

Draft Financial Management Code

2017

DRAFT



Noddir gan
Lywodraeth Cymru
Sponsored by
Welsh Government

Contents

Contents	1
Introduction	1
Application of this Code	1
Responsibilities of HEFCW	3
Preparation of this Code.....	3
Review of the Code	3
Interpretation of statements within this document.....	3
Monitoring and interventions	3
Communicating concerns over financial affairs	3
Risk assessment of institutions	4
Responsibility to act reasonably	5
Responsibilities of the institution to HEFCW and to students	5
Governing Body responsibility for compliance with this document	5
Proper stewardship of funds.....	5
Sound financial management	5
Financial viability	5
Effective risk management processes	7
Accountable officer's role and responsibilities	7
Robust governance oversight of financial affairs	8
Composition of the governing body	9
Absence of, or removal of accountable officer.....	10
Responsibility for reporting significant events.....	10
Responsibility to provide HEFCW with accurate and timely information.....	11
Notification of changes to senior roles.....	12
Legislative requirements.....	12
Monitoring of complaints.....	12
Prudent management of the estate	13
Negative cash forecasts	13
Financial commitments.....	13
Activity costs should form part of decision making	15
Financial statement preparation	15
HEFCW's assurance processes	15
Institutional engagement, support and safeguarding actions	15

*Draft Financial Management Code between HEFCW and
(name of institution)*

Annual assurance returns.....	16
HEFCW Assurance Review.....	16
Data assurance	16
Other sources.....	17
Institutional Risk Reviews.....	17
Audit Code of Practice	18
Governing bodies of institutions	18
Audit committees in institutions	19
Finance committees	20
Internal audit arrangements in institutions.....	21
External audit arrangements in institutions.....	22
External auditor selection procedures	23
External auditor’s report	23
HEFCW access to auditors	24
Provision of audit services.....	24
Auditors’ access to information.....	24
Limitation on auditors’ liability.....	24
Reporting serious weaknesses.....	25
Professional standards	26
Appointment, removal or resignation of internal and external auditors.....	26
Signature of the accountable officer	27
Annex A: Institutional engagement processes.....	1
Introduction.....	1
How HEFCW engages	1
Normal contact	2
Focused dialogue	2
Statement of Intervention	2
Introduction.....	3
Our response.....	5
Information required	5
<i>Table 1: Information required by HEFCW to consider a request to increase a financial commitments threshold</i>	<i>6</i>
Annex C: Glossary	8

Introduction

1. This circular comprises the Financial Management Code (“the Code”) which sets out the requirements concerning the organisation and management of financial affairs to which regulated institutions¹ must adhere. The Code has been prepared in response to the relevant provisions contained within the Higher Education (Wales) Act 2015 (“the 2015 Act”).
2. HEFCW has been mindful of a number of guiding principles whilst preparing the Code. Primarily, these principles are:
 - a. The need to maintain stakeholder confidence in the Higher Education sector;
 - b. The protection of the public and student interest;
 - c. Minimising regulatory burden and duplication;
 - d. Recognising institutional autonomy;
 - e. Reasonable and proportionate accountability;
 - f. Where appropriate, being explicit about the need for the requirements laid out in this Code by linking the requirement to the organisation and management of the financial affairs of the institution;
 - g. Adopting a consistency of approach with other UK funding councils where possible and appropriate (for example, in respect of financial requirements and the consideration of the student interest) in order that the regulatory environment supports the ability of Welsh institutions to operate competitively; and
 - h. HEFCW's duties under the Equality Act 2010 and the Well-being of Future Generations Act (Wales) 2015.
3. The definitions of terms used within this Code are set out within ‘**Annex C: Glossary**’.

Application of this Code

4. This Code does not supersede the requirements of the institution’s governing documents and the law relating to the institution’s charitable status but is intended to complement and reinforce them. Nothing in this Code shall require the institution to act in a manner which would cause it to lose its charitable status, or which would be incompatible with its governing documents.
5. Where HEFCW uses the term ‘must’, it means it is a specific legal requirement or requirement under this Code. Institutions must comply with these requirements, and failure to do so could result in HEFCW exercising relevant intervention functions as outlined within the Statement of Intervention. HEFCW may decide that it does not need to intervene through the Statement of Intervention where it considers that the effects of the failure are not severe or

¹ As defined in Part 2, S7(5)(b) of the Higher Education (Wales) Act 2015

that the institution's proposed actions to remedy the failure are acceptable to HEFCW.

6. HEFCW uses 'should' for items it regards as minimum good practice, but for which there is no specific legislation or for which HEFCW is not setting a requirement under this Code; however, governing bodies must take such guidance into account. HEFCW will consider the extent to which an institution has adopted the 'should' provisions (or alternative, equally robust arrangements) in the Institutional Risk Review - our annual assessment of risk.
7. This document takes effect from 01 September 2017.

Responsibilities of HEFCW

Preparation of this Code

8. This Code has been developed in response to the statutory requirement² on HEFCW to prepare a code relating to the organisation and management of the financial affairs of regulated institutions³.

Review of the Code

9. HEFCW will keep this Code under review, and if appropriate, prepare and publish a revised Code following consultation with stakeholders. Revisions will be made subject to the procedure for approval of the Code by Welsh Ministers, as outlined in Section 28 of the 2015 Act.

Interpretation of statements within this document

10. Questions on the interpretation of any provision in this Code shall be determined by HEFCW, in dialogue with the institution concerned.

Monitoring and interventions

11. The HEFCW Chief Executive must satisfy himself or herself that the governing body of the institution has appropriate arrangements for the organisation and management of its financial affairs, and that the institution has neither failed, nor is likely to fail, to comply with any of the requirements of this Code.
12. HEFCW will monitor compliance by each institution with the requirements set out within this Code.

Communicating concerns over financial affairs

13. In his/her role as Accounting Officer, the Chief Executive of HEFCW must inform the institution's governing body and/or its audit committee if (s)he has serious concerns about the institution's organisation and management of its financial affairs.

² Within Part 4, S(27)(1) of the Higher Education (Wales) Act 2015

³ As defined in Part 2, S7(5)(b) of the Higher Education (Wales) Act 2015

Risk assessment of institutions

14. HEFCW is required to form a view as to whether the governing body of an institution has failed, or is likely to fail, to comply with a requirement imposed by this Code⁴. HEFCW runs a number of assurance processes to inform its view (see **Institutional engagement, support and safeguarding actions**), one of which is an annual, confidential risk assessment of each institution (the 'Institutional Risk Review').
15. HEFCW will provide the Institutional Risk Review to the institution's accountable officer (see paragraph 39) and governing body. HEFCW will not normally make its Institutional Risk Reviews public until at least three years have elapsed. This period, based on advice from the Information Commissioner, gives an institution that is designated as 'high risk', time to ameliorate its risk rating.
16. HEFCW will make its Institutional Risk Reviews available within this three-year period, on an exceptional and confidential basis, to:
 - other regulators and public funders (such as the Charity Commission and Welsh Government) with an interest in the institution to enable those bodies to make their own assessments of risk; and
 - the Wales Audit Office (WAO). In some cases where these assessments are shared with the WAO, the WAO may then need to discuss those assessments at the Public Accounts Committee or disclose them in a published report.

In all cases where HEFCW is legally allowed to do so, institutions will be informed prior to sharing.

