

## INSTRUMENT

# INSTRUMENT OF GOVERNMENT

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### **Interpretation of the terms used**

#### **1. In this Instrument of Government—**

- (a) any reference to “the Principal” shall include a person acting as Principal;
- (b) “the Clerk” means the Clerk to the Corporation;
- (c) “the Corporation” means any further education corporation to which this Instrument applies;
- (d) “Independent Members” means members of the Corporation who are appointed pursuant to clause 2(1)(a);
- (e) “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 as amended from time to time;
- (f) “this Instrument” means this Instrument of Government;
- (g) “meeting” includes a meeting at which the members attending are present in more than one room, provided that by the use of video-conferencing facilities it is possible for every person present at the meeting to communicate with each other;
- (h) “necessary skills” means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have;
- (i) “parent member”, “staff member” and “student member” have the meanings given to them in clause 2;
- (j) “the Secretary of State” means the Secretary of State for Education;
- (k) “staff matters” means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff;
- (l) “the students’ union” means any association of students formed to further the educational purposes of the institution and the interests of students, as students;
- (m) a “variable category” means any category of members whose numbers may vary according to clauses 2 and 3.

### **Composition of the Corporation**

- 2.—(1)** The Corporation shall consist of—

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- (a) up to twelve Independent 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;
- (b) not more than two members, who are parents of students under the age of 19 years attending the institution, who have been nominated and elected by other parents, or if the Corporation so decides, by a recognised association representing parents (“parent members”);
- (c) the Principal of the institution, unless the Principal chooses not to be a member;
- (d) 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 and who have been nominated and elected by the staff of the institution (“staff members”); and
- (f) at least one and not more than two members who are students at the institution and have been nominated and elected by their fellow students, or if the Corporation so decides, by a recognised association representing such students (“student members”).

(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.

(3) The appointing authority, as set out in clause 4, will decide whether a person is eligible for nomination, election and appointment as a member of the Corporation under paragraph (1).

### **Determination of membership numbers**

**3.—(1)** Subject to paragraph (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.

(2) The Corporation may at any time vary the determination referred to in paragraph (1) and any subsequent determination under this paragraph provided that -

- (a) the number of members of the Corporation shall not be less than twelve or more than nineteen; and
- (b) 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) 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.

### **Appointment of the members of the Corporation**

**4.—(1)** Subject to paragraph (2) the Corporation is the appointing authority in relation to the appointment of its members.

(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.

(3) The appointing authority may decline to appoint a person as a parent, staff or student member if—

- (a) 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
- (b) the appointment of the person would contravene any rule or bye-law made under clause 8 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
- (c) the person is ineligible to be a member of the corporation because of clause 7.

(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.

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### **Appointment of the Chair and Vice-Chair**

5.—(1) The members of the Corporation shall appoint a Chair through an open external process which can include any nominations from Board Members who are part of the Corporation.

(2) The members of the Corporation shall appoint at least one Vice-Chair from among themselves. If the Corporation appoints more than one Vice-Chair, then the Corporation shall decide on the respective duties of each Vice-Chair.

### **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.

(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.

(3) Any reference in this Instrument to the Clerk shall include a temporary Clerk appointed under paragraph (2).

(4) Unless required to withdraw, the Clerk shall be entitled to attend all meetings of the Corporation and any of its committees.

(5) The Clerk may also be a member of staff at the institution.

### **Persons who are ineligible to be members**

7.—(1) No one under the age of 18 years may be a member, except as a student member.

(2) The Clerk may not be a member.

(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.

(4) Paragraph (3) does not apply to a student who is employed by the Corporation in connection with the student's role as an officer of a students' union.

(5) Subject to paragraphs (6) and (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(1), or if that person has made a composition or arrangement with creditors, including an individual voluntary arrangement.

