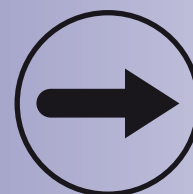


Financial Memorandum between the Welsh Assembly Government, Further Education Institutions and Higher Education Institutions providing further education in Wales

**Information
Document**



**Further
Education**

DELLS Information Document No: 026-06

Date of Issue: 1 January 2007

Replaces: **Financial Memorandum between the Further Education Funding Council for Wales and Institutions issued July 1997**



Title of document:	Financial Memorandum between the Welsh Assembly Government, Further Education Institutions and Higher Education Institutions providing further education in Wales.
Audience:	Governing Bodies and Principals of Further Education Institutions and Higher Education Institutions providing further education in Wales.
Overview:	This document forms Financial Memorandum between the Welsh Assembly Government and Further Education Institutions and Higher Education Institutions providing further education in Wales, effective from the 1st January 2007. The document sets out the terms and condition which apply to Further Education Institutions and Higher Education Institutions providing further education in Wales.
Action required:	No response required.
Further information:	Emma Smith, Finance Manager, Welsh Assembly Government, Ty'r Afon, Bedwas Road, Bedwas, Caerphilly, CF83 8WT. Tel: 01443 663973
Further copies:	Can be obtained from: Emma Smith, address as above.
Related documents:	NAfW 24/2006, Financial Health Monitoring Procedures for Further Education Institutions.

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

Section	Paragraph
Introduction	1
Definitions and Interpretation	5
Accountability	8
Allocation of Funds	17
Use of funds	23
Payment of Funds	26
Repayment of Funds	29
Financial Management	31
Estate and Equipment Management	38
Land & Buildings transactions	43
Borrowing and financial commitments	47
Financial Statements	53
Contracts and other services	56
Audit	57
Provision of information	60
Reportable events	61
Insurance	62
Legislative requirements	63
Severance payments to senior staff	64
Guarantees and indemnities	65
compliance with this memorandum	66
Revision	67
Effective Date	68

Annexes

Matters requiring prior Assembly Government consent	A
Matters requiring notification to the Assembly Government	B
Circumstances under which an institution may retain proceeds of sale proceeds or rental income	C

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

Introduction

1. This Memorandum (including the Annual Schedule) sets out the conditions imposed by the Welsh Assembly Government (“the Assembly Government”) when it makes payments to further education institutions and higher education institutions providing further education (each an “institution” for the purposes of this Memorandum). This memorandum is issued by the Assembly Government pursuant to its powers contained in section 35 Learning and Skills Act 2000 (as amended) and in furtherance of its duties contained in Part II of that Act and in accordance with all other powers in that regard.
2. Nothing in this Memorandum shall require the institution to act in a manner which would cause it to lose its charitable status or which would be inconsistent with its articles or instrument of government, its charter or any applicable statutes or Acts of Parliament. The conditions set out below do not override the duties and powers of the institution under the Act.
3. The Assembly Government will have regard to the desirability of encouraging the institution to maintain and develop its funding from other sources.
4. The sections of this Memorandum relating to financial management, estate and equipment management, land and buildings transactions, borrowing and financial commitments, contracts and other services, audit, reportable events and severance payments to senior staff shall not apply to higher education institutions providing further education so long as the institution concerned receives finance from the Higher Education Funding Council for Wales on equivalent terms and conditions.

