

Cylchlythyr | Circular

Consultation on Terms and Conditions of Funding

Date: 11 January 2021
Reference: W21/01HE
To: Heads of higher education institutions in Wales
Principals of directly-funded further education colleges in Wales
Response by: 28 February 2021
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This consultation attaches Terms and Conditions of Funding.

If you require this document in an alternative accessible format, please email info@hefcw.ac.uk.



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Introduction

1. This consultation document sets out the Terms and Conditions of Funding to supersede the Memorandum of Assurance and Accountability between HEFCW and institutions and the Financial Memorandum Part 2: Annual schedule for Teaching and Research Funding for the academic year.
2. This consultation documents seeks views on these proposed Terms and Conditions of Funding.
3. These terms would supersede W15/32HE 'Memorandum of Assurance and Accountability', which had previously replaced W08/63HE, 'Revised Financial Memorandum and Audit Code of Practice'.
4. Information included in both the annual Funding Allocations circular and the Financial Memorandum Part 2: Annual schedule will only feature in the Funding Allocations circular going forward i.e. it will not be include in the Terms and Conditions of Funding, to reduce duplication.

Consultation on Terms and Conditions of Funding

5. Terms and Conditions of Funding have been drafted in an effort to eliminate the current duplication between the Memorandum of Assurance and Accountability and the Financial Management Code, including the Financial Memorandum Part 2: Annual schedule. There is significant overlap between these documents and the new Terms and Conditions of Funding aims to supersede the Memorandum of Assurance and Accountability and the Financial Memorandum Part 2: Annual schedule for Teaching and Research funding for the academic year as a more concise document, without repetition of the Financial Management Code.
6. Duplication with the annual Funding Allocations circular has also been removed from this document.
7. Questions to institutions
 - *Do you have any comments on the proposal? Are there any unintended consequences of these revisions or should further consideration be given to particular elements of the proposal?*
 - *What positive or adverse effects will the proposals have on:*
 - *opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language?*
 - *Could the proposals be changed to increase positive effects, or decrease adverse effects on:*
 - *opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language?*

- *Do the proposals have any positive or negative impacts or unintended consequences in terms of equality and diversity and the Well-being of Future Generation (Wales) Act's seven wellbeing goals, Sustainable Development Principle and five ways of working?*
8. Please provide any comments or views on this document to the Assurance inbox (assurance@hefcw.ac.uk) by 28 February 2021.

Proposed time for Implementation

9. HEFCW intends to implement the proposals above from 1 August 2021.
10. The proposals will cover academic year 2021/22 onwards.

Further information

11. For further information, contact Gail Morgan (tel 029 2085 9715; email gail.morgan@hefcw.ac.uk).

Assessing the impact of our policies

12. We have carried out an equality impact assessment (EIA) screening to help safeguard against discrimination and promote equality. We also considered the impact of policies on the Welsh language, and Welsh language provision within the HE sector in Wales. Contact equality@hefcw.ac.uk for more information about EIAs.

Terms and Conditions of Funding

2021/22

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Contents

Introduction	4
Application of this document	4
Responsibilities of HEFCW	6
<i>Payment of funds in accordance with legislation</i>	6
<i>Arrangements for payment of funding</i>	6
<i>Protection of public funds</i>	6
<i>Auditors' access to information</i>	6
<i>Right to suspend payment of funds</i>	7
Responsibilities of the institution to us and to students	7
<i>Governing Body responsibility for compliance with this document</i>	7
<i>Proper stewardship of public funds</i>	7
<i>Robust, accountable and transparent governance structures</i>	7
<i>Composition of the governing body</i>	8
<i>Accountable officer's role and responsibilities</i>	8
<i>Absence of, or removal of accountable officer</i>	9
<i>Responsibility for reporting significant events</i>	9
<i>Governing Body's responsibility to deliver value for money</i>	10
<i>Responsibility to provide HEFCW with accurate and timely information</i>	10
<i>Responsibility to provide HEFCW with data requested</i>	11
<i>Audit of data</i>	11
<i>Notification of changes to senior roles</i>	12
<i>Securing quality provision of education</i>	12
<i>Compliance with the Research Integrity Concordat</i>	13
<i>Remuneration</i>	13
<i>Appropriate use of public funds</i>	14
<i>Circumstances in which public funds become repayable</i>	15
<i>Requirement to subscribe to other bodies</i>	15
<i>Prudent management of the estate</i>	15
<i>Monitoring of the exchequer value held within the institution's assets</i>	16
<i>Disposal of assets in which there is an exchequer interest</i>	16
<i>Financial commitments</i>	17
<i>Compliance with EU state aid law</i>	17
<i>Financial statement preparation</i>	17
<i>Oversight of audit</i>	19