17. HEFCW will exceptionally make public an Institutional Risk Review at any stage if it has strong grounds for believing that it is in the collective student or public interest to do so. In so doing, HEFCW will take into account the impact that such a disclosure might have upon an institution. HEFCW will only share or publish its Institutional Risk Reviews after having notified the accountable officer (see paragraph 39) and governing body of the institution concerned. When HEFCW assesses an institution to be at 'high risk', HEFCW will engage with the institution in accordance with HEFCW's Statement of Intervention.
18. HEFCW defines an institution as 'high risk' in respect of the organisation and management of its financial affairs, when in HEFCW's judgement, on the basis of the available evidence, the institution has failed, or is likely to fail, to comply with a requirement imposed by the Code and the effect of this is to give rise to viability concerns over the short to medium term.
19. Further information on HEFCW's Institutional Risk Review process is provided in paragraphs 109 to 114 below.

⁴ Part 4 S(32) of the Higher Education (Wales) Act 2015

Responsibility to act reasonably

20. In exercising its powers under this Code, HEFCW will act reasonably at all times.
21. HEFCW will respect commercial confidentiality within the constraints of the Freedom of Information Act 2000 and its own obligations to the Welsh Government under the Framework Document⁵ and to any regulatory body.

Responsibilities of the institution to HEFCW and to students

Governing Body responsibility for compliance with this document

22. The responsibility for ensuring that the institution complies with this Code and related guidance rests with the governing body of the institution.

Proper stewardship of funds

23. The governing body of the institution is responsible for ensuring that all funds are used for the purposes intended.
24. The governing body must take into account any relevant guidance on accountability or propriety issued from time to time by HEFCW, the WAO or the Audit Committee of the National Assembly for Wales.
25. The governing body should also take into account the guidance of stakeholder bodies, such as the British Universities Finance Director's Group (BUFDG), the Association of Colleges, accountancy bodies and the Leadership Foundation for Higher Education (LFHE).

Sound financial management

26. The governing body of the institution must ensure that it has appropriate arrangements the organisation and management of its financial affairs, including an adequate and effective internal control environment.

Financial viability

27. Institutions must remain financially viable.
28. 'Financially viable' is defined by reference to the common understanding of 'going concern', over the short to medium term.
29. Consequently, the governing body of the institution must plan and conduct its financial and academic affairs to ensure that it remains financially viable.

⁵ Available at www.hefcw.ac.uk/about_us/our_responsibilities/our_responsibilities.aspx

30. In order to satisfy HEFCW as to financial viability, institutions which are subsidiaries must be able to demonstrate that either:
 - a. they have a guarantee from their parent company – any such guarantee is subject to approval by HEFCW and HEFCW will only give its approval if it is satisfied that, taking the guarantee into account, the parent itself is financially viable over the short to medium term; or
 - b. they are financially viable independent of their parent company.

31. Governing bodies must ensure that the institution has conducted a thorough risk assessment of adverse events that could give rise to financial viability concerns. The extent to which the risk assessment should consider adverse events should be determined by reference to events which a reasonable, informed individual could foresee as giving rise to financial viability concerns. Governing bodies must inform HEFCW immediately should they consider that such an event is likely to occur.

32. HEFCW considers that there are a number of indicators that may denote an institution at risk of being financially unviable. HEFCW does not provide an exhaustive list. However, the following areas might (in combination or alone, and depending upon the detail of the individual context) indicate an institution that is at risk of not being financially viable:
 - a. Unplanned deficits;
 - b. Net cash outflow from operating activities in two consecutive periods;
 - c. Low levels of liquidity;
 - d. High levels of gearing, particularly where the borrowing is repayable on demand or subject to interest rate changes;
 - e. The breach or close breach of borrowing covenants, particularly where the requirement to immediately repay the outstanding debt as a result of the breach would lead to viability concerns;
 - f. Forecasts indicating that the institution is not a going concern over the forecast period;
 - g. Reliance upon unreasonable assumptions within the financial forecast, where the effect of modifying those assumptions to a more reasonable basis results in the institution's forecasts no longer showing the institution to be a going concern; and/or
 - h. The institution suffers an 'adverse event' (see paragraph 31) where the consequences of the event risks the institution ceasing to be a going concern.

33. Ultimately, such an assessment will depend upon the context and the specific details. HEFCW will make such an assessment where it believes there are reasonable grounds for uncertainty over the financial viability, informed as necessary by dialogue with the institution.

34. In accordance with FSSG's⁶ recommended good practice, institutions should prepare an ASSUR statement on an annual basis. This statement should be reviewed by the institution's governing body.

Effective risk management processes

35. Well-designed and effective risk management processes are a key element in providing assurance regarding an institution's organisation and management of its financial affairs.
36. An institution's senior executive team and governing body collectively have responsibility and accountability for setting the institution's objectives, defining strategies to achieve those objectives, and establishing governance structures and processes to best manage the risks in accomplishing those objectives. It follows that risk management models are best implemented with the active support and guidance of the institution's governing body and senior executive team.
37. The institution must therefore ensure that it has an effective policy of risk management which is able to demonstrate that the organisation and management of the institution's financial affairs are appropriately controlled.

Accountable officer's role and responsibilities

38. The head of an institution is responsible for leadership of the academic affairs and executive management of the institution.
39. The governing body must designate a member of the Senior Executive team (normally the head of the institution) as the 'accountable officer' to be accountable for compliance with this Code and for reporting to HEFCW on behalf of the governing body. The institution must notify HEFCW whenever it designates such an officer.
40. The accountable officer is personally responsible to the governing body for ensuring that the requirements in this Code are complied with and for providing HEFCW with clear assurances to this effect.
41. HEFCW must be able to meet the accountable officer within a reasonable timeframe following their designation.
42. The accountable officer may be required to appear before the Public Accounts Committee of the National Assembly for Wales alongside the Chief Executive of HEFCW on matters relating to the institution.

⁶ Financial Sustainability Strategy Group (www.hefce.ac.uk/funding/finsustain/fssg/)

43. The accountable officer must advise the institution's governing body immediately if, at any time, any action or policy under consideration by the governing body appears to the accountable officer to be incompatible with the requirements of this Code. If the governing body decides nevertheless to proceed, the accountable officer must immediately inform the Chief Executive of HEFCW in writing.

Robust governance oversight of financial affairs

44. The governing body of an institution has ultimate responsibility for overseeing the institution's activities, for determining its future direction, and fostering an environment in which the institution's mission is achieved. This responsibility cannot be delegated.
45. An institution's governing body and senior executive team are the primary stakeholders served by assurance and risk management processes. They are therefore the parties best positioned to provide oversight of these processes and to ensure that these operate effectively.
46. In order that the oversight outlined in paragraphs 44 and 45 is appropriately robust, institutions should adhere to recognised standards of good governance, including the Higher Education Code of Governance issued by the Committee of University Chairs⁷ ("Code of Governance").
47. HEFCW considers that the elements contained within the Code of Governance represent good governance practices. However, HEFCW understands that some institutions may not have previously adhered to the Code of Governance and that the code is voluntary, and recognises that institutions may be able to apply alternative governance practices to achieve similar outcomes. Where institutions have not adhered to the Code of Governance an explanation must be given within the institution's annual report. The explanation must describe the alternative governance procedures adopted in lieu of those recommended by the Code of Governance. Non-compliance with the Code of Governance will be considered to be acceptable provided that the explanation within the annual report describes equally robust alternative arrangements that are in place or indicates that there are appropriate and reasonable grounds for non-adherence.
48. HEFCW will assess the institution's compliance with good governance practices as part of its annual Institutional Risk Review process. Inadequate and/or ineffective corporate governance arrangements may lead HEFCW to conclude that the institution is likely to fail to comply with a requirement imposed by this Code. This may in turn lead to HEFCW assessing an institution as being at 'high risk', at which point HEFCW's Statement of Intervention will be implemented.

