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Welsh Government Consultation Document

Public Good and a Prosperous Wales

Public Good and a Prosperous Wales – the next steps

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview	This consultation sets out more detailed proposals for the reform of the post-compulsory education and training system in Wales and for the way in which Welsh Government research and innovation expenditure should be overseen and co-ordinated. The paper provides more detailed, technical proposals for the shape and operation of the new Commission.
How to respond	Please respond by using the questionnaire at the back of the document or completing the online form. Following the consultation, we will analyse and publish a summary of responses.
Further information and related documents	Large print, Braille and alternative language versions of this document are available on request.
Contact details	<p>For further information: Post-Compulsory Education and Training (PCET) Reform Team</p> <p>Mailbox Address:</p> <p>PCETReform@gov.wales or DiwygioPCET@llyw.cymru</p>
Data protection	<p>How the views and information you give us will be used</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.</p> <p>The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.</p>

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Foreword

Professor Ellen Hazelkorn's 2016 report, "*Towards 2030 - A Framework for Building a World-class Post-Compulsory Education System for Wales*", has begun a new national conversation in Wales about the future of post-16 education and training.

In response to the Hazelkorn Report, in June this year the Welsh Government published a White Paper for consultation setting out our proposals to create a new Tertiary Education and Research Commission for Wales. The Commission would replace the current Higher Education Funding Council for Wales (HEFCW) and would assume responsibility also for the funding and performance of further education, work-based learning and research and innovation in Wales.

Through the autumn we consulted widely with learning providers and with learners of all ages. Three stakeholder "roadshows" were held alongside two learner-focused conferences in different parts of Wales. A separate consultation was undertaken with children and young people. Through all of this, I have been hugely encouraged by the strong support from learning providers, institutions and learners for the reforms we have set out. There is wide agreement that change is needed and that the proposed Commission would represent the right solution for Wales.

The White Paper set out a broad framework for the Commission's proposed functions and the way in which it might work with different types of learning providers. We have listened very closely to the feedback from all those who might be affected by these reforms. This paper develops further some of the ideas in the White Paper and explains in more technical detail how we envisage the new Commission might operate.

One question posed in the White Paper was whether school sixth forms should come within the remit of the new Commission going forward. This consultation paper proposes that the Commission **should** be made responsible for the funding of school sixth forms and have oversight of their quality assurance. This latter responsibility will depend to some extent on the outcomes of Professor Graham Donaldson's independent review into the role of Estyn, expected to be published in May this year. The intention is not to move wholesale to a tertiary model of provision in Wales. I am committed to retaining a mixed economy of provision which meets the needs of different localities and learners. In keeping with our national mission for schools our aim is to promote better quality, challenge poor performance, celebrate and share good practice, and raise standards across the board.

These proposals are offered for consultation once again. I am determined that we should build this ambitious future vision together with practitioners, learners and sector leaders. Only through joint enterprise and collaboration can we be confident of creating a whole-system solution to the funding, regulation and performance of tertiary education, training and research and innovation in Wales which will be truly effective for learners and the economy and sustainable over the longer term.

It is important now to maintain the momentum for change. I look forward to receiving views on the technical proposals set out in this consultation paper and to continuing to work in partnership to create the future for Wales we all wish to see.

Kirsty Williams AM
Cabinet Secretary for Education

Summary

In 2016, Professor Hazelkorn published her review of the oversight of post-compulsory education and training in Wales. There were two primary recommendations in the review: that the Welsh Government should develop an overarching vision for the post-compulsory education and training (PCET) sector; and that we should establish a new arm's length body responsible for the oversight, strategic direction and leadership of the sector.

Following these recommendations, the Welsh Government launched a White Paper - *"Public Good and a Prosperous Wales – Building a Reformed PCET system"* – in June 2017 setting out high-level proposals for reform of the PCET sector. This included the establishment of a Tertiary Education and Research Commission for Wales which would be responsible for higher and further education, work-based learning and adult learning. The decision as to whether sixth forms would fall under the remit of the Commission was still to be decided.

Responses to White Paper suggested that learning providers, institutions and learners broadly support our proposals for reform. These responses have been taken into account whilst further developing the proposals detailed in this technical consultation paper.

We are inviting stakeholders to respond to these more developed and detailed proposals which seek to provide greater clarity on the proposed operation of the new body.

The Commission will be a Welsh Government sponsored body, operating at arms length from the government but within a strategic planning and funding framework established by Welsh Ministers. It will become the sole funder and regulator for further and higher education, apprenticeships, work-based learning, adult learning and sixth forms. It will also be responsible for Welsh Government funded research and innovation.

Proposals for the operation of the Commission include:

- forming effective working relationships between the Welsh Government and the Commission, and in turn between the Commission and learning providers to ensure accountability, alignment and clear communication at every level;
- proposals to establish regulation and outcome agreements between the Commission and learning / training providers;
- establishing robust financial assurance arrangements to protect the interests of learners, public funds and the reputation of the Welsh sector;
- integrating and strengthening the various planning and funding systems across the whole of the sector;
- consistent arrangements to protect learners studying at PCET providers;
- a more joined-up approach to quality assurance, including the development of a quality framework assessment;

- the ability to collect and analyse data and statistics to oversee work and performance, set and monitor strategic and operational priorities and distribute funds appropriately.

Proposals are set out here to include sixth forms within the remit of the Commission. Our aim is not to move wholesale to a tertiary system but to bring greater coherence and parity of esteem across the sector. In keeping with our national mission, we want to focus on outcomes for learners and enhance quality right across the system.

The Commission will be responsible for supporting and developing apprenticeship provision in Wales to help invest in growth and address the skills gap. With this in mind, our paper proposes reforms to the current apprenticeship arrangements, making them more responsive to the needs of the Welsh economy, employers and learners.

Proposals in the White Paper to establish Research and Innovation Wales (RIW) met with agreement by stakeholders. This paper asks for further views on the structural arrangements for the Commission, RIW and the research and innovation community as well as funding and monitoring of performance and delivery.

Respondents to the White Paper consultation emphasised the need to ensure that the learner voice is considered throughout the development of these proposals. Ensuring a learner-centred approach is vital and proposals to strengthen the learner voice and representation are further developed within this paper.

Enhancing the ability to learn through the medium of the Welsh language will be an integral part of the duties of the new Commission. In line with the new Welsh language strategy *Cymraeg 2050 – A million Welsh speakers* the new Commission will need to plan for the development of the Welsh language and Welsh-medium provision across all its activities.

Whilst developing these proposals, concurrent developments are taking place in both Wales and the UK. In Wales, the findings of independent reviews by Professor Harvey Weingarten, Professor Graeme Reid and Professor Graham Donaldson are being taken into account in the development of our proposals. In England, a number of reforms are taking place which have implications for Wales. This paper asks for stakeholders' views on the need for legislative reform in response to these including accelerated degrees and HE course designation for the purpose of student support.

Purpose of this consultation paper

This consultation builds on proposals set out in the Welsh Government's White Paper, "*Public Good and a Prosperous Wales – Building a reformed PCET system*", published in June 2017:

https://consultations.gov.wales/sites/default/files/consultation_doc_files/170620_reformed_pcet_system_final_en.pdf

The White Paper responded to the independent report by Professor Ellen Hazelkorn contained in "*Towards 2030 - A Framework for Building a World-class Post-Compulsory Education System for Wales*":

<http://gov.wales/topics/educationandskills/publications/reports/review-of-the-oversight-and-regulation-of-post-compulsory-education-and-training-in-wales/?lang=en>

The Hazelkorn Report recognised that the Welsh post-compulsory education sector comprises a multifaceted and diverse set of institutions, providing for learner needs from 16 years onwards. While recognising that different parts of the system have responded to, and sought to meet, the challenges and needs of citizens and society in the 21st century, the report also raised a number of challenges for planning and funding the post-compulsory sector:

- there was confusion around the overlapping roles, and duplication of resources, between and across different institutions;
- there was insufficient strategic thinking by government or by the institutions, at all levels, leading to insufficient collaboration and lack of critical mass;
- an overall vision for the post-compulsory system is lacking;
- Wales lacks coherent learning pathways and educational opportunities for learners, whatever their age, gender or specific talents, from school, into/through further and higher education;
- there needs to be a better balance between supply-led and demand-led education and research and innovation provision shifting away from a market-demand driven system to a mix of regulation and competition-based funding;
- there was a significant level of uncertainty within the system generated by the multiplicity of reviews over the past number of years, creating questions about the long-term sustainability of the system and student funding.

A key recommendation of the Hazelkorn report was that the Welsh Government should establish a new arms-length strategic body to oversee the funding and performance of tertiary education and training in Wales.

The White Paper set out evidence in relation to the current performance of the post-compulsory education and training system in Wales and articulated the case for change. It included initial, high-level proposals for a new Tertiary Education and Research Commission for Wales which would be responsible for higher and further education, work-based learning (including apprenticeships) and adult learning. The Commission would also be responsible for overseeing research and innovation activity in Wales. The Commission would be given responsibility for funding, planning, quality assurance, performance and risk, and delivering stronger outcomes for Wales across the whole post-compulsory education and training system.

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1. Background

1. On 19 September 2017, the First Minister published “Prosperity for All”, the new national strategy for Wales. The four key themes of the strategy reflect the principles of the Well-being of Future Generations Wales (Act) 2015 and explain how, by delivering in a more integrated and collaborative way, government and its many partners can enhance the well-being of the people of Wales. The four themes are:

Prosperous and Secure – the aim is to drive a Welsh economy which spreads opportunity and tackles inequality, delivering individual and national prosperity.

Healthy and Active – to improve health and well-being in Wales, for individuals, families and communities, helping us to achieve our ambition of prosperity for all, taking significant steps to shift our approach from treatment to prevention.

Ambitious and Learning – to instil in everyone a passion to learn throughout their lives, inspiring them with the ambition to be the best they possibly can be.

United and Connected – to build a nation where people take pride in their communities, in the Welsh identity and language, and in our place in the world.

2. “*Prosperity for All*” recognises five areas which have the greatest potential contribution to long-term prosperity and well-being.

Early Years: an individual’s experiences in childhood play a significant part in shaping their future, and are critical to their chances of going on to lead a healthy, prosperous and fulfilling life.

Housing: good quality, affordable homes bring a wide range of benefits to health, learning and prosperity.

Social Care: plays a critical part in strong communities, ensuring that people can be healthy and independent for longer, and is a significant economic sector in its own right.

Mental Health: one in four people in Wales will experience mental ill health at some point in their lives. Getting the right treatment at an early stage, coupled with greater awareness of conditions, can in many cases prevent long term adverse impacts.

Skills and Employability: the better people’s skills, the better their chances of getting fair, secure and rewarding employment, and the stronger the skills base is in Wales, the more chance we have of attracting new businesses and growing existing ones to improve prosperity.

3. Building on the strategic approach outlined in *Prosperity for All*, the new *Economic Action Plan* published in December 2017 sets out the Welsh Government’s proposals for strengthening our economic foundations and future proofing the Welsh economy. The Plan recognises the crucial

importance of building ambition, enhancing skills and supporting lifelong learning to a successful and inclusive economy.

4. The Economic Action Plan commits to the introduction of "...a strategic planning system for education and skills delivery across post-16 education, working with the Regional Skills Partnerships to align this to our national and foundation sectors where this is possible and practicable. We will assess and match skills to the needs of the economy, building on the commitment in Prosperity for All to work with the Regional Skills Partnerships to anticipate future skills needs. Post-16 education and skills planning and delivery will include strong links to local authorities and regional consortia to ensure all parts of the education system are focused on meeting the needs of learners, employers and wider communities".
5. The Economic Action Plan also highlights plans to bring together, through the new Tertiary Education and Research Commission, all Welsh Government controlled research funding "...to reflect Welsh priorities, maintaining the benefits of national and institutional links between research, innovation, skills development and teaching. We will do this by focussing our investments in research and innovation in universities to recognise excellence, reward achievement and prioritise commercialisation and the later stages of the technology readiness scale".
6. The proposals set out in this consultation document support the objectives of *Prosperity for All* and the *Economic Action Plan* by enabling the post-compulsory education and training system in Wales to become more joined up and more focused on the local and regional needs of learners and businesses. They have the potential to drive new and innovative ways of working, bringing education and training providers closer together supported by more robust strategic planning and funding mechanisms, stronger performance and accountability systems, and quality enhancement arrangements which will enable Wales to benchmark and learn from the very best worldwide.
7. In total, 92 responses were received to the 2017 White paper. On 5 December the Cabinet Secretary for Education delivered an Oral statement and published a summary of those responses; summaries of the Learner Voice Events as well as the Young Persons Consultation have also been published.
8. The strategic planning role of the proposed Commission was welcomed by stakeholders, who agreed also that funding from the Commission to learning providers should be made dependent in some way on Welsh Ministers' agreement to its strategic plan. The majority of respondents outside the higher education sector in principle supported the introduction of Outcome Agreements but wanted more detail on their operation. This document includes further detail on this approach for stakeholders' consideration.
9. Respondents saw a role for the proposed Commission in supporting learners to change course and provider, and to protect students in case of provider

failure. A majority also agreed that widening access for under-represented groups remains an issue as does the relative lack of opportunities for part-time study. These remain driving principles for our learner support reforms and are considered further below.

10. With regard to the quality of provision, the vast majority of stakeholders supported a role for the Commission in enhancing quality. Opinion was, however, divided on whether one common quality assurance framework for the whole PCET system would be the right way forward. More work is needed here and the complementary review being undertaken by Professor Harvey Weingarten will contribute much to the development of these proposals, as well as complementary engagement with other experts in this field. These issues are expanded upon within this document.
11. Whether or not the proposed Commission should have responsibility for sixth forms was a specific question asked in the consultation. A majority of respondents were of the opinion that sixth forms should be treated as part of the PCET system for the purposes of these proposed reforms. Some respondents felt that sixth forms should be phased in at a later date rather than being part of the Commission's remit at the outset.
12. As well as what stakeholders have told us in response to the White Paper we also need to consider other developments and their impact on our proposals for PCET reform.
13. The recent Review of the Activities of the Coleg Cymraeg Cenedlaethol recommended that it broadens its remit from higher education to cover the whole of the PCET sector. This is very much in tune with our proposals for PCET reform and the relationship between the proposed Commission and the Coleg will be an important consideration as we move forward.

2. Concurrent developments

14. The proposals in this technical consultation will be aligned with and take account of the outcomes of a number of concurrent developments. These include: the Review of Systems for Monitoring and Improving the Effectiveness of Post-compulsory Education in Wales being conducted by Professor Harvey Weingarten; the Review of Government Funded Research and Innovation in Wales which has been led by Professor Graeme Reid and the independent review of Estyn being undertaken by Professor Graham Donaldson.
15. Professor Harvey Weingarten is conducting an independent review¹ of the systems for monitoring and improving the effectiveness of post-compulsory education in Wales. Professor Weingarten began this work in October and is due report on his findings in spring 2018. His thinking will be helpful to shape the future of any outcome agreements which might form part of the proposed Commission's relationship with providers.
16. Professor Graeme Reid has finalised his 'Review of Government Funded Research and Innovation in Wales'² and presented it formally to Welsh Ministers. Professor Reid was asked to consider how Welsh capacity and capability for research and innovation can be increased individually and by collaboration between academia and industry, with a view to increasing the benefits to the socio-economic, health and well-being landscape of Wales. His work is informing our thinking about the role and potential impact of the proposed Commission.
17. Professor Graham Donaldson is undertaking an independent review of the role of Estyn³ and will look at the implications of Wales' extensive education reforms for the future role of Estyn. Professor Donaldson will present his report to the Cabinet Secretary for Education and HM Chief Inspector of Education and Training in Wales after gathering and analysing evidence on inspection, quality enhancement and accountability while supporting Estyn to refine and develop their practices. His findings will be taken into account in our proposals for quality assessment and enhancement functions of the proposed Commission.
18. Our national mission⁴ sets out how the school system will move forward over the period 2017-21 securing implementation of the new curriculum with a

¹<http://gov.wales/about/cabinet/cabinetstatements/2017/reviewofmonitoringandimprovingpostcompulsoryed/?lang=en>

² <http://gov.wales/newsroom/educationandskills/2017/review-of-government-funded-research-and-innovation-in-wales-begins/?lang=en>

³ <http://gov.wales/newsroom/educationandskills/2017/drive-to-improve-education-at-heart-of-estyn-review/?lang=en>

⁴ Our National Mission is the action plan for Education in Wales, published in September 2017: <http://gov.wales/topics/educationandskills/allsectorpolicies/education-in-wales/?lang=en>

focus on leadership, professional learning, and excellence and equity within a self-improving system. The action plan focuses on raising standards for all, reducing the attainment gap, and delivering an education system that is a source of national pride and public confidence. Only by working across boundaries can we be confident of a prosperous Wales where education from the earliest age, through compulsory schooling and on to post-compulsory learning will meet the needs of learners, employers and civic society in Wales. Our policy statement on Adult Learning in Wales⁵ set out proposals for taking forward adult learning including further consultation to introduce a funding and delivery structure to ensure that public funding reaches those in greatest need. Our proposals for reform of post-compulsory education and training will take account of the outcomes of the consultation on adult learning. By taking a whole-system view – including on more seamless and effective pathways and transition arrangements for learners – our intention is that the proposed Commission should help to open up post-compulsory learning opportunities for all.