HEFCW's right of access for investigations 19

Institutional engagement, support and safeguarding actions..... 19

Safeguarding actions 19

Other matters..... 20

Revisions to this document..... 20

Interpretation of statements within this document..... 20

Signature of the accountable officer 20

Signature of the Chair of the Governing Body 21

Annex A: Glossary 22

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Introduction

1. This document sets out the terms and conditions of funding by the Higher Education Funding Council for Wales (HEFCW), made available by the Minister for Education for the purposes of teaching and research for the period **1 August 20xx to 31 July 20xx. [Annual update of dates required]**
2. This document records the agreement between the Higher Education Funding Council for Wales (HEFCW) and **name of institution** in receipt of this funding as set out in the annual Funding Allocations circular.
3. This document supersedes the Memorandum of Assurance and Accountability (W15/32HE), which had previously replaced the Revised Financial Memorandum and Audit Code of Practice 2008 (W08/36HE).
4. This document **does not** supersede the Financial Management Code (FMC) (W17/16HE), but operates in parallel to the FMC, and regulated institutions must also comply with the requirements set out in the FMC.
5. We have been mindful of a number of guiding principles whilst preparing this document. These principles are:
 - a. Protecting the exchequer interest and accountability for exchequer funds;
 - b. The need to maintain stakeholder confidence in the higher education sector;
 - c. The protection of the student interest;
 - d. Minimising regulatory burden and removing duplication;
 - e. Recognising institutional autonomy;
 - f. Reasonable and proportionate accountability; and
 - g. Adopting a consistency of approach with other UK HE funding bodies where possible (for example, in respect of financial requirements and the consideration of the student interest), in order that the regulatory environment in Wales supports the ability of Welsh institutions to operate competitively across Wales, the United Kingdom and internationally.
6. The definitions of terms used within this document are set out within '**Annex A: Glossary**'.

Application of this document

7. This document does not override the requirements of the institution's charter, statutes (or equivalent) and the law relating to the institution's charitable status but is intended to complement and reinforce them. Nothing in these terms and conditions 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 charter and statutes.
8. Where an institution receives funds from both HEFCW (for the provision of

higher education) and the Welsh Government (for the provision of further education in accordance with the Learning and Skills Act 2000) the terms which will apply will be those which relate to the majority of provision at the institution. In this document, references to funds received from HEFCW should also be taken to include any funds received from the Welsh Government for the provision of further education.

9. Where we use the term 'must', this indicates a specific legal requirement or condition of funding under this document. Institutions must comply with these requirements, and failure to do so could result in HEFCW recovering and/or ceasing funding under the terms of this document. We use 'should' for items we regard as minimum good practice, but for which there is no specific legislation or where we are not setting a condition of funding under this document. We will, however, consider the extent to which an institution has adopted the 'should' provisions (or alternative, equally robust arrangements) in our annual assessment of risk.
10. From time to time, we may within subsequent guidance, attach extra mandatory requirements to the conditions of funding, following appropriate consultation with the sector.
11. This document takes effect from 1 August 20xx.

Responsibilities of HEFCW

Payment of funds in accordance with legislation

12. Payments to the institution by HEFCW are made in support of activities specified in section 65(2) of the Further and Higher Education Act 1992.
13. Payments will be subject to the provisions of the 1992 Act, the conditions set out in this document, and such terms and conditions as HEFCW may from time to time prescribe in accordance with the 1992 Act, and after the consultation required under section 66(1) of the Act. In accordance with section 65(3) of the 1992 Act, the payment of funds will be subject to such terms and conditions as HEFCW may impose, including those set out in this document. However, in accordance with section 65(4) of the 1992 Act, these terms and conditions will not relate to the application by the institution of any funds not derived from HEFCW. In accordance with section 66(2) of the 1992 Act, HEFCW does not wish to discourage the institution from maintaining or developing its funding from sources other than HEFCW.

Arrangements for payment of funding

14. HEFCW will make payments of all teaching funding and research funding to the institution against a profile of payments which has been notified separately by email to Vice Chancellors/Principals and Directors of Finance.

Protection of public funds

15. The Chief Executive of HEFCW has been appointed as its Accounting Officer. As such, they are responsible and accountable to Welsh Government for ensuring that the funds received from the Minister for Education (or successor) are used for the purposes for which they were given and in ways that comply with the conditions attached to them. The Chief Executive is also responsible for promoting good value for money through grants paid to institutions and associated guidance.
16. All funding provided by HEFCW is made available subject to the funding being deployed.
17. The Chief Executive must satisfy themselves that the governing body (or equivalent) of the institution has appropriate arrangements for internal control (including financial management and accounting), and that HEFCW's funds are used for the purposes for which they were given.

Auditors' access to information

18. The Auditor General for Wales, head of the Wales Audit Office (WAO), is the external auditor of both the Welsh Assembly Government and HEFCW. S/he has the right to inspect the accounts of any institution that receives HEFCW grant or Welsh Government funding and to carry out value for money

investigations.