⁷ Accessible at www.universitychairs.ac.uk/publications/

49. Members of governing bodies and accountable officers must comply with the seven principles set out by the Committee on Standards in Public Life. The governing body must inform HEFCW's Chief Executive immediately should it become aware that a governing body member or accountable officer has violated one or more of these principles.
50. Governing bodies and accountable officers are accountable for their decisions and actions, and must submit themselves to whatever scrutiny is appropriate to their office. They must also be as open as possible about all the decisions and actions that they take that may affect the institution's financial position.
51. HEFCW will write to the new chair of each governing body of an institution, on appointment, drawing attention to their responsibilities, and those of the governing body generally, under this Code and related guidance.
52. The governing body of the institution has a responsibility to protect the collective student interest and the public interest and must ensure that consideration of these elements takes place within its key decision making processes.

Composition of the governing body

53. The composition of the governing body is first and foremost the responsibility of the governing body itself, acting within the bounds of the institution's governing documents.
54. Transparent appointment processes for the governing body help to ensure that threats to independence are avoided, allowing independent members to hold one another to account. Such threats are particularly relevant to the management of financial affairs. Consequently, the accountable officer must inform HEFCW's Chief Executive if neither an external search consultancy nor open advertising has been used in the appointment of a governing body member and provide an explanation for this. The use of an external search consultancy or open advertising is not a requirement; however, HEFCW considers it to be good practice.
55. Governing bodies should have at least one member with relevant financial experience gained within a predominantly finance-based role. Whilst this is not a requirement, governing bodies must disclose within their annual report should they not meet this requirement, together with an explanation of the degree to which the governing body feels it has been able to obtain adequate financial assurance. HEFCW considers it to be good practice to co-opt members to institutional finance committees to provide relevant additional expertise, should a demonstrable financial skills gap exist.
56. In order to avoid over-familiarity, which may impact upon a governing body member's ability to act independently, independent members of the governing body should not normally serve for more than two terms of four years, or three terms of three years, except where subsequently undertaking the role of chair

of the governing body. Institutions must notify HEFCW where it is decided to deviate from this good practice.

57. HEFCW will consider the composition of the governing body, as well as the governance structure in relation to financial affairs, within its annual Institutional Risk Review process.

Absence of, or removal of accountable officer

58. Where an institution fails, or is likely to fail, to comply with a requirement imposed by this Code, HEFCW may instigate the processes within the Statement of Intervention. When HEFCW assesses an institution to be at 'high risk', HEFCW will engage with the institution in accordance with HEFCW's Statement of Intervention.
59. During this intervention process, the HEFCW Chief Executive may, in exceptional circumstances, conclude that the institution's accountable officer is unable or unwilling to meet his or her responsibilities under this Code. HEFCW may then require the institution's governing body to designate someone else to report to HEFCW on behalf of the institution. In taking this action HEFCW will not seek to influence the employment relationship between the governing body and the head of the institution. The governing body is clearly entitled to maintain the head of the institution in post. However, the governing body would then have to appoint another member of the Senior Executive team as the accountable officer, and adjust the roles and responsibilities of the head of the institution accordingly.
60. In the event of a prolonged absence from work (or absence that is reasonably expected to be prolonged) or a sudden departure of the accountable officer, the institution must appoint an interim accountable officer. The clerk to the institution's governing body must ensure that HEFCW is made aware immediately of the identity of the interim accountable officer.

Responsibility for reporting significant events

61. The institution's accountable officer must report any event (whether already arisen or forecast) that has, or is likely to have, a material adverse impact on the financial position of the institution, as soon as this becomes apparent, to:
- a. The chair of the institution's audit committee;
 - b. The chair of the institution's governing body;
 - c. The institution's head of internal audit;
 - d. The external auditor; and
 - e. The HEFCW Chief Executive.
62. The institution's accountable officer must notify HEFCW of any serious weakness, such as a significant threat to the institution's financial position, significant fraud or a major accounting breakdown. Should the accountable officer be implicated in wrongdoing, the responsibility for reporting this information lies with the governing body.

63. 'Serious weakness' is more fully defined within paragraphs 164 and 165.
64. The institution's accountable officer must inform HEFCW, without delay, about major changes in strategy and/or risk profile, plans for major restructuring and significant changes to interests in the institution (including merger with another institution or organisation), as these are likely to have financial implications for the institution.
65. The governing body must inform HEFCW without delay of the removal or resignation of the external or internal auditors before the end of the term of their appointment.

Responsibility to provide HEFCW with accurate and timely information

66. The institution must provide HEFCW, or agents acting on its behalf, with such information, assistance and access to the institution's facilities as HEFCW or its agent reasonably requires for the purpose of exercising its functions in relation to compliance with the Code under the 2015 Act⁸.
67. HEFCW will act reasonably in its requests for information and will have regard to the costs of providing this information, and, where appropriate, to its confidentiality.
68. If an institution fails to provide information required by HEFCW by the specified deadline, or that information is not of satisfactory quality, HEFCW reserves the right to any of the following:
 - a. To carry out whatever reasonable investigations it deems necessary to collect the data;
 - b. To use its own reasonable estimates of data which it requires to exercise its functions under the 2015 Act; or
 - c. Direct an institution, through processes outlined within the Statement of Intervention⁹ to take (or not to take) specified steps for the purpose of securing the provision of information, assistance or access.
69. The institution must provide HEFCW with access to all information requested by HEFCW in pursuance of its function of monitoring institutions' compliance with the Code, regardless of how it is held and accessed. HEFCW retains the right to enter the premises of an institution to do so, but will give reasonable notice to the governing body of such an action, except where the situation is urgent or if giving notice of the visit defeats the purpose of that visit.
70. The books and records of the institution must also be open to inspection by the Auditor General for Wales.

⁸ Under sections 31 – 34 of the Higher Education (Wales) Act 2015

⁹ Powers given under Section 35(2) of the 2015 Act.

71. Institutions must subscribe to the Higher Education Statistics Agency (HESA) and provide HEFCW with continuing authorisation to access information from this body where such information relates to the exercise of HEFCW's functions under the 2015 Act.
72. Continuing authorisation must also be provided to access information from UCAS, the Quality Assurance Agency (QAA) and Estyn (as applicable) where such information relates to the exercise of HEFCW's functions under the 2015 Act.
73. Paragraphs 71 and 72 apply equally to any bodies that, after publication of this Code, undertake functions of, or similar to, the bodies listed in those paragraphs.
74. Data shared with other bodies may contain the personal details of students and/or staff. To ensure that institutions and HEFCW can fulfil their duties under the Data Protection Act 1998, institutions must satisfy themselves when collecting data that students and/or staff are aware of the requirements set out at paragraphs 66 to 73 and have given their consent. The institution will co-operate with HEFCW as reasonably necessary to ensure that any agents of HEFCW are able to comply with the Data Protection Act 1998 in processing information supplied by the institution. It is for each institution to decide what they tell students and/or staff based on good practice and guidance, such as HESA model collection notices.

Notification of changes to senior roles

75. Members of the Senior Executive team and those in senior governance roles carry significant responsibility for the organisation and management of the institution's financial affairs.
76. The institution must notify HEFCW of the formal appointment of a new chair of the governing body, a new clerk to the governing body and the appointment of members of the Senior Executive team.

Legislative requirements

77. Institutions must comply with all legislative requirements applicable to them and their governing bodies.

Monitoring of complaints

78. Institutions must have a robust process in place for the handling of complaints made by students, staff and third parties insofar as they relate to financial matters. Governing bodies must be provided with a complaints report at least annually, which provides the governing body with assurance that such complaints are being handled appropriately.