⁵ <http://gov.wales/topics/educationandskills/learningproviders/communitylearning/adult-learning-in-wales/?lang=en>

3. The Commission

19. The proposal to create a new statutory body to be called the Tertiary Education and Research Commission for Wales (“the Commission”) has received very wide support through our White Paper consultation. We therefore propose to move forward with these proposals.

20. The Commission will become the sole funder and regulator for post-compulsory education and training in Wales. Welsh Government funded research and innovation will be included within the remit of the Commission from its establishment, allowing for the first time a “whole-systems” approach to meeting the needs of learners in Wales and of the Welsh economy.

- The Commission will be a Welsh Government sponsored body, operating at arms length from government but within a strategic planning and funding framework established by Welsh Ministers. Ministers will be responsible for appointing the Chair, Chief Executive and non-executive Board members of the Commission. We propose that the Commission should consist of no more than 15 and no fewer than 9 members.
- The Commission will be comprised of a maximum of 15 members who will be selected on the basis of their skills and experience across the full range of the Commission’s proposed functions. We would expect membership to be drawn from industry and employers, post-16 education, work-based learning, adult learning, the third sector and the research and innovation community.
- The membership of the Commission will include at least two learner representatives.
- The Higher Education Funding Council for Wales will be dissolved following the creation of the Commission. The Commission will be responsible for allocating funding for further education, higher education, work-based learning, adult learning as well as research and innovation in Wales.
- The Commission will be required to create a statutory committee to be called Research and Innovation Wales that will allocate funding for research and innovation and act as a champion for Wales at the UK and global level. The creation of Research and Innovation Wales will ensure that our research and innovation system remains competitive and is sufficiently strategic and agile to deliver national capability for the future that drives discovery and growth, thus fostering a mix of curiosity-driven research and challenge-led research and innovation.
- The Chair of Research and Innovation Wales should be the Vice Chair of the Commission.
- The Welsh Ministers will set the budget for the Commission through a grant letter.
- The Commission will be required to produce a strategic plan for the approval of Welsh Ministers which will form the basis of annual funding allocations to the Commission.
- Arrangements would be put in place to protect joint working, cooperation and the sharing of information between the Commission and others with

whom it would need to work in order to discharge its statutory functions – for example any organisation appointed by the Commission to undertake quality assessment.

Framework of corporate governance

21. The Commission will be accountable to Welsh Ministers in the exercise of all its functions.
22. Membership of the Commission will be made up of a minimum number of 9 and a maximum number of 15 members appointed through a Public appointments exercise upholding the Nolan principles.
23. Membership would consist of:
 - a) a Chief Executive, appointed by Welsh Ministers through open competition. The Chief Executive will ex officio be a member of the Commission and accountable to the Chair of the Board.
 - b) a Chair, appointed by Welsh Ministers to chair the Commission.
 - c) other non-executive members appointed by the Welsh Ministers, including at least two learner representatives.
24. A company secretary will be responsible for the secretariat and proper construct of the Commission.
25. We propose that the Commission should be required to establish a number of statutory committees to provide a strong governance framework that reflects the broad range of functions for which the Commission would have responsibility. In particular, we propose that the Commission should be required to establish separate statutory committees to protect learners' needs, and to address the needs of businesses, employers and apprentices in Wales. These committees would ensure there is appropriate representation and focus across all areas of post-compulsory education and training, and would enable the new system in Wales to become more joined up and focused on local and regional needs of learners and businesses, supporting robust strategic planning and funding.
26. Proposed legislation would also require the following statutory committees to be established:
 - an Audit and Compliance Committee whose remit would include consideration of annual accounts and matters relating to the internal operations of the Commission, in particular relating to risk management, corporate governance, internal audit, external audit and compliance;
 - a Remuneration Committee;
 - a Quality Committee whose function would be to advise the Commission on the assessment of the quality of education and training across all PCET sectors, and the development of a quality framework;

- Research & Innovation Wales (the functions of this committee are set out below);
- a committee with responsibility for advising the Commission on matters relating to widening participation.

27. The Commission would be given a general power to create any other committees it feels necessary.

28. In addition, there exist currently important advisory boards whose role it is to advise Welsh Ministers on matters relating to employment, skills and apprenticeships. The Wales Employment and Skills Board (WESB) was established as an independent advisory board in 2008. Its purpose is to provide an effective forum for employers to provide strategic input and robust challenge to shape future employment and skills policy. The Wales Apprenticeships Advisory Board (WAAB) was established in 2017 to support Welsh Government's apprenticeship skills policy. The WAAB is enterprise-led with representatives from business, trade unions, further education bodies and the Welsh Government. It advises on the expansion of apprenticeships into new sectors of the economy and identifies sectors where new or revised apprenticeships can make a real difference to both employers and employees. In carrying out its role, the WAAB works closely with the Regional Skills Partnerships in Employment and Skills Plans and labour market research.

29. Given the proposed remit of the new Commission for the funding and quality of all post-compulsory education and training, including apprenticeships, and for fostering closer ties with employers, we propose the functions of WESB and WAAB should in future be brought within the Commission and the existing advisory boards abolished. We propose that the Commission should be required by statute to establish a committee with specific responsibilities for advising on employment, skills and the development of apprenticeships going forward.

30. Finally, we propose that the Commission should be required to establish a statutory committee to advise on matters relating to the Welsh Language. The committee's remit would be to provide advice to enable the Commission to take a proactive and strategic role in planning the development of the Welsh language and Welsh-medium provision across all of its activities and responsibilities.

Questions

Is the proposed governance framework appropriate given the remit of the new Commission?

Do you think that the Welsh language and development of Welsh-medium provision should be supported through a statutory committee within the Commission's statutory governance framework?

Question

Do you agree the Wales Employment Skills Board and the Apprenticeships Advisory Board should be brought within the Commission to strengthen links between the Commission and employers?

4. The relationship between the Welsh Government and the Commission

31. The new Commission would be placed under duties to secure, or make arrangements to secure, the provision of post-compulsory education and training⁶ and to administer any funds made available to it by the Welsh Ministers in respect of the provision of further education, higher education, work-based learning, adult learning, and research and innovation.
32. Successful reform of the PCET sector must be founded on effective working relationships between the Welsh Government and the Commission and between the Commission and the full range of learning providers. Promoting effective working relationships would require mechanisms for ensuring accountability and clear communication at every level. It is not yet determined what powers of intervention, if any, the Welsh Ministers should have in respect of the Commission. Appropriate powers of intervention will need to be considered, in the event of the Commission failing to comply with its duties, or fulfil the terms of its strategic plan. Mechanisms governing the relationship between the Welsh Government and Commission and those between the Commission and learning providers, and research and innovation communities also need to be properly aligned.
33. It is essential to ensure accountability for the funding that the Welsh Government would allocate to the Commission, as well as clarity about where responsibilities would lie for strategic planning for the PCET sector as a whole. Most respondents to the White Paper consultation who expressed a view on this agreed that the Commission should have a role in strategic planning at national level across the PCET sector. Respondents emphasised the importance of ensuring that the approach was truly strategic and evidence based. There was concern that the Commission's approach should not be too operational and that it should avoid micro managing learning providers. The period to be covered by the strategic plan should reflect the need to support a strategic, long-term approach.
34. The majority of respondents were also of the view that Welsh Ministers should be required to approve any strategic plan and that funding should be dependent on Welsh Ministers' approval. Some respondents felt that this approach could help to ensure accountability for public funding. However, they were also concerned to ensure that the strategic plan would be subject to consultation with stakeholders and that they would have the opportunity to provide feedback on it before it received Welsh Government approval. There was also support for funding being provided on a longer-term basis, to run for the same period as the strategic plan.
35. The importance of the strategic plan addressing the needs of learners and business was recognised. Respondents suggested that planning should be

⁶ In the context of this duty, post-compulsory education would include education and training provided by school sixth forms, further education, work-based learning, apprenticeships and adult learning.

focused on the needs of learners and on regional priorities, and that learners needed to be an integral partner in creating the strategic plan.

36. The aim of our reforms is to ensure that a strategic and joined-up approach can be developed and that the Commission has a clearly-defined role in driving it forward. To ensure this, we propose sharing responsibility between the Welsh Government and the Commission as follows:
 - the Welsh Government would have responsibility for setting the overall direction for PCET and research and innovation, subject to academic freedom; and
 - the Commission would be responsible for drawing up its own strategic plan reflecting the overall direction established by government and for working with learning providers and research and innovation communities to make the vision a reality.
37. The Welsh Government would draw up a high-level, overarching policy, with a small number of strategic priorities for Wales. Conferring responsibility on the Welsh Government to prepare and publish the overarching policy would provide an opportunity for alignment of the vision for PCET and research and innovation with other relevant policies, including those relating to compulsory education and the economy.
38. With its oversight of the whole PCET sector, the Commission would plan how the Welsh Government's overarching policy could most effectively be implemented. The Commission would be given considerable flexibility to promote coherence across PCET and work with learning providers and research and innovation communities in a way that would take account of their particular strengths, as well as their size, mission, the types of learning opportunities they deliver and, where relevant, the types of research and innovation they carry out.
39. We propose that in the second year of each Assembly term, the Welsh Government should publish an overarching statement of policy priorities, informed by:
 - evidence from a range of sources, including the Commission;
 - the views of the Commission, learners, learning providers and other relevant stakeholders;
 - issues and priorities in relevant policy areas.
40. The overarching policy would sit under, and be aligned with, Prosperity for All and the Economic Action Plan or their future equivalents.
41. The Commission would subsequently be under a duty to prepare a strategic plan for Wales, reflecting the priorities in the Welsh Ministers' overarching policy statement and setting out proposals for taking them forward. The Commission would be under an obligation to consult with learning providers

and research and innovation communities, learners, employers and other key stakeholders in the process of preparing its strategic plan.

42. It would be open to the Commission to engage and consult informally with the Welsh Government through the process of developing its strategic plan. Once agreed by the Commission, the strategic plan would be submitted to the Welsh Ministers for approval.
43. The strategic plan would require Welsh Government approval to help ensure:
 - alignment between the Government's overarching priorities and the work of the Commission;
 - appropriate accountability for the funding allocated to the Commission.
44. Procedures would be set out to deal with circumstances in which Welsh Government approval of the strategic plan was withheld. We recognise the need in such a situation for a degree of stability of funding for learning providers in order to protect the interests of learners and the continuity of their courses. Possible options for dealing with a situation in which the Welsh Government was unable to approve the Commission's strategic plan could include:
 - Welsh Ministers having powers to fund the PCET sector directly for a limited period, in the absence of an agreed strategic plan;
 - core funding being transferred to the Commission, whilst holding back an element of that funding until the strategic plan is approved;
 - a requirement for the Commission to work within strict delegations and to obtain Welsh Government approval for any expenditure above specified limits or allocated for specified purposes.
45. Following approval of its strategic plan, the Commission would be responsible for allocating the totality of funding to the eligible learning providers and research and innovation communities, and for monitoring how effectively it was being used to take forward the Welsh Government's strategic priorities. The Commission would be under a duty to monitor the implementation and effectiveness of its strategic plan and to submit an annual report to the Welsh Ministers. The Commission's annual report would be published.
46. While this approach should allow for stronger forward planning and a long-term view by both the Welsh Government and the Commission, it would also be necessary to have the ability to respond quickly to changing circumstances. The Welsh Government's overarching policy will need to be kept under review and updated periodically to take account of significant changes in circumstances, including economic changes or changes to PCET and research and innovation policy in other parts of the UK that could impact substantially on Wales. In the same way, the Commission would be under a duty to keep its strategic plan under review and, where appropriate, make additions or amendments in keeping with the government's overarching policy direction and priorities.

47. The frequency with which strategic plans would need to be produced requires further consideration and should perhaps not be set in stone. It might, for instance, be appropriate to require a five-year strategic plan in the first instance, with an operational plan drawn up by the Commission once budgets are agreed by Ministers and the Assembly. Alternatively, the Commission might be given freedom to produce strategic plans covering whatever period or periods it might deem appropriate and to allow for changing circumstances. In either event, the strategic plan would be subject to approval by the Welsh Ministers.

48. The advantages of the approach to strategic planning set out above would include:

- clear demarcation between the roles of the Welsh Government and the Commission, leading to clarity about where responsibilities would lie and helping to ensure effective accountability;
- greater opportunities for joining up and achieving more coherent planning across the full range of PCET provision;
- it would support development of a system with the interests of learners at its core, giving the Commission sufficient freedom to work effectively with the full range of learning providers and other stakeholders.

49. Placing a duty on the Commission to consult learning providers and research and innovation communities, learners and other stakeholders on the contents of its strategic plan would ensure that all those with a stake in the Commission's work have a voice in how it operates and can help monitor and assess its impact over time.

Questions

Is the proposed allocation of responsibilities for strategic planning between the Welsh Government and the Commission appropriate?

Are the proposals for dealing with funding appropriate, in the event of the Welsh Government withholding approval of the strategic plan? What safeguards or interim measures should be considered?

Apart from withholding approval of the strategic plan, what intervention powers may be required by the Welsh Ministers to ensure that the Commission complies with its duties and fulfils the terms of its strategic plan?

Would a five-year cycle be an appropriate length of time for the Commission's strategic plan to cover or should flexibility be allowed?

5. The relationship between the Commission and learning providers

50. In considering how the relationship between the Commission and learning providers could operate most effectively, it would be necessary to ensure that:

- it aligns effectively with the relationship between the Welsh Government and the Commission, so that commitments made by learning providers would reflect priorities in the Commission's strategic plan and hence with the strategic vision set by Ministers;
- it safeguards the funding that the Commission would allocate to learning providers;
- there is proper accountability of learning providers to the Commission;
- the Commission has appropriate powers of intervention in the event that a learning provider or local authority fails to comply with the terms of a Regulation and Outcome Agreement. It is not yet determined what those should be;
- the interests of learners and their sponsors⁷ are protected, as well as the reputation of the Welsh PCET sector;
- due account is taken of the need to preserve institutional autonomy and academic freedom; and,
- it promotes effective communication between the Commission and learning providers.

51. The White Paper set out three possible models for managing the relationship between the Commission and learning providers:

1. a Registration of Provider Model
2. an Outcome Agreement Model
3. a Regional Compact Model

52. While each of these models would have some advantages, our view now is that none of them would achieve all the benefits that should be expected from an effective relationship between the Commission and learning providers. This conclusion was reflected in the views and concerns expressed by respondents to the White Paper consultation.

53. The White Paper asked whether the Commission should operate a registration system to facilitate a flexible but consistent approach to its engagement with institutions and providers across the full range of PCET activity and, if so, which model stakeholders preferred. The majority of respondents preferred registering individual providers for regulatory purposes, as this should protect the reputation of the PCET sector in Wales and provide a good basis for accountability. Respondents also emphasised the importance

⁷ Sponsors could include, among others, employers and private or charitable sources that cover the learning costs for individual learners. Governments in the United Kingdom might also be sponsors, in the sense that they support students' learning costs, through grants or loans for fees and maintenance, which are underpinned by Exchequer funding.

of registration providing a single, permanent, publicly accessible record of providers and the qualifications that they offered, to ensure the integrity of PCET in Wales.

54. However, respondents felt that it would be helpful to have a definition of the term “provider”, to clarify the types of organisations that were envisaged to fall within the oversight of the Commission. There was some concern that a registration system might increase complexity across PCET and that care should be taken to ensure that administrative burdens on the sector should not be increased. A number of respondents suggested that whatever registration system was in place would need to ensure that all providers met the same standards of financial stability and propriety, but that adjustments to the process might be required to reflect the needs and circumstances of the different types of providers. Respondents emphasised the need to avoid perceptions of a hierarchy among providers, based on different registration requirements for different types of providers. They suggested that the classification of providers needed more clarity and development and that further information was needed on the terms and conditions of registration.
55. Regarding the proposal that individual outcome agreements would be registered, respondents recognised that such a model would provide the Commission with influence, at national and regional level, in determining strategic provider outcomes. They also acknowledged that success would require significant collaboration to ensure that the growth sectors received the support they needed. Respondents were, however, concerned that this model might result in too much emphasis on short-term economic drivers and that it might impinge upon institutional autonomy. It was also felt that there might be risks during the transition period, while the outcome agreement model was being introduced.
56. Respondents to the White Paper recognised that the proposal to register regional compacts, developed between a range of learning providers, would provide opportunities to build on existing regional partnerships and align with the particular needs of each region. However, there were concerns that social, economic, linguistic and geographical issues could present challenges to the effective operation of this model.
57. Some respondents had concerns with any form of registration model. These included:
- current systems in FE work, so registration would not be needed;
 - a registration model would not promote careful monitoring of the outcomes delivered by learning providers;
 - it would need in-depth consideration to identify the types of issues that could prevent a provider from being registered;
 - HE respondents expressed concern about possible confusion because Welsh HEIs were part of a UK sector. Therefore, registration by the Commission in Wales could confuse learners looking across the UK, as

“registered providers” would be the term used to describe a different category of providers in England’s register of HE providers.

