

MODEL ARTICLES OF GOVERNMENT FOR HIGHER EDUCATION CORPORATIONS

In exercise of the powers conferred upon it by section 125 of the Education Reform Act 1988, the [name of institution) higher education corporation makes the following Articles of Government in accordance with which the [name of institution] shall be conducted:

1. INTERPRETATION

(1) In these Articles words and expressions shall have the meanings ascribed to them in paragraph 1 of the Instrument of Government made by the Privy Council on , and

"the holders of senior posts" means the Principal, the Clerk and the holders of such other senior posts as the Board of Governors may determine and "holder of a senior post" shall be construed accordingly;

"the staff" includes both teaching and other staff of the [University/College/Other];

"staff governor" means a member of the Board of Governors appointed on the nomination of the Academic Board, or as a co-opted staff nominee;

"student governor" means a member of the Board of Governors appointed as a student nominee or a co-opted student nominee; and

"a students' union" means any association of the generality of students formed to further the educational purposes of the [University/College/Other] and the interests of students as students.

Note on Article 1 (1)

For consistency with the terminology of the Act the words "the Principal" should be used throughout the Articles to denote the chief executive of the institution.

2. CONDUCT OF THE [UNIVERSITY/COLLEGE/OTHER]

(1) The [University/College/Other] shall be conducted in accordance with the provisions of the Education Acts 1944 to 1993, any subsequent Education Acts, any relevant regulations, orders or directions made by the Secretary of State, or by the Privy Council, and subject thereto, in accordance with the provisions of the Instrument, these Articles and any rules or bye-laws made under these Articles.

3. RESPONSIBILITIES OF BOARD OF GOVERNORS, PRINCIPAL AND ACADEMIC BOARD**The Board of Governors**

- (1) The Board of Governors shall be responsible for:
- (a) the determination of the educational character and mission of the [University/College/Other] and for oversight of its activities;
 - (b) the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets;
 - (c) approving annual estimates of income and expenditure;

Code of Corporate Governance and Governors Handbook

2(iv) Model Instrument and Articles of Government

- (d) the appointment, grading, suspension, dismissal and determination of the pay and conditions of service of the holders of senior posts; and
- (e) setting a framework for the pay and conditions of service of all other staff.

The Principal

(2) Subject to the responsibilities of the Board of Governors, the Principal shall be the chief executive of the [University/College/Other], and shall be responsible for:

- (a) making proposals to the Board of Governors about the educational character and mission of the [University/College/Other], and for implementing the decisions of the Board of Governors;
- (b) the organisation, direction and management of the [University/College/Other] and leadership of the staff;
- (c) the appointment, assignment, grading, appraisal, suspension, dismissal, and determination - within the framework set by the Board of Governors - of the pay and conditions of service of staff other than the holders of senior posts;
- (d) the determination, after consultation with the Academic Board, of the [University's/College's/Other's] academic activities, and for the determination of its other activities;

Code of Corporate Governance and Governors Handbook

2(iv) Model Instrument and Articles of Government

- (e) preparing annual estimates of income and expenditure, for consideration by the Board of Governors, and for the management of budget and resources, within the estimates approved by the Board of Governors; and

the maintenance of student discipline and, within the rules and procedures provided for within these Articles, for the suspension or expulsion of students on disciplinary grounds and for implementing decisions to expel students for academic reasons.

The Academic Board

(3) Subject to the provisions of these Articles, to the overall responsibility of the Board of Governors, and to the responsibilities of the Principal, the Academic Board shall be responsible for:

- (a) general issues relating to the research, scholarship, teaching and courses at the [University/College/Other), including criteria for the admission of students; the appointment and removal of internal and external examiners; policies and procedures for assessment and examination of the academic performance of students; the content of the curriculum; academic standards and the validation and review of courses; the procedures for the award of qualifications and honorary academic titles; and the procedures for the expulsion of students for academic reasons. Such responsibilities shall be subject to the requirements of validating and accrediting bodies;

(b) considering the development of the academic activities of the [University/College/Other] and the resources needed to support them and for advising the Principal and the Board of Governors thereon; and

(c) advising on such other matters as the Board of Governors or the Principal may refer to the Academic Board.