Prudent management of the estate

79. Section 6 of Annex 4 of the Welsh Government Sponsored Body Framework Document: Higher Education Funding Council for Wales obliges HEFCW to require institutions to keep their holdings of land and buildings under review, with the objective of rationalising and disposing of those which institutions consider to be no longer needed.
80. The institution's estate is likely to represent a materially significant part of the institution's asset base. Sound financial organisation and management processes include good management of the estate.
81. Institutions must manage their estate in a sustainable way, in line with an estates strategy and a maintenance plan, covering its long-term and routine maintenance requirements.
82. The institution should give due regard to the guidance issued from time to time by HEFCW on estate procedures.
83. HEFCW recommends that institutions prepare and regularly review space plans. The metrics for measuring the success of such plans should be pre-agreed by the governing body.
84. Governing bodies should receive an annual report outlining estates performance.

Negative cash forecasts

85. The institution must prepare cashflow forecasts on a regular basis. Institutions should prepare annual and monthly forecasts covering the upcoming 12 months.
86. The institution must inform HEFCW immediately if, at any point in the upcoming 12 months, negative net cash (as defined within FRS 102 S(7), including cash and cash equivalents) is forecast for more than 30 consecutive days.

Financial commitments

87. The primary responsibility for assessing the affordability of, and risks around, financial commitments rests with an institution's governing bodies. HEFCW's role is to assess whether any financial commitments entered into by the institution present challenges to the institution's financial viability or indicate issues in the organisation and management of financial affairs.
88. Institutions must apply the following principles prior to entering into any financial commitments:

- a. The risks and affordability of any new on- and off-balance sheet financial commitments must be properly considered, including through the use of prudent, sensitised downside forecasts;
 - b. Financial commitments must be consistent with the institution's strategic plan, financial strategy and treasury management policy;
 - c. The source of any repayment of a financial commitment must be clearly identified and agreed by the governing body at the point of entering into that commitment;
 - d. Planned financial commitments must represent value for money;
 - e. The risk of triggering immediate default through failure to meet a condition of a financial commitment must be monitored and actively managed;
 - f. The institution must ensure that it retains sufficient liquid cash or equivalents to service working capital requirements as well as a prudent level of liquid reserve to be called upon in the case of extraordinary events; and
 - g. The institution's ability to maintain financial and academic viability must not be impaired as a result of its financial commitments.
89. Institutions are able to make financial commitments up to a predefined threshold. This threshold is based on the ratio of an institution's operating cashflow (adjusted for several elements) to its drawn and undrawn borrowings. This ratio is initially set at TBC (refer to consultation) (see '**Annex B: Approval of increases to a financial commitments threshold**').
90. An institution must obtain written permission from HEFCW to increase its threshold before it agrees to any new financial commitments that would result in it breaching its threshold.
91. Annex B sets out how the financial commitments threshold is calculated, as well as the information HEFCW requires to assess requests to increase the threshold. When HEFCW designates an institution as 'high risk' any increase in its financial commitments will require written permission from HEFCW in advance.
92. The threshold should not deter an institution from increasing its financial commitments where appropriate. An institution must determine a level of financial commitments that is both affordable and consistent with its financial strategy.
93. In relation to any request for permission submitted to HEFCW, HEFCW will ask the institution to demonstrate that the proposal represents good value, and to confirm that:
- a. Key information or opinions relating to the proposed commitment or financial circumstances have not been withheld from the governing body and the governing body has been supplied with all necessary information required to enable it to come to a reasonable, balanced conclusion;
 - b. The governing body confirms that paragraph 88 above has been complied with; and

- c. That, following receipt of this information, the governing body has approved the proposal as presented to HEFCW.
94. In responding to requests for permission, HEFCW aims to be helpful and pragmatic, taking into account the circumstances of each proposal.

Activity costs should form part of decision making

95. An institution should know the full cost of its activities and use this information in making decisions. If it does not seek to recover the full cost, this should be the result of a clear policy set by the governing body and included in the financial strategy, and must not risk putting the institution in financial difficulty.

Financial statement preparation

96. The institution must keep proper accounting records and must prepare financial statements in respect of each accounting period.
97. Institutions and their external auditors must comply with the prevailing Accounts Direction issued by HEFCW, which is published in an annual circular letter.
98. The institution must provide HEFCW with a copy of its audited consolidated financial statements by the date specified in the annual Accounts Direction.
99. The institution must also send the audited accounts of its subsidiaries to HEFCW by the date specified in the annual Accounts Direction.

HEFCW's assurance processes

Institutional engagement, support and safeguarding actions

100. The 2015 Act makes provision for HEFCW to issue directions, advice and/or assistance, or to conduct a review, if HEFCW is satisfied that the governing body of an institution has failed, or is likely to fail, to comply with a requirement imposed by this Code. HEFCW therefore operates a number of assurance processes to inform this view; these are designed to provide HEFCW with the necessary assurance while minimising burden on the sector. The processes may include:
- a. annual assurance returns;
 - b. HEFCW Assurance Reviews;
 - c. Other sources (as defined below);
 - d. Institutional Risk Reviews;
 - e. strategic planning documents; and
 - f. data audits and assurance.

101. As far as possible the assurance process between HEFCW and institutions is concentrated into an exchange of documents and dialogue during a specific period following the end of the financial year. HEFCW's aim is to minimise its demands on institutions, and as far as possible to rely on data and information that institutions have produced to meet their own needs and those of other regulators.

Annual assurance returns

102. HEFCW's assurance process involves reviewing a suite of assurance returns, including audited financial statements, financial forecasts and independent audit reports, which must be submitted to HEFCW by a specified date or dates. They provide HEFCW with a view of each institution's risk management, control and governance, financial viability and arrangements for managing and quality assuring data. By using such information and assurances, much of which is needed for internal management and assurance purposes by the institution, HEFCW is able to minimise its audit requirements and reduce burden. See paragraphs 110 and 111 below on institutional engagement and support.

103. The annual assurance returns are analysed by HEFCW as part of the annual Institutional Risk Review process, which results in a risk assessment of each institution. The risk assessment is reported to the institution's governing body and accountable officer. Sometimes HEFCW will ask for more information to clarify uncertainties.

HEFCW Assurance Review

104. The HEFCW Assurance Review is a short site visit to the institution to ensure that there are suitable accountability processes within each institution to assure the validity of its annual assurance returns. This helps HEFCW to validate the systems of self-regulation on which it relies.

105. HEFCW usually visits each institution once within a three-year period but reserves the right to arrange visits more frequently. HEFCW will give reasonable notice of its visit and seek to arrange a mutually convenient time.

Data assurance

106. Institutions must supply HEFCW with data to inform HEFCW's understanding of the institution. The responsibility for the quality and accuracy of those data rests with the institution. HEFCW relies on the institution's own data assurance processes where possible.

107. HEFCW monitors the reasonableness of data and undertakes verification, validation and reconciliation work between HESA data and other datasets. HEFCW may undertake its own audits at institutions. Data audits assess the strength of institutional systems and controls as well as assessing the accuracy of the data submissions.

Other sources

108. HEFCW uses a number of mechanisms and sources to enable it to remain informed over risks to the institution, including:
- a. **HEFCW's own institutional audit processes**, including data audits and cyclical assurance visits.
 - b. **The continuing dialogue that HEFCW has with each institution** about their changing priorities and strategies, and their reporting of material events.
 - c. **Information from other sources** including public bodies whose work might potentially impact on HEFCW's concerns in respect of the institution's financial viability or the organisation and management of its financial affairs.
 - d. **Information provided to HEFCW through public interest disclosures** but only when substantiated in dialogue between HEFCW and the institutions concerned, for example in relation to the application of fee limits.
 - e. **Other sources** of publicly available data.