58. While a large majority of respondents were, in principle, in favour of outcome agreements forming the basis for the Commission’s strategic planning relationship with learning providers, many sought further clarification. Concerns about outcome agreements were strongest among HE providers, while businesses and the NUS were quite positive about this approach. A number of suggestions came forward for ensuring that outcome agreements operated effectively. These included:

- outcomes should be measurable, realistic and achievable;
- they would need to be open to independent scrutiny;
- they would need to be tailored to the specific learning provider, taking account of its identity, learner profile and particular mission / strengths.

59. Respondents were also of the view that, if outcome agreements were to be introduced, they should operate for a sufficient length of time to ensure a measure of long-term planning. It was therefore suggested that they should last for a minimum of three years, and possibly five years.

60. While the regional compact model received little support from stakeholders there was support for using outcome agreements to promote collaboration across the PCET sector. Thus, respondents proposed requiring and challenging providers to think and work beyond their own segment of the sector, as this would help to ensure that the learner was at the heart of the system.

61. Issues raised by respondents to the White Paper included:

- legislation should not be too prescriptive about the nature of outcome agreements, as this would prevent flexibility and innovation;
- there should not be too much reliance on recruitment and retention data, but rather, the focus should be on the quality of provision;
- concern about HE providers being required to develop fee and access plans and outcome agreements at the same time would place too heavy an administrative burden on them;
- HE providers argued that tuition fee income should not be tied to outcome agreements.

62. A significant majority of respondents who expressed a view agreed that eligibility for funding should be conditional on outcome agreements reflecting priorities in the strategic plan. However, some who were undecided sought clarification on the type of funding being referred to and the precise nature of an outcome agreement. A number of respondents felt that an appropriate balance should be struck between providing financial certainty for providers and their learners, and the need to secure meaningful progress against agreed objectives. Some respondents therefore felt that funding should not be

dependent solely on producing a suitable outcome agreement, reflecting relevant priorities in the strategic plan.

63. Some respondents expressed the view that the Commission should have the ability to fund outside of an outcome agreement process in some circumstances, including for strategic developments. One suggestion which came forward was to have a mixed model of core funding and outcome linked funding, as this might help to secure stability whilst ensuring that the overarching priorities would be taken forward.
64. On the proposal to link funding to performance against outcome agreements, the majority of respondents recognised the need for providers to be accountable for their funding. Respondents who supported this approach did so on the basis that the performance measures would be realistic and would reflect the provider's context. However, there were concerns on the part of some about too much dependence being placed on outcome agreements, particularly when the nature and content of those agreements was still unclear. Some suggested only using outcome agreements for specific projects or areas of work.
65. A point made particularly by respondents from higher education was that incentives should be used rather than penalties to achieve the desired performance standards. They were of the view that the Commission should ensure that funding streams allocated for particular purposes (i.e hypothecated funding) would be configured so that they could recognise different missions across the different types of PCET provision. The machinery for that funding should be left for the Commission to determine and not be so tightly defined that flexibility to support new and emerging activity would be lost.
66. Clearly, there is support for a consistent approach to regulation and accountability for public funds, though there is concern about a registration approach that would give the perception of a hierarchy of providers. There is also support for the use of outcome agreements as a mechanism for managing the relationship between the Commission and learning providers.
67. A model has therefore been developed which seeks to bring together the strengths of the models proposed in the White Paper and address the concerns expressed by respondents. The model aims to provide consistency of approach to regulation and accountability, whilst allowing for considerable flexibility regarding the outcomes to be negotiated between the Commission and individual learning providers.

The Regulation and Outcome Agreement Model

68. For learning providers to receive funding from the Commission and, in the case of those delivering HE provision, for their courses to attract student support, they would first be expected to meet a set of specified criteria, bringing them within the scope of the Commission's regulatory oversight. To be in scope to receive funding, it is proposed that they would be required to:

- deliver PCET and/or be engaged in or undertaking research and innovation activities;
- operate wholly or principally in Wales; and,
- possibly be a charitable institution⁸.

69. If they fulfil these requirements, they could, if they choose, draw up a Regulation and Outcome Agreement (ROA) for approval by the Commission. Agreement of the ROA would make them eligible to receive funding from the Commission and / or ensure that the courses they provide attract student support from the Welsh Government. The only category of learning provider to receive public funding that would not be required to draw up a ROA would be WBL providers, because they must already fulfil thorough contractual obligations that would include the types of issues covered in a ROA.

Charitable status

70. Further consideration needs to be given to whether charitable status should be one of the specified criteria for bringing learning providers within the scope of the Commission's regulatory oversight. Currently HE providers in Wales who wish their courses to be automatically designated for Welsh Government student support need to apply to HEFCW for approval of a fee and access plan. Under the Higher Education (Wales) Act 2015 all HE providers seeking approval of a fee and access plan must be charities. Looking to the wider PCET sector, the rationale for including such a requirement is that in making public funds available to secure both the provision of and access to learning opportunities, the Welsh Government makes a very significant investment of tax payers' monies. As such, the Welsh Government considers that providers which benefit from a degree of financial subsidy in the form of statutory student support or from direct funding should reinvest the public monies subsidy they receive in charitable purposes. A means of ensuring that public funds are not used to benefit shareholders of for-profit organisations would be to require all providers seeking designation of their courses from the Welsh Government and /or direct funding from the Commission to be charities. There are advantages and disadvantages to this proposal including those listed below. We are keen to hear your views on this matter.

71. Advantages

- Charities are required to reinvest any surplus funds in their charitable purposes and so contribute to the public good as opposed to benefiting shareholders;
- Requiring charitable status of PCET providers would provide continuity with the arrangements under the 2015 Act insofar as they apply to HE providers in Wales.

⁸ The exception would be WBL providers who are currently not required to have charitable status and will not be required to enter into ROAs. Their relationship with the Commission would be contractual terms. Another possible exception might be Research Technology Organisations (RTOs) which are solely funded to undertake research.

72. Disadvantages

- Such a requirement could prevent innovative providers of PCET who are not charities from entering the regulated PCET sector in Wales;
- It could limit the choice of providers and courses for learners.

Regulation and Outcome Agreements

73. This agreement would have two parts:

- Part I: regulatory requirements; and,
- Part II: outcomes negotiated with the Commission that the provider of learning and/or research and innovation has committed to deliver.

We propose to make provision for the Commission to enter into the ROAs and for the enforcement of them in the event of a breach by a provider or local authority.

Part I: Regulation

74. The regulatory part of the ROA would need to include evidence of satisfaction of, and ongoing compliance with, certain regulatory requirements. These might include requirements relating to:

- the financial viability and financial sustainability of the provider;
- the sufficiency of the quality of the education, training and research and innovation delivered by or on behalf of the provider;
- effective systems of management and governance to deliver the education and training for which student support and / or direct funding is being sought, including those established in governing documents, where applicable;
- prescribed fee limits and fair access requirements, where applicable;
- appropriate learner protection arrangements and learner complaints procedures.

75. In addition, providers would need to commit to:

- supplying the Commission with specified information relevant to compliance with the above regulatory requirements and notifying the Commission of changes to such information;
- supplying the Commission with specified data concerning course provision; and,
- assisting the Commission with monitoring of compliance with ongoing regulatory conditions.

76. Satisfaction of these regulatory requirements would provide evidence of the providers' viability and their suitability to receive public funds, whether directly

via funding allocated from the Commission, or indirectly via the designation of their courses for the purpose of student support.

77. While this approach would provide for the funding of providers that deliver education and training as well as research and innovation, the approach will need to be adapted to address the distinctive features of some types of learning provision.
78. In the case of sixth forms, for instance, it is proposed that ROAs would be entered into between the Commission and local authorities, who would represent the relevant schools in their area/region. Local authorities already have mechanisms in place to ensure that schools are properly regulated and that financial viability, good governance and learner protection are secured. Consideration will need to be given to the regulatory information that local authorities would be required to share with the Commission on sixth form provision in their area.
79. The approach to ROAs with adult learning providers will also need to be considered.
80. Alternative providers of education and training that did not have charitable status and were not seeking public funding could, nonetheless, enter into a regulation agreement with the Commission. Such providers could include independent sixth forms, private colleges and alternative HE providers. These providers would need to show that they complied with relevant regulatory requirements. In return, they would receive recognition by the Commission, that they were bona fide, viable learning providers and that they did, in fact, deliver the learning that they claimed to provide. This would provide security for learners wishing to study at those institutions, which, in turn, would assist the providers to attract learners. Providers that solely enter into a regulation agreement would not be eligible for public funding nor would their HE courses attract student support.
81. As well as the issues that need to be considered around providers of education and training, some thought needs to be given to whether the Commission should fund organisations that solely carry out research and innovation. Such institutions might include Research and Technology Organisations (RTOs). These institutions are not for profit companies and are funded by membership fees from industry. Typically, RTOs undertake applied research and development work for business and industry, often working in collaboration with academia. They seek public funds like Horizon 2020 and will be eligible for UK Government funds through UKRI.

Questions

In the regulation section of the ROA, are there other matters that should be included? If so, what are they? Should any be removed? If so, which ones?

While we recognise that, in light of their contractual obligations, work-based learning providers would not require charitable status to receive public

funding, should other types of learning providers be required to have charitable status in order to receive such funding? What might be the advantages and disadvantages?

Should RTOs be eligible for funding from the Commission under Regulation and Outcome Agreements? If so, how might the regulation element of ROAs need to be modified to reflect the fact that RTOs do not provide learning?

If they should not be funded under ROAs, in what circumstances and by what mechanisms should they be funded? What mechanism(s) could be put in place to ensure the appropriate use of any public funding that RTOs might receive?

If learning providers that did not have charitable status could enter a regulation agreement, how might that differ from the regulation element of the ROA entered into with other learning providers?

Part II: Outcomes

82. The second part of the ROA would contain the outcomes that the learning and research provider had committed to achieve. This would be quite separate from the regulatory part of the agreement and would reflect the nature and focus of the learning provider. The intention is that this part of the agreement would be negotiated with the Commission and would demonstrate how the provider proposed to respond to the Commission's strategic plan. Learning providers and research and innovation communities would be required to involve learners and other relevant stakeholders in drawing up their proposed agreements.
83. In the case of sixth forms it is proposed that the Commission would negotiate ROAs with local authorities and not with individual schools. Local authorities will need to engage with the governing bodies of schools in their areas to ensure that the learning opportunities proposed for post-16 learners in each school are in line with the Welsh Government's overarching policy and the Commission's strategic plan.
84. With the full range of learning providers and research and innovation communities, consideration will need to be given to the frequency of application for approval of ROAs and whether Part I of the agreements could be ongoing, with Part II renegotiated at appropriate intervals.

Questions

Is the ROA the best way forward? What are the advantages and disadvantages?

What powers may the Commission need to ensure that learning providers and local authorities carry out their responsibilities under the ROA?

Is there another model that we should consider (not involving the use of ROAs)? If so, what is it and what would be the benefits?

What information about learning providers and research and innovation communities with approved ROAs should the Commission make publicly available?

Once approved, should the regulatory section of the ROA be ongoing, or should it be reconsidered from time to time? If so, how often should it be reconsidered? How often should the outcome agreement element be re-negotiated?

Provision of information and guidance

85. To ensure the availability of relevant information about learning providers and research and innovation communities in receipt of public funds, we propose that the Commission would be placed under a duty to prepare, publish and keep up to date a register of providers with approved ROAs. We also propose to require the Commission to publish information relating to each provider with a ROA, as well as each provider with a WBL contract.

86. As well as its duty to ensure that information on learning providers and research and innovation communities is publicly available, the Commission would also have responsibility for providing information and guidance to learning providers and research and innovation communities. For instance, in carrying out its responsibility for planning and implementation of the overarching policy across PCET provision and research and innovation, the Commission would prepare guidance documents for learning providers and research and innovation communities on what it would require from them. The nature and frequency of the guidance documents for learning providers and research and innovation communities may be a matter to be agreed between them and the Commission, based on what is found to work most effectively.

Additional matters

87. Other areas to consider would be:

- how the Commission could ensure that the ROA, drawn up by learning providers and research and innovation communities, would meet the necessary requirements;
- how the Commission could ensure that learning providers and research and innovation communities carried out the outcome element of their ROA properly;
- The appropriate monitoring arrangements that would need to be in place to ensure that the ROA is being carried out by the provider and to understand how changes in circumstances may have impacted on the provider's ability to meet its commitments under the ROA;
- the evidence to be used to monitor the achievement of outcomes, and to measure their impact.

88. This would require giving the Commission the power to apply penalties, in the event of failure, although consideration would need to be given to mitigating circumstances. Where the Commission was not fully satisfied about the content of the ROA, there could be an option to give the Commission the power to decide which of the learning provider's activities it would be prepared to fund. In addition, powers could be given to the Commission to allow an element of funding to be withheld or reclaimed, where a ROA had not been properly carried out. This would require giving the Commission the power to hold back funding into the next financial year. It might also be necessary to consider whether further interventions might be necessary. Clearly, monitoring arrangements would need to be in place, to assess compliance.
89. As well as providing for interventions in the event of failure, the Commission could be empowered to employ incentive funding to promote positive behaviours, or agree to provide some of the start up costs for courses aligned with key Welsh Government priorities. The Commission could provide opportunities for learning providers to put up collaborative bids. Consideration would also need to be given to whether specific provisions would be required to support and promote research and innovation.

Question

Please let us have your views on the issues listed in the 'Additional Matters' section of this paper.

6. Strengthening the link between planning and funding

90. The funding of post-compulsory education and training in Wales is currently undertaken by a mix of Welsh Government and Welsh Government-sponsored bodies.
91. Under section 31 of the Learning and Skills Act 2000 (the 2000 Act) the Welsh Ministers must secure the provision of proper facilities for education and training (other than higher education) suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19. Under section 32 of that Act the Welsh Ministers must secure the provision of reasonable facilities for education and training (other than higher education) suitable to the requirements of persons aged 19 and above.
92. Sections 34, 35 and 36 of the 2000 Act set out the principal powers for Welsh Ministers to allocate funding for further education, WBL, adult learning and sixth form provision. Section 68 of the Further and Higher Education Act 1992 (the 1992 Act) sets out the powers for Welsh Ministers to allocate funding to the Higher Education Funding Council for Wales (HEFCW) for higher education provision in Wales.
93. The Welsh Government has overall responsibility for policy, strategy and funding for post-compulsory education, including sponsorship of the Higher Education Funding Council for Wales (HEFCW).
94. The majority of higher education funding is via HEFCW. Recent changes in the way higher education is funded have led to changes in HEFCW's responsibilities, with more emphasis being placed on the Council's regulatory role under the Higher Education (Wales) Act 2015. This includes determining applications for approval of Fee and Access plans, which gives an institution access to higher tuition fee income supported by the statutory student finance system. Tuition fee loans and/or grants are paid direct to institutions via the Student Loans Company and on behalf of learners, under regulations made by the Welsh Ministers.
95. Sixth form education falls under the remit of the Welsh Government. Funding is provided to secondary schools via local authorities (under section 36 of the 2000 Act).
96. Further education institutions have been directly funded by the Welsh Government since 2006. Prior to that, responsibility for funding FE institutions had rested with local authorities, followed by the Further Education Funding Council for Wales (FEFCW) as of 1992, and National Council for Education and Training for Wales (ELWa) between 2001 and 2006.
97. Work Based Learning⁹ is funded by the Welsh Government by means of a fully procured tender exercise that includes FE institutions, independent training providers, local authorities and third sector organisations.

⁹ From April 2019, 'Work Based Learning' will become 'Apprenticeships and Working Wales'.

98. Adult Learning is funded by Welsh Government either through a distinct grant to local authorities or via FE institutions.
99. Although there is no specific statutory power dealing with planning, requirements for planning (and funding) related activity for FE institutions, Adult Learning and sixth form provision are administered via annual terms and conditions of funding. Section 40 of 2000 Act requires that the Welsh Ministers must establish systems for collecting information which are designed to secure that their decisions with regard to education and training are made on a sound basis.
100. A Post-16 Planning and Funding Framework was introduced in 2014 which operationalised and brought consistency and alignment to the planning and funding of FEI mainstream provision and local authority sixth form provision.
101. Work-based learning (WBL) providers are required to adhere to contractual obligations detailed within the Framework Agreement and WBL Programme Specification. Following a robust and open tender, frameworks are awarded for the period of the tender. Programme commissions (or contracts) are generally awarded to WBL providers on an annual basis.
102. The planning and funding of higher education is mediated through HEFCW. The Further and Higher Education Act 1992 provides that grants made available by the Welsh Ministers to HEFCW for the purposes of funding higher education may be made subject to certain generic terms and conditions relating to every HE institution, or every institution falling within a specified class or description. The 1992 Act otherwise prohibits the Welsh Ministers from attaching terms and conditions of grant which might relate to the provision of financial support by the Council in respect of activities carried on by any particular institution or institutions. Similarly, the Act prohibits Welsh Ministers from placing terms and conditions of grant on monies paid to the Funding Council which relate to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed), or to the criteria for the selection and appointment of academic staff and for the admission of students. These provisions exist to protect the academic freedom of higher education institutions.
103. The current planning and funding arrangements across all sectors are, in the main, supported by the institutions that operate within them, and the new Commission would need to consider how best to integrate the systems where appropriate.

