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Financial Memorandum between the Welsh Government, further education institutions and higher education institutions providing further education

Guidance

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Financial Memorandum between the Welsh Government, further education institutions and higher education institutions providing further education

Audience	Senior management and governors of further education institutions in Wales.
Overview	The Memorandum sets out the conditions imposed by the Welsh Government on the provision of grants or grant aid to further education institutions and higher education institutions providing further education.
Action required	None – for information only.
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Additional copies	This document can be accessed from the Welsh Government's website at www.wales.gov.uk/educationandskills
Related documents	<i>Financial Memorandum between the Welsh Assembly Government, Further Education Institutions and Higher Education Institutions providing further education in Wales</i> DELLS Information Document No: 026-06 (2007) <i>Financial Health Monitoring Procedures for Further Education Institutions</i> National Assembly for Wales Circular No: 24/2006 (2007)

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Introduction

- 1 This Memorandum (together with the annual terms and conditions of funding and priorities letter) sets out the conditions imposed by the Welsh Government on the provision of grants or grant in aid to further education institutions and higher education institutions providing further education (each an "institution" for the purposes of this Memorandum). This Memorandum is issued by the Welsh Government pursuant to its powers contained in section 35 Learning and Skills Act 2000 (as amended) and in relation to its duties contained in Part II of that Act.
- 2 Nothing in this Memorandum shall require the institution to act in a manner which would cause it to lose its charitable status or which would be inconsistent with its articles or instrument of government, its charter or any applicable statutes or Acts of Parliament. The conditions set out below do not override the duties and powers of the institution under the Further and Higher Education Act 1992.
- 3 The sections of this Memorandum relating to financial management, contracts and other services, audit and reportable events shall not apply to higher education institutions providing further education so long as the institution concerned receives finance from the Higher Education Funding Council for Wales on equivalent terms and conditions.

Definitions and interpretation

- 4 For the purposes of this Memorandum:
 - a. unless the context otherwise requires or unless otherwise expressly stated:

'Accounting Period' means the period covered by the institution's audited financial statements, usually 1 August to 31 July;

'Academic Year' means the twelve months from 1 August to 31 July;

'Act' means the Further and Higher Education Act 1992 as amended by the Further and Higher Education (Governance and Information) (Wales) Act 2014;

'Assembly' means the National Assembly for Wales;

'Audit Committee' – means a committee charged by the Governing Body with the responsibility for risk management, control and governance arrangements

'Director General' means the Director General of the Department for Education and Skills of the Welsh Government;

'Fixed Assets' means those assets which are intended to be held for use on a continuing basis by the institution;

'FRS' means a financial reporting standard published by the Accounting Standards Board from time to time;

'Governing Body' means the governing body of the institution with ultimate responsibility for the management and administration of the institution's resources, expenditure and property and the conduct of its affairs and includes as the context shall require members of that governing body;

'grant' or **'funds'** means all funding provided by the Welsh Government to the institution save where any such funding is the subject of a separate written agreement with the Welsh Government;

'guidance' includes guidance issued by Predecessor Funding Bodies;

'month' means a calendar month and 'monthly' shall be construed accordingly;

'operating surplus' and **'operating deficit'** means the surplus or deficit on operations after depreciation of tangible Fixed Assets at valuation and before tax, and before taking account of profit or loss on the sale of any Fixed Assets as calculated in accordance with the SORP;

'Predecessor Funding Bodies' means the National Council for Education and Training for Wales and the Further Education Funding Council for Wales;

'Principal' means the chief executive officer of the institution (howsoever called within the institution);

'Priorities letter' means the annual letter issued by the Welsh Government setting out policy direction and priorities for the sector for the year;

'SORP' means the Statement of Recommended Practice (SORP): 'Accounting for further and higher education' as may be amended from time to time;

'terms and conditions of funding' means the annual letter setting out the terms of funding from the Welsh Government to Institutions.

b. reference to a paragraph is a reference to a paragraph of this Memorandum.

5 A revised SORP has been published which will be applicable for accounting periods beginning on or after 1 January 2015. SORP 2015 reflects the

changes to UK Generally Accepted Accounting Practice (GAAP) and sets out that institutions must follow FRS 100,101 and 102. Any references in this Memorandum to FRS's will be replaced by FRS 102 from the SORP applicable date.

- 6 In addition to this Memorandum institutions will receive an annual priorities letter and terms and conditions of funding for the next academic year; detailing the funds to be paid to the institution and the educational provision the institution is required to make in return for those funds. The terms and conditions of funding included in the letter are deemed part of this Memorandum and any failure to comply with the terms and conditions set out in the letter will be deemed failure to comply with this Memorandum.

