David Blaney, Chief Executive
Higher Education Funding Council for Wales
c/o Matt Lody
Submitted by email to: matt.lody@hefcw.ac.uk

7 September 2015

Dear David

W15/16HE Consultation on revisions to the Financial Memorandum

Please find our comments in response to the consultation on the Financial Memorandum below. The feedback we have received from both Vice-Chancellors and members of WHEFDG has been generally supportive of the proposed changes. The Welsh Higher Education Finance Directors Group, which we have attended, has been the principal forum for prior discussion of the Revised Financial Memorandum, and we would expect these comments to be reflected in the responses of individual institutions. To complement specialist comments on the financial aspects, we have in particular sought views on the wider issues including the regulatory aspects.

Question 1: Do you agree that HEFCW should, if possible, maintain parity with HEFCE in setting thresholds for borrowing consent?

Yes. Most feedback we have received is supportive of aligning arrangements with England, and the measures proposed. However, the use of EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation) has its own strengths and limitations. We have received a query regarding the appropriateness of using a measure that mixes balance sheet and income/expenditure measures to indicate the extent to which the university has sufficient liquid assets to cover its debts. In particular a concern has been raised about the potential volatility of this test when applied to individual institutions in practice. In turn there is a risk that institutions in the sector are deterred from borrowing at an appropriate level. We note that the threshold is not intended as a limit, but as the trigger-point for obtaining written permission for increasing financial commitments above this level. We would expect HEFCW to bear this in mind in reviewing applications for borrowing consent and to take a rounded view which takes into account other measures. We would also ask that HEFCW models the impact for institutions and discusses the concerns raised in individual responses further before implementation to prevent foreseeable difficulties, and to identify alternative, transitional or supplementary arrangements if appropriate. In light of the changes, affecting both short-term and long-term borrowing, we also ask for further formal guidance on how

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the written permission procedure will be handled by HEFCW to ensure that applications for permission can be processed appropriately in a timely manner.

Question 2: Do you agree that the current distinction between short-term and long- term borrowing is no longer appropriate, and should discontinue within future arrangements? Do you have any other comments?

We agree that on technical grounds that recent developments in loan practice makes it more difficult to distinguish between short-term and long-term borrowing, and that there is merit in standardising arrangements across UK funding councils to provide parity of access to funding from lenders. Some of the comments we have received have questioned whether an additional short term borrowing measure may be appropriate to identify potential liquidity issues. However, we would need HEFCW to be clear that any measure is used for the purposes of processing an application for borrowing above the limit, not for more general monitoring of liquidity.

Question 3: Does the draft revised financial memorandum adequately place the collective student interest alongside the public interest? Do you have any comments

This appears to align the document with the approach in England. No significant concerns have been brought to our attention with this.

Question 4: Do you agree that the revised Audit Code of Practice at Annex A to the draft financial memorandum is sufficient to set out HEFCW's requirements? If not, what changes would you suggest? Do you have any other comments?

The reduction in the size of the Code, making greater cross-reference to existing guidance, is welcome. We are not aware of any significant concerns with this approach.

Question 5: Do you agree that the institutional engagement and support strategy strikes an appropriate balance between institutional autonomy and the protection of public funds, the student collective interest and the sector's financial reputation?

Overall, we have no significant concerns with the proposed document.

Question 6: Do you agree that the requirement to report the exchequer interest is necessary for helping to ensure the appropriate use of exchequer assets?

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We have had no major concerns raised with this approach.

Question 7: Do you have any other comments on the proposed revised financial memorandum that have not been covered in the preceding questions?

In particular, we have sought views from members on the regulatory aspects of the proposals, and have received no significant concerns. We have, however, received some comment that a number of the previous steers (denoted 'should') in the 2008 version of the Financial Memorandum have been changed to requirements (denoted 'must') in the new version. We ask that HEFCW reviews the new requirements to ensure that they consider them to be necessary requirement rather than a matter of best practice at this stage, particularly given the future opportunities for developing this alongside financial Code arrangements under the HE (Wales) Act 2015.

In particular, paragraphs 60-62 places new obligations on institutions to notify and inform HEFCW of changes e.g. to the 'senior executive team', to inform HEFCW of the reasons of board members resignation, and removals due to disagreement of a member of the 'senior executive team'. Given the variation in arrangements for individual institutions, further guidance would be welcomed to identify the 'senior executive team' for which this notification is necessary, and to ensure that this is not an unnecessary or onerous requirement for institutions. This appears to raise potential issues about reporting sensitive and personal information. We would welcome some further discussion/work to identify how the reporting requirement could be met to protect the legitimate public interests while avoiding such issues.

We specifically sought views from Members on the merits of aligning arrangements in England in relation to the 'accountable officer'. Under the old provisions the head of the institution was required to be the 'designated officer'. The role has now been replaced with the role of 'accountable officer' (Paragraphs 39-44). Both the 'designated officer' under the current arrangements and 'accounting officer' in the proposed arrangements must be responsible to the governing body for ensuring that conditions in the Financial Memorandum are complied with, and providing HEFCW with assurances to that effect. However, there are two key differences. Firstly, another senior officer could become the 'accounting officer'. Secondly, (see paragraphs 45-47) HEFCW would be able to make the governing body remove the role from a holder and appoint another senior officer as the accountable officer in extreme circumstances. This follows HEFCE's precedent. However, despite the assurance (paragraph 46) that this is not intended to influence the employment relationship, this would appear to have de facto implications for the role holder which leaves room for concern that this could raise potential issues about the independence of the institutions in making appointments and have other potential legal implications. Our Members have on balance expressed their support for aligning arrangements with England in this respect. We would recommend, however, that HEFCW satisfies itself that exercise of this provision will not have unforeseen consequences and that it will not be expected to rely on a power that it cannot exercise in practice.

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We note from paragraph 6 that the revised Financial Memorandum would not in general apply to further education institutions, and a Memorandum from the Welsh Government would apply instead. This differs from the current arrangements and from arrangements in England in which the Financial Memorandum applies to all institutions in receipt of funding council grant. This does not appear to be the right approach to us in principle and could lead to different conditions being attached to funding for different institutions (including potentially alternative institutions in future). It also raises potential difficulties for HEFCW in exercising its statutory duties, since HEFCW would be attaching no formal conditions to the funding it grants, and relying on the Welsh Government's document instead. We are firmly of the view that the Financial Memorandum should continue to apply to all institutions in receipt of funding.

Finally, we note that the equivalent documents for England and Scotland attempt to signal a collaborative relationship with the sector. We are confident of HEFCW' s intentions in this respect. However, HEFCW may wish to review the document to reflect their intended approach for a wider audience.

Yours sincerely

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Policy Adviser

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