Institutional Risk Reviews

109. HEFCW has a risk assessment system covering all institutions. This is an annual process that draws on the information that HEFCW routinely collects. Sometimes HEFCW will ask for more information to clarify its understanding. HEFCW classifies institutions according to three risk categories:

Low risk	HEFCW has no major concerns.
Moderate risk	Some issues identified in relation to: <ul style="list-style-type: none">• The organisation and management of the institution's financial affairs; or• The institution's long-term financial viability which HEFCW needs to understand better through further engagement with the institution.
High risk	The institution has failed, or is likely to fail, to comply with a requirement imposed by the Code and the effect of this is to give rise to financial viability concerns over the short to medium term.

110. When HEFCW assesses an institution as being 'high risk', HEFCW must respond appropriately to protect the public and the collective student interest. HEFCW's Statement of Intervention describes the range of ways in which it might respond to help institutions resolve difficulties and manage risks.

111. The work undertaken by HEFCW, augmented by information from other sources, enables HEFCW to make an annual risk assessment within the Institutional Risk Review process. For the majority of institutions this results in a letter from the HEFCW Chief Executive to the accountable officer, normally by the end of July, advising of HEFCW's Council's judgement of risk. Every risk assessment letter issued by HEFCW must be communicated to the governing body unless stated otherwise. For some institutions a second risk assessment letter may be issued in the autumn following assessment of their financial forecast submissions in July.
112. The HEFCW risk assessment letter will be qualified by comments alerting the institution to concerns HEFCW has that must be addressed and which, in some cases, if not addressed, may lead to a worsening of the institution's risk status. The comments can cover a range of issues, including financial performance, future viability and issues of non-compliance with assurance requirements. Some of these matters are more serious than others. HEFCW will endeavour in such cases to explain the issues fully, and institutions should consider and deal with HEFCW's concerns.
113. In exceptional cases, HEFCW's judgment will be that an institution is 'high risk'. The process of making such a judgement is very thorough. In the event that such a judgement is made, it will be communicated to the institution concerned and the processes in the Statement of Intervention will be initiated.
114. Beyond the exchange of assurance information each year, HEFCW welcomes the opportunity for regular and informal discussions with institutions about their plans and developments.

Audit Code of Practice

Governing bodies of institutions

115. Governing bodies are responsible for the appointment and removal of external and internal auditors.
116. Governing bodies are also responsible for appointing outsourced internal audit providers (on the advice of the institution's audit committee) and for choosing to move between outsourced and insourced internal audit provision, also after taking advice from the audit committee. Staff appointments and terminations for insourced internal audit staff are a matter for the institution's senior executive team, with the audit committee advising on the appointment and termination of the Head of Internal Audit.
117. The governing body must satisfy itself that where the institution has departed from the provisions in this Code that are prefaced with 'should' (i.e. our view of good practice) there are reasonable grounds for doing so and these reasons are not detrimental to the control environment within the institution. The governing body must provide assurance on these matters if requested by HEFCW.

118. Where the clerk to the governing body has significant responsibilities at senior executive team level within the institution, the governing body must consider whether the independence of the clerk's position is at risk of being compromised. If so, the governing body must consider whether the role should be transferred to someone else or sufficient safeguards can be built into existing arrangements. This should be reviewed by the governing body at least every three years.

Audit committees in institutions

119. Each institution must have an audit committee which follows good practice in higher education corporate governance. The audit committee is responsible for assuring the governing body about the adequacy and effectiveness of:
- a. risk management, control and governance;
 - b. economy, efficiency and effectiveness (VFM); and
 - c. management and quality assurance of data submitted to HEFCW and other bodies such as the Higher Education Statistics Agency and the Student Loans Company
120. The Committee of University Chairs publishes detailed guidance about audit committees. This reflects good governance practice, and each institution must take account of such guidance, as well as that of other relevant bodies, such as the Leadership Foundation, or explain within its annual report why the guidance is not being applied.
121. An audit committee can undertake whatever work it considers necessary to fulfil its role. This should include assuring itself about the effectiveness of the internal audit function and the external auditors. Audit committees will only be able to provide the necessary assurances if they are supported by suitably resourced internal audit and external audit functions, operating to recognised professional standards. They should also consider evidence-based assurances from management.
122. Members of the audit committee must not have or exercise any executive management responsibilities. Audit committees should include a minimum of three lay members of the governing body. The chair of the governing body should not be a member of the audit committee.
123. Audit committees should usually have at least one member with relevant experience gained in a finance or audit role. Where an exception to this good practice is exercised, a disclosure must be made within the annual report stating the absence of finance or audit backgrounds, and outlining the relevant skills of the audit committee members.
124. Audit committee members should not be members of the institution's finance committee or its equivalent. This is because it would create a potential conflict of interest when the audit committee is considering issues involving the finance committee. If an institution's governing body determines that cross-representation involving one or more members is essential, this must be the

subject of an explicit, recorded resolution, which sets out the rationale for such a decision. However, such cross-representation is not permitted for the chair of either committee or the chair of the governing body.

125. Where internal audit undertakes advisory work, the audit committee must satisfy itself that the objectivity of future audit work over the same areas is not compromised.
126. The audit committee must produce an annual report for the governing body and the accountable officer. The report must cover the financial year and include any significant issues up to the date of signing the report. The report must be presented to and reviewed by the governing body before the audited financial statements are signed.
127. The report should record the work of the audit committee and consider the following:
 - a. The external auditors' communications with those charged with governance and the external audit management letter;
 - b. The internal auditor's annual report;
 - c. Audit reports and assurances received during the year in respect of the controls in place to manage the quality of data returns;
 - d. Value for money work;
 - e. Any relevant HEFCW correspondence, such as HEFCW's risk assessment letter received as part of the Institutional Risk Review process.
128. The report must formally record the audit committee's opinion on the adequacy and effectiveness of the institution's arrangements for:
 - a. risk management, control and governance
 - b. economy, efficiency and effectiveness (VFM)
 - c. management and quality assurance of data submitted to the Higher Education Statistics Agency, the Student Loans Company, HEFCW and other bodies.
129. The finalised annual report to the governing body and the accountable officer must be shared with HEFCW each year.

Finance committees

130. Each institution should have a finance committee or equivalent, comprised of at least one individual with relevant finance experience. The finance committee should meet regularly to advise the governing body on the institution's financial matters.
131. Whilst convening a finance committee or equivalent is not a requirement of this Code, governing bodies must disclose within their annual report should they not have a finance committee, together with an explanation of the degree

to which the governing body feels it has been able to obtain adequate financial assurance.

132. Where the institution has a finance committee, but that committee does not have at least one individual with relevant finance experience, a disclosure must be made within the annual report stating the absence of finance backgrounds, and outlining the relevant skills of the finance committee members.

Internal audit arrangements in institutions

133. Internal audit is a vital element in good corporate governance since it provides governing bodies, audit committees and accountable officers with independent assurance about the adequacy and effectiveness of risk management, control and governance, and VFM.
134. Consequently each institution must have an internal audit function which complies with the Public Sector Internal Audit Standards¹⁰ or successor standards. Internal audit terms of reference must make clear that its scope encompasses all the institution's activities, the whole of its risk management, control and governance, and any aspect of VFM delivery.
135. The internal audit function must be adequately resourced; that is, the internal audit function must be able to audit all key risk areas within a reasonable timeframe, with each individual audit being afforded sufficient time to allow adequate work to be undertaken.
136. The internal audit service must produce an annual report relating to each financial year and include any significant issues, up to the date of signing the report, which affect the opinions. It must be addressed to the governing body and the accountable officer and must be considered by the audit committee.
137. The annual report must include the internal auditor's opinions on the adequacy and effectiveness of the institution's arrangements for:
- a. risk management, control and governance; and
 - b. economy, efficiency and effectiveness (VFM).
138. The finalised annual report to the governing body must be shared with HEFCW each year.
139. The head of internal audit must have direct access to the institution's accountable officer, the chair of the audit committee, the chair of the finance committee (where applicable) and, if necessary, the chair of the governing body.

