

**2011 No. 54**

**EDUCATION**

**The Edinburgh College of Art (Transfer) (Scotland) Order 2011**

*Made* - - - - *1st February 2011*

*Laid before the Scottish Parliament* *2nd February 2011*

*Coming into force in accordance with article 1*

The Scottish Ministers, after consulting the Scottish Further and Higher Education Funding Council(a) and the Governors of Edinburgh College of Art(b), and with the consent of the University Court of the University of Edinburgh(c), make the following Order in exercise of the powers conferred by sections 47(1), (1A), (2), (4) and (6) and 60 of the Further and Higher Education (Scotland) Act 1992(d) and of all other powers enabling them to do so:

**Citation and commencement**

- 1.—(1) This Order may be cited as the Edinburgh College of Art (Transfer) (Scotland) Order 2011.
- (2) This Order with the exception of article 10 comes into force on 1st August 2011.
- (3) Article 10 comes into force on 2nd August 2011.

**Interpretation**

2. In this Order—

- “the 1959 Order” means the Edinburgh College of Art Order 1959(e);
- “the 1992 Act” means the Further and Higher Education (Scotland) Act 1992;
- “the Council” means the City of Edinburgh Council, a local authority constituted and established under the Local Government etc. (Scotland) Act 1994(f);

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(a) The Scottish Further and Higher Education Funding Council was established by the Further and Higher Education (Scotland) Act 2005.

(b) In accordance with section 47(5) of the 1992 Act.

(c) In accordance with section 47(8) of the 1992 Act.

(d) 1992 c.37; section 47 was amended by the Further and Higher Education (Scotland) Act 2005. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 c.46.

(e) Confirmed by and set out in the Schedule to the Edinburgh College of Art Confirmation Act 1959 (c.xxxiv): the relevant amending instruments are S.I. 1965/1251, S.I. 1988/1715, S.I. 1990/2202 and S.I. 1995/471.

(f) 1994 c.39.

“enactment” has the meaning given in Schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010(a);

“the original College” means the institution named Edinburgh College of Art and designated under section 44 of the 1992 Act(b), and “the transferor” means the Governors of the Edinburgh College of Art constituted as a body corporate by section 4 of the 1959 Order;

“the reconstituted College” means the body established under article 3(1)(a); and

“the University” means the University of Edinburgh, a charitable body registered in Scotland under registration number SC005336 and “the transferee” means the University Court of the University of Edinburgh.

### **Re-constitution of Edinburgh College of Art as part of the University of Edinburgh**

3.—(1) The transferee must establish and maintain—

- (a) a part of the University to be known as Edinburgh College of Art to provide instruction and education in, and carry out research into, design, art, architecture and landscape architecture, and such other subjects as the transferee may determine from time to time;
- (b) the office of Principal of Edinburgh College of Art.

(2) The reconstituted College is to be situated at the Lauriston Place campus occupied by the original College as at 31st July 2011, or such other buildings as the transferee may determine from time to time.

### **Transfer of property, rights, liabilities and obligations**

4.—(1) All property, rights, liabilities and obligations of the transferor are transferred to and vested in the transferee.

(2) Any references to the original College or the transferor in any instrument (other than the codicil dated 12th September 1911 to the trust disposition and settlement dated the 24th October 1894 of the late Andrew Grant) are to be construed as a reference to the University or the transferee respectively.

(3) Any action or proceeding by or against the transferor pending or current immediately before this Order comes into force may be continued by or against the transferee.

(4) For the purposes of this article “instrument” does not include enactment.

### **Property provided with grant aid**

5. Where the Grant-aided Colleges (Scotland) Grant Regulations 1989(c) applied to the transferor in respect of any land or buildings immediately before they were transferred by this Order, those Regulations apply to the transferee in respect of such land or buildings.

### **Rights of pre-emption of the Council**

6.—(1) This article applies in the event that the transferee determines that the property specified in schedule 1, or any part of that property, is not to be retained by it for the purposes of the reconstituted College.

