

SCHEDULE 1

Regulation 2(3)

INSTRUMENT OF GOVERNMENT

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**Interpretation**

1. In this Instrument of Government—
  - (a) “business member” means an independent member or a TEC member;  
“co-opted member” has the meaning ascribed to it by clause 3(2)(c);  
“the Corporation” means any further education corporation to which this Instrument applies;  
“foundation member” means a person nominated—
    - (i) in the case of a Corporation established to conduct an institution which, on the date the Corporation was established, was a voluntary controlled school in which religious education in accordance with the tenets of the Church of England was given, by the relevant Diocesan Board of Education, and

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- (ii) in any other case, by the trustees appointed under the trust deed or Charity Commissioners' Scheme relating to the institution,

for the purpose of securing, so far as practicable, that the established character of the institution immediately before it is conducted by the Corporation is preserved and developed and, in particular, that the institution is conducted in accordance with the provisions of any trust deed relating to it;

“independent member” has the meaning ascribed to it by clause 3(2)(a);

“this Instrument” means this Instrument of Government;

“nominee member” has the meaning ascribed to it by clause 3(2)(b);

“parent member” means a member of the Corporation who is a parent of a student at the institution elected and nominated by other such parents;

“the Secretary of State” means the Secretary of State for Education or the Secretary of State for Wales, as the case may be;

“staff member” means a member of the Corporation employed at the institution elected and nominated by the persons so employed;

“student member” means a member of the Corporation who is a student at the institution elected and nominated by the students at the institution;

“TEC member” means a person nominated by the Training and Enterprise Council for the area in which the institution is situated;

- (b) references, in relation to the Corporation, to the institution are references—
  - (i) in relation to any time before the operative date (as defined in section 17(2) of the Further and Higher Education Act 1992) applicable in relation to the Corporation, to the institution the Corporation are established to conduct, and
  - (ii) in relation to any later time, to any institution for the time being conducted by the Corporation in exercise of their powers under the Further and Higher Education Act 1992;
- (c) unless the context otherwise requires, a reference to—
  - (i) a numbered clause is a reference to the clause so numbered in this Instrument, and
  - (ii) a numbered paragraph is a reference to the paragraph so numbered in the clause in which the reference appears; and
- (d) words importing one gender shall import all genders, the singular number shall include the plural and vice versa (unless the context otherwise requires) and the headings are intended for convenience only and shall not affect the construction of this Instrument.

### **Initial Composition of the Corporation**

**2.—**(1) Clauses 3 and 4 provide for the initial composition of the Corporation and are subject to clause 6.

(2) References in this Instrument, in relation to the Corporation, to a variable category of members are references to any category of members in relation to which the number applicable in accordance with clauses 3 and 4 is subject to variation.

**3.—**(1) The Corporation shall consist of not less than 10 and not more than 20 members appointed in accordance with the following provisions of this Instrument and shall include the person who is for the time being the Principal of the institution, unless he chooses not to be a member.

- (2) Of the appointed members—

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- (a) not more than 12 (referred to in this Instrument as the independent members) shall be persons appearing to the appointing authority to be, or to have been, engaged or employed in business, industry or any profession or in any other field of employment relevant to the activities of the institution;
- (b) not less than 3 and not more than 6, or, in the case of a former voluntary controlled school, not less than 4 and not more than 10, (referred to in this Instrument as the nominee members) shall be persons nominated otherwise than by other members of the Corporation; and
- (c) not more than 3 (referred to in this Instrument as the co-opted members) co-opted by the members of the Corporation who are not co-opted members, of which not more than 2 may be employed by a local authority, other than as teachers (including head teachers or principals) or as members of a fire brigade maintained under the Fire Services Act 1947(1), or be elected members of a local authority.