¹⁰ <https://www.gov.uk/government/publications/public-sector-internal-audit-standards>

140. Whether provided internally or externally, day to day line management and overall reporting arrangements for the internal audit service must be such as to preserve its objectivity by avoiding too great a concentration of responsibility and reporting within any one senior person at the institution. Particular attention must be paid to a reporting line where the head of internal audit reports to those charged with principal responsibility for risk management, financial management and/or governance processes. In such cases, the institution must design appropriate safeguards to protect the independence and objectivity of the head of internal audit.
141. The institution must formally document that the head of internal audit is unequivocally free to act in an independent manner in pursuit of their professional business and must not be fettered in their scope or reporting.
142. There should be periodic assessment of whether in-house or externally-sourced internal audit provision is the appropriate type of provision for the institution. This assessment must happen at least once every five years.
143. Where internal audit is provided from an external source, market testing should be undertaken at least every five years.
144. Safeguards must be put in place where internal audit review an area on which the same firm has previously provided advice in a consultancy capacity. These safeguards must ensure the objectivity and independence of the internal audit function.
145. Where an institution is assessed by HEFCW as being 'high risk', the action plan for addressing recommendations arising from internal audits covering core financial work, governance and risk management must be shared with HEFCW as soon as they are agreed, or an explanation forwarded in the event of delay in agreeing the recommendations. The responsibility for sharing the management action plan rests with the governing body and not the internal auditor. However, internal auditors should remind the institution of their responsibilities should they become aware that information is not being shared. Under the terms of this Code, institutions must not penalise auditors who notify HEFCW of their suspicion of a deliberate delay in the reporting of this information to HEFCW, whether or not it be proven to be true.
146. The governing body must inform HEFCW without delay of the removal or resignation of the internal auditors and of the reasons.

External audit arrangements in institutions

147. External audit must provide an opinion to the governing body on whether funds (including public funds) have been applied for the intended purposes and on whether the financial statements provide a true and fair view of the financial results for the year. External audit must also form a view about whether an institution is a going concern. External auditors of institutions do not owe a duty of care to HEFCW.

148. Institutions may commission external auditors to provide additional services. The institution's audit committee must provide its consent where such additional services may have a bearing on the auditors' objectivity and independence. Additional work must not impair the independence of the external audit opinion.
149. Institutions must disclose separately, by way of a note in the financial statements, the fees paid to their external auditors for other services and the nature of those services.
150. Market testing should normally be undertaken at least every five years. One named individual partner in the firm is normally responsible for the institution's audit; (s)he should not hold this position for more than five consecutive years. This may be extended to seven years where the criteria set out within the Auditing Standards Board Ethical Standard 3 are met¹¹.

External auditor selection procedures

151. The criteria required for eligibility as external auditors of higher education institutions are set out in section 124B of the Education Reform Act 1988. Institutions must ensure that their external auditors are eligible for appointment as statutory auditors under the provisions of Part 42 of the Companies Act 2006. Auditors must be registered with one of the appropriate professional bodies.
152. Selection criteria and procedures for the appointment of external auditors should be determined by the governing body in advance of receiving proposals and should be endorsed by the audit committee.

External auditor's report

153. External auditors must issue to the governing body a report (or reports, if more than one, covering different stages of the annual audit), which records accounting issues and control deficiencies arising from the audit. Any issues around the use of charitable assets for non-charitable purposes must be highlighted in such reports. The institution's management must provide written responses to any recommendations made or issues raised. The report(s), including management response, is one of the annual assurance returns which must be submitted to HEFCW.
154. External auditors must comply with the reporting requirements of the prevailing annual Accounts Direction.
155. The report(s), with management responses, must be made available to the institution's audit committee in time to inform the committee's annual report.

¹¹ Paragraphs 12 to 18 of the Auditing Practices Board Ethical Standard 3 (Revised) (<https://www.frc.org.uk/Our-Work/Publications/APB/ES-3-%28Revised%29-Long-Association-with-the-Audit-Eng.pdf>)

156. Auditors should, within their management letters or reports, have regard to the specific requirements of the Code such as compliance with those provisions relating to increases in financial commitments thresholds, or other issues of non-compliance as set out in paragraph 153 above.

HEFCW access to auditors

157. HEFCW may wish to communicate with an institution's external or internal auditors, particularly in connection with a HEFCW Assurance Review, and the institution must ensure HEFCW has unrestricted access to do so. This will normally be arranged through the institution's accountable officer or representative. HEFCW will exchange letters where necessary with both parties to deal with confidentiality and the terms under which access is given.

Provision of audit services

158. Internal and external audit services must not be provided by the same or a connected firm or provider.

Auditors' access to information

159. Internal and external auditors must have unrestricted access to information – including all records, assets, personnel and premises – and be authorised to obtain whatever information and explanations the head of internal audit service or the external auditor reasonably considers necessary.
160. The Auditor General for Wales, head of the WAO, is the external auditor of both the Welsh Assembly Government and HEFCW. S/he has the right to inspect the accounts of any institution.

Limitation on auditors' liability

161. Where the internal audit service is provided through a contractual arrangement with an external provider, the provider may ask the institution to agree to a limitation of the provider's liability arising from its default. Normally such liability should be unlimited. However, institutions may negotiate a limitation of liability so long as the decision is made on an informed basis and the liability remains at such a level as to provide reasonable recourse for the institution. The governing body, through the audit committee, must be specifically notified of any request for a liability limitation.
162. Institutions must not agree to any limitation of external auditors' liability in respect of the external audit of their annual financial statements.
163. For other types of work performed by the external auditors, the provider may ask the institution to agree to a limitation of the provider's liability arising from its default. However, as with internal audit services, institutions may negotiate a limitation of liability if the decision is made on an informed basis and the liability remains at such a level as to provide reasonable recourse for the

institution. The governing body, through the audit committee, must be specifically notified of any request for a liability limitation.

Reporting serious weaknesses

164. A serious weakness is one which has resulted in, or could result in, a significant loss of funds or a significant risk to an institution's financial viability, property, work, stakeholders or reputation.
165. Significant fraud and financial irregularities encompassed by this definition includes those where one or more of the following apply:
- a. The sums of money are, or potentially are, in excess of £25,000;
 - b. The particulars of the fraud or irregularity are novel, unusual or complex;
or
 - c. There is likely to be public interest because of the nature of the fraud or irregularity, or the people involved.
166. There may be cases of serious weakness that fall outside this definition. In these cases, institutions can seek advice or clarification from HEFCW. In view of the public interest, institutions should normally notify the police of suspected or actual fraud. Where the police are not notified, management should advise the institution's audit committee of the reason for not doing so.
167. Institutions must report serious weaknesses to HEFCW at the time they are identified. Institutions must also sign the specific declaration in the annual assurance return that serious weaknesses have been reported appropriately to HEFCW.
168. Serious weaknesses, including those that are suspected but not confirmed, must be reported to the institution's internal auditors immediately, in order that they can assess the adequacy of the relevant controls and any impact on their opinion of risk management, control and governance processes.
169. In the event that internal investigations into suspected serious weaknesses may be time-consuming, the institution should provide HEFCW with a provisional report.
170. The report relating to a serious weakness must be sent to the HEFCW Chief Executive. Institutions should provide as much information as possible to help HEFCW understand the appropriateness of the response and what, if any, further action is planned. In particular the report must indicate:
- a. whether the incident has happened or is suspected;
 - b. when it occurred and who was involved;
 - c. the impact of the incident on the institution and any stakeholders;
 - d. what inquiries have been made and actions taken, including any reports to other regulators or the police;
 - e. what controls were in place that applied to the incident, whether they were followed and, if not, why not; and