Definitions and Interpretation

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

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

‘**Academic Year**’ means the twelve months from 1 August to 31 July;

‘**Act**’ means the Further and Higher Education Act 1992 as amended;

'Annual Revenue' means total income as reported in the institution's most recent audited financial statements;

'Assembly' means the National Assembly for Wales;

'Annual Schedule' means the annual schedule described in paragraph 6;

'cash outflow' means cash flow from operating activities as calculated in accordance with the FRS 1 (revised) and the SORP;

'Director' means the Director of the Education and Lifelong Learning Department of the Assembly Government;

'Exchequer Funds' means Government grant or grant-in-aid including grant or grant-in-aid paid by the Assembly Government or either of the Predecessor Funding Bodies and grant paid by the Welsh Office to former voluntary aided and grant aided institutions now within the further education sector in Wales but excluding grant or grant-in-aid paid by a local authority;

'financial commitments' includes finance leases, as defined in SSAP 21 'Accounting for leases and hire purchase contracts' and other schemes where borrowing is the substance of the transaction, in line with FRS 5 'Reporting the substance of transactions' and non-cancellable operating leases on land and buildings;

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

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

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

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

'guidance' includes guidance issued by Predecessor Funding Bodies;

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

'One month's expenditure' means one twelfth of the annual expenditure of the institution minus depreciation, including interest payable;

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

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

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

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

‘SSAP’ means a statement of standard accounting practice;

- b. any reference to the Assembly Government includes a reference to the Assembly and to any committee of the Assembly Government or the Assembly; and
- c. reference to a paragraph or Annex is a reference to a paragraph of or annex to this Memorandum.

6. In addition to this Memorandum institutions will receive an annual schedule setting out any conditions specific to the institution; detailing the funds to be paid to the institution and the educational provision the institution is required to make in return for the funds. The Annual Schedule is deemed part of this Memorandum and any failure to comply with the terms and conditions set out in the Annual Schedule will be deemed failure to comply with this Memorandum.

7. Annexes A and B are intended to assist institutions in understanding their obligations. In the event of any conflict or inconsistency between those annexes and this Memorandum, this Memorandum shall prevail.

Accountability

8. Funds shall be used in accordance with the purposes for which they were granted. Funds that are not used for the purpose for which they were granted are subject to reclaim.

9. The Director has been appointed by the Permanent Secretary as a sub-accounting officer. As sub-accounting officer, the Director is responsible and accountable for ensuring that (a) the uses to which the institution puts funds received are consistent with the purposes for which the funds were given; and (b) the institution complies with the conditions attached to the receipt of funds. The Director is also responsible for the regularity and propriety of expenditure from those funds and for the achievement of the best possible value for money in the use of those funds.

10. In order to meet these responsibilities, the Director will require to be satisfied (a) that the institution has appropriate arrangements in place for financial management and accounting; and (b) that the uses to which funds are put by the institution are consistent with the purposes for which they were given and achieve value for money.

11. The Governing Body is responsible for ensuring that funds from the Assembly Government are used only in accordance with the Act, this Memorandum, the Annual Schedule and any other conditions prescribed by the Assembly Government or its Predecessor Funding Bodies from time to time.

12. The Governing Body is also responsible for ensuring that the financial, planning and other management controls established by the institution are sufficient to safeguard funds received from the Assembly Government, ensure compliance with this Memorandum, the Annual Schedule, related guidance and any other terms and conditions under which grants are made to the institution.

13. The Governing Body has ultimate responsibility for the proper stewardship of funds the institution receives from the Assembly Government and for ensuring that those funds are used for the purposes intended. Therefore, the Governing Body must ensure that in conducting the institution's affairs it exercises its discretion appropriately and gives due consideration to any relevant guidance on accountability or propriety issued by the Assembly Government or the Wales Audit Office. The Governing Body is responsible for delivering value for money from public funds and it should keep under review its arrangements for managing all the resources under its control.

14. The respective responsibilities of the Governing Body and the Principal are set out in the institution's Articles of Government. Within this framework, the Governing Body will require the Principal to take personal responsibility, as accounting officer, which may not be delegated, to assure them that the conditions in this Memorandum have been complied with together with all other terms and conditions referred to in paragraph 12. The Principal may be required to appear before the Assembly alongside the Director on any matters arising before the Assembly relating to funds paid to the institution.