White Paper responses

104. Responses received from the White Paper consultation, and stakeholder roadshows across Wales indicated that:

- the Commission should be flexible to handle different provisions/different systems as it was thought that there is no 'one size fits all' answer to planning and funding across all sectors;
- the Commission should try to develop a balanced and joined-up system or approach to funding in HE and FE to make processes simpler;
- the Commission should ensure funding of Welsh medium provision across all sectors;
- the Commission should ensure a strong relationship with regional skills requirements, and employers to understand the needs of the economy in Wales;
- a three-year funding model, with a link to strategic plans, would be beneficial and less complicated for all;
- there was general support for funding being dependent on Welsh Ministers' approval of a strategic plan from the Commission, provided stakeholder engagement is undertaken;
- not all funding should be based on Regulation and Outcome Agreements;
- an appropriate balance needs to be struck between providing a degree of financial certainty for providers and their learners, and the need to secure meaningful progress against agreed objectives;
- funding of registered providers could be conditional on other factors, and required deliverables, which could inform an Outcome Agreement process. The Commission should have the ability to fund outside of an Outcome Agreement process (e.g. for strategic developments or for certain types of provision);
- a mixed model of core funding and outcome-linked funding would be one way to ensure stability but also impact;
- the Commission should ensure that hypothecated funding streams are configured so that they recognise differentiation across the different elements of PCET and the mechanism for that funding should be left to the Commission to determine and not be so tightly defined that flexibility to support new and emerging activity is lost.

Proposed approach

Planning and funding relationship between Welsh Government and the Commission

105. As noted above sections 34, 35 and 36 of the 2000 Act set out the principal powers for Welsh Ministers to allocate funding for further education, WBL, adult learning and sixth form provision and section 68 of the 1992 Act sets out the powers for Welsh Ministers to allocate funding to the Higher Education Funding Council for Wales (HEFCW) for higher education provision in Wales.
106. Sections 65 and 66 of the 1992 Act, provides the legal basis upon which HEFCW funds mainstream higher education in Wales. HEFCW also has functions in respect of the funding of eligible activities connected to

teacher training and associated activities provided for in sections 85 to 91 of the Education Act 2005 (the 2005 Act).

107. The Welsh Ministers will cease to have the functions in sections 31, 32, 33, 34, 35 and 36 and will no longer have their funding powers set out in sections 34, 35 and 36 of the 2000 Act. Instead those functions, or functions very similar to those, will be given to the Commission. It is not yet determined whether the Welsh Ministers should retain some role in the planning, provision and funding of 16 to 19 and post 19 education and training. Similarly, it is proposed that the functions in sections 65 and 66 of the 1992 Act and sections 85 to 91 of the 2005 Act should be given to the Commission in so far as is appropriate.^[1]

108. Consequently, the Welsh Ministers will require a new legislative power to fund the Commission.

Questions

Do you agree that the Welsh Minister should cease to have their functions (i.e. duties and powers) under sections 31, 32, 33, 34, 35 and 36 of the Learning and Skills Act 2000 and that the Commission should have those functions, or functions very similar to those instead?

Do you consider that the Welsh Ministers should retain a role in respect of the planning, provision and funding of 16 to 19 and post 19 education and training? If so what should that role be?

Do you agree that the powers in section 65 and 66 of the Further and Higher Education Act 1992, along with powers in sections 86 and 87 of the Education Act 2005, should be replicated largely unchanged for the new Commission?

Do you agree that section 68 of the Further and Higher Education Act 1992 should be replaced with a new power that allows Welsh Ministers to allocate funding to the Commission for all post-16 provision? Are there any specific inclusions or exclusions that should be considered as part of this new power?

109. Currently the Welsh Ministers must comply with sections 31 and 32 of the Learning and Skills Act 2000, which place duties on the Welsh Ministers that differentiate between the obligations relating to 16-19 year olds and those relating to the post-19 cohort of learners. In respect of 16-19 year olds, the obligation on Welsh Ministers is to secure “proper provision for education and training”, and for those over 19 it is “reasonable provision”.

110. When allocating Welsh Government funding to the Commission, it is important to consider whether the budget should be hypothecated on the basis of type of provision to be funded, or given as an un-hypothecated sum

^[1] For further detail about the existing duties and powers please refer to <http://law.gov.wales/publicservices/education/?lang=en#/publicservices/education/?tab=overview&lang=en>

for the Commission to determine the quantum allocated to each type of provision. We propose that the Welsh Ministers would hypothecate any grant paid to the Commission using appropriate terms and conditions.

111. We further propose that hypothecation (when used) should be at a relatively high level with a split between further education provision (to include FE institutions, local authority sixth forms, WBL and adult learning) and higher education provision.

Question

Do you agree that the Welsh Ministers should hypothecate between elements of the total grant available to the Commission on the basis of type of provision to be funded?

Question

Do you agree that the hypothecation should be split at a FE/HE level to give the Commission as much flexibility as possible, but to acknowledge the fact that we propose specific statutory responsibilities in relation to the funding of further education, which should pass to the new Commission? These do not have a current counterpart in relation to higher education.

112. Whilst the proposals above outline the broad planning and funding relationship between Welsh Ministers and the new Commission, we recognise that in-year requirements may arise which Welsh Ministers want to support. An example of this within HE might be the provision of specialist vocational degrees where there is a national interest in having qualified individuals in Wales (such as courses for educational psychologists), or within FE the current provision of nuclear specific provision to support Wylfa Newydd.

113. It is proposed that any in-year requirements should, in the first instance, be shared with the new Commission to establish whether this could be supported via existing mechanisms and budgets. If the Commission was unable to support these in-year requirements it is proposed that a new power is introduced that allows the Welsh Ministers to directly fund a PCET learning provider (including higher education providers), with additional budget, to provide a particular course or pathway for a limited time and with acknowledgement that this would be incorporated into the Commission after any initial direct funding agreement. We anticipate any additional funding would be made available through a bidding/business case mechanism rather than a directed allocation. We do not expect any such provision to be used significantly, but only where there is a strong public interest in doing so and where Ministers believe the national interest of Wales will be furthered.

Question

Do you agree that there should be a power available to the Welsh Ministers to directly fund PCET provision (including higher education), having first shared any

such proposals with the Commission, and where there is a strong public interest in doing so?

114. We recognise there are a number of funding streams received by the post-16 networks that are administered across different parts of the Welsh Government. Examples of this are Communities for Work, Farming Connect, some current European Social Fund projects etc. Decisions as to whether the responsibility of these funding streams should be transferred to the new commission will be taken on an individual basis.

Question

We know there are additional funding streams, outside core funding. If you receive such funding can you indicate whether you think responsibility for the funding you receive should rest with the Commission?

Relationship between the Commission and post-compulsory providers

115. Feedback from the White Paper consultation and stakeholder events suggest that the Commission should recognise there is no 'one size fits all' solution when planning and funding post-16 provision. This would suggest that the Commission should continue to operate flexible planning and funding systems across the post-compulsory sector, at least in the first instance, while perhaps seeking to align and consolidate systems over time. Continuing with separate methodologies could be considered transition enough but in transferring powers Welsh Ministers may also wish to protect, via transition arrangement, further education allocations at an individual institution level.

Questions

Do you agree that the Commission should have the flexibility during a short transition period to operate different planning and funding models across each type of post-16 provider, whilst driving forward alignment and consolidation as the Commission matures in its operation?

Should there be transition arrangements in place to ensure that core funding to any institution is initially protected? What would constitute a reasonable protection?

116. The apprenticeship levy was implemented in April 2017. In England all employers use a digital voucher system to pay for their apprenticeship requirements, in line with the payments they have made. All employers operating in the UK with an annual pay bill over £3 million will contribute 0.5% annually. Employers continue to be concerned about how they obtain returns (in Wales) as a result of the apprenticeships levy. They believe the English system is simpler to understand and access. The approach to planning and funding of PCET in Wales in the future may need to consider more detailed intelligence around the levy and alternative mechanisms for allocating funding across the system.

Question

Do you agree that the Commission should be expected to keep under review intelligence around the apprenticeship levy and consider new ways of allocating funding across the system if the levy is not seen to be meeting the needs of employers in Wales?

Regional Skills Partnerships

117. Three Regional Skills Partnerships (RSPs) were announced in October 2014 by the then Deputy Minister for Skills and Technology. They are:
- North Wales Economic Ambition Board – Regional Skills Partnership North Wales (NWEAB - RSP);
 - South West and Mid Wales Regional Learning and Skills Partnership (RLSP);
 - South East Wales Learning, Skills and Innovation Partnership (LSkIP).
118. RSPs have a key role in producing regional intelligence informed by employers. They have substantially increased their employer focus and have developed robust employer engagement strategies to capture the skills needs of the region and, in particular, the skills needs associated with regional infrastructure projects and priority sectors.
119. Each RSP produces an annual employment and skills plan, identifying priorities for their region based upon employer need. Regional employment and skills plans identify key economic sectors and are starting to drive planning decisions for providers and providing a critical evidence base from which to make skills investment decisions. The plans serve as the employment and skills evidence for the City Regions and Growth Deals, and each RSP has developed strong links with their respective City Region and Growth Deal structures, which is reflected in their individual governance arrangements.
120. Currently WBL contracts are influenced by the annual employment and skills plans. FE provision planning has worked to take the annual plans into consideration for the past two academic years. An approach is being developed to further refine the approach and impact for 2018/19.
121. We propose that the new Commission should maintain a strong relationship with the RSPs or any similar regional body and that it should be able to withhold an amount of funding to be used specifically for responding to the recommendations set out in the annual skills plans. This could be used for additional provision in priority areas or to risk assure the development of new provision to meet potential future labour market needs.

Questions

Do you agree that the Commission should continue to work collaboratively with the RSPs to inform provision delivered by learning providers?

Do you agree that the Commission should be able to withhold some of the core budget for each sector to be allocated based on the recommendations set out in the annual skills plans?

Management of performance and risk

122. We believe the proposals above for strengthening the strategic planning and funding arrangements for PCET provision in Wales should help significantly to enhance the management of performance and risk across the system. We set out below other proposals relating to quality assurance and enhancement within individual institutions and providers and system wide. Taken together, these changes should serve to strengthen accountability and performance and ensure that the PCET system in Wales is effective and sustainable into the future.

Question

Do you consider that the proposals above for monitoring performance and achieving accountability across the PCET system are sufficient and appropriate?

Question

What more might need to be done to secure the sustainable operation of the PCET system in Wales over the longer term?

7. Protecting the interests of learners

123. The White Paper recognised that different parts of the PCET system have grown and responded to public funding changes and government policies in different ways. This has led to complex and different arrangements for protecting learners' continuing education in the event of the closure of their course or campus, or failure of the learning/training provider. Arrangements for transferring a learner to another course or provider, where they are at risk of not completing their course or because of other progression related issues, are also different and not transparent for the learner. These differences and complexities mean we cannot be confident all learners, even within the same provider, receive the same level of protection. For example:

- **higher education institutions** – arrangements are in place to allow students to continue to receive student finance if they transfer course or provider and, where appropriate, if the provider at which they are studying ceases to be part of the regulated HE sector. The Quality Assessment Framework for Wales, established by HEFCW, requires HEIs to have student protection arrangements in place. HEFCW will request a student protection statement from a regulated HEI they believe to be at risk of failure, confirming how students will be supported to complete their qualifications. In addition, the UK Quality Code for Higher Education establishes the expectation that, amongst other things, adequate contingency plans are in place to protect the academic interests of students in the event of discontinuation of programmes of study;
- **further education institutions (FEIs)** – the Technical and Further Education Act 2017 makes provision for a special administration regime to operate alongside ordinary insolvency, with the purpose of protecting learners in the event of a FE college or designated institution (FE bodies) being insolvent. In addition, the Welsh Government has powers to intervene in extenuating circumstances to protect the interests of learners and safeguard the education of existing learners where there are serious problems;
- **work-based learning** – includes apprenticeships, traineeships and Jobs Growth Wales programmes. Apprenticeships are currently delivered through contracts between the Welsh Government and a network of approved providers. From September 2018, the current intention is that Degree Apprenticeship will be commissioned by the Higher Education Funding Council for Wales. The current WBL Contract and Programme Specification (it will be revised for 2019 onwards) is available at: <http://gov.wales/topics/educationandskills/learningproviders/workbasedlearning/wbl-contracts-2015-to-2019/?lang=en>); it sets out the contractual requirements to which providers must adhere, including:
 - finding an alternative employer for apprentices that have been made redundant so they may achieve their original qualification aim. Such learners are entitled to financial support from the Welsh Government for a set period of time whilst alternative employment is sought to enable them to complete their apprenticeship; and
 - recruiting any learners displaced as a result of the WBL tendering exercise so they may complete their learning programme.

- **school sixth forms** - arrangements are in place to ensure the transfer of data about pupils when they move from one school to another. Under the Pupil Information (Wales) Regulations 2011 (“the 2011 Regulations”), whenever a pupil joins a school from another school within England or Wales, the pupil’s Common Transfer File (CTF) **must** accompany him/her. When a pupil leaves a school for a new school a CTF **must** be sent to the new school. These arrangements do not cover transfers between schools and other types of learning provider. However, the 2011 Regulations do require that when a learner is under consideration for admission to another school, institution for further education, or any other place of education or training, the head teacher must transfer the pupil’s educational record to the responsible person should they request this, although this does not include the results of any assessment of the pupil’s achievements. In the event that a learner registered at a new maintained school without his or her old school being available, the local authority for the new school would need to provide the CTF. These 2011 Regulations also specify the information that should be maintained by schools in relation to educational and curricular records and the circumstances for disclosure of such records to parents and schools to which pupils are under consideration for transfer.

124. In summary, there are many pockets of good practice across the PCET sector; however, we believe there needs to be more consistency so all learners can expect the same level of protection, wherever they choose to study and learn. The current arrangements vary in their scope and focus, rather than a comprehensive approach which includes both practical arrangements and support for learners’ progress and well-being. The establishment of the new Commission presents an opportunity to address this disparity and create a more equal, learner-focused and coherent system which has proactive arrangements in place in the event of course or campus closure and enables learners to transfer between courses or providers, ensuring continuity of learning.

Proposals for change

125. The responses to the White Paper consultation indicated there is scope to strengthen the arrangements to protect learners studying at PCET providers in Wales. We recognise that a one-size-fits-all approach is not likely to be appropriate and that it should be for each individual provider to determine what arrangements will best protect its learners. However, we consider that the arrangements put in place by providers should align with a common set of principles to ensure consistency for learners across the PCET sector. We have identified the following principles as a starting point for discussion:

- **learner-centred** - arrangements should be in the interests of the learner and meet each learner’s personal circumstances, goals and aspirations and focus on continuity of education. Learners should be fully involved in the development and implementation of learner protection arrangements. Learners should know in advance of starting their programmes what protections are in place;

- **supportive** - arrangements should safeguard learners' well-being and mental health, and particular consideration should be given to the specific needs of learners from protected groups and those with additional support needs;
- **timely and effective processes** - timely transfer of learner information to the learner's new provider. Effective data sharing protocols between PCET providers which comply with the General Data Protection Regulation and have a sound legal basis. Learners informed of plans to close a course, centre or campus as soon as practicably possible;
- **awareness and accessibility** - information should be clear, jargon-free, easily accessible, bilingual and available in a wide range of formats to suit the needs of different types of learners. Arrangements should be well-promoted among learners and staff. Appropriate training and guidance should be provided for teaching and support staff;
- **collaborative approaches** - learner protection arrangements and processes should be developed in consultation with learner representative bodies. Coherent collaboration and planning should take place between PCET providers and in consultation with learners to minimise disruption and cost for learners requiring transfer to another provider and to seek to identify alternative routes in the event of course, centre or campus closure;
- **flexibility** - every learner has different needs, requirements and circumstances and arrangements should reflect this. However this should be balanced with a proportionate approach and a degree of flexibility for providers to exercise professional judgement;
- **compliance and monitoring** - annual monitoring should focus on the efficiency and effectiveness of the arrangements in place. Appropriate sanctions should be available to address specific or persistent non-compliance with the Commission's requirements. Annual monitoring information should be used to improve the quality of provision and the experience for learners. Appropriate arrangements for learner appeals should be in place and linked to the complaints resolution process.

Questions

Do you agree that learner protection arrangements should align with a common set of principles to ensure consistency for learners across the PCET sector?

Do you agree with the principles suggested? Are there any that should be omitted or additional principles which should be included?

Learner Protection and Progression Plans

126. As each PCET provider will have different arrangements in place which they consider best meet the needs of their learners, we need to consider how to make this information clear and easily accessible for existing and prospective learners. The White Paper asked whether there would be benefits in requiring higher education providers to produce student protection plans within outcome agreements. We suggest the plans should be 'Learner

Protection and Progression Plans' (LPP Plans) to reflect that they should include arrangements to support learners to progress in their learning that are wider than protecting learners against the impact of external factors such as course or provider closure. Based on feedback received through the White Paper consultation, there appears to be support for this approach across all PCET providers.