4.—(1) The nominee members of the Corporation shall consist of—

- (a) not more than 2 parent members;
- (b) not more than 2 staff members;
- (c) not more than 1 student member;
- (d) 1 TEC member; and
- (e) a number of foundation members (in the case of former voluntary controlled schools only) calculated in accordance with the following table:

Table

<i>Total membership of the Corporation</i>	<i>The minimum number of those members that must be foundation members</i>
10	2
11—14	3
15—20	4

(2) For the purposes of this Instrument a person who is not for the time being enrolled as a student at the institution shall be treated as such a student during any period when he has been granted leave of absence from the institution for the purposes of study or travel or for carrying out the duties of any office held by him in the student union at the institution.

(3) It shall be for the appointing authority to determine any question as to whether any person is eligible or qualified in accordance with the provisions of this Instrument for appointment as a member of the Corporation of any description or category.

### **Initial Appointments**

5.—(1) The Secretary of State is the appointing authority for the purposes of this Instrument in relation to the appointment of the first members of the Corporation.

(2) In determining the number of members to appoint within each variable category, he shall secure that at least half of all the members of the Corporation as first constituted are business members or, in the case of former voluntary controlled schools, are business members or foundation members.

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(1) 1947 c. 41.

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### **Determination of Membership Numbers**

6.—(1) Following the appointment by the Secretary of State of the first members of the Corporation, the Corporation shall at their first meeting make a determination with respect to their membership numbers under this clause.

(2) Such a determination shall fix the number of members of each variable category of which the Corporation are to consist, subject to the limits applicable in relation to that category under clauses 3 and 4.

(3) In making a determination under this clause, the Corporation shall secure that at least half of all the members of the Corporation, when constituted in accordance with the determination, will be business members or, in the case of former voluntary controlled schools, will be business members or foundation members.

(4) A determination under this clause shall not have effect so as to terminate the appointment of any person who is a member of the Corporation at the time when it takes effect.

(5) A determination under this clause may be varied by a subsequent determination under this clause.

### **Subsequent Appointments**

7.—(1) Appointments of members of the Corporation at any time after the appointment by the Secretary of State of the first members shall be subject to this clause.

(2) No such appointment may be made before the first determination of the Corporation under clause 6 takes effect.

(3) The Corporation are the appointing authority in relation to the appointment of any member of the Corporation other than an independent member.

(4) Where an appointment of an additional independent member of the Corporation falls to be made in consequence of a determination in accordance with clause 6, the appointing authority in relation to the appointment—

- (a) shall be the Corporation if the appointment is made within the period of three months beginning with the date of the determination; or
- (b) if the appointment is not made within that period, shall be the current independent members of the Corporation.

(5) Where a vacancy in the office of an independent member of the Corporation arises on any existing independent member ceasing to hold office on the expiry of his term of office—

- (a) his successor shall not be appointed more than six months before the expiry of that term; and
- (b) the appointing authority in relation to the appointment of his successor—
  - (i) shall be the Corporation if the appointment is made not less than three months before the expiry of that term, or
  - (ii) if the appointment is not so made, shall be the current independent members.

(6) Where a vacancy in the office of an independent member of the Corporation arises on the death of any such member or on any such member ceasing to hold office in accordance with this Instrument other than on the expiry of his term of office, the appointing authority in relation to the appointment of his successor—

- (a) shall be the Corporation if the appointment is made within the period of three months beginning with the date of death or the date on which the office falls vacant (as the case may be); or

(b) if the appointment is not made within that period, shall be the current independent members of the Corporation.

(7) No appointment of an independent member by the Corporation in accordance with paragraph (4)(a), (5)(b)(i) or (6)(a) shall be made unless the appointment has been approved by a majority of the current independent members.

(8) If the number of independent members falls below the number needed for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum.

### **Appointment of Chairman, Vice-Chairman and Clerk to the Corporation**

**8.—(1)** At the first meeting of the Corporation, the members shall appoint a Chairman and a Vice-Chairman from among their number.

(2) The Principal and any staff or student member shall not be eligible to be appointed Chairman or Vice-Chairman.

(3) The Chairman and Vice-Chairman shall hold office for such period as the Corporation may determine.

