

Halesowen College Corporation

Instrument and Articles of Government

The following Instrument and Articles of Government are drafted on the basis of those provided through the following:

1. Further Education Corporations (Former Further Education Colleges)
(replacement of instruments and Articles of Government) Order 2007
2. (Modification of Instrument and Articles of Government) Order 2010
3. (Modification of Instrument and Articles of Government) Order 2012

With reference to the revised Schedule 4 as amended by the Education Act 2011.

***Revised and adopted by Halesowen College Corporation on 27 March 2013
(Last amendment approved on 8 July 2020)***

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SCHEDULE 1 INSTRUMENT OF GOVERNMENT

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Interpretation of the terms used

1. In this Instrument of Government—

- (a) any reference to “the Principal” shall include a person acting as Principal;
- (b) “the Clerk” means the Clerk to the Corporation;
- (c) “the Corporation” means any further education corporation to which this Instrument applies;
- (d) “the institution” means the institution which the Corporation is established to conduct and any institution for the time being conducted by the Corporation in exercise of its powers under the Further and Higher Education Act 1992(1);
- (e) “this Instrument” means this Instrument of Government;
- (f) “the CE of Skills Funding” means the Chief Executive of Skills Funding;
- (g) “meeting” includes a meeting at which the members attending are present in more than one room, provided that by the use of telephone or video-conferencing facilities it is possible for every person present at the meeting to communicate with each other;
- (h) “necessary skills” means skills and experience, other than professional qualifications, specified by the Corporation as appropriate for members to have;
- (i) “staff member” and “student member” have the meanings given to them in instrument 2;
- (j) “the Secretary of State” means the Secretary of State for Business, Innovation, and Skills;
- (k) “staff matters” means the remuneration, conditions of service, promotion, conduct, suspension, dismissal or retirement of staff;
- (l) “Standing Orders” means the Standing Orders of the Corporation, as amended by the Corporation from time to time;
- (m) “the students’ union” means any association of students formed to further the educational purposes of the institution and the interests of students, as students;

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- (n) a “variable category” means any category of members whose numbers may vary according to instruments 2 and 3;
- (o) “written resolution” means a resolution in writing agreed to by over 50% of the members of the Corporation who would have been entitled to vote upon it had it been proposed at a meeting which is passed in accordance with the procedure set out in the Standing Orders.

Composition of the Corporation

2.—(1) Subject to the transitional arrangements set out in instrument 4, the Corporation shall consist of—

- (a) Nine members who appear to the Corporation to have the necessary skills to ensure that the Corporation carries out its functions under article 3 of the Articles of Government;
- (b) the Principal of the institution;
- (c) one member who is a member of the institution’s staff and has a contract of permanent employment with the institution and who has been nominated and elected as set out in the Standing Orders (“staff member”); and
- (f) unless otherwise required by law, one member who is a student at the institution and has been nominated and elected by his or her fellow students or, if the Corporation so decides, by a recognised association representing such students (“student member”).

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

(3) The appointing authority, as set out in instrument 5, will decide whether a person is eligible for nomination, election and appointment as a member of the Corporation under paragraph (1).

Determination of membership numbers

3.—(1) Subject to paragraph (2) and the transitional arrangements in instrument 4, the number of members of the Corporation and the number of members of each variable category shall be that set out in instrument 2.

(2) The Corporation may at any time vary the number of members referred to in paragraph (1) and any subsequent determination under this paragraph provided that the number of members of each variable category shall not be less than that set out in instrument 2.

(3) No determination under this instrument shall terminate the appointment of any person who is already a member of the Corporation at the time when the determination is made.

Transitional arrangements

4. Where, following the adoption of this Instrument, the membership of the Corporation does not conform in number to instrument 2

- (a) nothing in instruments 2 and 3 of this Instrument shall require the removal of members; but
- (b) the Corporation shall ensure that any new appointments are made so that its composition conforms to this Instrument as soon as possible.