127. However, we suggest that school sixth forms should not be required to produce LPP Plans for the following reasons:

- there appear to be robust, well-established arrangements in place for pupil transfers through the CTF;
- to avoid additional administrative burden for schools in managing different arrangements for pupils pre-16 and post-16; and
- to avoid potential confusion for learners and parents etc. that may result from different arrangements for pupils pre-16 and post-16.

128. That said, while the CTF is effective for pupil transfer between schools, it does not cover transfers between schools and other types of learning provider. We will explore whether there are ways in which these types of transfers could be further improved in the future.

129. We propose that the Commission should be responsible for the approval and monitoring of LPP Plans, and that the operational process should be developed in full consultation with PCET providers and learners or learner representative bodies. We are considering what sanctions, if any, should be at the disposal of the Commission in relation to LPP Plans and we would like to ask stakeholders for their views on what these should be.

130. We have taken on board stakeholder feedback that a proportionate approach should be adopted which does not result in additional burdens for providers. For this reason, we do not intend to take a prescriptive approach; LPP Plans would be in a format appropriate to the provider and its structures, and could be incorporated into other documents where appropriate (such as academic handbooks, learner charters or learner support strategies). However, we do propose that each provider should be required to produce a concise, learner-friendly version of the LPP Plan to enable clarity and ease of comparability across PCET providers.

131. While it would be for the Commission to determine the detailed contents of plans in consultation with PCET providers and learner representative bodies, we would envisage that LPP Plans could include:

- processes to be followed in the case of course, programme, campus closure or sub-contractor failure and individual learner transfers. This might include:
 - setting up a task group and agreeing an action plan to manage the transfer of learners or a specific point of contact that learners could use to discuss their needs;

- arrangements to enable transfer to an alternative course/programme that recognises prior learning an achievement;
 - seeking alternative employers for work-based learning;
 - a commitment to ensure that existing learners can complete a course/programme;
 - options for alternative courses with the same provider;
 - the development of an individual learner transfer plan to ensure a smooth transition;
 - assistance with arrangements such as transport or childcare; and
 - careers advice and guidance;
- identification of staff roles and responsibilities;
 - specific arrangements for safeguarding learners' well-being and mental health, with particular consideration to meeting the needs of learners from protected groups or from vulnerable backgrounds, who may be disproportionately affected by disruption to the learning process (for example, care experienced young people; learners in receipt of additional financial support);
 - arrangements for promoting the LPP Plan to learners and for ensuring that it is easily accessible and available in a range of ways;
 - arrangements to ensure that provider staff (including teaching staff and student services teams) are given appropriate training and guidance, to support learners and signpost them to additional information and guidance;
 - arrangements for involving learners in the development of the LPP Plan, and in evaluating how well it is working in practice;
 - flowcharts or checklists to ensure that processes are followed consistently;
 - arrangements to ensure compliance with statutory requirements, including the General Data Protection Regulation and the Equality Act 2010;
 - clear identification of links to other organisational policies and strategies (including the complaints policy);
 - arrangements for reviewing the LPP Plan, to ensure that it is revised to reflect any changes to organisational processes and structures, and to incorporate 'lessons learnt' through implementation of the LPP Plan.

Questions

Do you agree with the suggested content for inclusion in a Learner Protection and Progression Plan? Is there anything that should be added or omitted?

What sanctions, if any, should the Commission have in relation to Learner Protection and Progression Plans?

Complaints handing and resolution arrangements

132. The White Paper recognised that different arrangements for complaints handing and resolution exist across the PCET sector.

- **Higher education institutions** - the QAA's Quality Code for Higher Education sets out principles for addressing academic appeals and complaints about the quality of learning opportunities by students in higher education providers. The Quality Code requires higher education providers to have procedures for handling academic appeals and student complaints about the quality of learning opportunities; these procedures are fair, accessible and timely, and enable enhancement. In addition, the Office of the Independent Adjudicator (OIA) provides information and guidance to members of the scheme on handling student complaints and academic appeals. HEFCW may consider complaints against a higher education institution in areas in which it has funding or regulatory powers, for example, complaints regarding an institution's financial or quality procedures. If a learner studying at a higher education institution has taken their complaint through the internal complaints process of their provider and they are not satisfied with the outcome they are able to refer their unresolved complaint to the OIA. The OIA is the designated operator for handling unresolved student complaints in HE in England and Wales. The OIA provides an independent, transparent complaints handling scheme to review student complaints and academic appeals. Learners studying on higher education courses at further education institutions and alternative providers of higher education that offer courses designated for statutory student support are also able to take their unresolved complaints to the OIA. Learners on higher level apprenticeship programmes that lead to higher education qualifications may be able to take an unresolved complaint regarding their higher education course to the OIA.
- **Further education institutions and work-based learning** – the Welsh Government's requirements for FEIs and WBL providers to have their own complaints procedures are set out in guidance, and in the programme specification for WBL. In 2015, an Estyn thematic review¹⁰ found that complaints procedures in FEIs were generally working, clearly documented and comprehensive, but that there were inconsistencies in how different FEIs defined and handled complaints. Following this review, the Welsh Government issued guidance to FE institutions and work-based learning providers on handling complaints. FE and WBL learners are unable to refer their unresolved complaints to an independent body. The Welsh Government has no legal powers to investigate unresolved complaints from individual learners, and they do not come within the remit of the OIA.
- **School sixth forms** – section 29 of the Education Act 2002 requires the governing bodies of all maintained schools in Wales, including nursery schools, to establish and publish procedures for dealing with complaints from parents, pupils, members of staff, governors, members of the local community and others. When establishing complaints procedures, governing bodies must have regard to any guidance issued by the Welsh Ministers, with the current guidance contained in the Welsh Government circular '*Complaints Procedures for School Governing Bodies in Wales 2012*'. This provides governing bodies with guidance in relation to establishing such procedures

¹⁰ <https://www.estyn.gov.wales/thematic-reports/how-well-do-further-education-institutions-manage-learner-complaints-may-2015>

and includes a recommended model complaints procedure. It also outlines the local authority's role in relation to complaints, where appropriate. Although the statutory responsibility for dealing with complaints remains with the governing body, local authorities should satisfy themselves that schools have adequate complaints procedures, and can provide advice and assistance to governing bodies on handling complaints. A local authority should also consider any evidence that suggests that a governing body does not have a complaints procedure, has an inadequate procedure, has not followed its procedure or has a procedure that is inoperable because persons who are subjects of the complaint investigate it or make decisions about it.

The Public Services Ombudsman for Wales (PSOW) also has a role in respect of complaints about schools in relation to a few restricted matters including school admissions, school exclusions and the provision of education for children with special educational needs. The PSOW may look into complaints about the actions of a local authority in respect of the administrative operation of a complaints or review procedure, this would not include a consideration of the substantive issues giving rise to the complaint.

Proposals for change

133. Based on the feedback from the White Paper consultation, we consider that all PCET providers should continue to have clear policies and procedures in place to enable a learner to make a complaint regarding their learning experience. We propose that the Commission should be responsible for ensuring that PCET providers have appropriate complaints procedures in place and communicate these effectively to learners. The Commission should also consider complaints against institutions which relate specifically to its regulatory role.
134. There was clear support in stakeholders' responses to the White Paper for the proposal that all PCET learners should have access to an independent body for unresolved complaints, i.e. complaints that have been addressed through a provider's complaint processes but the learner is not satisfied that his or her issue has been resolved, which is not currently the case. There are several potential ways that this could be achieved, such as including a specific ombudsman role within the Commission or the establishment of a new body for reviewing unresolved complaints in Wales. We have considered stakeholder feedback, the need to ensure indisputable independence, and other factors such as the costs, time, resources and the capacity building that would be required for establishing a new body for this purpose. Taking all of these factors into account we do not consider that the Commission should be responsible for unresolved learner complaints but propose to extend the role of the OIA as the independent body responsible for dealing with unresolved complaints across the PCET. Arrangements will need to be put in place between the OIA and the Commission to ensure effective liaison regarding complaints falling within the Commission's statutory role.

135. However, we are not proposing that school sixth forms be included in the proposals for complaint resolution for the following reasons:

- there appear to be robust, well-established arrangements in place for complaints about schools which must align with the Welsh Government guidance: Complaints Procedures for School Governing Bodies In Wales 2012;
- learners are able to request that local authority consider evidence that suggests that a governing body does not have a complaints procedure, has an inadequate procedure, has not followed its procedure or has a procedure that is inoperable because persons who are subjects of the complaint investigate it or make decisions about it;
- to avoid additional administrative burden for schools in managing different arrangements for pupils pre-16 and post-16; and
- to avoid potential confusion for learners and parents etc. that may result from different arrangements for pupils pre-16 and post-16.

Question

Do you agree that the current complaint resolution arrangements should remain in place for school sixth forms?

8. Strengthening the learner voice and representation

136. We intend that the Commission should be focused first and foremost on the needs of learners. Learners must have the opportunity to help shape the Commission's strategic plan and to provide feedback on the impact of the Commission's activities. We propose that learners should be represented among the membership of the Commission but more than that we wish to see the Commission, when it comes into operation, take concerted action to enhance learner representation and expand the learner voice over time.
137. Improvements in student satisfaction, achievements and employability need to be made available to all students in all post-16 providers - wherever they are based. This includes universities, further education colleges, work-based learning providers and school sixth forms.
138. The new Commission would be expected as part of its strategy to set out ambitious and measurable plans to strengthen the involvement of learner representatives in decision making. Learners are already represented on some but not all learning providers' governing bodies, but the establishment of the Commission presents an opportunity to develop more sustainable learner representation structures across all of the learning providers within the Commission's remit, building on the best practice that already exists. Learning providers will need to consider how they will support and fund these structures so that all learners, regardless of where and how they are studying, are listened to and their experiences used to help shape provision and measure quality. The Commission would be required to report annually on the steps taken by providers to work genuinely in partnership with learners through robust structures and sustainable funding models, and on the effectiveness of that engagement.
139. Higher education providers in Wales, in partnership with HEFCW and NUS Wales, have embedded partnership within our institutions, putting students at the core of their learning experience. This progressive approach to partnership within the sector and with HEFCW has meant that all students' unions in Wales now produce an annual quality report and every higher education provider has in place a student charter. The NUS Wales President is an observer on HEFCW's Council. Such collaboration has given rise to a culture of meaningful partnership between institutions, students' unions and students across Wales.
140. All post-16 education and training providers are encouraged under the Welsh Government's Learner Involvement Strategies Guidance to have a formal learner involvement strategy that places learners at the heart of decision making. Since the launch of the guidance in 2010, Welsh Government has funded a series of NUS Wales projects that helped providers develop learner voice structures and trained learner representatives. Welsh Government now contributes to Wise Wales, a collaboration of FE and HE sector organisations, which aims to create meaningful partnership between educators and learners across Wales. Wise Wales are now in the process of

developing a longer term strategy for learner voice activities at both colleges and universities.

141. The School Councils (Wales) Regulations 2005¹¹ made it a statutory requirement for all maintained schools in Wales to have a school council to ensure that pupil voice is represented in the development of school policies and procedures and any other matters of concern. In addition, schools are encouraged to develop holistic models to help all pupils have the opportunity to take part in consultation and decision-making, including working with the Senior Management Team and Governors to implement and review key policies.
142. As the Welsh Government Learner Involvement Strategies guidance states:
“Involvement in decision-making has proven benefits for learners. As well as making them feel more motivated and engaged in their learning experiences, it can help them to develop important skills which will equip them for their futures as active citizens. This will also help providers to improve their retention and achievement rates, by shaping a generation of learners who will actively work with staff to improve the quality of learning.”
143. If we truly believe in parity of learning there must be a baseline requirement to develop, support and adequately fund learner voice structures across the entire post-16 sector.

Reforming arrangements

144. On 9 October 2017, the previous Minister for Lifelong Learning and Welsh Language committed to consult on proposals to strengthen learner voice and representation across the whole of the PCET sector, building on best practice that already exists.
145. Feedback from our roadshows and responses to our White Paper emphasized the important role that learner voice should play in our reforms. Respondents felt that the learner should be at the heart of the system with most thinking that the current HE and FE arrangements had something to offer as the baseline. Student representation on boards was widely supported, with suggestions for stronger more formal structures across the sector.
146. Respondents recognised the importance of the strategic plan in addressing the needs of learners and businesses and suggested that planning should be focused on the needs of learners and on regional priorities. They felt that learners needed to be an integral partner in creating the strategic plan.

¹¹ S.I. 2005/3200 (W.236).

147. Respondents also felt that learners must be at the centre of the quality framework across all parts of the PCET system, with learners actively engaged in decisions relating to their experience.
148. The responses to the White Paper consultation indicated there is scope to strengthen the arrangements to protect learners studying at PCET providers in Wales. It was suggested that this could be more learner-centred and that arrangements should be in the interests of the learner, meeting each learner's personal circumstances, goals and aspirations with a focus on continuity of education. Learners should be fully involved in the development and implementation of learner protection arrangements.
149. Taking into account responses to our White Paper consultation, we have developed proposals for strengthening learner voice and representation in relation to the strategic plan, learner protection and quality assessment. We have recommended that:
- The Commission will be under an obligation to consult learners in preparing its strategic plan;
 - The Commission will involve learner representative bodies and learners in the development of Learner Protection and Progression Plans;
 - The Commission will ensure that learner engagement will be at the heart of the quality framework. Learners should be integrated as partners in the design and implementation of quality assurance and enhancement processes; and
 - Learner involvement will be at the heart of the external quality assessment model.
150. In addition the Welsh Government has a statutory commitment to assess any impact on learners in developing legislative proposals. A range of statutory assessments is being prepared including a Children and Young People and Equality Impact Assessment alongside this consultation. These assessments will help ensure that the impact of the reforms on learners from a range of different backgrounds are taken fully into account. Contributions from stakeholders which will help in the development of these assessments, and ensure all the impacts are considered would be particularly welcome.
151. We recognise that consistency in principles and values is important, but that a 'one size fits all' approach may not be the best way forward. In developing our proposals further it will be necessary to take account of the needs of learners across the full range of learning settings. There are good examples of best practice across the PCET sector, but further benefits could be gained from strengthening arrangements and applying an agreed and consistent set of principles to learner representation across the whole sector.

How this will be achieved

152. We believe that the establishment of the Commission offers an opportunity to explore ways to strengthen learner representation across PCET.
153. We have worked with key stakeholders to look at options for a more consistent learner representation across the sector.

Outcome agreements

154. As a regulation and outcome agreement model (ROA) is proposed it is suggested that learner representatives would be involved in developing the outcome agreement element of the regulation and outcome agreement and that the Commission would require learner involvement in this.
155. However, for sixth forms this would need to be less direct with the Commission requiring evidence of how schools take account of the views of their sixth form learners. This would help to ensure that the Commission would be confident that the outcome agreements negotiated with the local authorities are reflecting learner views and aspirations.
156. WBL providers are exempt from the regulation and outcome agreement requirements because they must already fulfil thorough contractual obligations that would include the types of issues covered in the ROA. It is proposed that the commitment to learner involvement is included in the contract between the Commission and the learning provider.

National Framework

157. In addition, the establishment of a new national framework of principles is proposed, shown in figure 1, to bring consistency across the PCET sector. This would be drawn up in consultation with learners, providers and representative bodies. It is proposed that this framework should provide clarity around the themes and underpin strong, effective and sustainable learner representative bodies, providing flexibility and ensuring that all learners have access to effective learner-led representation.

Figure 1

Partnership	Partnership is a relationship between the provider, learners and learner-led representative body who work together to co-create the best possible educational environment and experience. This is an equal relationship based on mutual value, trust and respect.
Autonomous	An autonomous learner-led representative body is one which enables independent learner voice to be articulated and can ensure that voice will be heard at the highest levels.

Accountable	A learner-led representative body, accountable to its members on what it says and does on their behalf. There are clearly defined lines of accountability for its policy decisions and performance.
Representative	A learner-led representative body takes its mandate from its members through its democratic processes. It speaks on their behalf with a collective, informed and evidenced voice which can create change for its members. Its officers are elected through fair and free elections.
Sustainable	A sustainable learner-led representative body is able to function effectively and deliver its core representative purpose year after year. There is continuity of organisational memory, skills, plans and structures.

Questions:

Do you agree that consistent principles and values should be developed for learner voice and representation and that learning providers should be required to adhere to these?

Do you agree that learner representatives should be involved with developing the outcome agreement element of the ROAs?

Do you agree with the proposal to develop a national framework for learner voice and representation? Do you think this would work for all learning providers?

If so, do you think responsibility for establishing the proposed national framework should sit with the Commission?

Should the Commission work with all educational providers in Wales to ensure the establishment of learner-led representative bodies are adequately resourced and supported?