- f. whether the governing body has determined that controls need to be introduced or revised – and if so, how and by when.
171. A serious weakness may, in rare circumstances, lead HEFCW to conclude that the institution has failed, or is likely to fail, to comply with a requirement imposed by this Code, and therefore may result in the institution being assessed as being at ‘high risk’.
172. In extreme cases, a serious weakness report may lead HEFCW to invite the Charity Commission to consider instituting an inquiry under section 46 of the Charities Act 2011.
173. HEFCW appreciates that information provided under paragraphs 164 to 170 may be of a sensitive nature, and it undertakes to treat it with care. As a public authority, HEFCW is subject to the Freedom of Information Act 2000. HEFCW will only disclose information to someone outside HEFCW after informing the institution; however, in some rare cases HEFCW may be legally obliged to disclose the information before informing the institution.

Professional standards

174. Internal auditors must adhere at all times to the Public Sector Internal Audit standards or successor standards. External auditors must adhere at all times to the professional standards of a recognised accrediting accounting body.
175. Internal and external auditors must not take on any executive management responsibilities, or hold any interest - financial or non-financial, direct or indirect - in the institution (other than the normal employee or contractor relationship, or the funding of any prize, scholarship or academic appointment).
176. It is generally not acceptable for a firm to provide an opinion as external auditor about the same firm’s work as internal auditor, unless the audit partner has changed and the institution has requested and obtained sufficient assurances over the objectivity and independence of the external audit team.

Appointment, removal or resignation of internal and external auditors

177. Governing bodies are responsible for the appointment and removal of external and internal auditors. Where auditors cease to hold office for any reason, they should provide the governing body with either a statement of any circumstances connected with their resignation or removal which they consider should be brought to the governing body’s attention, or a statement that there are no such circumstances.
178. Any such statements as outlined in paragraph 177 must also be sent to HEFCW by the accountable officer.

Signature of the accountable officer

179. The accountable officer of **(name of institution)** must signify below that they have received, and agree to abide by, the terms of this Code, as prepared under the 2015 Act.

Signed.....

Dated

Annex A: Institutional engagement processes

Introduction

1. This annex sets out how HEFCW will engage with and support institutions on matters relating to assurance and risk assessment. It also describes what will happen when, as a result of HEFCW's assessment, HEFCW finds that the institution has failed, or is likely to fail, to comply with a requirement imposed by this Code.
2. The principles underlying HEFCW's engagement are that HEFCW will:
 - a. seek to work in partnership with institutions in the first instance;
 - b. respect the independence of institutions;
 - c. act reasonably and fairly;
 - d. engage transparently and consistently;
 - e. protect the collective interests of students, the public and the taxpayer;
 - f. maintain an open dialogue on matters of mutual interest;
 - g. seek to intervene only when necessary, but HEFCW will do so vigorously, using the full extent of its powers, when it judges that an institution's management and governing body are not effectively addressing risks to public funds and/or the interests of the public and/or students;
 - h. be open with the institution in HEFCW's Institutional Risk Review and requirements and, if warranted, on student or public interest grounds, disclose its risk assessments publicly;
 - i. ensure its involvement is proportionate to the risks;
 - j. end its enhanced involvement as early as possible.

How HEFCW engages

3. In broad terms there are three levels at which HEFCW may engage with institutions:
 - a. normal contact;
 - b. focused dialogue (in cases where HEFCW is supporting an institution's change or development or where HEFCW perceives there to be medium-term risks which, if not addressed, will put the institution at high risk); and/or
 - c. through the Statement of Intervention.

Each of these is dealt with below.

Normal contact

4. As part of its routine engagement with institutions, HEFCW will want to understand their mission, strategy and operational plans. This will help HEFCW to make appropriate responses to the needs of the institution and the higher education sector generally, and to gain assurance about matters that affect the delivery of HEFCW's own objectives. There will often be a formal visit by a representative of HEFCW to the institution each year, sometimes in addition to more frequent and less formal exchange of information and views. It is also part of HEFCW's normal contact to discuss an institution's assurance returns and give feedback, as part of the annual assurance returns exercise.

Focused dialogue

5. There are occasions when it is to the advantage of both HEFCW and an institution to explore issues in more detail. For example, an institution may wish to secure HEFCW's support for particular plans, and HEFCW will want to understand how best to provide help to meet the institution's development needs and to ensure they fit with HEFCW's wider objectives for the higher education sector. Likewise, HEFCW may wish to discuss with an institution whether there are opportunities to improve its performance or work collaboratively with others. There will also be cases where an institution's risks are increasing because of strategic factors which impact upon its financial outlook, for instance, changes in student demand or increased competition, its performance or its internal control arrangements. At such times HEFCW will seek to engage to try and ensure that the risks are appropriately addressed.

Statement of Intervention

6. Where an institution fails, or is likely to fail, to comply with a requirement imposed by this Code, HEFCW may instigate the processes within the Statement of Intervention.
7. HEFCW may, however, decide that it does not need to intervene through the Statement of Intervention. This will most likely be in situations where HEFCW considers that the effects of the failure, or likely failure, are not severe or that the institution's proposed actions to remedy the failure are acceptable. In these cases HEFCW will engage with the institution to determine how the failure can be remedied to HEFCW's satisfaction.
8. HEFCW will initiate the processes within the Statement of Intervention for any institution that HEFCW defines as 'high risk'.

Annex B: Approval of increases to a financial commitments threshold

Introduction

- C1. Section 27(2)(a) of the 2015 Act states that the Code may make provision about circumstances in which an institution is to enter into a transaction of a class specified in the Code only with the consent of HEFCW.
- C2. An institution must get prior written approval from HEFCW to increase its financial commitments threshold, before it agrees to any new financial commitment:
- a. Where the average ratio of an institution's operating cashflow (adjusted for several elements, as outlined below) to its drawn and undrawn borrowings exceeds TBC (refer to consultation); or
 - b. Where the institution is assessed by HEFCW as being at high risk.

How the borrowing threshold is calculated

- C3. The metric template is based on the proforma financial statements issued by the Financial Reporting Group, part of the British Universities Finance Director's Group (<http://www.bufdg.ac.uk/sorp/resources>).

	Actual (prior year)	Actual (current year)	Forecast (years 1-4)
	£	£	£
Net cashflow from operating activities	20,834	34,836	xx
<i>Add:</i> Cash received from investment income	1,903	1,725	X
Endowment cash received	1,950	2,123	x
<i>Deduct:</i> Cash paid on interest on borrowings	(3,236)	(2,217)	(x)
Cash paid on interest element of finance leases	(278)	(240)	(x)
(a) Adjusted operating cashflow	13,591	17,379	xx
Year-end borrowings (drawn)	53,225	35,016	xx
Facilities (undrawn)	0	0	x
(b) Adjusted year-end borrowings	53,225	35,016	xx
Metric (b÷a)	3.9	2.0	0.0

- C4. Where the adjusted operating cashflow (a) figure is negative it should be deemed to be £1.

