

## **LAW SOCIETY OF SCOTLAND**

The Council of the Law Society of Scotland are considering the following amendments to the Society's Constitution which would further e-enable member participation at General Meetings and clarify the status of the Vice President. Comments from the membership are invited to help inform a proposal to the AGM in May 2016.

The paper constitutes:

- A background note on the amendments.
- A tracked change draft of the relevant clauses.
- A clean, as amended, copy of the relevant clauses

### **Note on Amendments to Articles 12, 14 and 15 of the Constitution.**

#### **Article 12(4)**

This provision has been amended to provide for not less than twenty-one days' notice of General Meetings of the Society to be given. The minimum period has been increased from fourteen in order to permit sufficient time for amendments to resolutions proposed at general meetings to be notified to the Secretary, then circulated to members and then for a period of electronic voting to commence prior to the General Meeting in question. See the commentary on Articles 14(1) to 14(3) below.

#### **Article 14(1)**

This Article permits electronic voting prior to General Meetings and at General Meetings. The Article is flexibly drafted as to the commencement of the voting period and also such that electronic/remote voting may be permitted up to the date of the meeting and may in future, subject to the availability/use of suitable technology enabling remote registration/attendance/voting, be permitted at the meeting.

The Article also clarifies that where the voting period does include the General Meeting, any person who attends the meeting remotely may vote (with one exception set out in Article 14(10) relating to resolutions which amend the Constitution) on all matters on which the person could vote if present in person unless they have already cast a vote on the matter in question in terms of Article 14(1). In other words, the principle is that a vote, once cast, cannot be cancelled or changed.

References to precise time periods have been removed in the interests of flexibility.

#### **Article 14(2)**

This provides for a period following the giving of notice of a General Meeting, and to be specified in the notice, during which any member of the Society may by notice to the Secretary propose an amendment to any resolution set out in the notice of the General Meeting. The notice must contain the name of a seconder and a statement of the reasons for the amendment proposed. This Article does not permit the introduction of new resolutions, only amendments to those proposed in the notice convening the meeting. This represents a change from the current position, which per paragraph 3(a) of the Standing Orders of the Society, would appear to allow any motions to be submitted to a General Meeting provided that they "relate to the business specified in the notice calling the meeting".

References to precise time periods have been removed in the interests of flexibility.

### **Article 14(3)**

This Article obliges the Secretary, as soon as practicable, to notify each member of the Society of each amendment notified under Article 14(2), accompanied by the statement of the reasons for the amendment proposed.

References to precise time periods have been removed in the interests of flexibility.

### **Article 14(4)**

The intention behind Articles 14(2) and 14(3) is that they represent the opportunity for members to consider resolutions to be proposed at a General Meeting and to propose amendments to them. In consequence, no amendments outside the specified period may be notified. Article 14(4) further provides that it is not competent at a General Meeting to amend a resolution or an amendment to a resolution. There is, however, a saving for the purposes of correcting clerical errors or manifest errors in sense. With the introduction of electronic voting, members will have the opportunity and the time to consider both resolutions and amendments to resolutions in advance of the General Meeting and to vote on them. This will not work effectively if amendments to resolutions or indeed to amendments can continue to be proposed after the voting period has commenced or at the meeting itself.

### **Article 14(5)**

The introduction of electronic voting means that there is no longer, with one exception set out in Article 14(10) relating to resolutions which amend the Constitution, any need for provision to be made for polls or for proxy voting. Article 14(5) makes this clear.

### **Article 14(6)**

This clarifies that at a General Meeting, when a vote is taken, the votes which will be counted will be the votes of those present in person and all of the votes cast in terms of Article 14(1). Again, there is one exception set out in Article 14(10) relating to resolutions which amend the Constitution.

### **Article 14(8)**

This provision is needed to clarify that any member of the Society who is personally present at a meeting may not vote on a matter on a show of hands or otherwise at that meeting if they have already cast a vote on that matter in terms of Article 14(1). Again the principle is that a vote, once cast, cannot be cancelled or changed.

### **Article 14(9)**

This Article clarifies that if there is an equality of votes on any particular resolution, the Chairman does not have a second or casting vote. This brings the Society in line with the procedures now operated, for example, by most companies. If there is an equality of votes, the status quo will be upheld.