(2) To the extent that the property, or the part of the property, is owned by the transferee, the transferee must offer to sell the same to the Council.

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(a) 2010 asp 10.

(b) The Designation of Institutions of Higher Education (Scotland) Order 1992 (S.I. 1992/1025), as amended by S.I. 1993/424, S.I. 1998/192, S.S.I. 2006/279 and S.S.I. 2006/398.

(c) S.I. 1989/433, amended by S.I. 1993/489.

(3) To the extent that the property, or the part of the property, is property of which the transferee is lessee, the transferee must offer to assign its interest as lessee of the property, or the part of the property, to the Council.

(4) If the Council wishes to accept an offer made by the transferee in accordance with either paragraph (2) or paragraph (3) it must inform the transferee in writing within three months of the offer, failing which the Council shall be deemed to have decided not to exercise the right conferred on it by paragraph (5).

(5) If the Council confirms in accordance with paragraph (4) that it wishes to accept an offer made by the transferee in accordance with paragraph (2) or paragraph (3) the transferee must either sell the property specified in the offer to the Council or assign its interest as lessee of the property specified in the offer to the Council, in each case on terms—

- (a) agreed between them, which failing;
- (b) fixed by the Chief Valuer Scotland, which failing;
- (c) fixed by a valuer appointed on the application of either party by the Scottish Ministers.

(6) In the event that the transferee fails to comply with this article any conveyance or other deed granted by it by which its interest in the property, or any part of the property, is disposed or otherwise alienated shall in the option of the Council be of no effect.

(7) Nothing in this article prejudices any claim competent to a purchaser, lessee or assignee against the transferee.

#### **Edinburgh College of Art Prize Fund**

7.—(1) The Edinburgh College of Art Prize Fund<sup>(a)</sup> (in this article referred to as “the fund”) is to be held and administered by the transferee in accordance with the provisions of this article.

(2) The transferee is to apply the free income of the fund in each financial year in providing prizes in the form of gold medals or in such other form as the transferee may from time to time determine for students of the University of outstanding merit on programmes of study in the reconstituted College including, in particular, architecture and the work of goldsmiths or silversmiths and as far as possible the various prizes shall be associated with the following names—

- (a) James Clason-Harvie;
- (b) Alexander Dowell;
- (c) Nancy Rosemary Henderson;
- (d) Sir Robert Kirk Inches.

(3) Income unused at the end of a financial year may be carried forward to the next financial year or added to the capital of the fund or both.

#### **Andrew Grant Bequest**

8.—(1) The endowment created by a codicil dated 12th September 1911 to the trust disposition and settlement dated 24th October 1894 of the late Andrew Grant and known as the Andrew Grant Bequest (in this article referred to as “the bequest”) is to be held and administered by the transferee in accordance with the provisions of this article.

(2) The transferee—

- (a) must apply not less than four-fifths of the free income of the bequest in each financial year to provide scholarships or bursaries to deserving students of the University on programmes of study within the reconstituted College either during such programme of study or in the way of travelling scholarships or otherwise after such programme of study is finished under such regulations as the transferee shall from time to time appoint; and

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(a) Created by section 28 of the 1959 Order.

- (b) may apply the remainder—
  - (i) in meeting the expenses of organised educational excursions for the benefit of students of the University on programmes of study within the reconstituted College or the expenses of holding exhibitions of works of art at the University;
  - (ii) in providing equipment and facilities for special study at the reconstituted College;
  - (iii) in assisting the provision and development of sports activities at or in connection with the reconstituted College; and
  - (iv) in assisting in the formation, maintenance and encouragement of clubs, societies and other organisations conducted for the benefit of students of the University on programmes of study within the reconstituted College.

(3) Income unused at the end of a financial year may be carried forward to the next financial year or added to the capital of the bequest or both.

### **Transfer of staff**

**9.**—(1) All employees of the transferor are transferred to the transferee and their contracts of employment shall have effect as if originally made between that person and the transferee.