Right to suspend payment of funds

19. In their role as Accounting Officer, the Chief Executive of HEFCW may suspend the payment of grant, either in whole or in part and either permanently or temporarily, if in his or her opinion it is appropriate and reasonable to do so in order to safeguard public funds.
20. In their role as Accounting Officer, the Chief Executive of HEFCW shall inform the institution's governing body (or equivalent) and/or its audit committee if they have serious concerns about the institution's financial affairs or system of internal controls.

Responsibilities of the institution to us and to students

Governing Body responsibility for compliance with this document

21. The responsibility for ensuring that the institution complies with the Terms and Conditions of Funding and related guidance rests with the governing body of the institution.

Proper stewardship of public funds

22. The governing body of the institution is responsible for ensuring that funds from HEFCW are used only in accordance with the 1992 Act, these terms and any other conditions that HEFCW may from time to time prescribe.
23. The governing body must exercise its discretion reasonably in the use of public funds and take into account any relevant guidance on accountability or propriety issued from time to time by HEFCW, the Wales Audit Office (WAO) or the Public Accounts Committee of the National Assembly for Wales.

Robust, accountable and transparent governance structures

24. Institutions must have robust governance structures in place to enable them to effectively identify and manage conflicts of interest and whistleblowing incidents. Any instances of such conflicts or whistleblowing incidents should be reported to HEFCW immediately. This information must be in a format which is readily accessible to stakeholders, including HEFCW. See paragraph 48 for further information.
25. The secretary/clerk is accountable for highlighting issues of independence or conflict to the Chair of the governing body.
26. Governing body committees must be structured to enable effective oversight of strategic development and delivery, including assurance of benefit delivery and effective risk management.

27. Institutions must sign up for and work towards delivering the commitments as set out in Governance Charter for Universities in Wales.

Composition of the governing body

28. Governing body roles and responsibilities must be clearly defined for each role, including the expected behaviours. This is to include the roles of the Chair, deputy chair, committee chair, lay members, executive members, staff members and student members.
29. The governing body must consider the diversity of its composition, particularly in terms of protected characteristics. At each step of the recruitment exercise for new members, care should be taken that an applicant's ability is not conflated with their experience. Recruitment efforts for governing body memberships should be proactive and target under-represented groups. We do not consider it sufficient to openly advertise a vacancy without taking proactive measures to bring the advert to the attention of under-represented groups.
30. Transparent strategies towards boardroom diversity must be developed, to ensure that the governing body reflects the community which it serves.
31. The accountable officer must inform HEFCW's Chief Executive if neither an external search consultancy nor open advertising has been used in the appointment of a governing body member. The use of an external search consultancy or open advertising is not a condition of grant, however, we consider it to be good practice.
32. The governing body should work towards ensuring that membership of the governing body does not exceed 22 members, with a lay member majority.
33. Non-executive members of the governing body should not normally serve for more than nine years, which may be exceptionally extended to 10 years. Where an existing member is subsequently appointed as Chair, the accountable officer must inform HEFCW's Chief Executive.
34. HEFCW will consider the composition of the governing body and the institution's report on its equality and diversity policies within its Institutional Risk Review process.

Accountable officer's role and responsibilities

35. The head of an institution is first and foremost responsible for leadership of the academic affairs and executive management of the institution.
36. The governing body must designate an individual (normally, but not necessarily, the head of the institution) as the 'accountable officer' to assist and enable the governing body to discharge its reporting responsibilities to HEFCW.

37. The accountable officer may be required to appear before the Public Accounts Committee of the National Assembly for Wales alongside the Chief Executive of HEFCW on matters relating to grants to the institution.
38. The accountable officer must advise the governing body immediately if, at any time, any action or policy under consideration by the governing body appears to the accountable officer to be incompatible with the terms of this document. If the governing body decides nevertheless to proceed, the accountable officer must immediately inform the Chief Executive of HEFCW in writing.

Absence of, or removal of accountable officer

39. If, in the judgement of the HEFCW Chief Executive, there is evidence of serious failure in relation to the oversight and management of public funds, they will raise this as appropriate with the accountable officer concerned, the chair of the governing body or both; provide the relevant evidence; and seek and consider a response.

Responsibility for reporting significant events

40. The institution's accountable officer must notify HEFCW of any serious weakness, such as a significant and immediate threat to the institution's financial position, significant fraud or major accounting breakdown and the action being taken by the institution to address this weakness.
41. The institution's accountable officer should notify HEFCW of any fraud which, whilst not being significant, indicates a financial control weakness and the action being taken by the institution to address this weakness.
42. The institution's accountable officer should notify HEFCW of any fraud reported to the Police, which has actually or potentially been committed, in line with Charity Commission guidance¹.
43. The Chair of the institution's Governing Body must notify HEFCW of any disciplinary processes being taken against the accountable officer.
44. The institution's accountable officer must notify HEFCW of any disciplinary processes being taken against members of the institution's senior executive team, as defined in paragraph 62.
45. If an issue or weakness has been identified, or is being investigated, by a funder or regulator other than HEFCW, the University must make us aware of this.
46. 'Serious weakness' is defined as one which has resulted in, or could result in, a significant loss of funds or a significant risk to an institution's property, work,

¹ www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity

data, beneficiaries or reputation.