### **Article 14(10)**

This Article is required because of the wording of paragraph 5 of Schedule 1 to the Solicitors (Scotland) Act 1980. This paragraph addresses rescission of, addition to or amendment of the Constitution. It does not envisage electronic voting, but it does make reference to a resolution requiring to be passed by "members of the Society present in person or by proxy at a meeting of the Society." The wording of paragraph 5, which the Constitution itself cannot of course change, means that electronic voting in relation to a resolution to amend the Constitution will not be competent. In light of this, poll and proxy voting should remain competent in respect of resolutions which amend the Constitution.

### **Article 14(11)**

For the purposes of Article 14(10) this provides for the lodging of proxies with the Secretary. The drafting is per the current Constitution. However, one change has been made, which is that open proxies are not competent. There should be no need for these in light of the fact that advance notice will be given of all amendments to resolutions and that resolutions may not be amended at a General Meeting other than for the purposes of correcting clerical errors or manifest errors in sense.

### **Article 15**

There are a number of changes to Article 15, but almost all flow from one particular change. That change is that the post of Vice-President is elected annually whilst the previous/sitting Vice-President automatically becomes President following their Vice-Presidential term. This reflects longstanding practice. Therefore, references to the election of President have been removed and other amendments consequential on that have been made.

The second change, which is contained in Article 15(1), is that a requirement has been introduced that a candidate for Vice-President requires to have been a member of the Council of the Society for at least 3 consecutive years, ending on the date of the Vice-Presidential election.

Article 15 (7) has been deleted to permit a Vice President to stand again for a Vice President at any time. There is a consequential amendment to Article 15(8)(a).

### **Standing Orders**

The changes to Article 14 will require changes to the Society's Standing Orders.

#### *Meetings of Society*

##### **12.....**

(4) Twenty-one days' notice at least (exclusive of the day on which the notice is sent but inclusive of the day for which the notice is given), specifying the place, day, and hour of any General Meeting and the business to be considered shall be given to each member of the Society. Service of a notice of a General Meeting shall be deemed to have been effected at the expiration of 24 hours after the notice is sent. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by any member shall not invalidate the proceedings at the meeting.

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#### *Resolutions and Voting in respect of General Meetings*

**14.(1)** During a period ~~commencing not later than [fourteen] days~~ after the giving of notice of any

General Meeting in terms of Article 12(4), the commencement and end of which period shall be determined by the Council and specified in the notice, and which may continue up to and including that General Meeting, each member of the Society may vote (~~whether by electronic or online means or otherwise~~ by such means as shall be specified in the notice) on each resolution proposed in the notice, on each amendment (if any) proposed to that resolution, and on that resolution as so amended. Where the voting period includes the General Meeting, each member of the Society who attends that meeting otherwise than by being present in person and who has not already voted in terms of this Article 14(1) prior to that meeting may, save as provided in Article 14(10), vote on all matters on which he ~~or she~~ could vote if present in person at that meeting. The voting options shall be "for", "against" and "abstain".

(2) During ~~the~~ a period commencing on the giving of notice of a General Meeting in terms of Article 12(4) and ending ~~[seven] days after the giving of on a date specified in~~ such notice, any member of the Society may, by notice given to the Secretary, propose an amendment to any resolution proposed in the notice of that General Meeting. Such notice must contain the name of another member of the Society who has agreed to be a seconder and a statement of the reasons for the amendment proposed.

(3) The Secretary shall, as soon as practicable ~~and in any event not later than [fourteen] days after the giving of notice of the General Meeting in question~~, give notice to each member of the Society of each amendment notified to the Secretary in terms of Article 14(2) together with the statement of the reasons for the amendment proposed.

(4) It shall not be competent at any General Meeting to amend a resolution or an amendment to a resolution prior notice of which amendment has not been given in terms of Article 14(2), save for the purposes of correcting clerical errors or manifest errors in sense.

(5) ~~#Save as provided in Article 14(10), it~~ shall not be competent at any General Meeting to demand a poll, nor shall it be competent to vote by proxy.

(6) ~~At Save as provided in Article 14(10), at~~ any General Meeting a resolution put to the vote of the meeting shall be decided on the total of the votes on a show of hands by those members of the Society present in person and the votes cast in terms of Article 14(1).

(7) Every member of the Society, whether present in person at the relevant meeting or otherwise, shall have one vote.