(2) In particular—

- (a) all the rights, powers, duties and liabilities of the transferor under or in connection with a contract to which paragraph (1) applies are transferred to the transferee; and
- (b) anything done before the transfer by or in relation to the transferor in respect of that contract or the employee shall be deemed to have been done by or in relation to the transferee.

(3) Paragraphs (1) and (2) are without prejudice to any right of an employee to terminate their contract of employment if the terms and conditions of employment are changed substantially to the detriment of that employee, but such change shall not be taken to have occurred by reason only of the fact that their employer is changed by virtue of this article.

(4) Paragraphs (1) and (2) apply to a person who has entered into a contract of employment with the transferor which is to come into effect after the coming into force of this article; and who would, if the contract had come into effect before that date, have been an employee to whom those paragraphs would have applied.

### **Closure and winding up**

**10.** The original College is closed and the transferor is wound up and dissolved.

### **Amendment of the Teachers' (Superannuation) (Scotland) Regulations 2005**

**11.** In Schedule 2 to the Teachers' (Superannuation) (Scotland) Regulations 2005(a) insert at the end—

“**16.** Employment as a teacher in Edinburgh College of Art, a part of the University of Edinburgh, where the teacher immediately before 1st August 2011 was in pensionable employment at Edinburgh College of Art, was transferred to employment at the University of Edinburgh on 1st August 2011 and has not ceased to be employed in that part of the University of Edinburgh at any time since that date.”.

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(a) S.S.I. 2005/393 to which no relevant amendments have been made.

**Revocations**

**12.** The Orders specified in column 1 of Schedule 2 are revoked to the extent specified in column 2 of that Schedule.

St Andrew's House,  
Edinburgh  
1st February 2011

*MICHAEL RUSSELL*  
A member of the Scottish Executive

## SCHEDULE 1

Article 6

### PART 1

The subjects shown delineated with a black broken line and hatched in black on the plan set out in Part 2 of this Schedule, which plan is taxative, are specified for the purposes of article 6.



SCHEDULE 2  
REVOCATIONS

Article 12

<b>Instrument</b>	<b>Extent of Revocation</b>
The Edinburgh College of Art (Scotland) Order of Council 1995 <b>(a)</b>	The whole Order
The Edinburgh College of Art (Scotland) Order of Council 1995 (Amendment) Order of Council 2005 <b>(b)</b>	The whole Order
The Designation of Institutions of Higher Education (Scotland) Order 1992 <b>(c)</b>	In article 2(1) omit the entry for Edinburgh College of Art
The Edinburgh College of Art (Amendment) Order 1965 <b>(d)</b>	The whole Order
The Edinburgh College of Art Order 1959	The whole Order to the extent not already revoked

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**(a)** S.I. 1995/471 as amended by S.S.I. 2005/313.

**(b)** S.S.I. 2005/313.

**(c)** S.I. 1992/1025 as amended by S.I. 1993/424, S.I. 1998/192, S.S.I. 2006/279 and S.S.I. 2006/398.

**(d)** S.I. 1965/1251.



## EXPLANATORY NOTE

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

On 1st August 2011 Edinburgh College of Art (referred to in the Order as “the original College”) will become part of the University of Edinburgh and on 2nd August 2011 will cease to be a separate institution. This Order gives effect to that arrangement.

The Order provides for the establishment of an academic entity within the University known as Edinburgh College of Art (referred to in the Order as “the reconstituted College”) (Article 3). It transfers the whole property, rights, liabilities and obligations of the governing body of the original College to the governing body of the University of Edinburgh (Article 4). It makes consequential provisions regarding property provided with the aid of a grant (Article 5), property over which the City of Edinburgh Council has a right of pre-emption (Article 6) and the original College’s endowments (Articles 7 and 8). It provides for staff of the original College to transfer to employment by the governing body of the University without a break in their employment (Article 9). It provides for the original College to be closed and its governing body wound up and dissolved (Article 10). It makes consequential amendments to regulations governing superannuation to enable the present arrangements to continue to be available for transferred staff (Article 11). It makes consequential revocations of legislation relating to the original College (Article 12).

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