Accountability

- 7 Funds shall be used in accordance with the purposes for which they were granted. Funds that are not used for the purpose for which they were granted are subject to reclaim.
- 8 The Director General has been appointed by the Permanent Secretary as an additional accounting officer. As additional accounting officer, the Director General is responsible and accountable for ensuring that (a) the uses to which the institution puts funds received are consistent with the purposes for which the funds were given; and (b) the institution complies with the conditions attached to the receipt of funds. The Director General is also responsible for the regularity and propriety of expenditure from those funds and for the achievement of the best possible value for money in the use of those funds.
- 9 In order to meet these responsibilities, the Director General will require to be satisfied (a) that the institution has appropriate arrangements in place for financial management, including a sound system of internal control; and (b) that the uses to which funds are put by the institution are consistent with the purposes for which they were given and achieve value for money.
- 10 The Governing Body is responsible for ensuring that funds from the Welsh Government are used only in accordance with this Memorandum, the terms and conditions of funding and any other conditions prescribed by the Welsh Government from time to time. Funds should be managed in line with the principles set out in Managing Welsh Public Money.
- 11 The Governing Body is also responsible for ensuring that the financial, planning and other management controls established by the institution are sufficient to safeguard funds received from the Welsh Government, ensure compliance with this Memorandum, the terms and conditions of funding, related guidance and any other terms and conditions under which grants are made to the institution.

- 12 The Governing Body has ultimate responsibility for the proper stewardship of funds the institution receives from the Welsh Government and for ensuring that those funds are used for the purposes intended. The Governing Body is responsible for delivering value for money from public funds and it should keep under review its arrangements for managing all the resources under its control to maintain the solvency of the institution, for the protection of learners funded by the Welsh Government.
- 13 The respective responsibilities of the Governing Body and the Principal are set out in the institution's Articles of Government. Within this framework, the Governing Body will require the Principal to take personal responsibility, as accounting officer, which may not be delegated, to assure them that the conditions in this Memorandum have been complied with together with all other terms and conditions referred to in paragraph 1. The Principal may be required to appear before the Assembly or its Public Accounts Committee alongside the Director General on any matters arising before the Assembly relating to funds paid to the institution.
- 14 The Principal is responsible for advising the Governing Body if at any time in his or her opinion any action or policy being considered by the Governing Body is incompatible with the terms and conditions of this Memorandum. If the Governing Body nevertheless decides to proceed, the Principal will within seven days of such decision inform the Welsh Government in writing of the decision and the reasons he or she believes such decision to be incompatible.
- 15 The Welsh Government will inform the Governing Body of the institution of matters of serious concern regarding the institution's financial affairs, including the financial health of the institution. The interventions that the Welsh Government may make are set out in section 57 of the Act.

Allocation of funds

- 16 The payments of funds are subject to such terms and conditions as the Government may impose, including those set out in this Memorandum and the terms and conditions of funding.
- 17 The Welsh Government may distinguish between recurrent funds and capital funds.
- 18 Recurrent funds are intended to meet the recurrent costs of the institution, including the routine maintenance of buildings and other assets.
- 19 Capital funds are intended to meet expenditure on land and buildings, new construction and extension of and alterations to buildings and the purchase of any Fixed Assets. Capital funds can be used for the following:
 - direct payment of capital expenditure;

- payment of interest or repayment of principal on approved borrowing incurred for new capital projects begun after 29 November 1994;
 - finance lease repayments.
- 20 The institution shall use funds that the Welsh Government has earmarked or provided for specific recurrent or capital purposes solely for those purposes. The institution may use recurrent funds not earmarked or provided for specific purposes to fund capital expenditure. It must not use capital funds to fund recurrent expenditure, except as permitted by paragraph 19.
- 21 The recurrent funding allocation to be paid to the institution in any year will normally be notified to the institution by the end of April, or earlier if the information is available, in advance of the Academic Year to which the funds relate. Other grants will be announced as and when they are determined by the Welsh Government.

Use of funds

- 22 If any funds which are earmarked or provided for specific purposes are used for other purposes, the institution must report such use to the Welsh Government as soon as it becomes aware of it.
- 23 Where funds are earmarked or provided for an activity to be completed or undertaken by the institution by a specified date, the Welsh Government will not provide funds after that date if the activity has not been completed.
- 24 The institution is required to provide an annual report on its use of funds as part of its financial statements in accordance with guidance that the Welsh Government may issue from time to time.
- 25 If land and buildings that were funded in full or in part from the Welsh Government or its Predecessor Funding Bodies the proceeds must be used to reinvest in the capital assets for publically funded educational purposes by the institution.

Payment of funds

- 26 The Welsh Government will pay recurrent funds to the institution in monthly instalments. This will be reflected in the terms and conditions letter.
- 27 The Welsh Government may be prepared on written application from the institution, to consider making such exceptional or ad hoc payments as the Welsh Government sees fit. However, such payments will not be made in advance of the institution's need to spend the money.