9. Quality assurance and enhancement

158. The Hazelkorn Report recognised that the quality assurance landscape in Wales is complex, with a number of different bodies involved. Professor Hazelkorn acknowledged that, overall, the current quality and performance of PCET providers is good. However, her report raised a number of challenges related to the effectiveness of the quality system, including:

- FEIs and HEIs are too focused on their own agendas, with little evidence of genuine working relationships and too little discussion about the needs of learners, their pathways and transitions across the system;
- the system as a whole is too focused on the short to medium term, rather than delivering a longer-term vision for learners;
- criticisms were made by different parts of the system about the quality of education and the level of preparedness for learners progressing;
- many stakeholders identified a need for better co-ordination and collaboration across the system, and for more positive relationships between sectors;
- given the diversity of the PCET system and its institutions, having strict boundaries between parts of the system is no longer desirable; and
- a lot of data is being gathered, but not being thought about in a coherent cross-governmental way.

159. Learning providers in all PCET sectors have their own quality systems, with self assessment undertaken regularly and used as the starting point for external assessments. In many cases, providers have mature and effective systems which rigorously evaluate the quality of teaching and learning, learner outcomes and the effectiveness of leadership. In the strongest, learners are fully engaged as partners in all aspects of quality assurance and enhancement.

160. However, the current arrangements for external quality assessment make it difficult to look holistically at the performance of the PCET system, as existing legislation gives different bodies statutory responsibility for quality in different parts of the system. HEFCW has developed a Quality Assessment Framework in line with its statutory remit for quality in higher education. Under this framework, regulated HE providers currently contract with the QAA to undertake external quality reviews of their provision. Estyn has a statutory remit to inspect all other PCET provision, as well as initial teacher education. Some institutions (such as FEIs which deliver HE and universities which deliver initial teacher education) fall within the remit of both bodies. Sixth forms are inspected by Estyn as part of secondary school inspections, with no separate judgements. As different terms are used, we have adopted the term 'external quality assessment' in this document as shorthand to encompass this range of external quality assurance and inspection arrangements.

161. It is important to recognise that the current arrangements are well established, and that the agencies which undertake external quality assessment are respected and trusted by providers. We do not want to lose the strengths of the current arrangements. However, if we are to achieve our goal of a more strategic, sustainable PCET system, it needs to be underpinned by a coherent quality framework.
162. Stakeholders have told us that, while they value many aspects of the current quality arrangements, they feel that external quality assessment can sometimes be too focused on processes and/or metrics. There is support for a single quality framework with learners, their experiences and outcomes at its heart, and the establishment of the Commission offers the opportunity to design this overarching framework. We will always need to use data to evaluate standards and progression, but there is scope to use it in a far more strategic way to measure the effectiveness of the PCET system as a whole (for example, through the use of data linking to analyse learner destinations). We also need to ensure that quality assessment arrangements evolve to keep pace with wider system changes; for example, the blurring of sector boundaries through HE/FE group structures, FE institutions leading WBL consortia, and the development of Degree Apprenticeships. Sixth forms and colleges sometimes work together to broaden the curriculum offer for learners, and we want to see this practice extended. A more holistic model for quality assurance and enhancement would accommodate these delivery models, without being constrained by traditional sector boundaries.
163. We have also considered what role the Commission should have in relation to quality enhancement. We recognise that individual learning providers are responsible for identifying their own improvement targets and priorities, informed by their annual strategic planning and self-assessment cycles. However, the Commission could help to secure a more coherent approach and to promote collaboration and sharing of best practice between sectors. Through the proposed planning mechanisms set out above and the implementation of Regulatory Outcome Agreements with PCET providers, we also expect the Commission to act strategically to help raise the quality of provision and learner outcomes system-wide.
164. There are many examples of successful projects and programmes to support capacity building and improvement in PCET. Both the FE and HE sectors have development programmes for senior leaders. Through its Investing in Quality fund, the Welsh Government has supported a range of projects, professional learning and action research in the FE and WBL sectors, most recently to help providers comply with the Prevent duty and to improve support for more able and talented learners. In the HE sector, the Higher Education Academy, QAA and the Leadership Foundation for HE¹² all carry out quality enhancement work, some of which focuses on specific themes. For schools, a range of quality improvement initiatives is delivered by Regional Education Consortia, although in most cases their focus on sixth

¹² Following a review of HE sector agencies by Sir David Bell, the HE Academy, Leadership Foundation for HE and the Equality Challenge Unit will be merged into a single UK body from 2018.

forms has been limited until very recently. However, some initiatives have been linked to short-term funding and there have been variations in the support available in different sectors, rather than a more strategic, sustainable approach that reflects priorities for the broader PCET system. Learning providers in different sectors are facing many of the same challenges and, of course, many learners progress through different parts of the system; so there is a strong argument for a more strategic, joined-up approach to enhancement, complementing and building on the roles of individual learning providers.

White Paper responses

165. The majority of respondents to the White Paper were supportive of a more joined-up approach to quality, as long as there is sufficient recognition of sector context. Stakeholders told us that:

- they recognised the need for a more consistent approach to quality across the PCET system, and were generally supportive of an approach based on shared principles;
- quality assessment arrangements must be tailored to reflect sector context, rather than a 'one size fits all' approach. Many respondents advocated building on the strengths of existing arrangements and bringing them together in a more coherent way, rather than introducing completely new requirements;
- national and international comparability is vital for the HE sector, and must be incorporated into any new quality framework;
- there are some opportunities to streamline and to reduce bureaucracy;
- metrics are important, but they have to be the right ones and must be considered in context. The Commission should consider longer-term outcomes, especially employability, and at widening access indicators, rather than focusing only on short-term indicators;
- learning providers should continue to be responsible for self improvement and should have ownership of their own quality and standards, in the context of institutional autonomy;
- learners must be at the centre of the quality framework across all parts of the PCET system, with learners actively engaged in decisions relating to their experience; and
- the Commission should have a role in driving forward quality enhancement, including co-ordinating activities across different bodies, supporting collaboration, disseminating good practice between different parts of the PCET system, and helping to ensure a strategic focus.

Proposed approach

166. Subject to what we say below about sixth forms, we propose that the Commission should have a statutory responsibility for quality assurance and enhancement across all of the PCET providers it regulates. The Commission

would be placed under a statutory duty to develop a quality framework based on common principles, but with enough flexibility for sector-specific approaches that reflect the context, ways of working and level of autonomy of different providers. The Commission would be mandated to consult with stakeholders in developing the framework, including PCET providers and learner representative bodies. It would also be required to establish a statutory Quality Committee.

167. In respect of sixth forms it is not yet determined whether they will be included in this aspect of the proposals. Professor Donaldson is carrying out an independent review of Estyn's inspection of schools which is due to report in May 2018.¹³ The Government will need to consider the proposals which emanate from that review before finalising whether or not to include sixth forms in this aspect of its proposals for the Commission. Should the review be silent on this matter then it is our intention to include sixth forms.

The quality framework

168. There are already some common features in the existing QA arrangements. For example, self-assessment, peer review and learner involvement are seen by most providers as strengths of both Estyn inspections and QAA reviews. We believe that there is scope to build on these features and incorporate them into a more coherent and streamlined quality framework which is inclusive of the whole PCET system.

169. We propose that the Commission should be responsible for developing the framework, which would include:

- arrangements for external quality assessment;
- monitoring of provider performance and standards by the Commission;
- mechanisms to address inadequate quality and support improvement;
- quality enhancement, including co-ordinating and support for professional learning, leadership development and cross-sector sharing of good practice; and
- oversight of quality and standards across the PCET system, including reporting to Welsh Ministers.

170. Based on the Hazelkorn Review, our mapping of current quality arrangements and feedback from stakeholders, we have developed a proposed set of principles to guide the Commission in developing its quality framework. These are intended to provide the foundation for a coherent approach across the whole PCET system, so it is important they are endorsed by learning providers and other stakeholders. They need to be specific enough to be meaningful, but general enough to be applied flexibly to reflect the context and level of autonomy of providers in different sectors, taking account of whether they work locally, nationally and/or internationally. We

¹³ <https://www.estyn.gov.wales/news/drive-improve-education-heart-estyn-review>

intend that the Commission will further develop and finalise the principles, in consultation with stakeholders.

171. Proposed guiding principles for the quality framework:

- (i) Learner engagement should be at the heart of the framework. Learners should be integrated as partners in the design and implementation of quality assurance and enhancement processes.
- (ii) Learning providers should be responsible for internal assurance of their own quality and standards, working within the overall quality framework established by the Commission and in line with their own statutory and/or contractual responsibilities.
- (iii) The framework should incorporate and build on the strengths of existing quality arrangements for different sectors, and bring them together into a more coherent, consistent and streamlined approach.
- (iv) The framework should seek to assure the quality of teaching, and will reflect trust in the expertise and judgement of teaching, learning and academic professionals. The Commission should support continued professional development of teaching, learning and academic professionals across the PCET sector.
- (v) The framework should evaluate how well the PCET system is securing value for money and achieving sustainable outcomes for learners, employers, the Welsh economy and society. The cost effectiveness of provision should be assessed. Employers and relevant professional or statutory bodies should be involved in the assessment of quality.
- (vi) The framework should build in flexibility to evolve in the light of experience, and to enable the Commission and PCET providers to respond to new priorities and policies where required.
- (vii) External quality assessment should be tailored appropriately to reflect each sector's context, and undertaken by agencies with relevant sector knowledge and expertise. Where an institution delivers learning across more than one PCET sector, a holistic partnership approach should be taken.
- (viii) External quality assessment should be robust but proportionate, should not create unnecessary bureaucracy, and should respect the principles of institutional autonomy and academic freedom.
- (ix) The framework should promote collaboration, and identify and share best practice across the whole of the PCET system. External quality assessment should include thematic and geographic reviews that look at the effectiveness of the entire system in meeting learners' needs, as well as assessments of individual providers and sectors.
- (x) The framework should promote activities designed to enhance the quality of provision and learners' experiences.

- (xi) Where underperformance is identified, learning providers should be given the opportunity and support to improve before intervention is considered.

Question

Do you agree with the proposed overall principles for the quality framework? Should anything be added, removed or changed?

Securing external quality assessment

172. Subject to what we say below about sixth forms we propose the Commission should be placed under a statutory duty to ensure that the quality of education and training across all PCET sectors is assessed. We think that giving the Commission this role is essential in order to establish a more coherent approach to quality assessment across the whole PCET system.
173. In respect of sixth forms it is not yet determined whether they will be included in this aspect of the proposals. As noted above Professor Donaldson is carrying out an independent review of Estyn's inspection of schools and the Government will need to consider the proposals from that review before finalising whether or not to include sixth forms in this aspect of its proposals for the Commission. Should the review be silent on this matter then it is our intention to include sixth forms.
174. We are considering how external quality assessment can best meet the needs of the PCET system as a whole, given our starting point with different arrangements in place for different sectors. The establishment of the Commission offers a real opportunity to develop a new approach, which is informed by the best aspects of current quality systems within Wales and internationally.
175. For the HE sector, it is crucial that any external quality assessment arrangements ensure UK and European comparability. For all PCET sectors, assessment must be undertaken by agencies with appropriate experience and credibility. Involvement of peer reviewers in assessment and enhancement support is crucial to any quality regime. We envisage that the Commission should also be able to engage international expertise in support of all external quality assessments, in order to ensure quality in Wales compares against European and international benchmarks. In doing so, the Commission would be well placed to challenge preconceptions and established ways of working and learn from good practice wherever it may be found.
176. Many of the White Paper responses, particularly those from learning providers, focused on quality arrangements at the institutional level. We believe that, while assuring the quality and standards of individual providers is essential, it is also important to consider how learners' experiences and opportunities can be evaluated on a thematic and geographic basis, looking across institutional and sector boundaries.

177. Our preference would be for the Commission to work with a single designated body which can develop and operate a quality assessment framework on its behalf across all PCET providers, with the exception of sixth forms (see below). At this stage we envisage that any such body would need to:

- Demonstrate experience and expertise across the full range of PCET provision within the scope of the Commission's responsibilities;
- Develop a model for quality assessment which works across the PCET system, including appropriate 'tailoring' to reflect sector context where appropriate;
- Ensure that learner involvement is at the heart of the quality assessment model;
- Meet the requirements of the UK Quality Code and the European Association for Quality Assurance in HE (ENQA);
- Ensure comparability of provision against European and international benchmarks;
- Ensure that the design and delivery of quality assessment reflects the Welsh language and culture; and
- Be flexible enough to adapt its approach in response to sector and learner feedback, direction from the Commission, and Ministerial priorities for the PCET sector.

178. As set out in the proposed principles above, it would be for the Commission to ensure that external quality assessments are tailored to reflect the context of different types of provider. Responses to the White Paper emphasised the importance of this contextualised approach, and highlighted some of the strengths of current arrangements which should be maintained.

179. We recognise that this would be a significant change, and would require a rigorous process to select and appoint the quality assessment body. We are not making any presuppositions about which body would be most suitable, and anticipate that the Commission may look beyond Wales for a suitable organisation. We are not anticipating that the Commission will simply adopt one of the existing quality assessment models, but that a new, system-wide approach will be developed in partnership with learners and providers.

180. We think that in light of the Commission's proposed sector wide role, there are strong arguments for using a single body to undertake quality assessment, including greater coherence, the opportunity to develop a new model aligned to our ambitions for the PCET sector, and reduced bureaucracy for providers which operate across sector boundaries. Of course, there are also likely to be risks involved with this approach, and we would need to ensure sufficient flexibility to allow for alternative approaches to quality assessment. We are using this consultation to seek stakeholders' views on our proposed approach, and to help us identify potential issues that might arise.

181. The funding of external quality assessment will need to be considered as we develop more detailed proposals, and this may include a subscription model for learning providers (currently, HE institutions pay fees for external quality assessments, while other PCET providers do not). This will be subject to further consultation with learning providers when the various options have been worked up.
182. We propose that Estyn would retain its statutory responsibility to inspect sixth forms as part of secondary school inspections, to avoid excessive bureaucracy for schools. As Estyn's role in inspecting education is currently being reviewed by Professor Graham Donaldson, we will need to ensure that any findings from his review that impact on sixth forms are taken into account as we develop more detailed proposals on how this would work in practice. However, it is likely that this would require the Commission to work closely with Estyn to ensure that secondary school inspections consider and report on sixth forms in sufficient detail, and that they align with the approach to quality assessment across the wider PCET sector. This will strengthen the focus on quality and standards in sixth forms and their position in the overall PCET landscape, without creating unnecessary bureaucracy for secondary schools.

Questions

With the exception of school sixth forms should a single body be designated to undertake external quality assessment of all PCET provision? Please explain the reasons for your response, and any particular positive or negative impacts that you anticipate.

Supporting quality enhancement

183. Stakeholders have asked us for a definition of the term 'quality enhancement', in order to help define the desired role for the Commission. The White Paper responses showed that, in some cases, there were different interpretations of what the term meant, and a few respondents were concerned that it implied an increase in accountability. We propose that a definition of enhancement should be used by the Commission to inform its work, while recognising that providers will need to consider what enhancement means in their own context. We would welcome views on the proposed definition of "quality enhancement" below:

Processes and activities designed to improve, strengthen and enhance the quality of learning and the learner experience. This could be at subject, programme, provider, sector and/or PCET system levels.

184. Based on the Hazelkorn Report and subsequent consultation with stakeholders, we believe that the Commission should have a statutory role in quality enhancement across the PCET system. This does not necessarily imply that there are shortcomings that need to be addressed, but that all provision, even the very best, can improve and develop; and that the overall

system, as well as its individual providers, needs to adapt in response to new priorities and innovations. Giving the Commission a statutory role would help to ensure that quality and excellence are placed at the centre of programme planning and delivery, and would give providers from different sectors opportunities to support and learn from one another. This opportunity to share good practice across sector boundaries was seen by White Paper respondents as particularly valuable.

185. Learning providers are responsible for the enhancement of their own provision, and we recognise they are best placed to identify their own organisations' and learners' needs. The Welsh Government does not propose to change this, nor to undermine providers' autonomy in determining their own priorities for enhancement in partnership with their learners (although there may be situations where the Commission will need to play a more active role in requiring improvement at provider level, if there is evidence of inadequate or declining quality). The Commission's oversight role would add value and coherence to what individual providers are doing, through:

- helping to secure more efficient delivery through co-ordinating collaborative regional, sectoral or all-Wales enhancement activities, where appropriate;
- ensuring that these strategic enhancement activities support the sector to respond to national priorities;
- facilitating cross-sector dissemination of best practice, and ensuring a joined-up approach to enhancing learners' experiences as they progress through the PCET system;
- publishing and/or signposting relevant support and guidance for providers; and
- bringing in additional support where inadequate quality or standards are identified.

186. Quality enhancement needs to be fully integrated with quality assurance processes, rather than seen as a separate domain. This connection should already be made at provider level, with self-assessment and external quality assessment identifying recommendations or areas for development that are then incorporated into a cycle of continuous improvement. It works less well at sector and system levels, and the Commission would be able to drive forward a more strategic, sustainable approach.

187. It is envisaged that the Commission would play a co-ordinating and brokering role, working closely with other agencies, rather than duplicating their work. Its quality enhancement activities might include:

- issuing guidance and resources;
- disseminating best practice;
- commissioning or subsidising professional learning;

- supporting networks, conferences and other events;
- commissioning research and evaluation;
- funding provider-led initiatives and action research;
- monitoring the impact of enhancement activities and evaluating ‘what works’; and
- working with learning providers, agencies undertaking external quality assessment, and other partners to identify system-wide priorities for enhancement.