15. The Principal is responsible for advising the Governing Body if at any time in his or her opinion any action or policy being considered by the Governing Body is incompatible with the terms and conditions of this Memorandum. If the Governing Body nevertheless decides to proceed, the Principal will within seven days of such decision inform the Assembly Government in writing of the decision and the reasons he or she believes such decision to be incompatible.

16. The Assembly Government will inform the Governing Body and the audit committee of the institution of matters of serious concern regarding the institution's financial affairs, including the financial health of the institution. The Assembly Government and the Governing Body (or at the

Assembly Government's discretion the chair of the Governing Body and the chair of the institution's audit committee) will meet to discuss such concerns and to consider what if any action should be taken by the institution in order to address the Assembly Government's concerns. Following those discussions, if the Assembly Government is not satisfied that appropriate action is being taken, the Assembly Government may suspend the payment of grant, either in whole or in part, and either permanently or temporarily. The Assembly Government may require the Governing Body to put in place an action plan, if necessary, to address the matters of concern. The Assembly Government will assess all information provided and consider if it should exercise its powers to appoint observers to or members of the Governing Body or otherwise to intervene.

Allocation of funds

- 17.** The payment of funds will be subject to such terms and conditions as the Assembly Government may impose, including those set out in this Memorandum and the Annual Schedule.
- 18.** The Assembly Government may distinguish between recurrent funds and capital funds.
- 19.** Recurrent funds are intended to meet the recurrent costs of the institution, including the routine maintenance of buildings and other assets.
- 20.** Capital funds are intended to meet expenditure on land and buildings, new construction and extension of and alterations to buildings and the purchase of any Fixed Assets. Capital funds can be used for the following:
 - direct payment of capital expenditure;
 - payment of interest or repayment of principal on approved borrowing incurred for new capital projects begun after 29 November 1994;
 - finance or operating lease repayments.
- 21.** The institution shall use funds that the Assembly Government has earmarked or provided for specific recurrent or capital purposes solely for those purposes. The institution may use recurrent funds not earmarked or provided for specific purposes to fund capital expenditure. It must not use capital funds to fund recurrent expenditure, except as permitted by paragraph 20.
- 22.** The recurrent funding allocation to be paid to the institution in any year will be notified to the institution by the end of April in advance of the Academic Year to which the funds relate. Other grants will be announced as and when they are determined by the Assembly Government.

Use of funds

- 23.** If any funds which are earmarked or provided for specific purposes are used for other purposes, the institution must report such use to the Assembly Government as soon as it becomes aware of it.
- 24.** Where funds are earmarked or provided for an activity to be completed or undertaken by the institution by a specified date, the Assembly will not provide funds after that date if the activity has not been completed.
- 25.** The institution is required to provide an annual report on its use of funds to the Assembly Government in accordance with guidance that the Assembly Government may issue from time to time.

Payment of funds

- 26.** The Assembly Government will pay recurrent funds to the institution in monthly instalments, in accordance with a funding profile for the Academic Year. This, together with a statement of any specific terms and conditions attached to the funds, will be reflected in the Annual Schedule.
- 27.** The Assembly Government may be prepared on written application from the institution, to consider making such exceptional or ad hoc payments as the Assembly Government sees fit. However, such payments will not be made in advance of the institution's need to spend the money.
- 28.** Specific additional terms and conditions of funding, including those relating to the method and timing of payment applicable to capital funds, may be issued at the time of notification of the allocation of the capital funds.

Repayment of funds

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

Financial Management

- 31.** The Governing Body must plan, conduct and control the institution's financial and academic affairs to ensure that it remains solvent.