(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—

(a) on that person's discharge from bankruptcy, unless the bankruptcy order has before then been annulled; or

(b) if the bankruptcy order is annulled, at the date of that annulment; or

(c) 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

(d) if the interim bankruptcy restrictions order is discharged by the court, on the date of that discharge; or

(e) if the bankruptcy restrictions undertaking is annulled, at the date of that annulment.

(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.

(8) Subject to paragraph (9), a person shall be disqualified from holding, or from continuing to hold, office as a member if—

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### 1 1986.c.45 as amended by the Enterprise Act 2002 (c. 40)

(a) 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

(b) within the previous twenty years that person has been convicted as set out in sub-paragraph (a) and has received a sentence of imprisonment, whether suspended or not, for a period of more than two and a half years; or

(c) that person has at any time been convicted as set out in sub-paragraph (a) and has received a sentence of imprisonment, whether suspended or not, of more than five years.

(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.

(10) Upon a member of the Corporation becoming disqualified from continuing to hold office under paragraphs (5) or (8), the member shall immediately give notice of that fact to the Clerk.

### **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.

(2) Members retiring at the end of their term of office shall be eligible for reappointment, although not automatically reappointed, and clause 4 shall apply to the reappointment of a member as it does to the appointment of a member.

(3) Paragraph (2) is subject to any rule or bye-law made by the Corporation concerning the number of terms of office which a person may serve.

### **Termination of membership**

9.—(1) A member may resign from office at any time by giving notice in writing to the Clerk.

(2) The Corporation may by notice in writing to a member remove the member from office and the office shall then be vacant.

(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.

(4) A student member shall cease to hold office—

(a) 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

(b) if expelled from the institution,

and the office shall then be vacant.

### **Members not to hold interests in matters relating to the institution**

10.—(1) No member shall acquire or hold any interest in any property that is held or used for the purposes of the institution.

(2) A member to whom paragraph (3) applies shall -

(a) disclose to the Corporation the nature and extent of the interest; and

(b) 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 paragraph (3) 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

(c) 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 paragraph (3) is to be considered,

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where required to do so by a majority of the members of the Corporation or committee present at the meeting.

- (3) This paragraph applies to a member who—
- (a) has any financial interest in—
    - (i) the supply of work to the institution, or the supply of goods for the purposes of the institution;
    - (ii) any contract or proposed contract concerning the institution; or
    - (iii) any other matter relating to the institution; or
  - (b) has any other interest of a type specified by the Corporation in any matter relating to the institution.

(4) 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.

(5) 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—

- (a) need not disclose a financial interest; and
- (b) 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
- (c) 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.

(6) 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.

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

11. 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.

### **Change of name of the Corporation**

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

### **Application of the seal**

13. The application of the seal of the Corporation shall be authenticated by the signature of any two members authorised either generally or specially by the Corporation to act for that purpose.

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## ARTICLES

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#### **Interpretation of the terms used**

1. In these Articles of Government—

- (a) any reference to “the Principal” shall include a person acting as Principal;
- (b) “the Articles” means these Articles of Government;
- (c) “Chair” and “Vice-Chair” mean respectively the Chair and Vice-Chair of the Corporation appointed under clause 5 of the Instrument of Government;
- (d) “the Clerk” has the same meaning as in the Instrument of Government;
- (e) “the Corporation” has the same meaning as in the Instrument of Government;
- (f) “parent member”, “staff member” and “student member” have the same meanings as in the Instrument of Government;
- (g) “the Secretary of State” means the Secretary of State for Education;
- (h) “senior post” means the post of Principal and such other senior posts as the Corporation may decide for the purposes of these Articles;
- (i) “the staff” means all the staff who have a contract of employment with the institution;
- (j) “the students’ union” has the same meaning as in the Instrument of Government.

#### **Conduct of the institution**

2. The institution shall be conducted in accordance with the provisions of the Instrument of Government, these Articles, any rules or bye-laws made under these Articles and any trust deed regulating the institution.