188. We would anticipate that the Commission would have a key role in working with Regional Education Consortia to ensure that sixth forms are appropriately integrated into these activities.

Questions

Do you agree with the proposed definition of quality enhancement? If not, what would you change?

Do you agree with the proposed scope of the Commission’s role in relation to quality enhancement? If not, what would you change?

Workforce development

189. The establishment of the Commission could also bring opportunities for a more strategic approach to workforce development and planning across the PCET system. As with quality enhancement, no single body currently has a system-wide overview. We recognise that providers have their own responsibilities for recruiting and developing their own staff, and that a ‘one size fits all’ approach would not work across all sectors. We propose that the Commission’s role might include developing a more strategic approach to supporting career progression and professional development for PCET practitioners. This could include:

- a strategic role in supporting workforce planning and teacher recruitment;
- helping to define more clearly career routes for teaching professionals in PCET, including a central point for signposting entry qualifications and available professional learning;
- helping to establish greater parity and portability for qualified teachers between the school and FE sectors;
- establishing an overall framework for pedagogy, professional learning and leadership development, within which sector- and system-wide investment priorities could be set; and
- owning professional teaching standards for the FE and WBL sectors, and ensuring that they are regularly reviewed and refreshed.

190. The strategy would be developed and delivered in consultation with learning providers, working closely with partners such as the Education Workforce Council, the new UK higher education agency, and the new National Academy for Educational Leadership.

Question

How could the Commission's role in workforce development be tailored to reflect the needs of different sectors and providers?

10. Sixth Forms

Background

191. Currently 71% of secondary schools in Wales have a sixth form and each year nearly half of 16 year olds who continue in full-time education do so in school sixth forms¹⁴. Although sixth forms are clearly not part of compulsory education they are different to other parts of the post-compulsory sector in that they are not stand-alone entities. Rather, they are part of a school and are therefore linked to the compulsory sector in a way that other parts of the post-compulsory sector are not.
192. The Welsh Government has a duty under the 2000 Act to secure the provision of education and training suitable to meet the reasonable needs of learners aged 16-19. This duty is partly discharged by providing grants to local authorities to fund sixth form in their area. The duty is also discharged by the funding of the FE sector and other providers.
193. The internal governance of sixth forms is the responsibility of the school's governing body and they do not have a separate status from that of the secondary school to which they belong. The head teacher is responsible for the day to day management of the school but is likely also to be a governor. Local authorities are responsible for the maintained schools in their area and have a range of functions in respect of those maintained schools, mainly relating to the provision of resources.
194. Some schools have been formally designated as 'having a religious character' by way of an Order. That designation allows the appropriate religious body to appoint certain governors to the governing body. These are voluntary aided schools and in such schools the governing body contributes towards the capital costs of running the school.
195. Compulsory schooling is funded by local authorities from their revenue support grant. Local authorities delegate part of this funding to the schools themselves. However, as mentioned above, funding for school sixth forms is by way of a discrete grant from the Welsh Government to local authorities which is then provided to schools, but it is allowable for the local authority to retain a small percentage for its own costs relating to sixth forms such as administration. The local authority is required to provide a Certificate of Expenditure to the Welsh Government stating that the funding has been given to schools with a sixth form. Schools themselves manage their delegated funding according to their priorities.

¹⁴ The rate going on to sixth form dipped below the rate going to FE for the first time in 2016. Prior to that it had been consistently higher. CW destinations surveys.

<https://www.careerswales.com/en/professionals/pupil-destinations/>

196. In calls for greater coherence in the post-compulsory sector in Wales Professor Ellen Hazelkorn in her report *Towards 2030* stated that this should include sixth forms. However, later in the report it was stated that further consideration needed to be given to whether they should come under the ambit of the Commission or remain within current governance arrangements. It was in this context that we approached the consultation on the White Paper *Public Good and a Prosperous Wales – Building a reformed PCET system*.

White Paper consultation

197. For the consultation on the White Paper three questions were asked about sixth forms:

- Should the Commission have responsibility for the planning, funding and monitoring of school sixth forms?
- Should the Commission have any other role in relation to school sixth forms, for example provider registration, quality assurance and enhancement, and governance?
- Should the Commission be established without including sixth forms within its remit, but with the option of doing so at a later date?

198. The majority of respondents expressed the view that sixth forms should be included within the remit of the Commission from the outset, mainly for reasons of generating coherence in the post-compulsory sector and ensuring parity of esteem between the different types of education. Those in favour were the further education institutions and their representative body, some employer groups, NUS and local authorities.

199. A minority were against the inclusion of sixth forms in the remit of the Commission due to them being part of a school. They also felt that governance arrangements are well established and effective and that including sixth forms would add additional layers of governance and accountability. The main respondents here were from the school sector, including some local authorities and the Welsh Local Government Association. It should be noted that responses from the school sector were relatively low.

200. A small number of respondents were keen for sixth forms to be an option for inclusion at a later date, so as not to over burden the new Commission at the outset or to see how things develop before adding sixth forms. This is the view of most of the higher education sector, some unions and others.

Proposals

201. Following the responses to the White Paper consultation we are proposing to include school sixth form provision within the remit of the Commission. We are especially keen to hear more from the schools sector in

response to this technical consultation following their relatively low engagement with the White Paper consultation.

202. It should be stated at the outset that when we refer to sixth form provision being within the remit of the Commission we do not propose to remove sixth forms from schools to create a tertiary system, nor do we propose to remove them from the current governance and staffing arrangements of a school. The planning and funding of sixth form provision are currently done separately from those of compulsory education and the intention is that the Commission would take on and develop this further. So, as far as sixth forms are concerned, the proposal is that the Commission is given the Welsh Government's current functions in, amongst others, section 31, 33, 34, 35 and 36 of the 2000 Act. Therefore, the Commission will work at a strategic level as regards sixth form provision, whilst at an operational level much of what currently takes place will remain the same, or largely the same. The only reason for any change to current arrangements would be to improve educational opportunities and outcomes for learners, and/or the quality of provision.
203. The reason for proposing to bring school sixth form provision within the remit of the Commission is that whilst good collaboration exists there is also some inefficiency and competition.¹⁵ Giving the Commission a remit for sixth form provision would provide an opportunity to have a strategic view of tertiary education thus promoting collaboration between providers across the 14-19 age group and reduce unnecessary duplication. It is acknowledged that, in developing its strategic plan, the Commission will consult with local authorities regarding sixth form provision within their boundaries and develop a relationship with the regional education consortia to enhance the quality of provision and outcomes for sixth form learners.
204. As noted in Chapter 6, we propose that the Welsh Ministers no longer have the duty to secure the provision of education and training suitable to meet the reasonable needs of learners aged 16-19. Instead the Commission will be given that duty and also funding powers. In light of that it is proposed that the Welsh Ministers will not retain the power in section 71 of the School Standards and Organisation (Wales) Act 2013 to propose new sixth forms or close existing sixth forms. Instead that power will be given to the Commission.
205. The specifics of this proposal regarding sixth form provision are explored further under the headings below:

¹⁵ Welsh Government (2016) A Think Piece on the possible options for improving the performance and efficiency of sixth forms in Wales, Crown Copyright. <http://gov.wales/statistics-and-research/think-piece-possible-options-improving-performance-efficiency-sixth-forms/?lang=en>

Regulation

206. It is proposed that the regulatory system for sixth form provision will operate at the local authority level so that regulation and outcome agreements are between the Commission and the authorities rather than with individual schools. This is because sixth forms are part of a whole school, and the burden of making a head teacher and a school's governing body accountable to an additional body would both increase bureaucracy and be unnecessary to achieve the Commission's strategic objectives for the sector. Dealing with around 150 secondary schools as opposed to only local authorities would also have far reaching effects on the constitution and operation of the Commission.

207. Our proposals for ROAs are set out in chapter 5 as are the consultation questions regarding their operation. We propose to make provision for the Commission to enter into the ROAs and for the enforcement of them in the event of a breach by a provider or local authority. In respect of school sixth form provision it is proposed that ROAs would be entered into between the Commission and local authorities, who would represent the relevant schools in their area. ROAs would be a statutory requirement and would consist of two elements:

- Part I - a regulation element, with which each local authority would be required to comply; and,
- Part II - an outcome agreement element, which each local authority would negotiate with the Commission and would reflect the circumstances of sixth form provision within that local authority, as well as the Welsh Government's strategic priorities.

208. Satisfaction of the regulatory requirements would provide evidence of the providers' viability and their suitability to receive public funds. In respect of the regulatory oversight element of ROAs local authorities already have mechanisms in place to ensure that schools are properly regulated and that financial viability, good governance and learner protection are secured. Consideration will need to be given to the regulatory information that local authorities would be required to share with the Commission on sixth form provision in their area.

209. In respect of the outcomes to be funded it is proposed that the Commission would negotiate part II of ROAs with local authorities rather than with individual schools. Local authorities will need to engage with the governing bodies of schools in their areas to ensure that the learning opportunities proposed for post-16 learners in each school are in line with the Welsh Government's overarching policy and the Commission's strategic plan.

210. Consideration will need to be given to how the Commission could, through the establishment of appropriate monitoring and enforcement arrangements, ensure that the outcome element of approved ROAs is properly delivered. This would require giving the Commission the power to apply penalties, in the event of failure, although consideration would need to be given to mitigating circumstances. Where the Commission was not fully

satisfied about the content of the ROA, there could be an option to give the Commission the power to decide which of the proposed activities it would be prepared to fund. In addition, powers could be given to the Commission to allow an element of funding to be withheld or reclaimed, where a ROA had not been properly carried out. This would require giving the Commission the power to hold back funding into the next financial year. It might also be necessary to consider whether further interventions might be necessary.

211. The regulation and outcome agreements in respect of sixth form provision will look to reduce or remove unnecessary competition, promote collaboration and possibly direct the responsible authorities to bring sixth forms together in a collaborative partnership in situations where it would be beneficial to learners in terms of factors such as travel, curriculum breadth and/or where inefficient duplication remains. Regulation and outcome agreements will be able to take account of the need to maintain and enhance Welsh-medium provision ensuring curriculum breadth to support the Welsh Government ambition of reaching one million Welsh speakers by 2050.

212. The responsible authority would, in line with their regulation and outcome agreement, be expected to make an annual return to the Commission on sixth form education noting the location of their sixth forms, numbers of learners, subjects available and Welsh-medium provision. These returns, as well as other data would be used by the Commission in determining future regulation of the sector as well as reporting to Welsh Ministers.

Governance

213. It is not proposed to change school governance arrangements. Governors will still be responsible for the whole school, including its sixth form.

School organisation

214. This refers to the process for opening, altering or closing a school and the decision to open or close a school sixth form would be a regulated alteration under the School Standards and Organisation (Wales) Act 2013 ("the 2013 Act"). These are subject to consultation and are resolved by the local or diocesan authority unless the authority itself is for or against the decision. In such cases the decisions are taken by the Welsh Ministers.

215. Under section 42 and Schedule 2 to the 2013 Act local authorities may make proposals to add or remove school sixth forms at community schools. Local authorities may also make proposals to add or remove school sixth forms at voluntary and foundation secondary schools, but only if they have first gained the consent of the Welsh Ministers to do so. The governing body of such schools may also make proposals to add or remove school sixth form in such schools. If a local authority does propose to open or close a sixth form then it has to come to the Welsh Ministers to determine.

216. Under section 71 of the 2013 Act the Welsh Ministers may also publish proposals to add or remove school sixth forms. The Welsh Ministers have this power to help enable them, if necessary, to meet their duties under section 31 of the 2000 Act – securing the provision of proper facilities for the education and training of 16-19 year olds. Given that it is proposed that the duty to secure such provision will be the Commission's, we think it is rational that the section 71 power is also given to the Commission.
217. However, in light of the Commission's proposed responsibilities for determining RAO and funding all post-16 learning provision, including that delivered by school sixth forms, we propose to give the powers currently held by the Welsh Ministers in this area to the Commission so that it will decide on these matters as it will have the appropriate strategic overview of the sector.

School admissions

218. School admissions, including admissions to a school's sixth form are the responsibility of an Admissions Authority. This Authority is the local authority for a community of voluntary controlled schools and the school's governing body for voluntary aided and foundation schools. It is not proposed to change current arrangements.

Funding and planning

219. Sixth forms are currently funded from a grant paid to the local authority by the Welsh Ministers. This is then added to the authority's education budget but they are required to confirm by letter that it is being spent on post-16 education. Once received, they are able to retain three percent of the total for general post-16 expenditure before distributing the remainder to their schools according to the authority's priorities.
220. It is proposed that this grant will be part of the Commission's overall budget. The Commission will then allocate a part of that budget for funding sixth forms and distribute it to local authorities following the establishment of a regulation and outcome agreement between the Commission and the authorities, and in line with the Commission's strategic plan as agreed by the Welsh Government. As stated in the above chapter entitled 'Strengthening the link between planning and funding' these funds may be hypothecated. Their ability to retain a percentage of the funds will be a matter for the Commission but the authorities' ability to distribute funds to their schools according to the authority's proprieties will be unaffected. It is proposed however that the authorities in receipt of this funding will need to report to the Commission on the use of the retained funding and the allocation to their schools and the reasons behind their allocations by way of an annual return to the Commission. This return would outline how the funding was spent and the effect this has had on standards and quality of sixth forms.

Quality assurance and enhancement

221. We are proposing that sixth forms would still be inspected by Estyn as part of secondary school inspections. Although a final decision on the quality assurance of sixth forms is dependent on the Donaldson review of Estyn, a possibility is that current arrangements would need to be revised so that a judgement on the quality of a sixth form is provided separately from that of the whole school, and that this judgement is able to be compared with other elements of the post-compulsory sector, especially further education. This would not mean an extra inspection, rather the judgement on a school's sixth form would be made during a whole school inspection and Estyn would be required to provide an early copy of the report to the Commission.
222. If a school, including its sixth form, is judged as needing improvement then the 2013 Act allows for interventions by the local authority and/or the Welsh Ministers to take place. We propose that the Commission should be kept informed of an intervention and if it were not content with the improvement of a sixth form of a school in special measures then we propose that it could recommend a course of action to the local authority or Welsh Ministers, dependent on which is intervening.
223. As school teachers are employed to teach across a whole school and not specifically for the sixth form it is not proposed to change current arrangements in this regard in terms of their employment, registration or professional learning.

Questions

Should the Commission have any other powers to instigate a regulated alteration in terms of a sixth form such as closure, or is this better achieved via the negotiation of Part II of the ROAs?

What reporting should be required of the local authority to show effective use of funding given for sixth form provision?

Is the role of the Commission when a sixth form is judged as causing concern appropriate, or should it be different in some way?

Are there any other powers the Commission should have as regards sixth form provision?

11. Supporting and developing apprenticeships in Wales

224. The Welsh Government's skills policy is to invest in training which will provide economic and social returns; investing in growth sectors and occupations to address skill shortages and gaps that hold back productivity and growth. Apprenticeships are our key employer-led programme where the curriculum is built around employer needs.

225. An apprenticeship is not a qualification in itself but a programme of learning specified in a framework usually designed by the relevant Sector Skills Council or standard setting body. The apprenticeship contains a number of different qualifications, all of which must be achieved in order to complete the framework. The frameworks are designed to equip learners with transferable skills relevant to the wider industry, as well as the specific skills associated with each framework.

226. The International Labour Office (ILO) has provided a short definition of apprenticeships which reflects our programme in Wales:

Apprenticeship is taken to denote training programmes that combine vocational education with work-based learning for an intermediate occupational skill (i.e., more than routine job training), and that are subject to externally imposed standards, particularly for their workplace component.¹⁶

227. Our policy is to align apprenticeships to the needs of the Welsh economy enabling Wales to compete globally through having workers equipped with high level technical and professional skills. The Welsh Government is working with employers to expand and strengthen routes in STEM, the digital industries, information technology, construction and financial services.

228. The proposed Commission offers opportunities to build on our existing objectives to provide integrated pathways for apprentices to develop higher-level skills, where provision is designed and developed through working with employers. Current arrangements for developing and reviewing apprenticeships need to be revised to support this demand from employers; we need to improve access, equality and equity of opportunity that will strengthen portability of skills and competencies throughout Wales.

229. Awarding Bodies develop qualifications in line with employer requirements and the relevant National Occupational Standards to ensure transferability and portability for learners across employers, sectors and UK borders.

230. There are currently 194 Apprenticeship Frameworks in Wales (some at multiple levels) of which 123 are publicly funded. The apprenticeships lead to an award at level 2-7 on the Credit and Qualifications Framework for Wales

¹⁶ National Audit Office (2016). Delivering value through the Apprenticeship programme. p7.

(CQFW). In 2016/17, 83% of apprenticeships starts were following only 20 frameworks.

231. Apprenticeships are currently delivered through contracts between the Welsh Government and a network of approved providers.
232. The Wales Employment and Skills Board agreed to establish the Wales Apprenticeship Advisory Board (WAAB) in 2017 to support Welsh Government's apprenticeship skills policy. The independent WAAB is enterprise-led with representatives from business, trade unions, further education bodies and the Welsh Government. The WAAB provides advice on the expansion of apprenticeships into new sectors of the economy and identifies sectors where new/revised apprenticeships can make a real difference to both employers and employees. While we work towards establishment of the new Commission, the WAAB will, after expert advice, approve or reject frameworks (new or revised), taking into account ongoing and future skills needs, including through data and reports produced by the Regional Skills Partnerships in Employment and Skills Plans and labour market research.