- 32.** In meeting the requirement set out in paragraph 31:
- a. the institution must prepare a financial strategy that underpins the institutional plan;
 - b. the financial strategy must set targets for the generation of cash and operating surpluses sufficient to finance ongoing activity, make funds available for investment in provision and facilities; and to produce a cash reserve excluding long term borrowing to support the future activities of the institution;
 - c. the Governing Body must receive at least termly, a report that (a) reviews the institution's financial position; (b) contains an income and expenditure account including a commentary on performance to that date against the original budget; (c) a forecast of the outturn for the Accounting Period; (d) a balance sheet; and (e) a 12 month rolling cash flow forecast. This report should comment on the impact on the institution's financial strategy of the results and forecasts presented; and
 - d. the Governing Body must undertake and approve an annual self assessment of the institution's financial health.
- 33.** In developing its financial strategy the institution must:
- a. identify and maintain sufficient cash reserves and balances to remain solvent; and
 - b. notify the Assembly Government if the Governing Body approves an institutional plan and financial forecasts that do not generate the level of cash and operating surpluses identified in the institution's financial strategy as necessary to underpin the institutional plan and prepare a recovery plan to bring the institution's cash reserves and balances back to the position required by the financial strategy.
- 34.** The Governing Body may only approve an annual budget that would result in an operating deficit or a net cash outflow from operating activities if:
- a. the operating deficit or net cash outflow from operating activities is part of planned investment or strategic decisions set out in the financial strategy and institutional plan and is fully funded from existing cash reserves; and
 - b. the forecast level of cash reserves and balances at the end of the Accounting Period in question do not fall below the level identified in the institution's financial strategy as required to maintain its solvency. The cash reserves and balances are expected to represent at least one month's expenditure to ensure the institution is able to pay its debts as they fall due.

35. The Assembly Government may in its discretion waive the conditions set out in paragraph 34 and substitute others on written application from the institution.

36. The Principal in his or her role as accounting officer shall notify the Assembly Government of any event that has, or is likely to have, a material adverse impact on the financial position of the institution, as soon as this becomes apparent.

37. In fulfilling its responsibilities the Assembly Government may issue from time to time guidance on the arrangements it proposes to put in place for monitoring the financial health of institutions. This guidance will include reference to the criteria which the Assembly Government will use to determine if there are serious concerns about the institution's financial health. In such circumstances the Assembly Government will contact the Governing Body and take further action in accordance with paragraph 16.

Estate and Equipment Management

38. The institution shall manage and develop its estate with regard to the guidance issued from time to time by the Assembly Government and its Predecessor Funding Bodies on estate procedures, including strategic estate and equipment management, option and investment appraisal and private finance.

39. The institution shall keep its holdings of land and buildings under review with the objective of rationalising and disposing of those which it considers, in light of its estate strategy, to be no longer needed. Former voluntary colleges and other institutions holding land and buildings not covered by exempt charitable status shall also take into account the requirements of the Charity Commissioners.

40. The institution shall maintain its estate in accordance with a maintenance plan approved by its Governing Body covering its long-term and routine maintenance requirements so that there is no diminution in the value of the estate not caused by market forces.

41. In respect of equipment assets, the institution shall establish an asset replacement policy that underpins the institutional plan and is reflected in the financial strategy.

42. The institution shall maintain a register of land, buildings and equipment assets.

Land and buildings transactions

43. The institution shall inform the Assembly Government of proposed transactions where the total value of the transaction exceeds 5 per cent of annual income or £500,000, whichever is the lower.

44. The total value of a transaction for the purposes of paragraph 43 means the funds deployed in connection with either: (a) any asset purchased directly by the institution using its own or borrowed monies; or (b) the capitalised value of any rental, lease (of whatever type) or servicing arrangement over the term of the intended use of the asset, using a discount factor of LIBOR plus 2%.