(8) No member of the Society who has cast a vote in terms of Article 14(1) in advance of a General Meeting on a resolution or on any amendment to it or on that resolution as amended may vote on that resolution or on any amendment to it or on that resolution as amended on a show of hands or otherwise at that meeting.

(9) In the case of an equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote.

(10) Where a resolution is proposed for the amendment of this Constitution, it shall, in respect of that resolution:

(a) be competent at the relevant General Meeting to demand a poll, and be competent to vote by proxy; and

(b) not be competent to vote in advance of or at the relevant General Meeting in terms of Article 14(1).

(11) Any instrument appointing a proxy in respect of a resolution referred to in Article 14(10) shall be deposited with the Secretary at any time after the notice is given calling the relevant General Meeting, and not less than 48 hours before the time for holding the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid. It shall not be competent to deposit an open proxy. A proxy must be a member of the Society.

PRESIDENT, VICE-PRESIDENT, PAST PRESIDENT AND HONORARY VICE-PRESIDENT  
OF THE SOCIETY

*President, Vice-President, Past President and Honorary Vice-President*

15.(1) The Council shall at its first meeting after the 1st day of November in each year, receive nominations ~~from members of the Council~~ for the office of Vice-President and shall thereafter elect at its first meeting after the 1st day of December in each year one of its number who has been a member of the Council for at least three consecutive years ending on the date of that election to be Vice-President of the Society. If there are two or more nominations for the office of Vice-President the election shall be decided by ballot. If there are three or more nominations the election shall be conducted by the single transferable vote method.

(2) The term of office of the Vice-President shall run from the date of the first meeting of the Council held after the annual election of members of the Council next following the election of the Vice-President ("the first post-election meeting") until the next succeeding such meeting ("the second post-election meeting"). If at or prior to the second post-election meeting the Vice-President, or if at or prior to the first post-election meeting the Vice-President elect (which positions for the purposes of this Article 15(2) are referred to as "the offices"), ceases to be a member of the Council as the result of retiral in terms of Article 5(1) he ~~orshe~~ shall nevertheless be *ex officio* a member of the Council whilst the holder of either of the offices. If at or prior to the first post-election meeting the Vice-President elect ceases to be a member of the Council for any other reason, his ~~orher~~ election as Vice-President shall be void as at the date of such cessation, and the Council shall at its first meeting held not less than four weeks after the date of such cessation, proceed to a new election of Vice-President.

(3) Only solicitor members of the Council are eligible for election as Vice-President.

(4) The serving Vice-President of the Society shall become President of the Society on the expiry of his ~~orher~~ term of office as Vice-President as specified in Article 15(2). The term of office of the President shall run from that date until the next succeeding meeting of the Council held after the next annual election of members of the Council. The serving Vice-President shall become President elect at the first meeting of the Council after the 1st day of December.

(5) If at or prior to the date of expiry of the term of office of the President as specified in Article 15(4), the serving President or the President elect (which positions for the purposes of this Article 15(5) are referred to as "the offices") ceases to be a member of the Council as the result of retiral in terms of Article 5(1) he ~~or she~~ shall nevertheless be *ex officio* a member of the Council whilst the holder of either of the offices. If at or prior to that date of expiry the President elect ceases to be a member of the Council for any other reason, the provisions of Article 15(~~98~~) will apply as if a casual vacancy had occurred in the office of President immediately upon commencement of the term of office of the President.

(6) A President or Vice-President shall cease to hold office if he ~~orshe~~ ceases to be a member of the Society.

~~(7) A Vice-President shall not be eligible to be Vice-President again until at least two years have elapsed since he or she last held that office.~~ (87) A President or Vice-President may resign at any time from office by a signed notice in writing delivered to the Secretary, and the resignation shall take effect upon the delivery of the notice or on the date (if any) specified in the said notice, whichever is the later.

(98) (a) On a casual vacancy occurring in the office of President or Vice-President at a time when there is a President elect or Vice-President elect as the case may be, the President elect or Vice-President elect shall immediately assume office as President or Vice-President as the case may be. The resulting additional period of office, ~~which~~ will terminate at the first meeting of the Council held after the next annual election of members of the Council, ~~shall be disregarded in applying the provisions of Article 15(7).~~

(b) On a casual vacancy occurring in the office of President at a time when there is no President elect, the Vice-President shall assume the additional office of Interim President until the first meeting of the Council held after the 1<sup>st</sup> day of December and shall assume the office of President with effect from the conclusion of that meeting.

