

The Glasgow School of Art

Procedure for Removal of Members of the Board of Governors

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The Glasgow School of Art (GSA/ the School)

Procedure for Removal of Members of the Board of Governors

Section 13 of the Higher Education Governance (Scotland) Act 2016 states that the rules of a higher education institution may contain provision about the procedure for the resignation or removal of the Chair of the governing body or the other members of the governing body (hereinafter referred to as “Governors” and each a “Governor”).

Paragraph 24 of the Scottish Code of Good HE Governance (the Code) provides that an institution’s governing body as a whole has the power to remove any Governor.

GSA’s Order of Council provides at Article 9 that GSA’s Board of Governors may make rules providing for the removal or resignation of Governors. GSA’s Articles of Association also make provision for removal and resignation at Articles 10.4 to 10.7 (inclusive).

In compliance with the Act, the Code, the Articles of Association and the Order of Council, the Board of Governors of GSA has agreed that the following process should be observed when seeking to remove any member of the Board of Governors (including the Chair). Any reference in these Rules to a Governor includes the Chair of the Board of Governors unless expressly stated otherwise.

1. Grounds for Removal

- 1.1 The Board of Governors shall have the power, after due investigation, to remove any Governor (including the Chair) on the following grounds that the Governor:
- (a) has failed to attend four or more consecutive meetings of the Board of Governors or any of their committees or sub-committees other than for a reason approved by the Board.
 - (b) is unfit or unable to exercise the functions of a Governor or the Chair or (as the case may be).
 - (c) has acted in a manner incompatible with their role as a Governor (whether or not in the capacity as a Governor).
 - (d) has committed a material breach of the conditions of their appointment as a member of the Board of Governors or Chair, including the requirements of the Code.
 - (e) is or may be, suffering from physical or mental incapacity and an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental health or incapacity for their detention or for the appointment of a receiver, curator bonis, guardian or other person to exercise powers with respect to their property or affairs or which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have (subject always to the Board of Governors having due regard to the Equality Act 2010 (or any statutory modification or re-enactment thereof for the time being in force)).

- (f) has committed a material breach of any of the policies and procedures of GSA applicable to the Board of Governors.
 - (g) is convicted of any criminal offence involving dishonesty.
 - (h) fails to declare the nature of their interest (as required by section 177 or section 182 Companies Act 2006) in any contract, transaction or arrangement with the School in which they have a direct or indirect interest.
 - (i) is considered by a majority of the Board of Governors to be subject to the circumstances contemplated by section 66(5) of the Charities Act.
- 1.2 The power to remove a Governor on any of the above grounds shall be exercisable by the Board of Governors in accordance with the provisions of GSA's Articles of Association independently of and without prejudice to the Companies Act 2006. Any such removal shall be undertaken in accordance with Article 10.5 of GSA's Articles of Association.

2. Procedure for Removal

- 2.1 Any proposal to invoke the procedure to remove a Governor on any one or more of the grounds set out in paragraph 1 above, shall be submitted in the first instance to the Secretary to the Board of Governors, who shall (in consultation with the Chair, or a Vice-Chair if the proposal involves removal of the Chair) make a recommendation to the Board whether to investigate the case for removal from office.
- 2.2 If the Board determines that it is appropriate to investigate the relevant circumstances, the Board may, at its discretion, delegate the investigation to an existing Committee of the Board, or to a Committee of the Board formed for that purpose. Either the Board or a Committee may commission an independent third party to undertake an investigation.
- 2.3 On completion of the investigation, a report outlining the findings of the investigation will be provided to the Board or to a Committee to which the investigation is delegated (as applicable). The Governor concerned shall be provided with a copy of the investigation report not less than seven days prior to the date on which the Board is to consider the complaint, and the member shall have the right to make representations to the Board in relation to the report.
- 2.4 Following consideration of the investigation report, any recommendation made by any Committee to which the investigation is delegated (as applicable) and any representations by the member concerned, the Board will decide whether to remove the Governor from office by a simple majority decision of the Board of Governors, excluding the Governor whom it is proposed be removed.
- 2.5 Where the Board of Governors has taken a decision to remove a Governor, Article 10.5.2.c of GSA's Articles of Association and the review process set out in paragraph 3 will apply.

3. Review of Decision

- 3.1 Any Governor whom the Board has decided to remove under paragraphs 1 and 2 may seek a review in order to have the decision of the Board to remove reconsidered or quashed. If the member wishes a review to be undertaken, they must give written intimation to the Board of Governors within fourteen days of the date of the decision by the Board of Governors to remove.
- 3.2 The review will be undertaken by an independent party appointed by the Board of Governors, being a person not employed or engaged by GSA (nor having been employed or engaged by GSA during the preceding five years), and holding (or having held) judicial office or being an advocate of at least ten years' standing.
- 3.3 If the review upholds the decision of the Board of Governors, the removal decision will stand in accordance with Article 10.5.2.c of GSA's Articles of Association, with effect from the date on which the original decision to remove was made.
- 3.4 If the review finds that the decision of the Board of Governors should be quashed or reconsidered, the review must specify the grounds on which it considers the Board of Governors should be invited to reconsider the decision, and the Board of Governors will review and reconsider the original decision on these grounds only. Where the Board of Governors re-affirms any decision to remove, there shall be no further right to seek review of this decision.

4. Deemed removal from office

- 4.1 In addition to the above procedure, Article 10.4 and 10.7 of GSA's Articles of Association also prescribe circumstances in which a Governor will be deemed to have been removed from office without any decision of the Board of Governors or without any further process taking place.
- 4.2 In the following circumstances, a Governor shall be deemed to have automatically vacated the office of Governor.
 - (a) Where a Governor is, by law, disqualified or otherwise no longer entitled to serve as a director (including pursuant to the Company Director Disqualification Act 1986) or as a charity trustee.
 - (b) Where a Governor is sequestered or a bankruptcy order is made against the Governor or such Governor has granted a trust deed for, or entered into an arrangement with their creditors.
 - (c) In the case of a Staff Governor or a Trade Union Governor (each as defined in the Articles of Association), when such person ceases to be a member of staff.
 - (d) In the case of a Student Governor (as defined in the Articles of Association), where such person ceases to be a Student of the School.

- (e) In the case of an Independent Governor (as defined in the Articles of Association), where such person becomes a member of staff or a Student of the School.
- (f) Where, in accordance with Article 8 of the School's Order of Council, their term of office expires or, if earlier, they cease to be eligible to hold that office.
- (g) Where they cease to be a member of the School. For these purposes, the term "member" shall be defined in accordance with the Companies Act 2006 and Article 6 of the School's Articles of Association.

5. Resignation

- 5.1 A Governor may resign from office at any time by written notice to the Secretary of the School in accordance with Article 10.6 of the School's Articles of Association.