(4) The Academic Board may establish such committees as it considers necessary to enable it to carry out its responsibilities provided that each establishment is first approved by the Principal and Board of Governors. The number of members of any such committee and the terms on which they are to hold and vacate office shall be determined by the Academic Board.

Notes on Article 3

- i. Article 3(1)(d): The institution will also need to set out in their Articles the responsibilities of the Board of Governors and the Principal for the assignment and appraisal of the holders of senior posts; and in particular whether the Board of Governors should approve the assignment of other holders of senior posts besides the Principal and Clerk.*
- ii. Article 3(3): So far as is practicable, the Academic Board should arrange for its tasks to be performed by [Faculties/Departments] where those tasks are related to matters not affecting other (Faculties/Departments] or the (University/College/Other) as a whole.*

4. ACADEMIC BOARD

(1) There shall be an Academic Board of no more than [30] members, comprising the Principal (who shall be Chairman) and such other numbers of staff and students as may from time to time be approved by the Board of Governors. The Principal may nominate a Deputy Chairman from among the

members of the Academic Board to take the chair in his place. The period of appointment of members and the selection or election arrangements shall be subject to the approval of the Board of Governors.

Notes on Article 4

- i. The Privy Council consider that most Academic Boards should be no larger than 30 members and smaller where appropriate. However, the Council will be willing to consider proposals for up to 40 members from institutions with more than 3,500 full-time equivalent students (including FE as well as HE), where they can demonstrate that a larger Board is necessary to include members from all the main groups of academic and related departments in the institution.*
- ii. The institution should specify in its Articles the number or proportion of members to be drawn from each category of interest to be represented on the Academic Board. Taken together, the following categories should comprise at least half of the total membership of the Board: Deputy and Assistant Principals; Deans of Faculty, or equivalent posts, where they exist; and Heads of academic and related departments. The remaining members shall include other members of staff and students, and may include co-opted members.*

5. DELEGATION OF FUNCTIONS AND COMMITTEES

(1) Subject to the following provisions of this Article, the Board of Governors may establish committees for any purpose or function, other than those assigned elsewhere in these Articles to the Principal or to the Academic Board, and may delegate powers to such committees or to the Chairman of the Board of Governors or to the Principal.

(2) The Board of Governors shall establish a committee or committees to determine or advise on such matters relating to employment policy or finance as the Board of Governors may remit to them. The members of the committee

Code of Corporate Governance and Governors Handbook

2(iv) Model Instrument and Articles of Government

or committees shall be drawn from the Board of Governors other than staff or student governors.

(3) The Board of Governors shall not, however, delegate the following:

the determination of the educational character and mission of the [University/College/Other];

the approval of the annual estimates of income and expenditure;

ensuring the solvency of the institution and the Corporation and the safeguarding of their assets;

the appointment or dismissal of the Principal; or

the varying or revoking of these Articles.

Note on Article 5

The Board of Governors may wish to consider whether it includes in the Articles reference to any other committees which are not mentioned in the text. The Board of Governors will be expected to establish an Audit Committee, in accordance with guidance issued by the Higher Education Funding Council for England (HEFCE).

6. APPOINTMENT OF CLERK TO THE BOARD OF GOVERNORS

(1) The Board of Governors shall appoint a Clerk to act as secretary to the Board of Governors.

7. PROCEDURES FOR MEETINGS

(1) The quorum for meetings of the Board of Governors shall be [x] members of whom [y] shall be independent

members. If a meeting is quorate, but less than half the members present are independent members, a majority of the independent members present shall be able to require that a decision be deferred to the next meeting. No decision shall be deferred more than once under this provision.

(2) Members of the Board of Governors shall not be bound in their speaking and voting by mandates given to them by other bodies or persons, except where acting as a proxy for another member.