47. Where institutions think there is reason to believe that the quality of provision is inadequate or likely to become inadequate as identified through their own processes including via complaints, they must treat this as a notifiable event, and inform HEFCW as soon as possible.
48. The institutions' accountable officer must inform HEFCW of any conflicts of interest or any whistleblowing incidents. Information will be treated with confidentiality and will not be shared without seeking permission from the institution first.
49. The institutions' accountable officer must inform HEFCW of any quality related significant events. Information will be treated with confidentiality and will not be shared without seeking permission from the institution first.
50. The institutions' accountable officer must inform HEFCW of any significant events reported to another regulator. Information will be treated with confidentiality and will not be shared without seeking permission from the institution first.

Governing Body's responsibility to deliver value for money

51. The governing body is responsible for delivering value for money from public funds. It must keep under review its arrangements for managing all the resources under its control, taking into account guidance on good practice issued from time to time by HEFCW, the Auditor General for Wales or the Public Accounts Committee of the National Assembly for Wales.

Responsibility to provide HEFCW with accurate and timely information

52. The institution must provide HEFCW, or agents acting on its behalf, with whatever information HEFCW requires to exercise its functions under the 1992 Further and Higher Education Act, and the Higher Education (Wales) Act 2015.
53. The institution must provide HEFCW with access to all books, records, information, systems and assets. HEFCW can require any officer to give any explanation which it considers necessary to fulfil its responsibilities. The books and records of the institution shall also be open to inspection by the Auditor General for Wales.
54. If the institution is overpaid grant as a result of HEFCW using estimated data, HEFCW reserves the right to recover any overpayment, plus interest, in accordance with paragraphs 79 to 83 below.
55. Institutions will be asked to provide data that they have collected to HEFCW or to other bodies acting on HEFCW's behalf. At present, the Higher Education Statistics Agency (HESA) acts as an agent both for the institution and for

HEFCW in collecting information required by HEFCW and passing that information to HEFCW and/or to Welsh Government on behalf of HEFCW. These data will often contain personal details for students and/or staff. To ensure that institutions and HEFCW can fulfil their duties under the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) (EU 2016/679), institutions must satisfy themselves when collecting data that students and/or staff are aware of data is being collected for these purposes. Institutions must inform students and staff that their personal data will be submitted to HESA and must make HESA collection notices available to all relevant data subjects. The institution will co-operate with HEFCW as reasonably necessary to ensure that HEFCW and HESA, or any other agents of HEFCW, are able to comply with the Data Protection Act 2018 in processing information supplied by the institution.

Responsibility to provide HEFCW with data requested

56. The institution must provide HEFCW, HESA or other organisations as required by HEFCW, with reliable and accurate information on the students it has enrolled and the credit values associated with those students, and with any other data required whether for calculating funding or for other reporting and analysis purposes.
57. The data provided by institutions and used for funding purposes by HEFCW are subject to validation checks. The definitions used in the data returns are set out in HEFCW's Higher Education Students Early Statistics (HESES) and End of Year Monitoring (EYM) of Higher Education Enrolments surveys and also in the HESA record manuals.
58. HEFCW reserves the right to use its own estimates of student registrations, associated credit values and any other data for institutions which fail to return data on time to HEFCW, HESA or other organisations, or where data are considered to be of insufficient quality.
59. The institution must comply with the code of practice for higher education data collections and to report any breaches of the Code to HEFCW. The institution must confirm their adherence to the Code as part of the annual assurance return².

Audit of data

60. All data used in funding calculations are subject to an external data audit. Other data used by HEFCW for monitoring or analysis may also be included in the scope of an external audit. In addition to the adjustments described in paragraphs 56 to 59 above for credit-based teaching, funding adjustments may be made to funding in the light of errors or omissions found at audit where these have resulted in an institution receiving a higher allocation of funding than should have been the case. If the adjustment is less than £50,000,

² www.hesa.ac.uk/innovation/data-landscape/Codes-of-practice/Supply-side

HEFCW will use its discretion, based on the circumstances of the audit findings, to decide whether or not the adjustment should be applied. If the adjustment is greater than £50,000 the adjustment will be applied in full.