Appointment and term of office of the members of the Corporation

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

(2) If the number of members falls below the number needed for a quorum, the Secretary of State is the appointing authority in relation to the appointment of those members needed for a quorum.

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(3) The appointing authority will be subject to instrument 8 when making any appointment of members and will decline to appoint a person who is ineligible to be a member of the corporation because of instrument 8.

(4) Where the office of any member becomes vacant the appointing authority shall as soon as practicable take all necessary steps to appoint a new member to fill the vacancy.

(5) A member of the Corporation shall hold and vacate office in accordance with the terms of the appointment, but the length of the term of office shall not exceed three years.

(6) Members retiring at the end of their term of office shall be eligible for reappointment, and instrument 5 shall apply to the reappointment of a member as it does to the appointment of a member.

(7) Paragraph (6) is subject to any rule or bye-law made by the Corporation under article 21 of the Articles of Government concerning the number of terms of office which a person may serve.

Appointment of the Chair and Vice-Chair

6.—(1) The members of the Corporation shall appoint a Chair and a Vice-Chair from among themselves.

(2) Neither the Principal nor any staff or student member shall be eligible to be appointed as Chair or Vice-Chair or to act as Chair in their absence.

(3) If both the Chair and the Vice-Chair are absent from any meeting of the Corporation, the members present shall choose someone from among themselves to act as Chair for that meeting.

(4) The Chair and Vice-Chair shall hold office for such period as the Corporation decides.

(5) The Chair or Vice-Chair may resign from office at any time by giving notice in writing to the Clerk.

(6) If the Corporation is satisfied that the Chair is unfit or unable to carry out the functions of office, it may give written notice removing the Chair from office and the office shall then be vacant.

(7) If the Corporation is satisfied that the Vice-Chair is unfit or unable to carry out the functions of office, it may give written notice removing the Vice-Chair from office and the office shall then be vacant.

(8) At the last meeting before the end of the term of office of the Chair, or at the first meeting following the Chair's resignation or removal from office, the members shall appoint a replacement from among themselves.

(9) At the last meeting before the end of the term of office of the Vice-Chair, or at the first meeting following the Vice-Chair's resignation or removal from office, the members shall appoint a replacement from among themselves.

(10) At the end of their respective terms of office, the Chair and Vice-Chair shall be eligible for reappointment.

(11) Paragraph (10) is subject to any rule or bye-law made by the Corporation under article 21 of the Articles of Government concerning the number of terms of office which a person may serve.

Appointment of the Clerk to the Corporation

7.—(1) The Corporation shall appoint a person to serve as its Clerk, but the Principal may not be appointed as Clerk.

(2) In the temporary absence of the Clerk, the Corporation shall appoint a person to serve as a temporary Clerk, but the Principal may not be appointed as temporary Clerk.

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

(4) Subject to instrument 10, the Clerk shall be entitled to attend all meetings of the Corporation and any of its committees.

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

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Persons who are eligible to be members

8. Any individual shall be eligible to be a member of the Corporation, subject to this Instrument, the Articles of Government, the Standing Orders and any other rule or bye law made under article 21.

Termination of membership

9. The office of any member may be terminated in accordance with this Instrument, the Articles of Government, the Standing Orders and any other rule of bye-law made under article 21.

Members not to hold interests in matters relating to the institution

10.—(1) A member to whom paragraph (2) applies shall -

- (a) disclose to the Corporation the nature and extent of the interest; and
- (b) if present at a meeting of the Corporation, or of any of its committees, at which such supply, contract or other matter as is mentioned in paragraph (2) is to be considered, not take part in the consideration or vote on any question with respect to it and not be counted in the quorum present at the meeting in relation to a resolution on which that member is not entitled to vote; and
- (c) withdraw, if present at a meeting of the Corporation, or any of its committees, at which such supply, contract or other matter as is mentioned in paragraph (2) is to be considered, where required to do so by a majority of the members of the Corporation or committee present at the meeting.