Notes on Article 7

- i. Section 125(3) of the Act requires that the Articles shall make provision for meetings of the Board of Governors, of the Academic Board and of their committees. The Privy Council will look to the Board of Governors to draw up the relevant Articles in addition to Article 7(1). These should include provision for:*
- (a) the election of a Chairman of the Board of Governors and a Deputy Chairman to act in his absence;*
 - (b) the conduct of meetings, including the notice required for ordinary and special meetings and for the circulation of papers;*
 - (c) the quorum for meetings - see Article 7(1) and notes 7 ii, 7 iii and 7 iv;*
 - (d) (i) the declaration of pecuniary, family or other personal interests in any matter under discussion. Members who declare any such interest shall take no part in the consideration of the matter;*
 - (ii) except that note 7 i (d) (i) above shall not prevent the Board of Governors considering and voting upon proposals for the Corporation to insure the members of the Corporation against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premiums.*
 - (e) the withdrawal of staff or student governors or members of committees, if appropriate, at meetings where a named member of staff or student, or prospective member of staff or student, is being considered; and the withdrawal*
-

of the Principal from any meeting or part thereof where his own position is under discussion;

- (f) *access to papers of the Board of Governors or its committees for inspection by students and staff of the institution. Except where material relates to named members of staff or students, or prospective members of staff or students, or to matters which the Board of Governors or any committee thereof, as appropriate, are satisfied should be dealt with on a confidential basis, the following should be available for such inspection:*

agenda;

draft minutes, if they have been approved by the chairman of the meeting;

signed minutes; and

reports or papers considered at meetings.

- (g) *the circumstances, if any, in which members of the Board of Governors may appoint proxies from among the other members to vote in their place and the procedures for doing so.*

- ii. *The Articles shall make provision for the quorum of the Board of Governors, in terms of Article 7(1). The following table gives minimum values of [x] and [y] for Boards of Governors of different sizes. Higher values can be considered.*

<i>Total size of Board of Governors</i>	<i>[x]</i> <i>Minimum number of members to be present for quorum</i>	<i>[Y]</i> <i>Minimum number of independent members within the total to be present for quorum</i>
<i>12 or 13</i>	<i>5</i>	<i>3</i>
<i>14 to 16</i>	<i>6</i>	<i>4</i>
<i>17 or 18</i>	<i>7</i>	<i>4</i>
<i>19 to 21</i>	<i>8</i>	<i>5</i>
<i>22 or 23</i>	<i>9</i>	<i>5</i>
<i>24 or 25</i>	<i>10</i>	<i>6</i>

- iii. *Section 125(3) of the Act also requires that Articles shall make provision for procedures in relation to the appointment of members of the Corporation. The procedures in the Articles shall:*

- (a) *determine the quorum for meetings at which any appointments are made and whether members of the Board of Governors can*

appoint proxies, from among the other members, if they are unable to attend; and

- (b) establish the notice required for meetings at which appointments are to be made, the form of voting or selection, and whether all members are to be appointed by a vote representing an absolute majority of all members.*

- iv. With regard to note 7 iii(a), the Corporation will be the appointing authority for appointments subsequent to the initial appointments, except where the independent members are the appointing authority for independent members under the provisions of paragraph 5 of the Instrument. Where the Corporation is the appointing authority, procedures for quorum and proxies may be the same as for other functions of the Board of Governors. Where the independent members are the appointing authority, they will form a committee of the Corporation for this purpose. The Articles shall set out procedures for the committee's operation, including the quorum and provisions for proxies.*

8. APPOINTMENT AND PROMOTION OF STAFF

(1) Each member of staff shall serve under a contract of employment with the Corporation.

(2) Upon the occurrence of a vacancy or expected vacancy for the post of Principal, the post shall be advertised nationally.

Note on Article 8

The Articles may also make provision for the appointment and promotion of other staff.

9. CONDUCT OF STAFF

(1) After consultation with the staff, the Board of Governors shall make rules relating to the conduct of the staff.

Academic Freedom

(2) In making rules under Article 9(1), the Board of Governors shall have regard to the need to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy or losing their jobs or any privileges they may have at the [University/College/Other].

10. SUSPENSION AND DISMISSAL OF STAFFSuspension

(1) The Chairman of the Board of Governors or in the absence of the Chairman, the Deputy Chairman, may suspend from duty, with pay, the holder of a senior post for misconduct or other good and urgent cause. The Chairman or Deputy Chairman shall report such suspension in writing to the Board of Governors within two working days or as soon thereafter as practicable.