Notification of changes to senior roles

61. Where a member of the governing body or one of its committees, or a clerk to one of these, leaves their post due to disagreement, dismissal or forced resignation, the accountable officer must notify us immediately of the reasons for the departure.
62. The accountable officer must also notify us immediately of the resignation or removal due to disagreement, dismissal or forced resignation of a member of the senior executive team. A member of the senior executive team is defined in accordance with FRS 102's definition for 'key management personnel'; that is "those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity". This is consistent with the approach that institutions are required to take in identifying their senior executive team for financial statements under the FEHE Statement of Recommended Practice³.

Securing quality provision of education

63. The institution must comply with HEFCW's quality assessment processes as they have been set out for regulated institutions in accordance with the HE (Wales) Act 2015. This includes the Quality Assessment Framework for Wales⁴.
64. All regulated institutions are required to publish a Student Charter and Relationship Agreement which should be reviewed annually in partnership with the Students' Union.⁵
65. HEFCW has a statutory responsibility to secure that assessment is made of the quality of provision of education provided in Wales by, or on behalf of, each regulated institution⁶. We currently exercise this duty partly through requiring regulated institutions to commission regular external quality assurance reviews from a body on the European Quality Assurance Register for Higher Education (EQAR). The review must comply with the European Standards and Guidelines requirements for such reviews.
66. A range of factors could give rise to the risk of the quality of education becoming inadequate. We therefore monitor a range of indicators throughout

³ www.frc.org.uk/getattachment/e1d6b167-6cdb-4550-bde3-f94484226fbd/FRS-102-WEB-Ready-2015.pdf

⁴ See [W18/05HE: Quality Assessment Framework for Wales](#) and also [W19/22HE: Revisions to the Quality Assessment Framework](#)

⁵ See [HEFCW Student Charter guidance](#)

⁶ www.legislation.gov.uk/anaw/2015/1/part/3/enacted

the year to determine our judgement of the likelihood of the quality of education becoming inadequate. This process could inform external quality assurance reviews, and would be informed by such reviews. Our Procedures for assessing the quality of education⁷ set out how we will determine the risk of provision being inadequate, or being likely to become inadequate. As noted above, instances which give reason to believe that the quality of provision is inadequate or likely to become inadequate, must be treated as notifiable events.

67. HEFCW has a clear regulatory interest to ensure that Institutions in receipt of public funds provide value for money and are responsible in their use of these funds, as described in this document. In cases both of inadequate quality, and where we have identified that quality is likely to become inadequate, we will expect the institution to take corrective action sufficient to address the issues. Prior to implementation of statutory intervention, we will liaise informally or formally with institutions⁸. For regulated institutions, HEFCW may also take action through its regulatory power under the HE (Wales) Act 2015.

Compliance with the Research Integrity Concordat

68. HEFCW is one of the signatories to the Concordat to Support Research Integrity⁹, together with Universities UK, the other three UK higher education funding bodies, UK Research and Innovation, the National Institute for Health Research and the Wellcome Trust. It is our firm expectation that all universities in Wales should comply with the terms of the Concordat. All institutions are asked to provide confirmation of their compliance with the Concordat within the Annual Assurance Returns.
69. HEFCW will require universities in Wales to: provide a copy of their policies on ethical review and approval and mechanisms for reporting allegations of misconduct; point to the area of the university website where information on research integrity is available; provide information on investigations of research misconduct to funders of research and to professional and/or statutory bodies as required by their conditions of grant and other legal, professional and statutory obligations.

Remuneration

70. The institution must follow public sector pay policy by taking account of fairness, the need to recruit, motivate and retain staff and affordability within the limits set by the grant settlement.
71. The institution must comply with all the required disclosures regarding the remuneration of its higher paid staff in its audited financial statements, as

⁷ [Annex B: Procedures for assessing the quality of education](#)

⁸ [W16/37HE: Statement of Intervention](#)

⁹ www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/the-concordat-for-research-integrity.aspx

specified in HEFCW's current Accounts Direction to institutions.

72. The institution should follow publicised remuneration good practice, including the principles set out in the CUC Senior Staff Remuneration Code (2018)¹⁰.

Appropriate use of public funds

73. HEFCW funds must not be used to subsidise non-public activities.
74. The institution must only use Council funds for the activities eligible for funding as specified in sub-sections 65(2)(a), (b) and (c) of the 1992 Act. This condition also applies where the institution passes on a part of its HEFCW grant to another legally distinct entity for provision of an activity which is eligible for funding. That includes passing on grant to colleges in the further education sector and where provision is delivered via sub-contractual arrangements or via a subsidiary company.
75. If passing on HEFCW-provided funds to another legally distinct entity:
- a. The institution remains accountable for the funds and must retain sufficient oversight such that it can ensure that the funds are used for qualifying purposes under the Act. This oversight must cover, among other areas, both financial accountability and quality assurance. A written statement of the arrangements must be agreed by both parties. This statement must ensure that the chain of accountability for the use of HEFCW funds is not broken, and that the relevant parts of the terms and conditions of funding here within apply to the eventual user of the funding; and
 - b. This applies except in cases where the body to which the institution passes funds is also an institution funded in Wales. In such cases, as set down in Section 65(3A) of the 1992 Act, the institution must obtain our consent before passing HEFCW funds to the connected institution. If HEFCW consents to the passing of funds, HEFCW will give notice to all parties stating the party which will be held accountable for the funds.
76. The institution must use any funds which HEFCW has earmarked or provided for specific revenue or capital purposes, solely for those purposes.
77. If any Council funds which were earmarked or provided for specific purposes are used for other purposes, the institution must report such use to HEFCW immediately.
78. The governing body of each institution must ensure that the fees payable for a course of higher education by an FT UG or PGCE student who is eligible for financial support under the Student Support Regulations do not exceed those specified in their approved fee and access plan, where a fee and access plan is in place. These conditions do not apply to students starting their full-time