(c) On a casual vacancy occurring in the office of Vice-President at a time when there is

no Vice-President elect, the Council shall as soon as practicable appoint one of its solicitor members to fill the vacancy until (i) the first meeting of the Council held after the 1<sup>st</sup> day of December or (ii) where a new election of Vice-President is held in terms of Article 15(2), the meeting of the Council at which that new election takes place.

(409) From the date upon which the President ceases to hold office as such, except where he ~~or she~~ ceases to hold office by reason of ceasing to be a member of the Society or having resigned in terms of Article 15(87), he ~~or she~~ shall serve as Past President of the Society for a period of one year. If the Past President is not, or if during his ~~or her~~ period of office he ~~or she~~ should cease as the result of retiral in terms of Article 5(1) to be, a member of the Council, he ~~or she~~ shall *ex officio* be a member of the Council until the expiry of his ~~or her~~ period of office. If the Past President ceases to be a member of the Council for any other reason, he ~~or she~~ shall cease to hold office as such. The Past President may resign in terms of Article 15(87) and shall cease to hold office if he ~~or she~~ ceases to be a member of the Society.

(410) The Council may at any meeting elect one of its solicitor members or a former one of its solicitor members to be Honorary Vice-President of the Society to hold office until the next annual election of members of the Council and to carry out such duties as may from time to time be prescribed by the Council. If the Honorary Vice-President is not a member of the Council or if during his period of office he ~~or she~~ should cease to be a member of the Council, he ~~or she~~ shall *ex officio* be a member of the Council until the expiry of his ~~or her~~ period of office. An Honorary Vice-President shall not be eligible for re-election as such. An Honorary Vice-President may resign in terms of Article 15(87) and shall cease to hold office if he ~~or she~~ ceases to be a member of the Society.

#### *Meetings of Society*

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(2) During a period commencing on the giving of notice of a General Meeting in terms of Article 12(4) and ending on a date specified in such notice, any member of the Society may, by notice given to the Secretary, propose an amendment to any resolution proposed in the notice of that General Meeting. Such notice must contain the name of another member of the Society who has agreed to be a seconder and a statement of the

reasons for the amendment proposed.

(3) The Secretary shall, as soon as practicable, give notice to each member of the Society of each amendment notified to the Secretary in terms of Article 14(2) together with the statement of the reasons for the amendment proposed.

(4) It shall not be competent at any General Meeting to amend a resolution or an amendment to a resolution prior notice of which amendment has not been given in terms of Article 14(2), save for the purposes of correcting clerical errors or manifest errors in sense.

(5) Save as provided in Article 14(10), it shall not be competent at any General Meeting to demand a poll, nor shall it be competent to vote by proxy.

(6) Save as provided in Article 14(10), at any General Meeting a resolution put to the vote of the meeting shall be decided on the total of the votes on a show of hands by those members of the Society present in person and the votes cast in terms of Article 14(1).

(7) Every member of the Society, whether present in person at the relevant meeting or otherwise, shall have one vote.

(8) No member of the Society who has cast a vote in terms of Article 14(1) in advance of a General Meeting on a resolution or on any amendment to it or on that resolution as amended may vote on that resolution or on any amendment to it or on that resolution as amended on a show of hands or otherwise at that meeting.

(9) In the case of an equality of votes, the chairman of the meeting shall not be entitled to a second or casting vote.

(10) Where a resolution is proposed for the amendment of this Constitution, it shall, in respect of that resolution:

- (a) be competent at the relevant General Meeting to demand a poll, and be competent to vote by proxy; and
- (b) not be competent to vote in advance of or at the relevant General Meeting in terms of Article 14(1).

(11) Any instrument appointing a proxy in respect of a resolution referred to in Article 14(10) shall be deposited with the Secretary at any time after the notice is given calling the relevant General Meeting, and not less than 48 hours before the time for holding the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid. It shall not be competent to deposit an open proxy. A proxy must be a member of the Society.

## PRESIDENT, VICE-PRESIDENT, PAST PRESIDENT AND HONORARY VICE-PRESIDENT OF THE SOCIETY

### *President, Vice-President, Past President and Honorary Vice-President*

**15.(1)** The Council shall at its first meeting after the 1st day of November in each year, receive nominations for the office of Vice-President and shall thereafter elect at its first meeting after the 1st day of December in each year one of its number who has been a member of the Council for at least three consecutive years ending on the date of that election to be Vice-President of the Society. If there are two or more nominations for the office of Vice-President the election shall be decided by ballot. If there are three or more nominations the election shall be conducted by the single transferable vote method.