(4) If both the Chairman and Vice-Chairman are absent from any meeting of the Corporation, the members present shall choose one of their number to act as chairman for that meeting, provided that the member chosen shall not be the Principal or any staff or student member.

(5) The Chairman and Vice-Chairman may at any time by notice in writing to the Clerk to the Corporation resign their respective offices.

(6) At the first meeting following the expiry of the term of office of the Chairman or the Vice-Chairman, or following the resignation of the Chairman or Vice-Chairman, the members shall appoint a new Chairman or Vice-Chairman, as the case may be, from among their number.

(7) Chairmen and Vice-Chairmen retiring at the end of their respective terms of office shall be eligible for reappointment.

(8) The Corporation shall appoint a person to serve as Clerk to the Corporation.

### **Persons Ineligible to be Members**

**9.—(1)** A person who is under the age of 18 years shall be ineligible for appointment as a member except as the student member.

(2) Subject to paragraph (3), no person who has attained the age of 70 years shall be eligible for appointment as a member of the Corporation.

(3) A person over the age of 70 shall not by virtue of paragraph (2) be disqualified for appointment as a member of the Corporation where—

(a) the appointing authority in relation to the appointment is the Secretary of State; or

(b) the appointing authority in relation to the appointment determine to make the appointment by a vote representing an absolute majority of all the members of that authority (whether or not taking part in the vote).

(4) A person who is a member of staff of the institution shall be ineligible for appointment as a member except as a staff member or co-opted member or in his capacity as Principal.

(5) A student at the institution shall be ineligible to be appointed as a member except as the student member, but a person who is already a member shall not be required to resign if during his term of office he enrolls on a part-time course at the institution.

(6) No person who is employed by a local authority, other than as a teacher (including a head teacher or principal) or as a member of a fire brigade maintained under the Fire Service Acts 1947,

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or is an elected member of a local authority shall be eligible for appointment as a member except as a co-opted member.

(7) Subject to paragraphs (8) and (9), a person shall be disqualified for holding, or for continuing to hold, office as a member if that person has been adjudged bankrupt or has made a composition or arrangement with his creditors; and a member, on becoming so disqualified, shall give written notice of that fact to the Clerk to the Corporation.

(8) Where a person is disqualified by reason of his having been adjudged bankrupt, that disqualification shall cease—

- (a) unless the bankruptcy order made against that person is previously annulled, on his discharge from bankruptcy; and
- (b) if the bankruptcy order is so annulled, on the date of the annulment.

(9) Where a person is disqualified by reason of his having made a composition or arrangement with his creditors and he pays his debts in full, the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiration of three years from the date on which the terms of the deed of composition or arrangement are fulfilled.

(10) A person shall be disqualified for holding, or for continuing to hold, office as a member if, within five years before his appointment would otherwise have taken effect, or since his appointment, he has been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine. Where, by virtue of this paragraph, a person becomes disqualified for holding office as a member that person shall give written notice of that fact to the Clerk to the Corporation.

### **Term of Office**

**10.**—(1) A member of the Corporation shall hold and vacate office in accordance with the terms of his appointment but the length of his term of office shall not exceed 4 years.

(2) Members retiring at the end of their term of office shall be eligible for reappointment.

### **Determination of Membership**

**11.**—(1) A member may at any time by notice in writing to the Clerk to the Corporation resign his office.

(2) If at any time the Corporation are satisfied that—

- (a) any member has been absent from meetings of the Corporation for a period longer than 6 consecutive months without the permission of the Corporation; or
- (b) any member is unable or unfit to discharge the functions of a member,

the Corporation may by notice in writing to that member remove him from office and thereupon the office shall become vacant.

(3) Any member who is a member by virtue of being a member of the staff (including the Principal) or a student of the institution shall cease to be a member if he ceases to be a member of the staff or a student of the institution and thereupon the office shall become vacant.

### **Members not to be financially interested in the Institution**

**12.**—(1) Except with the approval in writing of the Secretary of State no member shall take or hold any interest in any property held or used for the purpose of the institution, or receive any remuneration for his services as a member; provided that a member who is a member of the staff of the institution (including the Principal) may receive remuneration in that capacity.