45. If grant (or any part of it) from the Assembly Government or its Predecessor Funding Bodies has been used by the institution (or any predecessor institution) to acquire an interest in or to develop any land or buildings, to pay rent or to repay debts or to pay interest on any outstanding debt in respect of any land or buildings:

- a. no transaction which alters the ownership of the land or buildings shall be entered into by the institution without the prior written consent of the Assembly Government;
- b. no transaction, including but not limited to rebuilding or extending, that alters the use of the land or property by more than 250m² shall be entered into by the institution without the prior written consent of the Assembly Government;
- c. If the land or buildings or any interest in land or buildings is disposed of, the institution shall pay to the Assembly Government:
 - i) in cases where the land or buildings or interest was acquired or developed wholly with the aid of grant from the Assembly Government, or its Predecessor Funding Bodies, all the proceeds of the transaction (including any element in respect of intangible assets disposed of as part of the transaction) after deduction of the expenses of the transaction: or
 - ii) in cases where an outstanding debt was repaid or interest thereon paid wholly or in part with the aid of grant that proportion of the proceeds (after deduction of the expenses of the transaction) which corresponds to the proportion of the sum of the grant payments to the aggregate cost of acquisition or development of the land or buildings: or
 - iii) in other cases the proportion of the proceeds (after deduction of the expenses of the transaction) which corresponds to the proportion of the aggregate cost of the acquisition or development which was discharged out of the payment from the Assembly Government or its Predecessor Funding Bodies.
- d. If the land or buildings are leased for use for activities other than the provision of education, the rent (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) or the value of any other consideration (or in either case an appropriate proportion thereof) shall be paid to the Assembly Government.

46. The Assembly Government may specify conditions under which it would waive the application of paragraph 45. The present policy on waivers is set out in Annex C. If pursuant to such a waiver the institution uses proceeds of sale or rent to acquire an interest in, or to develop any land or buildings, the conditions in paragraph 45 will apply to the funds so used and the interest in the land and buildings to acquired or developed.

Borrowing and financial commitments (together “Borrowing”)

47. It is the Assembly Government’s responsibility to protect public investment in institutions. In furtherance of this responsibility and in its role of monitoring financial health, the Assembly Government will require the institution to satisfy certain conditions relating to Borrowing. These conditions are set out in paragraph 50. The Assembly Government expects the institution to be able to demonstrate in all cases, irrespective of whether Assembly Government consent is being sought, that it has acted in accordance with these requirements.

48. The Assembly Government gives consent for the institution to enter into unsecured Borrowing at any time, provided that the total of all such Borrowing does not exceed 5 per cent of the institution’s Annual Revenue. The institution must report all such Borrowing each year in the financial forecast return, or as otherwise required by the Assembly Government from time to time.

49. The institution must obtain the prior written consent of the Assembly Government if it proposes that the total of all unsecured Borrowing will exceed 5 per cent of the institution’s Annual Revenue. The institution must also obtain prior written consent if it wishes to enter into any secured Borrowing.

50. In considering whether to give its consent the Assembly Government will require the institution to demonstrate:

- a. its ability to repay the Borrowing and to pay interest and charges thereon without recourse to requesting additional grant from the Assembly Government;
- b. its ability to maintain financial and academic viability will not be impaired as a result; this must be evidenced in revised financial forecasts updated at the time of considering the proposed Borrowing;
- c. the positive value, quantitative or qualitative, to be generated by the transaction whether it involves refinancing, or the purchase of any new investments or assets, the purchase of which is to be financed by the borrowing;

- d. that any such new investment or asset acquisition is in accordance with the institutional plan and, where appropriate, its estate strategy; and
- e. that the Governing Body has taken an informed decision regarding the proposal, has considered the above matters and has given its approval to the proposal.

51. In seeking the Assembly Government's consent required under paragraph 49, the institution should demonstrate to the Assembly Government in writing its compliance with the conditions set out in paragraph 50.

52. Leasing of property or land will be subject to the prior written consent of the Assembly Government and paragraph 50. Equipment should be leased only if in the view of the institution leasing provides the best value for money.

Financial statements

53. The institution shall keep proper accounting records and shall prepare financial statements in respect of each Accounting Period. The institution shall provide the Assembly Government with a signed copy of its audited financial statements for each Accounting Period by 31 December immediately following the end of the Accounting Period in question. The institution shall make the financial statements publicly available and will publish them on its website as part of its publication scheme.