(2) This paragraph applies to a member who—

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

(3) This instrument shall not prevent the members considering and voting upon proposals for the Corporation to insure them against liabilities incurred by them arising out of their office or the Corporation obtaining such insurance and paying the premium.

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

- (a) need not disclose a financial interest; and
- (b) may take part in the consideration of the matter, vote on any question with respect to it and count towards the quorum present at that meeting, provided that in so doing, the staff member acts in the best interests of the Corporation as a whole and does not seek to represent the interests of any other person or body, but
- (c) shall withdraw from the meeting if the matter is under negotiation with staff and the staff member is representing any of the staff concerned in those negotiations.

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

Meetings

11.—(1) Meetings of the Corporation shall be called, notified and conducted in accordance with Standing Orders.

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(2) The Quorum for meetings of the corporation shall be determined in accordance with the Standing Orders.

(3) The proceedings of meetings, including matters relating to the recording of meetings, public access to meetings and the publication of recordings of meetings shall be carried out in accordance with the Standing Orders.

12. Written Resolutions

(1) The Corporation may take decisions by way of written resolution.

Copies of the Instrument of Government

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

Change of name of the Corporation

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

Application of the seal

15. The application of the seal of the Corporation shall be authenticated by—

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

SCHEDULE 2

ARTICLES OF GOVERNMENT

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Interpretation of the terms used

1.— In these Articles of Government—

- (a) any reference to “the Principal” shall include a person acting as Principal;
- (b) “the Articles” means these Articles of Government;
- (c) “Chair” and “Vice-Chair” mean respectively the Chair and Vice-Chair of the Corporation appointed under instrument 6 of the Instrument of Government;
- (d) “the Clerk” has the same meaning as in the Instrument of Government;
- (e) “the Corporation” has the same meaning as in the Instrument of Government;
- (f) “the CE of Skills Funding” means the Learning and Skills Council for England;
- (g) “staff member” and “student member” have the same meanings as in the Instrument of Government;
- (h) “the Secretary of State” means the Secretary of State for Business, Innovation and Skills;
- (i) “senior post” means the post of Principal and such other senior posts as the Corporation may decide for the purposes of these Articles;
- (j) “the staff” means all the staff who have a contract of employment with the institution;
- (k) “Standing Orders” has the same meaning as in the Instrument of Government.
- (l) “the students’ union” has the same meaning as in the Instrument of Government.

Conduct of the institution

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

Responsibilities of the Corporation, the Principal and the Clerk

3.—(1) The Corporation shall be responsible for the following functions—

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

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

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

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

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

Committees

4.—(1) The Corporation shall carry out certain procedures by way of the establishment of, and delegation of functions to, committees.

(2) Matters relating to committees, including establishment, delegation of functions, proceedings, composition of and access to committees shall be in accordance with the provisions of these Articles and the Standing Orders.

The Search and Governance Committee

5.—(1) The Corporation shall establish a committee, to be known as the “Search and Governance Committee”, to advise on:

- (a) the appointment of members (other than as a parent, staff or student member); and
- (b) such other matters relating to membership and appointments as the Corporation may ask it to.

(2) The Corporation shall not appoint any person as a member (other than as a parent, staff or student member) without first consulting and considering the advice of the Search and Governance Committee.

The Audit and Assurance Committee

6.—The Corporation shall establish a committee, to be known as the “Audit and Assurance Committee”, to advise on matters relating to the Corporation’s audit arrangements and systems of internal control.

Delegable and non-delegable functions

7.—The Corporation shall not delegate the following functions-

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

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

the power to determine an appeal in connection with the dismissal of the Principal, the Clerk or the holder of a senior post, other than to a committee of members of the Corporation.

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

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

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

Appointment and promotion of staff

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

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

(2) The members of the selection panel shall—

- (a) decide on the arrangements for selecting the applicants for interview;

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

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

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

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

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

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

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

Rules relating to the conduct of staff

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

Academic freedom

13. —In making rules under article 12, the Corporation shall have regard to the need to ensure that academic staff at the institution have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without putting themselves at risk of losing their jobs or any privileges which they may enjoy at the institution.