Explanation of adjustments

- C5. In the proforma accounts, investment and endowment income (notes five and six) have been excluded from the “Net cash inflow from operating activities”. They have been added back in the template because they are considered part of the cashflow available to repay borrowings.
- C6. Interest payable on borrowings and finance leases (note 8) has been deducted in the template because they are considered a cost of operating activities.
- C7. The figure for total year-end borrowings should agree with the total borrowings returned in the annual Financial Forecast submission.

What are financial commitments?

- C8. Financial commitments should be defined as those that are on balance sheet, in accordance with FRS 102.
- C9. Financial commitments include:
- a. all financial commitments, whether self-financing or not, drawn or undrawn
 - b. finance leases
 - c. Private Finance Initiative arrangements which are accounted for as loans or finance leases in accordance with the requirements of Statement of Standard Accounting Practice 21 or Financial Reporting Standard 5
 - d. repayable grants.
- C10. In calculating the threshold financial commitments pension fund liabilities and all provisions should be excluded.
- C11. Where existing financial commitments exceed institutions’ cashflow-based threshold at 1 September 2016, HEFCW will automatically provide approval for the higher financial commitment threshold, though any changes to financial commitments after this date will require approval. As part of this transition, we may need to engage with some institutions about their ability to service their financial commitments.
- C12. Where an institution exceeds its financial commitments threshold in the future because of a decline in its cashflow, it need not apply for a higher threshold, but the institution must inform us of this fact. Whilst an application for a higher threshold will not be required, the decline in cashflow it is likely to lead to engagement with that institution about its ability to service its financial commitments.

Our response

C13. HEFCW takes a risk-based approach to each institution's application for an increase to its financial commitments threshold. This approach will determine whether the application is considered by the HEFCW Chief Executive or by the HEFCW Council. Institutions must therefore include their financial commitments plans as far as possible in their annual financial forecasts submissions, to enable HEFCW to review them at an early stage. Institutions are also advised to discuss their plans informally with HEFCW at an early stage. Where HEFCW approves an application for a higher financial commitments threshold, it will write to the institution setting out the revised threshold. As part of this process, HEFCW may set out additional requirements which will need to be adhered to.

Information required

C14. All applications for a higher financial commitments threshold must be signed by the institution's accountable officer. By signing the application, the accountable officer confirms that the institution's governing body has reviewed the terms and conditions of the financial commitment, thereby providing assurance regarding value for money, and has reviewed affordability and compliance with banking covenants under different scenarios (meaning that the proposed financial commitments have been stress tested). In addition HEFCW asks for confirmation that the student interest has been considered in all applications.

C15. HEFCW sets out in 'Table 1: Information required by HEFCW to consider a request to increase a financial commitments threshold' the information it requires in order to be able to consider a request for an increase to an institution's financial commitments threshold. This highlights the issues on which the institution's own governing body should seek assurance before approving additional financial commitments. The main focus is on affordability and risk, not necessarily on the individual project.

Table 1: Information required by HEFCW to consider a request to increase a financial commitments threshold

Financial commitments

1. There should be a reasonable case for the new investment.

Information required:

- a. A brief description of the new investment.
- b. An explanation of how it broadly fits with the institution's mission and strategic priorities.
- c. Confirmation that the institution has considered appropriate guidance on appraising investment decisions.
- d. A description of how the student interest will be taken into account.

2. The new financial commitments or refinancing arrangement (where these will result in an increase to the financial commitments threshold) should be consistent with the institution's financial strategy and represent good value for money.

Information required:

- a. An explanation of why additional finance or refinancing is necessary and how this fits with the institution's financial strategy.
- b. The forms of finance considered and the selection process and criteria.
- c. The net present value for each financing option, and a brief explanation of why the chosen method was selected.

3. Details of the new financial commitments.

Information required:

- a. Details of the chosen option, including name of lender, value of new financial commitment, repayment period, basis of repayment and financial covenants.
- b. Terms and conditions of the financing (such as a copy of the offer letter) and an evaluation of the risks and uncertainties.

4. The new investment and financial commitments must be affordable.

Information required:

An update of the latest financial forecasts, to include the impact of the new investment and financial commitments, and demonstration that they are affordable. This update must include any other material changes in the institution's financial prospects, including guarantees to third parties.

5. The institution's governing body must have made an informed decision about the new investment and financial commitments.

Information required:

- a. Details of when the governing body approved the new investment and financial commitments, and a minute of the decision reached.
- b. A summary of the information the governing body received in reaching its decision.
- c. Confirmation that:
 - i. No key information or opinions relating to the proposed commitment or financial circumstances have been withheld from the governing body and the governing body has been supplied with all necessary information required to allow reasonable individuals to come to a reasonable, balanced conclusion;
 - ii. The governing body confirms that paragraph 88 of the Financial Management Code has been complied with;
 - iii. That, following receipt of this information, the governing body has approved the borrowing as presented to HEFCW.

6. Details of the new threshold.

Information required:

- a. Details of existing financial commitments (including the lender, terms, interest rate and financial covenants) and of the new financial commitments.
- b. A calculation of the new threshold required.

Annex C: Glossary

In this Financial Management Code, the following definitions apply:

2015 Act	The Higher Education (Wales) Act 2015
Academic year	The 12 months from 1 August to 31 July.
Accountable officer	The officer accountable for the organisation and management of the institution's financial affairs and for reporting to HEFCW on behalf of the institution's governing body.
Accounting period	The period covered by the institution's audited financial statements, usually the 12 months from 1 August to 31 July.
ASSUR	Annual Sustainability Assurance Report, developed by the FSSG.
BUFDG	British Universities Finance Directors Group
the Code	This Financial Management Code.
Code of Governance	The Higher Education Code of Governance, published by the Committee of University Chairs.
Financially viable	'Financially viable' is defined by reference to the common understanding of 'going concern', over the short to medium term.
Framework document	The Framework Document between HEFCW and Welsh Government, which sets out the broad framework within which HEFCW operate.
FRS	Financial Reporting Standard.
FSSG	Financial Sustainability Strategy Group (http://www.hefce.ac.uk/whatwedo/lgm/finsustain/fssg/).
Governing body	<ol style="list-style-type: none">i. For a training provider this means any persons responsible for the provider's management.ii. For a provider designated by Welsh Government as an institution it means any persons responsible for the provider's management.iii. For any other institution it means, for an institution conducted by a further education corporation or a higher education corporation, the corporation; in the case of a university, the executive governing body which has responsibility for the management and

*Draft Financial Management Code between HEFCW and
(name of institution)*

	<p>administration of its revenue and property and the conduct of its affairs; in the case of any other institution for which there is an instrument of government providing for the constitution of a governing body, the governing body so provided for; and in any other case, any board of governors of the institution or any persons responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors.</p> <p>iv. For an external provider (as defined by the 2015 Act) that is not an institution it means any persons responsible for the provider’s management.</p>
governing document	In the case of a provider of higher education, conducted by a company, the company’s memorandum and articles of association. In any other case, a document providing for the constitution and conduct of the provider of higher education.
HEFCW	Higher Education Funding Council for Wales.
HESA	Higher Education Statistics Agency.
the institution	a regulated institution, as defined in section 7(5)(b) of the Higher Education (Wales) Act 2015.
LFHE	Leadership Foundation for Higher Education.
SLC	Student Loans Company.
QAA	Quality Assurance Agency for Higher Education.
Senior Executive team	<p>Defined in accordance with FRS 102’s definition for ‘key management personnel’; that is. “those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity”.</p> <p>This is consistent with the approach that institutions will be required to take in identifying their Senior Executive team for financial statements prepared under the FEHE Statement of Recommended Practice.</p>
UCAS	Universities and Colleges Admissions Service.
VFM	Value for money.
WAO	Wales Audit Office.

2015 Act

The Higher Education Act (Wales) 2015.

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