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- (2) A member who has any financial interest in—
  - (a) the supply of work or goods to or for the purposes of the institution;
  - (b) any contract or proposed contract concerning the institution; or
  - (c) any other matter relating to the institution,

and is present at a meeting of the Corporation at which the supply, contract or other matter is to be considered, shall at that meeting disclose the fact and shall not take part in the consideration or vote on any question with respect to it and shall not be counted in the quorum present at the meeting in relation to a resolution on which he is not entitled to vote.

(3) A member who is an initial member of the Corporation appointed by the Secretary of State under clause 5 and who, with the approval in writing of the local education authority, holds any interest in any property held or used for the purpose of the institution or receives any remuneration for his services as a member may continue to do so.

(4) This clause shall not prevent the members of the Corporation considering and voting upon proposals for the Corporation to insure the members of the Corporation against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premiums.

### Meetings

**13.—**(1) The Corporation shall meet at least once in every term, and shall hold such other meetings as may be necessary.

(2) All meetings shall be summoned by the Clerk to the Corporation, who shall send to the members written notice of the meeting and a copy of the agenda therefor at least seven clear days in advance of the meeting.

(3) A special meeting of the Corporation may be called at any time by the Chairman or at the request in writing of any five members. Where the Chairman or, in his absence, the Vice-Chairman so directs on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice convening the meeting and the agenda therefor are given within such period, being less than seven days, as he specifies.

(4) Members of the Corporation shall not be bound in their speaking and voting by mandates given to them by other bodies or persons.

### Quorum

**14.—**(1) Meetings of the Corporation shall be quorate if 40% or more members are present including at least 40% of the total number of business members. In the case of a Corporation with the minimum number of business members, the table set out below gives the number of members and business members necessary for a quorum.

Table

(1) <i>Total membership of the Corporation</i>	(2) <i>Number of members that constitute a quorum</i>	(3) <i>Minimum number of business members that must be included in the number in column (2)</i>
10	4	2
11 or 12	5	3
13 or 14	6	3
15	6	4

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(1) <i>Total membership of the Corporation</i>	(2) <i>Number of members that constitute a quorum</i>	(3) <i>Minimum number of business members that must be included in the number in column (2)</i>
16 or 17	7	4
18, 19 or 20	8	4

(2) If the number of members assembled for a meeting of the Corporation does not constitute a quorum therefor, the meeting shall not be held. If in the course of a meeting of the Corporation the number of members thereof present ceases to constitute a quorum, the meeting shall be terminated forthwith.

(3) If for lack of quorum a meeting cannot be held or, as the case may be, cannot continue, the Chairman shall, if he thinks fit, cause a special meeting to be summoned as soon as conveniently may be.

(4) If a meeting is quorate, but the members present who are business members are in a minority, a majority of such members present shall have the right to decide that an item of business be deferred to a subsequent meeting. No item may be so deferred more than once under this provision.

**Proceedings of Meetings**

15.—(1) Every question to be decided at a meeting of the Corporation shall be determined by a majority of the votes of the members present and voting on the question. Where there is an equal division of votes the chairman of the meeting shall have a second or casting vote.

(2) A member may not vote by proxy.

(3) No resolution of the members may be rescinded or varied at a subsequent meeting unless consideration of the rescission or variation is a specific item of business on the agenda for that meeting.

(4) Except as provided by articles 11 and 12 of the Articles of Government (relating to appeals and representations about staff discipline and dismissal), a member of the Corporation who is a member of the staff of the institution shall withdraw—

- (a) from that part of any meeting of the Corporation at which his remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement are to be considered;
- (b) from that part of any meeting of the Corporation at which the appointment of his successor is to be considered; and
- (c) if so required by a resolution of the other members present, from that part of any meeting of the Corporation at which the appointment, remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of any member of staff holding a post senior to his own are to be considered.

(5) Subject to paragraph (4), a Principal who has chosen not to be a member of the Corporation shall still be entitled to attend and speak at all meetings of the Corporation.