(2) The Principal may suspend from duty, with pay, any member of the staff other than the holder of a senior post for misconduct or other good and urgent cause.

(3) Anyone who is suspended from duty under Articles 10(1) or 10(2) shall be entitled to receive from the Principal, or in the case of holders of senior posts, from the Chairman or Deputy Chairman of the Board of Governors, written notification of the suspension, setting out the grounds on which the decision to suspend has been taken.

(4) Procedures for the suspension of staff under Articles 10(1) or 10(2) shall be specified in rules made by the

Code of Corporate Governance and Governors Handbook

2(iv) Model Instrument and Articles of Government

Board of Governors after consultation with the staff. The rules shall include provision that

- (a) any person who has been under suspension for three weeks or more may appeal in writing to the Board of Governors against the suspension, save that no such right of appeal shall lie if the person is the subject of a reference to a Special Committee under Article 10(5) or of a notification from the Principal under Article 10(12);
- (b) any appeal made under 10(4) (a) shall be considered as soon as practicable; and
- (c) a suspension against which an appeal is made shall continue to operate pending the determination of the appeal.

Dismissal

- (i) Holders of senior posts including the Principal and the Clerk

(5) If the Chairman of the Board of Governors, or in his absence the Deputy Chairman, or a majority of the members of the Board of Governors, consider that it may be appropriate for the Board of Governors to dismiss the holder of a senior post, the Chairman, Deputy Chairman or the Board of Governors as appropriate shall refer the matter to a Special Committee of the Board of Governors, which shall be convened as soon as possible to examine the facts, otherwise investigate the ground for dismissal and to make a report to the Board of Governors.

(6) The person whose dismissal is to be considered by the Special Committee shall have the right to make

Code of Corporate Governance and Governors Handbook

2(iv) Model Instrument and Articles of Government

representations to the Committee, including oral representations, for which purpose he may be accompanied and represented by a friend.

(7) The Special Committee shall prepare a written report for consideration by the Board of Governors, a copy of which shall be sent to the person to whom it relates. The report shall set out facts relating to the case and any considerations which the committee considers should be taken into account in the Board of Governors' consideration of the matter. The report should not contain recommendations as to the decisions to be taken by the Board of Governors.

(8) The Board of Governors shall consider the report of the Special Committee and take such action as it considers appropriate, which may include the dismissal of the person concerned. The person concerned shall have the right to make representations to the Board of Governors, including oral representations for which purpose he may be accompanied and represented by a friend.

(9) The Special Committee shall consist of [five] members of the Board of Governors. The Chairman of the Board of Governors, the Deputy Chairman and the Principal shall not be eligible for membership of the Special Committee.

(10) The Board of Governors shall make rules specifying procedures for the conduct of the Special Committee and other aspects of the procedure set out in Articles 10(5) to 10(9).

(ii) Other Members of Staff

(11) The Principal may dismiss any member of the staff other than the holder of a senior post and if the circumstances are such that he is entitled to do so by virtue of the conduct of that member of staff, that

Code of Corporate Governance and Governors Handbook

2(iv) Model Instrument and Articles of Government

dismissal may take immediate effect without any need for prior notice.

(12) Where the Principal proposes to dismiss such a member of staff and the circumstances described in Article 10(11) do not prevail he shall notify the member of staff concerned of that proposal. That staff member shall be given an opportunity to make representations to the Principal (including oral representations, for which purpose the staff member may be accompanied and represented by a friend) before any decision to dismiss by the Principal is taken.

(13) Where a staff member has been dismissed pursuant to Article 10(11) or a decision to dismiss has been taken pursuant to Article 10(12) that staff member may appeal against the dismissal or decision, as the case may be, to the Board of Governors. In the case of an appeal against a decision to dismiss, the dismissal shall not take effect until the appeal has been determined.

(14) Procedures for the dismissal of staff by the Principal and for the consideration of appeals against dismissals shall be specified in rules made by the Board of Governors after consultation with the staff. The rules should include rights of representation.

Notes on Article 10

- i. The Principal may delegate his powers of suspension or dismissal to another member of staff. In such cases the Principal remains responsible, with the Board of Governors, for ensuring that the relevant rules are observed.*
- ii. The effect of note i(e) to Article 7 is that staff and student governors, as well as the persons excluded by Article 10(9), will not be eligible for membership of the Special Committee. Where fewer than ten governors*

are eligible for the Special Committee its membership may be lower than five.