#### **Responsibilities of the Corporation, the Principal and the Clerk**

3.—(1) The Corporation shall be the supreme governing body of the institution and shall be responsible for the following functions—

- (a) the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;

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- (b) publishing arrangements for obtaining the views of staff and students on the determination and periodic review of the educational character and mission of the institution and the oversight of its activities;
- (c) approving the quality strategy of the institution;
- (d) the effective and efficient use of resources, the solvency of the institution and the Corporation and safeguarding their assets;
- (e) approving annual estimates of income and expenditure;
- (f) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts and the Clerk, including, where the Clerk is, or is to be appointed as, a member of staff, the Clerk's appointment, grading, suspension, dismissal and determination of pay in the capacity of a member of staff; and
- (g) setting a framework for the pay and conditions of service of all other staff.

(2) Subject to the responsibilities of the Corporation, the Principal shall be the Chief Executive of the institution, and shall be responsible for the following functions-

- (a) making proposals to the Corporation about the educational character and mission of the institution and implementing the decisions of the Corporation;
- (b) the determination of the institution's academic and other activities;
- (c) preparing annual estimates of income and expenditure for consideration and approval by the Corporation, and the management of budget and resources within the estimates approved by the Corporation;
- (d) the organisation, direction and management of the institution and leadership of the staff;
- (e) the appointment, assignment, grading, appraisal, suspension, dismissal and determination, within the framework set by the Corporation, of the pay and conditions of service of staff, other than the holders of senior posts or the Clerk, where the Clerk is also a member of the staff; and
- (f) maintaining student discipline and, within the rules and procedures provided for within these Articles and the student disciplinary appeals process, suspending or expelling students on disciplinary grounds or expelling students for academic reasons.

(3) The Clerk shall be responsible for the following functions: -

- (a) advising the Corporation with regard to the operation of its powers;
- (b) advising the Corporation with regard to procedural matters;
- (c) advising the Corporation with regard to the conduct of its business; and
- (d) advising the Corporation with regard to matters of governance practice.

### **The establishment of committees and delegation of functions generally**

4.—(1) The Corporation may establish committees for any purpose or function, other than those assigned in these Articles to the Principal or Clerk and shall establish an Audit Committee to advise on matters relating to the Corporation's audit arrangements and systems of internal control

(2) The Corporation may delegate powers which have not been reserved in the Instrument or Articles.

(3) Any committee established by the Corporation may include persons who are not members of the Corporation but shall be chaired by a member of the Corporation.

(4) The Corporation may also establish committees under collaboration arrangements made with other further education institutions or maintained schools (or with both), and such joint committees shall be subject to any regulations made under section 166 of the Education and Inspections Act 2006(2) governing such arrangements.

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(2) 2006 c. 40.



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### **Delegable and non-delegable functions**

5. The Corporation shall not delegate the following functions-

- (a) the determination of the educational character and mission of the institution;
- (b) the approval of the annual estimates of income and expenditure;
- (c) the responsibility for ensuring the solvency of the institution and the Corporation and for safeguarding their assets;
- (d) the appointment of the Principal or holder of a senior post;
- (e) the appointment of the Clerk, (including, where the Clerk is, or is to be, appointed as a member of staff the Clerk's appointment in the capacity of a member of staff); and
- (f) the modification or revocation of these Articles.

6.—(1) The Corporation may not delegate -

- (a) the consideration of the case for dismissal, and
- (b) the power to determine an appeal in connection with the dismissal

of the Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation.

(2) The Corporation shall make rules specifying the way in which a committee having functions under paragraph (1) shall be established and conducted.

7. The Principal may delegate functions to the holder of any other senior post other than-

- (a) the management of budget and resources; and
- (b) any functions that have been delegated to the Principal by the Corporation.