(2) The term of office of the Vice-President shall run from the date of the first meeting of the Council held after the annual election of members of the Council next following the election of the Vice-President ("the first post-election meeting") until the next succeeding such meeting ("the second post-election meeting"). If at or prior to the second post-election meeting the Vice-President, or if at or prior to the first post-election meeting the Vice-President elect (which positions for the purposes of this Article 15(2) are referred to as "the offices"), ceases to be a member of the Council as the result of retiral in terms of

Article 5(1) he shall nevertheless be *ex officio* a member of the Council whilst the holder of either of the offices. If at or prior to the first post-election meeting the Vice-President elect ceases to be a member of the Council for any other reason, his election as Vice-President shall be void as at the date of such cessation, and the Council shall at its first meeting held not less than four weeks after the date of such cessation, proceed to a new election of Vice-President.

(3) Only solicitor members of the Council are eligible for election as Vice-President.

(4) The serving Vice-President of the Society shall become President of the Society on the expiry of his term of office as Vice-President as specified in Article 15(2). The term of office of the President shall run from that date until the next succeeding meeting of the Council held after the next annual election of members of the Council. The serving Vice-President shall become President elect at the first meeting of the Council after the 1st day of December.

(5) If at or prior to the date of expiry of the term of office of the President as specified in Article 15(4), the serving President or the President elect (which positions for the purposes of this Article 15(5) are referred to as "the offices") ceases to be a member of the Council as the result of retiral in terms of Article 5(1) he shall nevertheless be *ex officio* a member of the Council whilst the holder of either of the offices. If at or prior to that date of expiry the President elect ceases to be a member of the Council for any other reason, the provisions of Article 15(8) will apply as if a casual vacancy had occurred in the office of President immediately upon commencement of the term of office of the President.

(6) A President or Vice-President shall cease to hold office if he ceases to be a member of the Society.

(7) A President or Vice-President may resign at any time from office by a signed notice in writing delivered to the Secretary, and the resignation shall take effect upon the delivery of the notice or on the date (if any) specified in the said notice, whichever is the later.

(8) (a) On a casual vacancy occurring in the office of President or Vice-President at a time when there is a President elect or Vice-President elect as the case may be, the President elect or Vice-President elect shall immediately assume office as President or Vice-President as the case may be. The resulting additional period of office will terminate at the first meeting of the Council held after the next annual election of members of the Council.

(b) On a casual vacancy occurring in the office of President at a time when there is no President elect, the Vice-President shall assume the additional office of Interim President until the first meeting of the Council held after the 1<sup>st</sup> day of December and shall assume the office of President with effect from the conclusion of that meeting.

(c) On a casual vacancy occurring in the office of Vice-President at a time when there is no Vice-President elect, the Council shall as soon as practicable appoint one of its solicitor members to fill the vacancy until (i) the first meeting of the Council held after the 1<sup>st</sup> day of December or (ii) where a new election of Vice-President is held in terms of Article 15(2), the meeting of the Council at which that new election takes place.

(9) From the date upon which the President ceases to hold office as such, except where he ceases to hold office by reason of ceasing to be a member of the Society or having resigned in terms of Article 15(7), he shall serve as Past President of the Society for a period of one year. If the Past President is not, or if during his period of office he should cease as the result of retiral in terms of Article 5(1) to be, a member of the Council, he shall *ex officio* be a member of the Council until the expiry of his period of office. If the Past President ceases to be a member of the Council for any other reason, he shall cease to hold office as such. The Past President may resign in terms of Article 15(7) and shall cease to hold office if he ceases to be a member of the Society.

(10) The Council may at any meeting elect one of its solicitor members or a former one of its solicitor members to be Honorary Vice-President of the Society to hold office until the next annual election of members of the Council and to carry out such duties as may from time to time be prescribed by the Council. If the Honorary Vice-President is not a

member of the Council or if during his period of office he should cease to be a member of the Council, he shall *ex officio* be a member of the Council until the expiry of his period of office. An Honorary Vice-President shall not be eligible for re-election as such. An Honorary Vice-President may resign in terms of Article 15(7) and shall cease to hold office if he ceases to be a member of the Society.