(6) A student member who is under the age of 18 years shall not vote on any question concerning any proposal—

- (a) for the expenditure of money by the Corporation; or
- (b) under which the Corporation, or any members of the Corporation, would enter into any contract, or would incur any debt or liability (whether immediate, contingent or otherwise).

(7) Except as provided by rules made under article 14(2) of the Articles of Government relating to appeals and representations by students in disciplinary cases, a student member shall withdraw



from that part of any meeting of the Corporation at which his conduct, suspension or expulsion is to be considered.

(8) In any case where the Corporation are to discuss the appointment, remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of a member or prospective member of the staff of the institution, a student member shall—

- (a) take no part in the consideration or discussion of the matter in question and not vote on any question with respect to the matter; and
- (b) where required to do so by any one member of the Corporation present at the meeting, withdraw from the meeting.

### **Minutes**

**16.**—(1) At every meeting of the Corporation the minutes of the last meeting shall be taken as the first agenda item, except in cases where the members present decide otherwise, and, if agreed to be accurate, shall be signed as a true record.

(2) Separate minutes shall be taken of those parts of meetings from which staff or student members have withdrawn. A staff or student member who has withdrawn from a meeting in accordance with clause 15(4), (7) or (8) shall not be entitled to see the minutes of that part of the meeting.

### **Public Access to Meetings**

**17.** Subject to clause 15(5) any question whether any person who is not—

- (a) a member of the Corporation; or
- (b) the Clerk to the Corporation,

should be allowed to attend a meeting of the Corporation shall be determined by the Corporation.

### **Publication of Minutes and Papers**

**18.**—(1) Subject to paragraph (2), the Corporation shall ensure that a copy of—

- (a) the agenda for every meeting of the Corporation;
- (b) the draft minutes of every such meeting, if they have been approved by the chairman of the meeting;
- (c) the signed minutes of every such meeting; and
- (d) any report, document or other paper considered at any such meeting,

shall, in each case as soon as may be, be made available during normal office hours at the institution to any person wishing to inspect them.

(2) There may be excluded from any item required to be made available in pursuance of paragraph (1), any material relating to—

- (a) a named person employed at or proposed to be employed at the institution;
- (b) a named student at, or candidate for admission to, the institution; and
- (c) any matter which, by reason of its nature, the Corporation are satisfied should be dealt with on a confidential basis.

### **Allowances to Members**

**19.** The Corporation shall have power to pay to the members of the Corporation such travelling, subsistence or other allowances as the Corporation may determine.

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### **Copies of Instrument of Government**

20. A copy of this Instrument shall be given to every member and shall be available for inspection upon request during normal office hours at the institution to every member of staff and every student.

### **Change of Name**

21. The Corporation may change their name with the approval of the Secretary of State.

### **Application of Seal**

22. The application of the seal of the Corporation shall be authenticated by the signature of the Chairman or of some other member authorised either generally or specially by the Corporation to act for that purpose together with that of any other member.

### **Accounts and Audit**

23.—(1) The Corporation shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare in respect of each financial year of the Corporation a statement of accounts.

(2) The statement shall—

- (a) give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of the Corporation's income and expenditure in the financial year; and
- (b) comply with any directions given by the appropriate Further Education Funding Council as to the information to be contained in it, the manner in which the information is to be presented, the methods and principles according to which it is to be prepared and the time and manner of publication.

(3) The accounts (including any statement prepared under this clause) shall be audited by persons appointed in respect of each financial year by the Corporation.

(4) Such auditors shall be appointed, and audit work conducted, in accordance with any requirements of the appropriate Further Education Funding Council.

(5) In this clause in relation to the Corporation—

“the first financial year” means the period commencing with the date on which the Corporation is established and ending with the second 31st July following that date; and

“financial year” means that period and each successive period of twelve months.

### **Amendment of Instrument of Government**

24. This Instrument may be modified or replaced in accordance with section 22 of the Further and Higher Education Act 1992.