¹⁰ www.universitychairs.ac.uk/wp-content/uploads/2018/06/HE-Remuneration-Code.pdf

courses before 1 September 2012.

Circumstances in which public funds become repayable

79. Under section 65(4) of the 1992 Act HEFCW may require repayment by the institution, in whole or in part, of funds received from HEFCW if the institution fails to comply with any terms and conditions attached by HEFCW to the payment of funds.
80. We may require an institution to repay funds if it has been over-funded.
81. HEFCW has a responsibility to secure that assessment is made of the quality of provision it funds and reserves the right to impose financial sanctions and/or withdraw funding from an institution where HEFCW considers the quality of provision to be unsatisfactory.
82. HEFCW also reserves the right to require the institution to pay interest at two per cent over the Bank of England base rate, in respect of any period during which a sum due to HEFCW under this Terms and Conditions of Funding, or any other condition, remains unpaid.
83. The value of the Exchequer interest in the institution (paragraph 91 to 93) becomes immediately repayable if the institution becomes insolvent, including going into liquidation or administration, or if it dissolves or transfers its undertaking to some other body, or if it experiences any analogous event.

Requirement to subscribe to other bodies

84. Under the 1992 Act and the Higher Education Act 2004, institutions are respectively required to subscribe to the Office of the Independent Adjudicator and Higher Education Statistics Agency.
85. Institutions should remain apprised of the latest guidance from the Competition and Markets Authority and the Office of the Independent Adjudicator, or any successor bodies fulfilling those roles.
86. Institutions must comply with, and are responsible for complying with, the Welsh Language Standards, as set out in the Wales Measure 2011 (WLWM 2011).

Prudent management of the estate

87. An estates condition survey should be undertaken on a regular basis and consideration should be given to this in the estates strategy.
88. Institutions must put in place a carbon management strategy and plan. Progress against the strategy and plan should be monitored via the governance structure.

89. Institutions must comply with Paragraph 6 of the Welsh Government Sponsored Body (WGSB) Framework Document: Higher Education Funding Council for Wales¹¹, which obliges HEFCW to require institutions to keep their holdings of land and buildings under review, with the objective of rationalising and disposing of those which institutions consider to be no longer needed.
90. Processes should be implemented to ensure that space is effectively managed within the institution.

Monitoring of the exchequer value held within the institution's assets

91. Institutions must make an annual return to HEFCW detailing the gross and depreciated value of exchequer interest in the assets of the institution. The institution must also detail the depreciation charge to the assets made within the year as well as the value and nature of any additions or impairments. HEFCW will issue a schedule to the institution to be returned annually in order that these elements can be identified.
92. Institutions must abide by the Charity Commission's requirements over the disposal of charity land and buildings, which include requirements over the disposal price in relation to the market value of the asset.
93. Since repayment of the Exchequer interest only occurs at the discretion of HEFCW on the disposal of an asset (which would be considered atypical) or in the exceptional circumstances of insolvency, it does not need to be disclosed as a contingent liability in the institution's accounts.

Disposal of assets in which there is an exchequer interest

94. Paragraph 7 of WGSB Framework Document: Higher Education Funding Council for Wales requires HEFCW to safeguard the exchequer interest funded assets in institutions.
95. Institutions must request consent in advance from HEFCW before disposing (in full, or in part) of assets in which there is an exchequer interest and whose valuation exceeds a market value of £25,000.
96. Institutions must also apply for consent from HEFCW where they intend to cease using an asset containing an exchequer interest for its intended purpose.
97. In providing consent, HEFCW will determine the extent to which the public investment is repayable.
98. If a property comprising an exchequer interest is leased for use for activities other than vacation lettings or those eligible for funding by HEFCW under section 65(2) of the 1992 Act, then rent or an appropriate proportion thereof

¹¹ [Welsh Government Sponsored Body Framework Document](#)

(after deduction of any ground rent or other charges, administration costs and any expenditure necessary to keep the property in a state to command that rent) must be paid to HEFCW.

