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Instrument of Government 2014

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Further and Higher Education Act 1992 based on the Further Education Corporations (Former Further Education Colleges) (Modification of Instruments and Articles of Government) Order 2008 as amended by the 2010 Order and subsequently the 2012 Order.

Effective from 1 September 2014

**Eversheds LLP**

**115 Colmore Row**  
Birmingham  
B3 3AL  
United Kingdom

Tel: 0845 497 9797  
Fax: 0845 497 1900  
Int: +44 121 232 1000  
Int. Fax: +44 20 7919 4919

## CONTENTS

Clause	Page
1 INTERPRETATION OF THE TERMS USED .....	3
1 COMPOSITION OF THE CORPORATION .....	4
3 DETERMINATION OF MEMBERSHIP NUMBERS .....	4
4 APPOINTMENT OF THE MEMBERS OF THE CORPORATION .....	5
5 APPOINTMENT OF THE CHAIR AND VICE-CHAIR.....	5
6 APPOINTMENT OF THE CLERK TO THE CORPORATION.....	6
7 PERSONS WHO ARE INELIGIBLE TO MEMBERS.....	6
8 THE TERM OF OFFICE OF A MEMBER.....	8
9 TERMINATION OF MEMBERSHIP .....	8
10 MEMBERS NOT TO HOLD INTERESTS IN MATTERS RELATING TO THE INSTITUTION .	9
11 MEETINGS.....	10
12 QUORUM .....	11
13 PROCEEDINGS OF MEETINGS .....	11
14 MINUTES.....	13
15 PUBLIC ACCESS TO MEETINGS .....	14
16 PAYMENT OF ALLOWANCES TO MEMBERS .....	14
17 COPIES OF THE INSTRUMENT OF THE GOVERNMENT .....	14
18 CHANGE OF NAME OF THE CORPORATION .....	14
19 APPLICATION OF THE SEAL .....	14

## 1. **INTERPRETATION OF THE TERMS USED**

In this Instrument of Government:

- 1.1 any reference to "the Principal" shall include a person acting as Principal;
- 1.2 "the Clerk" means the Clerk to the Governors;
- 1.3 "the Corporation" means any further education corporation to which this instrument applies;
- 1.4 "the institution" means the institution which the Corporation is established to conduct and any institution for the time being conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992;
- 1.5 "this Instrument" means this Instrument of Government;
- 1.6 "meeting" includes a meeting at which the members attending are present in more than one room, provided that by the use of video-conferencing or telephone conferencing facilities it is possible for every person present at the meeting to communicate with each other;
- 1.7 "necessary skills" means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have;
- 1.8 "staff member" and "student member" have the meanings given to them in **clause 2**;
- 1.9 "the previous Instrument of Government" means the Instrument of Government relating to the Corporation which had effect immediately before 1 September 2014;
- 1.10 "the Secretary of State" means the Secretary of State for Business, Innovation, and Skills (BIS) or the successor body to BIS from time to time;
- 1.11 "staff matters" means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff;
- 1.12 "the students' union" means any formal association of students formed to further the educational purposes of the institution and the interests of students, as students;
- 1.13 "senior postholder" means senior staff appointed by and accountable to the Corporation.

## 2. **COMPOSITION OF THE CORPORATION**

2.1 The Corporation shall consist of:

2.1.1 between seven and thirteen members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions under Article 3 of the Articles of Government and:

2.1.2 the Principal of the institution, unless the Principal chooses not to be a member;

2.1.3 at least one and not more than two members who are members of the institution's staff and have a contract of employment with the institution ("staff members"); and

2.1.4 at least one and not more than two members who are students at the institution ("student members").

2.2 A person who is not for the time being enrolled as a student at the institution, shall nevertheless be treated as a student during any period of authorised absence from the institution for study, travel or for carrying out the duties of any office held by that person in the institution's Students' Union.

2.3 Where the Corporation has decided or decides that there is to be one staff member; the member may be a member of the academic staff or the non-academic staff. Where the Corporation has decided or decides that there are to be two staff members:

2.3.1 one may be a member of the academic staff, and the other may be a member of the non-academic staff, each may be a member of the academic or non-academic staff,

2.3.2 all may be members of the academic or non-academic staff.