54. The institution shall ensure its financial statements comply with the accounts direction issued from time to time by the Assembly Government and its Predecessor Funding Bodies. Such a direction will cover information to be contained in the financial statements; the manner in which they are to be presented; and the methods and principles according to which they are prepared. The financial statements will be prepared in accordance with generally accepted accounting principles and the SORP.

55. The financial statements shall be signed by the Principal, the finance director and by the Chair or one other member of the Governing Body as appointed by the Governing Body. In the case of an institution which is a company limited by guarantee, the requirements of the Companies Act 1985 (as amended) in respect of signatories to the annual accounts shall apply.

Contracts and other services

56. In determining the price to be charged for contracts, residences, catering, and other external services (including the subcontracting/franchising of provision), the institution shall have regard to the need to assess and to recover full costs and central overheads where applicable, unless the institution considers it appropriate to do otherwise, having regard to the circumstances of particular cases.

Audit

57. The institution shall appoint an audit committee and arrange for internal and external audit, in accordance with the Audit Code of Practice issued from time to time by the Assembly Government and any other directions drawn up by the Assembly Government or its Predecessor Funding Bodies in consultation with institutions.

58. The Assembly Government through its audit service will, from time to time, evaluate the institution's internal control arrangements. The Assembly Government's audit service shall be provided with access to all records, information and assets and may require any employee to give any explanation which it requires. Wales Audit Office auditors may accompany the Assembly Government's auditors on their visits to the institution or may undertake their own visits.

59. The books and records of the institution will be open to inspection by the Assembly Government and the Wales Audit Office. The Assembly Government 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 Wales Audit Office may also carry out value for money studies of the institution's use of resources.

Provision of information

60. The institution shall furnish the Assembly Government with such information as the Assembly Government may require from time to time. The Assembly Government shall have regard both to the costs of providing this information and, where appropriate, to the confidential nature of certain personal data. In such circumstances the Assembly Government will endeavour to ensure a reasonable timescale for providing the data.

Reportable events

61. In addition to the matters set out in this memorandum (summarised in Annex B) the Assembly Government may from time to time issue guidance on matters that the institution is required to report to the Assembly Government. It is a requirement of this Memorandum that the institution shall comply with such guidance.

Insurance

62. The institution is responsible for taking out and paying for adequate insurances in respect of its assets and activities.

Legislative requirements

63. The institution shall comply with all relevant legislation.

Severance payments to senior staff

64. The Assembly Government may from time to time issue guidance on severance payments to senior staff. "Senior staff" are those employees of the institution who report directly to the Principal or are "higher paid" within the definition of "higher pay" contained in the accounts direction referred to in paragraph 54. It is a requirement of this Memorandum that the institution shall comply with any requirements of such guidance.

Guarantees and indemnities

65. The institution shall not give any guarantees, letters of comfort or indemnities other than in the normal course of business.

Compliance with this Memorandum

66. As stated in paragraph 1, this Memorandum sets out the terms and conditions under which the Assembly Government will make payments to the institution. It sets out a number of key responsibilities and requirements of the Governing Body and the Principal. Accordingly, the institution is required to:

- a. ensure that all members of the Governing Body are provided with a copy of this Memorandum;
- b. ensure that appropriate training is provided to members of the Governing Body to enable them to undertake their responsibilities under this Memorandum; and
- c. provide an annual report to the Audit Committee on the institution's compliance with this Memorandum.

Revision

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

Effective Date

68. This Memorandum shall take effect from 1 January 2007 and apply from the Academic Year 2007/08 onwards. This Memorandum replaces the memorandum effective from 1 August 1997.