Grievance, suspension and disciplinary procedures

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

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

and such procedures shall be subject to the provisions of articles 3(1)(e), 3(2)(e), 7(d), 7(e), 8(1) and 15.

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

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

Suspension and dismissal of the Clerk

15.—(1) Where the Clerk is also a member of staff at the institution, the Clerk is to be treated as a senior post holder for the purposes of article 14(1)(c).

(2) Where the Clerk is suspended or dismissed under article 14, that suspension or dismissal shall not affect the position of the Clerk in the separate role of Clerk to the Corporation.

Students

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

(2) The students' union shall present audited accounts annually to the Corporation.

(3) After consultation with representatives of the students, the Corporation shall make rules concerning the conduct of students, including procedures for their suspension and expulsion (including expulsion for an unsatisfactory standard of work or other academic reason).

Financial matters

17.— The Corporation shall set the policy by which the tuition and other fees payable to it are determined, subject to any terms and conditions attached to grants, loans or other payments paid or made by the CE of Skills Funding.

Co-operation with authorised audit

18. —The Corporation shall co-operate with any person who has been lawfully authorised to audit any returns of numbers of students or claims for financial assistance and shall give any such person access to any documents or records held by the Corporation, including computer records.

Internal audit

19.—(1) The Corporation shall, at such times as it considers appropriate, examine and evaluate its systems of internal financial and other control to ensure that they contribute to the proper, economic, efficient and effective use of the Corporation's resources.

(2) The Corporation may arrange for the examination and evaluation mentioned in paragraph (1) to be carried out on its behalf by internal auditors.

(3) The Corporation shall not appoint persons as internal auditors to carry out the activities referred to in paragraph (1) if those persons are already appointed as external auditors under article 20.

Accounts and audit of accounts

20.—(1) The Corporation shall

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts for each financial year of the Corporation.

(2) The statement shall—

- (a) give a true and fair account of the state of the Corporation's affairs at the end of the financial year and of its income and expenditure in the financial year; and
- (b) comply with any directions given by the CE of Skills Funding as to the information to be contained in it, the manner in which the information is to be presented, the methods and principles according to which it is to be prepared and the time and manner of publication.

(3) The accounts and the statement of accounts shall be audited by external auditors appointed by the Corporation in respect of each financial year.

(4) The Corporation shall not appoint persons as external auditors in respect of any financial year if those persons are already appointed as internal auditors under article 19.

(5) Auditors shall be appointed and audit work conducted in accordance with any requirements of the CE of Skills Funding.

(6) The “financial year” means the first financial year and, except as provided for in paragraph (8), each successive period of twelve months.

(7) The “first financial year” means the period from the date the Corporation was established up to the second 31st July following that date, or up to some other date which has been chosen by the Corporation with the LSC’s approval.

(8) If the Corporation is dissolved—

(a) the last financial year shall end on the date of dissolution; and

(b) the Corporation may decide, with the CE of Skills Funding’s approval, that what would otherwise be the last two financial years, shall be a single financial year for the purpose of this article.

Rules and bye-laws

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

Copies of Articles of Government and rules and bye-laws

22. —A copy of these Articles, and of any rules and bye-laws, shall be given free of charge to every member of the Corporation and at a charge not exceeding the cost of copying or free of charge, to any other person who requests a copy and shall be available for inspection at the institution upon request, during normal office hours, to every member of staff and every student.

Modification or Replacement of the Instrument and Articles of Government

23. — (1) Subject to paragraph (2), the Corporation may by resolution of the members modify or replace its instruments and articles of government, after consultation with any other persons who, in the Corporation’s view, are likely to be affected by the proposed changes.

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

Dissolution of the Corporation

24.— (1) The Corporation may by resolution dissolve itself and provide for the transfer of its property, rights and liabilities.

(2) The Corporation shall ensure that a copy of the draft resolution to dissolve the corporation on a specified date shall be published at least one month before the proposed date for such resolution.