2.4 The Corporation shall determine the process for appointment of each category of member.

## 3. **DETERMINATION OF MEMBERSHIP NUMBERS**

3.1 Subject to **clause 3.2** the number of members of the Corporation, and the number of members of each variable category shall be that decided by the Corporation in the most recent determination made under the previous Instrument of Government.

3.2 The Corporation may at any time vary the determination referred to in **clause 3.1** and any subsequent determination under this paragraph provided that:

- 3.2.1 the number of members of the Corporation shall not be less than ten or more than eighteen; and
- 3.2.1 the numbers of members of each variable category shall be subject to the limit which applies to that category set out in **clause 2**.
- 3.3 No determination under this clause shall terminate the appointment of any person who is already a member of the Corporation at the time when the determination is made.

#### 4. **APPOINTMENT OF THE MEMBERS OF THE CORPORATION**

- 4.1 The Corporation is the appointing authority in relation to the appointment of its members.
- 4.2 If the number of members falls below the number needed for a quorum, the Secretary of State is the appointing authority in relation to the appointment of those members needed for a quorum.
- 4.3 The appointing authority may decline to appoint a person as a parent, staff or student member if:
  - 4.3.1 it is satisfied that the person has been removed from office as a member of a further education corporation in the previous ten years; or
  - 4.3.2 the appointment of the person would contravene any rule or bye-law made under **Article 18** of the Articles of Government concerning the number of terms of office which a person may serve, provided that such rules or bye-laws make the same provision for each category of members appointed by the appointing authority; or
  - 4.3.3 the person is ineligible to be a member of the corporation because of **clause 7**.
- 4.4 Where the office of any member becomes vacant the appointing authority shall as soon as practicable take all necessary steps to appoint a new member to fill the vacancy.

#### 5. **APPOINTMENT OF THE CHAIR AND VICE-CHAIR**

- 5.1 The members of the Corporation shall appoint a Chair and a Vice-Chair from among themselves.
- 5.2 Neither the Principal nor any staff or student member shall be eligible to be appointed as Chair or Vice-Chair or to act as Chair in their absence.

- 5.3 If both the Chair and the Vice-Chair are absent from any meeting of the Corporation, the members present shall choose someone from among themselves to act as Chair for that meeting.
- 5.4 The Chair and Vice-Chair shall hold office for such period as the Corporation decides.
- 5.5 The Chair or Vice-Chair may resign from office at any time by giving notice in writing to the Clerk.
- 5.6 If the Corporation is satisfied that the Chair or Vice-Chair is unfit or unable to carry out the functions of office, it may give written notice, removing the Chair or Vice-Chair from office and the office shall then be vacant.
- 5.7 At the last meeting before the end of the term of office of the Chair or Vice-Chair, or at the first meeting following the Chair or Vice-Chair's resignation or removal from office, the members shall appoint a replacement from among themselves.
- 5.8 At the end of their respective terms of office, the Chair and Vice-Chair shall be eligible for reappointment.
- 5.9 **Clause 5.8** is subject to any rule or bye-law made by the Corporation under **Article 18** of the Articles of Government concerning the number of terms of office which a person may serve.

## 6. **APPOINTMENT OF THE CLERK TO THE CORPORATION**

- 6.1 The Corporation shall appoint a person to serve as its Clerk, but the Principal may not be appointed as Clerk.
- 6.2 In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk, but the Principal may not be appointed as temporary Clerk.
- 6.3 Any reference in this Instrument to the Clerk shall include a temporary Clerk appointed under **clause 6.2**.
- 6.4 Subject to **clause 13**, the Clerk shall be entitled to attend all meetings of the Corporation and any of its committees.
- 6.5 The Clerk may also be a member of staff at the institution.

## 7. **PERSONS WHO ARE INELIGIBLE TO MEMBERS**

- 7.1 No one under the age of 18 years may be a member, except as a student member.

