% of the shares; or
- 5.1.2.2 controls more than 50% of the voting rights attached to the shares; or
- 5.1.2.3 has the right to appoint one or more directors to the Board of the company
- 5.1.3 "member of the Board of Governors" shall include any child, parent, grandchild, grandparent, brother, sister or spouse of the member of the Board of Governors or any person living with the member of the Board of Governors as his or her partner.
- 5.1.4 a "conflicted member of the Board of Governors" is a member of the Board of Governors who has received, is entitled to receive or is currently receiving remuneration under this bye law. A conflicted member of the Board of Governors also includes a member of the Board of Governors who has received financial benefits described in clause 1 but before this bye law came into force.

5.1.5 a “non-conflicted member of the Board of Governors” is a member of the Board of Governors who is not a conflicted member of the Board of Governors.

6. This Bye Law may not be amended without the express prior consent of the Privy Council.