99. Proceeds from the sale of Exchequer assets remain the property of the Exchequer and therefore remain subject to the provisions of this document.
100. The Welsh Ministers may, after consultation with the Council, specify conditions under which they would waive the application in which circumstances public funds become repayable.

Financial commitments

101. Under Section 69(4) of the 1992 Act, HEFCW has a duty to protect the exchequer interest in the development of any land, building or other asset which was:
 - i. acquired by the institution using public funds; and
 - ii. the public funds having a condition attached requiring the institution to obtain the Minister's consent before raising capital finance on the security of those assets.
102. This duty requires that the institution must obtain prior written consent from HEFCW where the institution wishes to grant security over such an asset. In seeking such approval from HEFCW the institution must demonstrate in writing its compliance.

Compliance with EU state aid law

103. Institutions must ensure compliance with European Union state aid law in their own uses of HEFCW funding. In the case of any breach of state aid law we may be required to recover all or some funding, together with interest. HEFCW may also be required to withhold funding or parts of funding to any institution which is subject to a state aid enquiry or which has an outstanding recovery notice against it.

Financial statement preparation

104. Financial statements for the institution (or consolidated group accounts where the institution is a parent entity) must be prepared in accordance with the SORP ('Statement of recommended practice: accounting for further and higher education')¹².
105. The institution must make copies of the consolidated financial statements publicly available in a timely manner.
106. Institutions and their external auditors must comply with the prevailing

¹² www.bufdg.ac.uk/resources/financial-reporting/sorp/introduction/

Accounts Direction issued by HEFCW.

107. The financial statements must be signed by the accountable officer and by the chair or another member of the governing body, as appointed by the governing body. If the institution is a company, the requirements of the Companies Act 1985 (as revised by the Companies Act 1989) for signatories to the financial statements shall apply.
108. The following information must be included in the institution's audited financial statements and related reports:
 - a. The members must confirm in the annual report that they have carried out a robust assessment of the principal risks and material uncertainties facing the institution, including those that would threaten its business model, future performance, solvency or liquidity. The report must describe those risks and explain how they are being managed or mitigated;
 - b. A statement from the members as to whether they consider it appropriate to adopt the going concern basis of accounting in preparing the financial statements, having considered the principal risks and material uncertainties existing over a period of at least twelve months from the date of approval of the financial statements;
 - c. A description of the governing body's policy on diversity and membership, including gender; any measurable objectives that it has set for implementing the policy; and progress on achieving the objectives;
 - d. The annual report must provide commentary on how the governing body has formally reviewed quantitative and qualitative data relating to organisational culture;
 - e. The annual report must provide commentary on how the governing body has formally reviewed whether there are any gaps between the actual and desired culture and how they determined what action needs to be taken to close the gap to achieve the desired culture;
 - f. An explanation on how key stakeholders have been engaged with during the year, what the governing body has learnt and what further action is planned for the forthcoming year must be included within the annual report;
 - g. The annual report must contain confirmation of the institution's approach to strategy delivery and oversight;
 - h. A report on how lay members of the governing body are independent must be included within the annual report. This will be based on the agreed definition of independence and make reference to the CUC Code;
 - i. A report on the work of the nominations (or equivalent) committee must be included within the annual report. This must include reference to the process for lay member requirement;
 - j. Where senior executive bonus schemes are in place, the details of the bonus scheme design and measures which trigger payment must be included within the annual remuneration report, which forms part of the overall annual report;

- k. The approach to succession planning for the roles of the Chair of the governing body, Vice Chancellor, lay governors, secretary/clerk and key senior executives will be confirmed within the annual report;
 - l. Governing body diversity and inclusivity must be reported in the annual report, together with the progress of the institution's boardroom diversity strategy; and
 - m. Key risks, along with risk management strategies, will be reported on in the annual report.
109. We may provide more detail and additional requirements about some of the above in the HEFCW accounts direction to institutions, which is published in an annual circular.

Oversight of audit

110. The governing body must ensure that the institution complies with the audit requirements set out in the Financial Management Code and any other directions drawn up and published by HEFCW in consultation with institutions.

HEFCW's right of access for investigations

111. HEFCW may carry out any investigations that it considers necessary. All or part of the cost of such additional investigations may, where circumstances warrant it, be deducted from the institution's revenue grant.
112. HEFCW may carry out reviews designed to improve economy, efficiency and effectiveness in the management or operation of the institution, including value for money studies. The Auditor General for Wales may also carry out value for money studies of the institution's use of resources.
113. Welsh Government's internal auditors and/or the WAO may accompany HEFCW on institutional visits to the institution. On such visits, Welsh Government's and/or WAO's auditors will be concerned only with the way HEFCW is carrying out tasks, and will not themselves audit arrangements within the institution.

Institutional engagement, support and safeguarding actions

114. As a Welsh Government Sponsored Body, HEFCW must be confident that the bodies it funds have adequate and effective risk management, control and governance arrangements to protect the investment of public funding and arrangements for delivering value for money from public funds.