- 7.2 The Clerk may not be a member.
- 7.3 A person who is a member of staff of the institution may not be, or continue as, a member, except as a staff member or in the capacity of Principal.
- 7.4 **Clause 7.3** does not apply to a student who is employed by the Corporation as a student sabbatical officer of the students' union.
- 7.5 Subject to **clauses 7.6** and 7.7 a person shall be disqualified from holding, or from continuing to hold, office as a member, if that person has been adjudged bankrupt or is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking within the meaning of the Insolvency Act 1986, or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement.
- 7.6 Where a person is disqualified by reason of having been adjudged bankrupt or by reason of being the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order or a bankruptcy restrictions undertaking, that disqualification shall cease:
- 7.6.1 on that person's discharge from bankruptcy, unless the bankruptcy order has before then been annulled; or
  - 7.6.2 if the bankruptcy order is annulled, at the date of that annulment; or
  - 7.6.3 if the bankruptcy restrictions order is rescinded as a result of an application under section 375 of the Insolvency Act 1986, on the date so ordered by the court; or
  - 7.6.4 if the interim bankruptcy restrictions order is discharged by the court, on the date of that discharge; or
  - 7.6.5 if the bankruptcy restrictions undertaking is annulled, at the date of that annulment.
- 7.7 Where a person is disqualified by reason of having made a composition or arrangement with creditors, including an individual voluntary arrangement, and then pays the 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, arrangement or individual voluntary arrangement are fulfilled.
- 7.8 Subject to **clause 7.9**, a person shall be disqualified from holding, or from continuing to hold, office as a member if:
- 7.8.1 within the previous five years that person has been convicted, whether in the United Kingdom or elsewhere, of any offence and has received a

sentence of imprisonment, whether suspended or not, for a period of three months or more, without the option of a fine; or

7.8.2 within the previous twenty years that person has been convicted as set out in **clause 7.8.1** and has received a sentence of imprisonment, whether suspended or not, for a period of more than two and a half years; or

7.8.3 that person has at any time been convicted as set out in **clause 7.8.1** and has received a sentence of imprisonment, whether suspended or not, of more than five years.

7.9 For the purpose of this regulation there shall be disregarded any conviction by or before a court outside the United Kingdom for an offence in respect of conduct which, if it had taken place in the United Kingdom, would not have constituted an offence under the law then in force anywhere in the United Kingdom.

7.10 Upon a member of the Corporation becoming disqualified from continuing to hold office under **clauses 7.5 or 7.8**, the member shall immediately give notice of that fact to the Clerk.

## 8. **THE TERM OF OFFICE OF A MEMBER**

8.1 A member of the Corporation shall hold and vacate office in accordance with the terms of the appointment, but the length of the term of office shall not exceed four years.

8.2 Members retiring at the end of their term of office shall be eligible for reappointment, and **clause 4** shall apply to the reappointment of a member as it does to the appointment of a member.

8.3 **Clause 8.2** is subject to any rule or bye-law made by the Corporation under **Article 18** of the Articles of Government concerning the number of terms of office which a person may serve.

## 9. **TERMINATION OF MEMBERSHIP**

9.1 A member may resign from office at any time by giving notice in writing to the Clerk.

9.2 The Corporation may remove a member from office and the office shall then be vacant.

9.3 Any person who is a member of the Corporation by virtue of being a member of the staff at the institution, including the Principal, shall cease to hold office upon ceasing to be a member of the staff and the office shall then be vacant.



- 9.4 A student member shall cease to hold office:
- 9.4.1 at the end of the student's final academic year, or at such other time in the year after ceasing to be a student as the Corporation may decide; or
  - 9.4.2 if expelled from the institution,
- and the office shall then be vacant.

10. **MEMBERS NOT TO HOLD INTERESTS IN MATTERS RELATING TO THE INSTITUTION**

- 10.1 A member to whom **clause 10.2** applies shall:
- 10.1.1 disclose to the Corporation the nature and extent of the interest; and
  - 10.1.2 if present at a meeting of the Corporation, or of any of its committees, at which such supply, contract or other matter as is mentioned in **clause 10.2** is to be considered, not take part in the consideration or vote on any question with respect to it and not be counted in the quorum present at the meeting in relation to a resolution on which that member is not entitled to vote; and
  - 10.1.3 withdraw, if present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter as is mentioned in **clause 10.2** is to be considered, where required to do so by a majority of the members of the Corporation or committee present at the meeting.
- 10.2 This paragraph applies to a member who:
- 10.2.1 has any financial interest in:
    - 10.2.1.1 the supply of work to the institution, or the supply of goods for the purposes of the institution;
    - 10.2.1.2 any contract or proposed contract concerning the institution; or
    - 10.2.1.3 any other matter relating to the institution; or
  - 10.2.2 has any other interest of a type specified by the Corporation in any matter relating to the institution.
- 10.3 This clause shall not prevent the members considering and voting upon proposals for the Corporation to insure them against liabilities incurred by them

arising out of their office or the Corporation obtaining such insurance and paying the premium.