Matters requiring prior Assembly Government consent

Paragraph	Consent required
35	<p>To waive the requirements that an annual budget that would result in an operating deficit or a net cash outflow from operating activities can only be approved by the Governing Body if:</p> <ul style="list-style-type: none"> a. the operating deficit or net cash outflow from operating activities is not part of planned investments or strategic decisions set out in the financial strategy and institutional plan or is not fully funded from existing cash reserves; or b. where the forecast level of cash reserves and balances at the end of the Accounting Period in question falls below the level identified in the institution's financial strategy as required to maintain its solvency or represents less than one month's expenditure <p>Applications for consent will be in the form of a letter to the Head of Division, Standards Quality and Governance as soon as the deficit budget is known.</p>
45a	Transactions affecting the ownership of land or property funded by the Assembly Government or its Predecessor Funding Bodies.
45b	Transactions, including but not limited to rebuilding or extending, that alters the use of the land or property by more than 250m ² .
46 Annex C	Consent to waive paragraph 45 to allow the retention and investment of the sale proceeds following the disposal of land or buildings or the retention of rent or other consideration.
49	Any proposal whereby the total of all unsecured borrowing or financial commitments including non cancellable leases, will exceed 5 per cent of the institution's Annual Revenue, or if it wishes to enter into any secured borrowing or financial commitments.
52	Consent to leasing any land or property.

Matters requiring notification to the Assembly Government

Paragraph	Notification required
15	Principal to inform the Assembly Government of any action or policy incompatible with the terms and conditions of this Memorandum that the Governing Body decide to proceed with.
33b	The institution to notify that the Governing Body has approved an institutional plan and financial forecasts that do not generate the level of cash and operating surpluses identified in their financial strategy as necessary to underpin the institutional plan. The notification should be accompanied by a recovery plan to bring the institution's finances back to the position required by the financial strategy.
36	The Principal to notify of any event that has, or is likely to have, a material adverse impact on the financial position of the institution, as soon as this becomes apparent.
43	The institution to notify of proposed land and building transactions where the total value of the transaction exceeds 5 per cent of annual income or £500,000, whichever is the lower.
48	The institution to report all permitted unsecured borrowing and financial commitments not exceeding 5% of Annual Revenue.
61	Reportable events.

Circumstances under which an institution may retain proceeds of sale proceeds rent or other consideration

Notwithstanding the provisions of paragraph 45, the institution may retain proceeds of sale rent or other consideration in the circumstances set out below.

Sale proceeds

1. Where an institution, with the Assembly Government's approval, disposes of land or buildings for which the proceeds are up to £400,000 (including leases for a term of 25 years or more) the institution may retain up to £200,000 of the proceeds of sale (or any premium payable on the grant of the lease) on the condition that:

- a. the Assembly Government is told how the institution proposes to use such proceeds; and
- b. such proceeds are used within three years of their receipt by the institution on building or adaptation work, long term maintenance, or the acquisition of property. Such proceeds may also be used for projects related to institution/industry collaboration, subject to the approval of the Assembly Government.

2. Where the institution disposes of land or buildings for which the proceeds are more than £400,000 the institution may, with the approval of the Assembly Government retain up to half the proceeds for the purposes and on the conditions described in paragraph 1b above.

3. The institution may, with the Assembly Government's approval, retain up to 100 per cent of such proceeds where they are to be used within three years for:

- a. the replacement of existing facilities; or
- b. restructuring or extending capital projects, including repayment of debt from previous projects.

The three year timescale may be extended by exception upon application to the Assembly Government.

4. The Assembly Government will require as the basis for its approval, evidence of an investment appraisal (undertaken in accordance with guidance issued by the Assembly Government from time to time). The Assembly Government will normally only approve the retention of proceeds for projects that produce a rate of return equal to or exceeding the Treasury Test Discount Rate.

Rental income

5. The Assembly Government may waive repayments of rent or other consideration where:

- a) the property is in commercial use of benefit to the institution or to the academic community over and above the purely financial benefit of receiving an income.
- b) the property is used to accommodate tenants displaced from other property acquired and developed for the institution's use; or
- c) some different arrangement has been approved exceptionally by the Assembly Government in particular circumstances.