### **Appointment and promotion of staff**

8.—(1) Where there is a vacancy or expected vacancy in a senior post, the Corporation shall—

- (a) advertise the vacancy nationally; and
- (b) appoint a selection panel consisting of—
  - (i) at least five members of the Corporation including the Chair or the Vice-Chair or both, where the vacancy is for the post of Principal ; or
  - (ii) the Principal and at least three other members of the Corporation, where the vacancy is for any other senior post.

(2) The members of the selection panel shall—

- (a) decide on the arrangements for selecting the applicants for interview;
- (b) interview the applicants; and
- (c) where they consider it appropriate to do so, recommend to the Corporation for appointment one of the applicants they have interviewed.

(3) If the Corporation approves the recommendation of the selection panel, that person shall be appointed.

(4) If the members of the selection panel are unable to agree on a person to recommend to the Corporation, or if the Corporation does not approve their recommendation, the Corporation may make an appointment itself of a person from amongst those interviewed, or it may require the panel to repeat the steps specified in paragraph (2), with or without first re-advertising the vacancy.

(5) Where there is a vacancy in a senior post or where the holder of a senior post is temporarily absent, until that post is filled or the absent post holder returns, a member of staff-

- (a) may be required to act as Principal or in the place of any other senior post holder; and
- (b) if so required, shall have all the duties and responsibilities of the Principal or such other senior post holder during the period of the vacancy or temporary absence.

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(6) The Corporation shall seek the Secretary of State's consent before making any temporary appointment to the post of Principal or any other senior post, where it is intended that such a post holder will not have a contract of employment with the Corporation.

9. The Principal shall have responsibility for selecting for appointment all members of staff other than -

- (a) senior post holders; and
- (b) where the Clerk is also to be appointed as a member of staff, the Clerk in the role of a member of staff.

### **Rules relating to the conduct of staff**

10. After consultation with the staff, the Corporation shall make rules relating to their conduct.

### **Academic freedom**

11. The Corporation shall have regard to the need to ensure that academic staff at the institution have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the institution.

### **Grievance, suspension and disciplinary procedures**

12.—(1) After consultation with staff, the Corporation shall make rules setting out

- (a) grievance procedures for all staff;
- (b) procedures for the suspension of all staff; and
- (c) disciplinary and dismissal procedures for
  - (i) senior post-holders, and
  - (ii) staff other than senior post-holders

and such procedures shall be subject to the provisions of articles 3(1)(f), 3(2)(e), 5(d), 5(e), 6(1) and 13.

(2) Any rules made under paragraph (1)(b) shall include provision that where a person has been suspended without pay, any appeal against such suspension shall be heard and action taken in a timely manner.

(3) Any rules made under paragraph (1)(c)(i) shall include provision that where the Corporation considers that it may be appropriate to dismiss a person, a preliminary investigation shall be conducted to examine and determine the case for dismissal.

### **Suspension and dismissal of the Clerk**

13.—(1) Where the Clerk is also a member of staff at the institution, the Clerk is to be treated as a senior post holder for the purposes of article 12(1)(c).

(2) Where the Clerk is suspended or dismissed under article 12, that suspension or dismissal shall not affect the position of the Clerk in the separate role of Clerk to the Corporation.

### **Students**

14.—Any students' union shall conduct and manage its own affairs and funds in accordance with a constitution approved by the Corporation and no amendment to, or rescission of, that constitution, in part or in whole, shall be valid unless approved by the Corporation.

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### **Rules and bye-laws**

15. The Corporation shall have the power to make rules and bye-laws relating to the government and conduct of the institution and these rules and bye-laws shall be subject to the provisions of the Instrument of Government and these Articles.

### **Copies of Articles of Government and rules and bye-laws**

16. A copy of these Articles, and of any rules and bye-laws, 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 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.

### **Modification or replacement of the Instrument and Articles of Government**

17. (1) Subject to paragraph (2), the Corporation may by resolution of the members modify or replace its instrument and articles of government.

(2) The Corporation shall not make changes to the instrument or articles of government that would result in the body ceasing to be a charity.

### **Dissolution of the Corporation**

18. The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.