10.4 Where the matter under consideration by the Corporation or any of its committees relates to the pay and conditions of all staff, or all staff in a particular class, a staff member:

10.4.1 need not disclose a financial interest; and

10.4.2 may take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum present at that meeting, provided that in so doing, the staff member acts in the best interests of the Corporation as a whole and does not seek to represent the interests of any other person or body, but

10.4.3 shall withdraw from the meeting if the matter is under negotiation with staff and the staff member is representing any of the staff concerned in those negotiations.

10.5 The Clerk shall maintain a register of the interests of the members which have been disclosed and the register shall be made available during normal office hours at the institution to any person wishing to inspect it.

## 11. **MEETINGS**

11.1 The Corporation shall meet at least once in every term, and shall hold such other meetings as may be necessary.

11.2 Subject to **clauses 11.4** and **11.5** and to **clause 12.4**, all meetings shall be called by the Clerk, who shall, at least seven calendar days before the date of the meeting, make available to the members of the Corporation the proposed agenda.

11.3 If it is proposed to consider at any meeting the remuneration, conditions of service, conduct, suspension, dismissal or retirement of the Clerk, the Chair shall, at least seven calendar days before the date of the meeting, send to the members a copy of the agenda item concerned, together with any relevant papers.

11.4 A meeting of the Corporation, called a "special meeting", may be called at any time by the Chair or at the request in writing of any five members.

11.5 Where the Chair, or in the Chair's absence the Vice-Chair, decides that there are matters requiring urgent consideration, the notice convening the special meeting and the proposed agenda may be given within less than seven calendar days.

11.6 Every member shall act in the best interests of the Corporation and shall not be bound to speak or vote by mandates given by any other body or person.

## 12. **QUORUM**

12.1 Meetings of the Corporation shall be quorate if the number of members present is at least 40% of the total number of members, determined according to **clause 3**.

12.2 If the number of members present for a meeting of the Corporation does not constitute a quorum, the meeting shall not be held.

12.3 If during a meeting of the Corporation there ceases to be a quorum, the meeting shall be terminated at once.

12.4 If a meeting cannot be held or cannot continue for lack of a quorum, the Chair may call a special meeting as soon as it is convenient.

## 13. **PROCEEDINGS OF MEETINGS**

13.1 Every question to be decided at a meeting of the Corporation shall be decided by a majority of the votes cast by members present and entitled to vote on the question.

13.2 Where, at a meeting of the Corporation, there is an equal division of votes on a question to be decided, the Chair of the meeting shall have a second or casting vote.

13.3 A member may not vote by proxy or by way of postal vote.

13.4 A resolution in writing agreed by at least 40% of the Members who would have been entitled to vote upon it had it been proposed at a meeting shall be effective provided that:

### 13.4.1

(a) a copy of the proposed resolution has been sent to every eligible member;

(b) at least 40% of the Members have signified agreement to the resolution; and

- (c) it is contained in a document authenticated by the Clerk which has been received at the address specified by the College for the receipt of documents within the period of 28 days beginning with the circulation date.
- 13.4.2 A resolution in writing may comprise several copies to which one or more members have signified their agreement.
- 13.4.3 A written resolution will lapse if it is not passed before the end of the period of 28 days beginning with the day on which copies of the written resolution are sent or submitted to members or, if copies are sent or submitted on different days, to the first of those days.
- 13.5 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.
- 13.6 Except as provided by procedures made pursuant to Article 12 of the Articles of Government, a member of the Corporation who is a member of staff at the institution, including the Principal, shall withdraw:
  - 13.6.1 from that part of any meeting of the Corporation, or any of its committees, at which staff matters relating solely to that member of the staff, as distinct from staff matters relating to all members of staff or all members of staff in a particular class, are to be considered;
  - 13.6.2 from that part of any meeting of the Corporation, or any of its committees, at which that member's reappointment or the appointment of that member's successor is to be considered;
  - 13.6.3 from that part of any meeting of the Corporation, or any of its committees, at which the matter under consideration concerns the pay or conditions of service of all members of staff, or all members of staff in a particular class, where the member of staff is acting as a representative (whether or not on behalf of a recognised trade union) of all members of staff or the class of staff (as the case may be); and
  - 13.6.4 if so required by a resolution of the other members present, from that part of any meeting of the Corporation or any of its committees, at which staff matters relating to any member of staff holding a post senior to that member's are to be considered, except those relating to the pay and conditions of all staff or all staff in a particular class.
- 13.7 A Principal who has chosen not to be a member of the Corporation shall still be entitled to attend and speak, or otherwise communicate, at all meetings of the Corporation and any of its committees, except that the Principal shall withdraw