- 28 Specific additional terms and conditions of funding, including those relating to the method and timing of payment applicable to capital funds, may be issued at the time of notification of the allocation of the capital funds.

Repayment of funds

- 29 The Welsh Government reserves the right to require the institution to repay all or part of any funds paid to it if the institution fails to comply with any terms and conditions which were attached by the Welsh Government to payment of those funds, whether by this Memorandum or otherwise.
- 30 The Welsh Government also reserves the right to require the institution to pay interest calculated at an annual rate of 2 per cent over the Bank of England base lending rate from time to time in respect of any period during which a sum due to the Government remains unpaid. Interest shall be calculated daily from the date of demand until the date of payment.

Financial management

- 31 The Governing Body must plan, conduct and control the institution's financial and academic affairs to ensure that it remains solvent.
- 32 In meeting the requirement set out in paragraph 31:
- a. the institution must prepare a financial strategy that underpins the institutional plan;
 - b. the financial strategy must set targets for the generation of cash and operating surpluses sufficient to finance ongoing activity, make funds available for investment in provision and facilities; and to produce a cash reserve excluding long term borrowing to support the future activities of the institution;
 - c. the Governing Body must receive at least termly, a report that (a) reviews the institution's financial position; (b) contains an income and expenditure account including a commentary on performance to that date against the original budget; (c) a forecast of the outturn for the Accounting Period; (d) a balance sheet; and (e) a 12 month rolling cash flow forecast. This report should comment on the impact on the institution's financial strategy of the results and forecasts presented;
 - d. the Governing Body must undertake and approve an annual self assessment of the institution's financial health; and

- e. the Governing Body must approve any borrowing by the institution taking into account the impact on the institution's current and future financial health.
- 33 The Principal in his or her role as accounting officer shall notify the Governing Body of any event that has, or is likely to have, a material adverse impact on the financial position of the institution, as soon as this becomes apparent.
- 34 In fulfilling its responsibilities the Welsh Government may issue from time to time guidance on the arrangements it proposes to put in place for monitoring the financial health of institutions. This guidance will include reference to the criteria which the Welsh Government will use to determine if there are serious concerns about the institution's financial health.

Financial statements

- 35 The institution shall keep proper accounting records and shall prepare financial statements in respect of each Accounting Period. The institution shall provide the Welsh Government with a signed copy of its audited financial statements for each Accounting Period by 31 December immediately following the end of the Accounting Period in question. The institution shall make the financial statements publicly available and will publish them on its website as part of its publication scheme.
- 36 The institution shall ensure its financial statements comply with the accounts direction issued from time to time by the Welsh Government. Such a direction will cover information to be contained in the financial statements; the manner in which they are to be presented; and the methods and principles according to which they are prepared. The financial statements will be prepared in accordance with UK generally accepted accounting principles and the SORP.
- 37 The financial statements shall be signed by the Principal, the finance director and by the Chair or one other member of the Governing Body as appointed by the Governing Body. In the case of an institution which is a company limited by guarantee, the requirements of the Companies Act 2006 in respect of signatories to the annual accounts shall apply.

Audit

- 38 The institution shall appoint an audit committee and comply with the Welsh Government Audit Code of Practice.

Provision of information

- 39 The institution shall furnish the Welsh Government with such information as the Welsh Government may require from time to time. The Welsh Government

shall have regard both to the costs of providing this information and, where appropriate, to the confidential nature of certain personal data. In such circumstances the Welsh Government will endeavour to ensure a reasonable timescale for providing the data.

Reportable events

- 40 The Welsh Government will, normally through the Audit Code of Practice, issue guidance on matters that the institution is required to report to the Welsh Government. It is a requirement of this Memorandum that the institution shall comply with this guidance.

Compliance with this Memorandum

- 41 As stated in paragraph 1, this Memorandum sets out the terms and conditions on which the Welsh Government will make payments to the institution. It sets out a number of key responsibilities and requirements of the Governing Body and the Principal. Accordingly, the institution is required to:
- a. ensure that all members of the Governing Body are provided with a copy of this Memorandum;
 - b. ensure that appropriate training is provided to members of the Governing Body to enable them to undertake their responsibilities under this Memorandum; and
 - c. provide an annual report to the Audit Committee on the institution's compliance with this Memorandum.

Revision

- 42 The Welsh Government may from time to time revise, revoke or add to any of the conditions of this Memorandum after consultation with institutions and such bodies representing the institutions as the Welsh Government considers appropriate, except in relation to grants which have already been paid to or accepted by the institution, unless there is specific agreement otherwise. The institution may itself make proposals to the Government for revision, revocation or addition of or to this Memorandum.

Effective date

- 43 This Memorandum shall take effect from 1 August 2014 and apply from the Academic Year 2014/15 onwards. This Memorandum replaces the Memorandum effective from 1 January 2007.