11. GRIEVANCE PROCEDURES

(1) After consultation with the staff the Board of Governors shall make rules specifying procedures according to which staff may seek redress of any grievances relating to their employment.

12. STUDENTS

(1) A students' union shall conduct and manage its own affairs and funds in accordance with a constitution approved by the Board of Governors and shall present audited accounts annually to the Board of Governors. No amendment to or rescission of that constitution, in part or in whole, shall be valid unless and until approved by the Board of Governors.

(2) The Board of Governors, after consultation with the Academic Board and representatives of the students, shall make rules with respect to the conduct of students, including procedures for suspension and expulsion.

(3) In exercise of their responsibilities under Article 3(3)(a), the Academic Board, after consultation with the Board of Governors and representatives of the students, shall determine procedures for the expulsion of a student for an unsatisfactory standard of work or other academic reasons.

Notes on Article 12

- i. The Articles should ensure that students have an appropriate opportunity to raise matters of proper concern to them at all levels in the [University/College/Other] and should provide for the procedures to be followed to that end.*

- ii. The Principal is responsible to the Board of Governors under Article 3(2)(f) for the maintenance of student discipline and, within the rules and procedures provided for within these Articles, for the expulsion of students for academic reasons.*
- iii. The rules made under Article 12(2) should include provision relating to:*
- the Principal's powers to expel or suspend a student on disciplinary grounds;*
 - the establishment of a student disciplinary committee with equal members of governors, staff and students to advise the Principal on the action to be taken in individual cases; and*
 - procedures for students to make representations to the Board of Governors against expulsion or suspension.*
- iv. The procedures made under Article 12(3) should include provision:*
- enabling students to make representations to the Academic Board, before the Academic Board makes its decision; and to appeal to the Board of Governors against the Academic Board's decision, but only on grounds that proper procedures had not been followed in the consideration of the matter; and*
 - for notifying the Principal of any decisions. The Principal will be responsible for implementing a decision to expel a student for academic reasons.*

13. FINANCIAL MATTERS

Fees

(1) The Board of Governors shall determine the tuition and other fees payable to the Corporation (subject to any terms and conditions attached to grants, loans or other payments paid or made by the appropriate Higher Education Funding Council).

Accounts Estimates and Audit

(2) The Board of Governors shall keep accounts and records, and appoint auditors in accordance with the provisions of the Act.

(3) Annual estimates of income and expenditure shall be prepared by the Principal for the consideration and approval of the Board of Governors.

14. RULES AND BYE-LAWS

(1) The Board of Governors shall have power to make rules and bye-laws concerning such matters with regard to the government and conduct of the [University/College/Other] as it shall think fit. Such rules and bye-laws shall be subject to the provisions of these Articles.

Note on Article 14

This Article enables the Board of Governors to make provision for matters which are too detailed to go in the Articles. Rules and bye-laws are not subject to approval by the Privy Council, although the Privy Council has powers to require changes to them after consultation with the Corporation concerned. Rules and bye-laws should be consistent with the Instrument and Articles; to any extent to which they are inconsistent they will be invalid.

15. COPIES OF ARTICLES, RULES AND BYE-LAWS

(1) A copy of these Articles, and any rules or bye-laws, shall be given to every governor and shall be available for inspection upon request to every member of staff and every student.

Note on Article 15

Two copies of the institution's Articles as approved by the Privy Council and bearing the date they came into force, which should be a date after they have been approved by the Privy Council, should be sent to the Privy Council Office, the Department for Education and the Higher Education Funding Council for England. The Board of Governors should also send the Privy Council Office, the DFE and the HEFCE, copies of any rules or bye-laws for information.

16. AMENDMENT OF ARTICLES

(1) These Articles may be amended or replaced by a resolution of the Corporation either with the approval of the Privy Council or as required by the Privy Council, after consultation with the corporation, in accordance with section 125 of the Act.

17. DATE OF ARTICLES

(1) These Articles shall come into operation on (a date after the date of approval by the Privy Council].