in any case where the Principal would be required to withdraw under **clause 13.6.**

13.8 A student member who is under the age of 18 shall not vote at a meeting of the Corporation, or any of its committees, on any question concerning any proposal:

13.8.1 for the expenditure of money by the Corporation; or

13.8.2 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.

13.9 A student member shall withdraw from that part of any meeting of the Corporation or any of its committees, at which a student's conduct, suspension or expulsion is to be considered.

13.10 In any case where the Corporation, or any of its committees, is to discuss staff matters relating to a member or prospective member of staff at the institution, a student member shall:

13.10.1 take no part in the consideration or discussion of that matter and not vote on any question with respect to it; and

13.10.2 where required to do so by a majority of the members, other than student members, of the Corporation or committee present at the meeting, withdraw from the meeting.

13.11 The Clerk:

13.11.1 shall withdraw from that part of any meeting of the Corporation, or any of its committees, at which the Clerk's remuneration, conditions of service, conduct, suspension, dismissal or retirement in the capacity of Clerk are to be considered; and

13.11.2 where the Clerk is a member of staff at the institution, the Clerk shall withdraw in any case where a member of the Corporation is required to withdraw under **clause 13.6.**

13.12 If the Clerk withdraws from a meeting, or part of a meeting, of the Corporation or a committee of the Corporation under **clause 13.10** the Corporation shall appoint a person from among themselves to act as Clerk during this absence.

## 14. **MINUTES**

14.1 Written minutes of every meeting of the Corporation shall be prepared, and, subject to **clause 14.2** at every meeting of the Corporation the minutes of the last meeting shall be taken as an agenda item.

- 14.2 **Clause 14.1** shall not require the minutes of the last meeting to be taken as an agenda item at a special meeting, but where they are not taken, they shall be taken as an agenda item at the next meeting which is not a special meeting.
- 14.3 Where minutes of a meeting are taken as an agenda item and agreed to be accurate, those minutes shall be signed as a true record by the Chair of the meeting.
- 14.4 Separate minutes shall be taken of those parts of meetings from which staff members, the Principal, student members or the Clerk have withdrawn from a meeting in accordance with **clause, 13.6, 13.8, 13.9, 13.10** or **13.11** and such persons shall not be entitled to see the minutes of that part of the meeting or any papers relating to it.

15. **PUBLIC ACCESS TO MEETINGS**

Persons who are not members of the Corporation may be permitted to attend meetings of the Corporation in line with Standing Orders adopted by the Corporation and as agreed by the Chair of the Corporation. In making a decision, the Chair shall give consideration to any matters of confidentiality.

16. **PAYMENT OF ALLOWANCES TO MEMBERS**

The Corporation may pay to its members such travelling, subsistence or other allowances as it decides, but shall not pay allowances which remunerate the members for their services as members without the written approval of the Charity Commission or designated principal regulator of the institution from time to time.

17. **COPIES OF THE INSTRUMENT OF THE GOVERNMENT**

A copy of this Instrument shall be given free of charge to every member of the Corporation and at a charge not exceeding the cost of copying or free of charge to any other person who so requests a copy, and shall be available for inspection at the institution upon request, during normal office hours, to every member of staff and every student.

18. **CHANGE OF NAME OF THE CORPORATION**

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

19. **APPLICATION OF THE SEAL**

- 19.1 The application of the seal of the Corporation shall be authenticated by:

- 19.1.1 the signature of either the Chair or of some other member authorised either generally or specially by the Corporation to act for that purpose; and
- 19.1.2 the signature of any other member.