Safeguarding actions

115. We expect institutions to engage with us and address matters prior to us needing to implement our statement of intervention.
116. If an institution fails to take any agreed action, HEFCW will seek explanations

and, if appropriate and justified, issue warnings to improve.

117. If the institution still fails to address the risks and issues then the institution will be informed that one or more of the safeguarding actions will be applied. This is very much a last resort and an action that we would not expect to take often.
118. The two safeguarding actions at HEFCW's disposal, which could be deployed if other routes to secure compliance are unsuccessful, are:
 - a. **Financial** – through the recovery of grant funding or the denial of access to future grant funding, including access to specific grants or to discretionary funding. Ultimately HEFCW can withdraw funding entirely, should circumstances warrant such action; and
 - b. **Information** – through making public our concerns about an institution where there are strong grounds to do so and where this is in the public or collective student interest (both current and prospective students, and past students where relevant).
119. In addition HEFCW may:
 - a. provide advice to the Charity Commission where an institution may have breached its charitable obligations; and/or
 - b. provide advice to the Equality and Human Rights Commission where discrimination may have occurred.

Other matters

Revisions to this document

120. After consultation with the institution and such bodies representing the institution as HEFCW considers appropriate, HEFCW may from time to time revise, revoke or add to any of the terms and conditions in this document. The institution may itself make proposals to HEFCW for such changes.

Interpretation of statements within this document

121. Questions on the interpretation of any statement in this document shall be resolved by HEFCW after consultation with the institution and such bodies representing the institution as HEFCW considers appropriate.

Signature of the accountable officer

122. The accountable officer of **(name of institution)** must signify below that they have received and accepted the Terms and Conditions of Funding, which sets out the terms and conditions for payment by the Higher Education Funding Council for Wales of funds to the governing body of **(name of institution)** out of funds made available by the Minister for Education.

Signed.....

Dated

Signature of the Chair of the Governing Body

123. The Chair of the Governing Body of **(name of institution)** must signify below that they have received and accepted the Terms and Conditions of Funding, which sets out the terms and conditions for payment by the Higher Education Funding Council for Wales of funds to the governing body of **(name of institution)** out of funds made available by the Minister for Education.

Signed.....

Dated

DRAFT

Annex A: Glossary

In this Terms and Conditions of Funding, the following definitions apply:

Academic year	The 12 months from 1 August to 31 July
Accounting period	The period covered by the institution's audited financial statements, usually the 12 months from 1 August to 31 July
The Code	HEFCW's Audit Code of Practice
Council	The Higher Education Funding Council for Wales (HEFCW). See also 'predecessor Council'
Accountable officer	Head of an institution responsible and accountable to HEFCW (and ultimately to the National Assembly for Wales) for ensuring that the institution uses HEFCW funds in ways that are consistent with the purposes for which those funds were given, and complies with the conditions attached to them. These include the conditions set out in the Further and Higher Education Act 1992 and in this document
Exchequer funds	Government grant or grant-in-aid. In the context of this document, the definition of such funds encompasses grant or grant-in-aid paid by HEFCW and its predecessor funding bodies, Welsh Government, Local Authorities, the Research Councils, and the Welsh Office to former voluntary and direct grant colleges
Exchequer interest	The contingent interest in the institution held by HEFCW, arising in accordance with HEFCW guidance from the use of exchequer funds in the form of specific capital funds. Such interest may create an obligation upon the institution to repay grant, or recognise a liability, on the occurrence of certain exceptional circumstances
FMC	Financial Management Code
FRS	Financial Reporting Standard
Governing body	The university council, board of governors or other body ultimately responsible for the management and administration of the institution's revenue and property, and the conduct of its affairs
Group	As defined under s. 1159(1) of the Companies Act 2006. It is therefore not a reference to a public benefit entity group
HEFCW	Higher Education Funding Council for Wales

HESA	Higher Education Statistics Agency
Higher Education Code of Governance	The Code of Governance published by the Committee of University Chairs (www.universitychairs.ac.uk)
Institution	A Higher education institution or Further education institution
The institution	(name of institution)
Minister	The Minister for Education and Skills
Month	Calendar month
SORP	Statement of Recommended Practice: Accounting for Further and Higher Education (www.fehesorp.ac.uk)
WAO	Wales Audit Office
Predecessor Council	The Universities Funding Council, including responsibilities inherited from the University Grants Committee under the Education Reform Act 1988
VFM	Vale for money
1992 Act	The Further and Higher Education Act 1992

References to the **financial position, financial statements, financial commitments** or **borrowing of the institution** mean the consolidated financial position, financial statements, financial commitments or borrowing of the institution and its subsidiary undertakings, as defined in the Companies Act 1985 and revised by the Companies Act 1989, and in accordance with generally accepted accounting principles.