Reforming arrangements

233. Demand for apprenticeships is changing as employers demand skills at higher levels and young people are looking towards work-based training (apprenticeships) as an alternative to traditional full-time undergraduate provision. Apprenticeships are reaching into professions which offer an opportunity to enhance the esteem of the programme for a new generation. They are being increasingly aligned to broader workforce skills programmes where flexible training routes are being developed to meet sector needs.
234. It is vital that the higher level skill needs of employers and the next generation of learners are met and that a genuine vocational alternative to University education is available. To address these requirements, degree apprenticeships are being developed by institutions and their plans submitted to HEFCW with the aim to commence the first pilots in September 2018.

https://www.hefcw.ac.uk/documents/publications/circulars/circulars_2016/W16%2047HE%20Supporting%20Strategic%20Change%20Fund.pdf).

235. Initially these pilots will be directed towards qualifications in the areas of engineering, advanced manufacturing and IT/ computing.
236. This new level of apprenticeship will help support wider educational objectives for example the aspiration for parity of esteem between vocational and academic routes to employment.
237. Against this backdrop we need to create a responsive and streamlined system that can adapt to differing economic and social stimuli and be calibrated to meet skills challenges, for example, the decision to leave the

European Union. This is an opportunity to design a truly Welsh solution to the challenge of multiple deprivation facing pockets of Welsh society.

238. The underpinning legislative framework contained in Apprenticeships, Skills, Children and Learning (ASCL) Act of 2009 was not designed with Wales in mind and in our view does not support the Welsh Government's current policy goals. Arrangements are too heavily dependent on a system put in place by the UK Government which does not cater to the distinct needs of the Welsh economy and Welsh society. In some cases provisions within the Act are unclear and not capable of delivering the system needed in Wales. The Specification of Apprenticeship Standards for Wales (SASW) is inflexible and unresponsive to the changing needs of industry; changes cannot be implemented with the speed needed in a rapidly-changing skills environment.
239. The ability of Sector Skills Councils and sector bodies to fill their role has diminished under UK Government apprenticeship reform, weakening their remit to give employers a voice and create high quality occupational routes. Many sector bodies struggle to provide the functions for which they were created: articulating employer needs, providing labour market intelligence and developing/reviewing apprenticeships.
240. Currently there is power in the ASCL Act 2009 for the Welsh Ministers to designate bodies to issue apprenticeship frameworks. Due to the weakened capacity of some of our apprenticeship issuing authorities, Sector Skills Councils and sector bodies, we are considering commencing a power in the Deregulation Act 2015 enabling Welsh Ministers to issue frameworks. This measure would help maintain the integrity of the current system.

White Paper consultation

241. The 2017 White Paper consultation asked for views on how Welsh apprenticeships should, in the future, fit within the role of the Commission. In particular, opinions were sought on what, if any, changes could be made to the Welsh apprenticeship system provided for in the 2009 Act.
242. Not all respondents offered views on the inclusion of apprenticeships within the Commission; however those that did were in favour overall whilst stressing the need to take cross-border issues into account. Respondents felt that including apprenticeships within the Commission would support the drive for greater parity of esteem between work-based and academic provision. It should be noted however, that although responses were received from employer and work based learning representatives, there were no returns from either individual employers or work based learning providers.
243. A few respondents suggested changes that could be made to the Welsh apprenticeship system including:
- replacing the current procurement approach with one that requires providers to register;

- the Commission should become the equivalent of the English Institute for Apprentices;
- a review of frameworks and streamlining to ensure that they meet the needs of employers and the PCET sector;
- more integration between the Welsh and English apprenticeship systems to allow for greater compatibility and portability of learning and qualifications;
- a greater and more coordinated role for the voice of learners undertaking apprenticeships;
- a greater emphasis on quality improvement to ensure that apprenticeships provide a meaningful, high-quality vocational pathway into employment and a genuine alternative to university education;
- consideration should be given to making the Commission the issuing authority for apprenticeship frameworks to ensure that the capacity for developing frameworks will be maintained in Wales; and
- any changes to the Welsh apprenticeship system provided for in the 2009 Act should be held within the context of the Qualifications Wales review.

244. One respondent felt that the changes to Apprenticeship funding arrangements across the UK would take them outside the remit of PCET. They suggested that apprenticeships are actually ‘work with some training’ as opposed to ‘education with some work experience’ and therefore should not be included within the remit of the Commission.

245. One respondent highlighted the *Remaking Apprenticeships – Powerful Learning for Work and Life* (2015)¹⁷ report and how this makes reference to the way apprentices differ from school, college and university students in that they are primarily employees rather than learners. That respondent suggested that these differences need to be taken into account whilst re-evaluating Welsh Apprenticeships.

Our vision

246. Our vision for the future is of an integrated apprenticeship system which is responsive to the needs of the Welsh economy, Welsh employers and Welsh learners, a system that will help to attract new businesses and grow existing ones to improve prosperity. We want a system that respects and values diversity and allows learners regardless of their social or economic background to achieve their potential. We also want a system that is understandable by learners and employers alike and with which they can fully interact.

247. We anticipate three phases to this:

- Phase 1: Developing provision aligned with regional and national needs
- Phase 2: Independent advice on developments/proposals
- Phase 3: Successful proposals into new/revised apprenticeships

¹⁷ https://www.cityandguilds.com/~/_media/documents/what-we-offer/apprenticeships/remaking%20apprenticeships%20pdf.ashx

248. Phase one will identify the need for apprenticeships to be set up in response to industry demand. To identify the skills gap, engagement will need to take place with existing networks on a local, regional and national level via the Regional Skills Partnerships with evidence reviewed by the WAAB.
249. Once the skills need has been identified, the second phase will require the WAAB to advise the Commission on which pathways are needed. Task and finish groups will need to be convened for sector-specific development work.
250. During phase three all successful proposals will be approved by the Commission, pathways published and the Welsh Government and providers informed of the new product.
251. Any new qualification will need to be of the appropriate type, level and credit value in order to represent the needs of both apprentices and employers. This is important to ensure that the qualifications gained are recognised and valued by individual sectors.

How this will be achieved

252. We believe that the establishment of the Commission provides an opportune time to look at how apprenticeships in Wales work and how they can become more integrated into the broader post 16 offering. This system wide approach will allow learners to seamlessly move between different learning environments and methods.
253. With the Commission at the centre of a reformed apprenticeships programme in Wales, we suggest the following changes to the current apprenticeships system:

Apprenticeship Standards

254. We propose that the SASW is replaced by a new Welsh Apprenticeship Specification (WAS). The WAS will be a living document which will need to be revisited as the economic needs of the nation change and new opportunities arise to extend and develop the apprenticeship offering. The WAS will be a high level document in which the Welsh Ministers set out what Welsh Apprenticeships should contain with a series of core requirements, varying depending on the level of the apprenticeship. In preparing the WAS the Welsh Ministers will consult with the Commission and other relevant stakeholders. In particular we envisage the WAS will set out:

- the level of a qualification that must be contained in an apprenticeship Pathway. At this stage we would envisage maintaining the current levels of apprenticeship;
- the types of qualification that should be contained in each Pathway, including the requirements that occupational and technical qualifications be included;

- a requirement for on the job and off the job training that must be completed in respect of each apprenticeship Pathway at each level;
- the priority Pathways that should be developed by the Commission;
- requirements that must be met before an apprenticeship certificate is issued. These requirements might include the level and type of qualification that must be obtained to complete an apprenticeship at a particular level; and
- the sectors of the economy to which Apprenticeship Pathways should be issued.

255. In the event that the Commission fails to fulfil the requirements within the WAS, the Welsh Ministers will have the power to direct them to comply.

Apprenticeship Pathways

256. We propose that Apprenticeship Frameworks, currently developed and issued by designated issuing authorities, are replaced by Apprenticeship Pathways. Each Pathway would be at a certain level (corresponding with the level of the qualifications contained in it) and will have to comply with the core requirements specified in the WAS. Subject to this, the Commission should have the ability to include on a sector by sector basis other qualifications, or industry standards, that are regarded as necessary to demonstrate competency at the relevant level in a particular sector. The Commission would also be able to determine requirements common to all Pathways such as requirements for Essential Skills or other qualifications.

257. Primary responsibility for issuing all Apprenticeship Pathways will fall to the Commission with the option to either commission the development of the Pathways via contract or delegate its power to issue Pathways to other bodies, subject to it retaining oversight. The Commission will keep these under review to ensure that the Pathways remain relevant and up to date, with the possibility of the overview and maintenance of the pathways delegated to the WAAB.

258. The Commission will be required to keep a register of approved apprenticeship pathways which will be made available publically, electronically and in other formats. The register will include details of the pathway's funding providers along with links to recent quality assurance reports.

259. The Commission will ensure compliance with the WAS in the development and issuing of the Apprenticeship Pathways, including overseeing compliance should it delegate or contract this to others.

260. As is currently the case, employers and others will be able to submit proposals for Apprenticeship Pathways to the Commission. In addition, we propose that the Commission should be able to consult with the Welsh Ministers and other relevant stakeholders when appropriate. This would likely be used in the event that a Pathway is issued in a new sector, or that in some

other way it is novel or potentially contentious. The Commission will also be able to withdraw and modify Apprenticeship Pathways as it determines to be necessary.

261. The Apprenticeship Pathways should have linkages to other post-16 provision, meaning a learner is able to port qualifications they already have into an apprenticeship programme, removing any need for them to have to retake equivalent qualifications. This will contribute to learners being able to seamlessly switch between different forms of study depending on their circumstances. This will be a clear benefit of having a commission with a remit for the whole PCET sector.

Apprenticeship Certificates

262. We think that the requirement for an apprenticeship agreement to be entered into should be retained as it serves as a touchstone in distinguishing apprenticeships from other forms of training. It also provides a degree of security and status to apprentices and provides employers with a basis upon which to plan their workforce.

263. Currently the Welsh Ministers designate a person or body as the Welsh Certifying Authority. We propose that in future the Commission will be the Certifying Authority issuing apprenticeship certificates, or delegating this function to another body if required. The current arrangements to retain the charging of fees at prescribed levels will be retained.

264. Currently an apprentice must apply to the Welsh Certifying Authority for the issue of an apprenticeship certificate. It is suggested that in the future the Commission issues certificates when it is notified by a learning provider, employer or apprentice that the Apprenticeship Pathway has been completed to the required standard provided for in the WAS by the Welsh Ministers.

265. The contents of an apprentice certificate should remain mostly unchanged however some changes will be necessary to reflect the move to Apprenticeship Pathways and reflective of other changes being made to the apprenticeship system. At the moment any additional matters to be included in certificates rests with the Welsh Ministers. We envisage that this will now be within the remit of the Commission to specify taking into account any guidance or direction provided by the Welsh Ministers.

266. The current conditions that must be met in order to complete an apprenticeship, including standard conditions applicable to those in employment as well as alternative conditions for those who are self-employed or recently made redundant, will be retained and included in the WAS.

Funding and planning

267. Apprenticeships up to level five are currently funded via a contract between the Welsh Government and work-based learning providers, with the provider network procured through a competitive tender exercise every few

years. This includes FE institutions, independent training providers, local authorities and third sector organisations. Degree apprenticeships at level six and above, due to commence in September 2018, will be funded via a grant through HEFCW.

268. In the future, it is proposed that these duties and functions will pass to the new Commission, which will be responsible for administering the funding for all work-based learning providers.
269. Learning providers, delivering apprenticeships up to level five, will not be initially required to draw up a Regulation and Outcome Agreement (ROA) as the necessary accountability requirements will be covered in their existing contractual obligations.
270. However, degree apprenticeships, at level six and above, will be funded via a grant to the Commission and therefore subject to the ROA process. This will ensure accountability for the funding and will include details of regulatory requirements that they must meet and outcomes they will commit to deliver. The Commission will monitor these to measure their impact and the achievement of the outcomes.

Questions

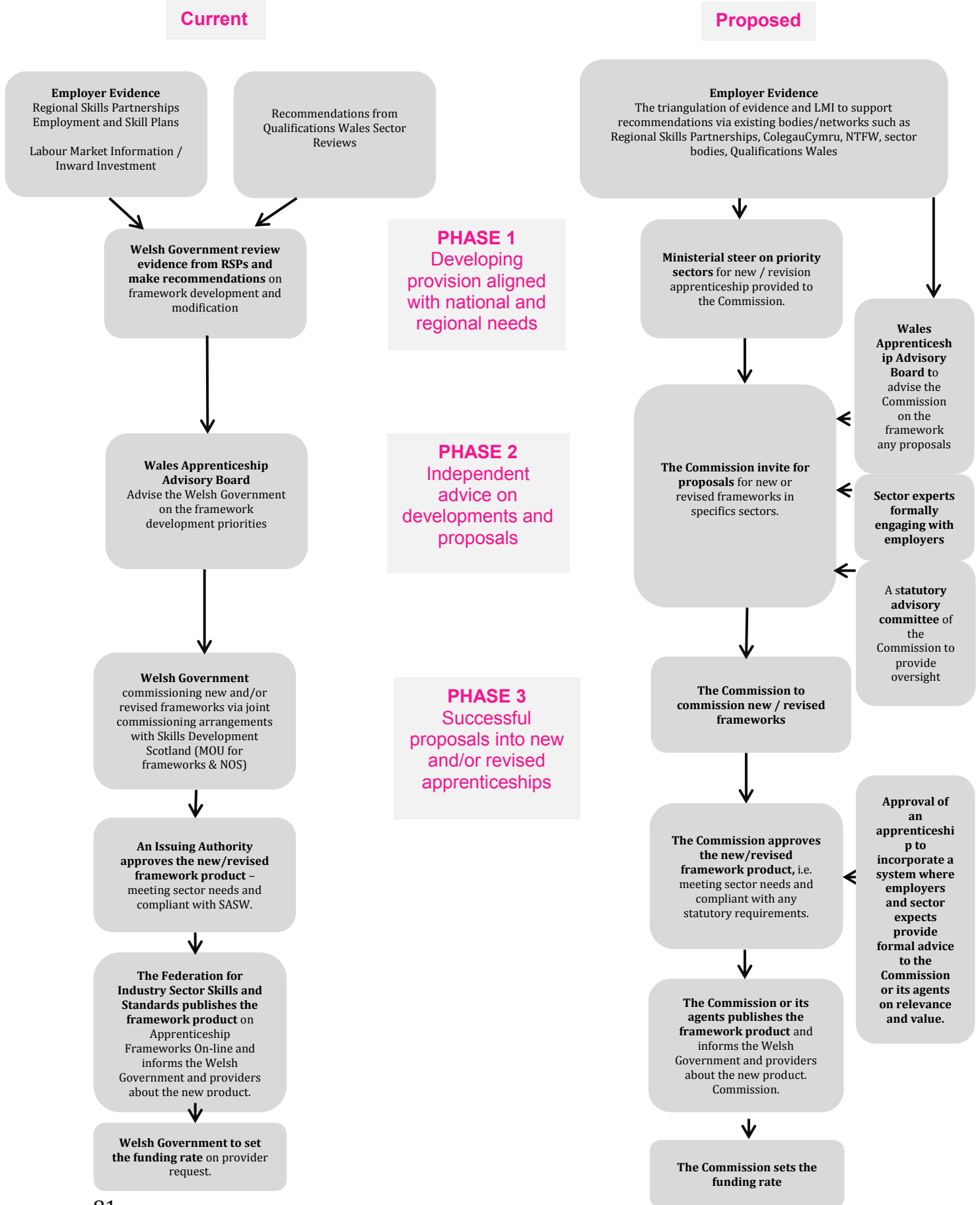
Do you agree that the Commission should play a central role in delivering Welsh Apprenticeships? In particular, should the Commission have the power to issue Apprenticeship Pathways, as well as Apprenticeship Certificates?

Which elements of the current apprenticeships system work well and should be retained and where can delivery be improved by removing complexity and onerous statutory requirements?

Do you foresee any issues with the Welsh Ministers being able to determine the high level requirements for the operation of the apprenticeship system in the manner currently being proposed via the WAS?

Do you foresee any issues, or have any comments about the reformed apprenticeship system we have proposed?

System for Framework Review and Development (Figure 1)



12. Research and innovation

Background

271. The White Paper consultation responses indicated general agreement to the proposal that Research and Innovation Wales (RIW) should be incorporated as a statutory committee within the Commission. There was general agreement that RIW should be the point of call in relation to engagement with Research England and UK Research and Innovation (UKRI) and that it should be the 'go-to' place for strategy-related research and innovation activities in Wales. However, there was concern that its scope would be too tight and that opportunities to include FE would be missed and that RIW would be too HE focused. Furthermore, there was concern that the major research strengths of HE would be diluted by the inclusion of other players eligible for funding.
272. On the issue of research versus innovation, stakeholders appear to recognise that they are complementary but not the same activities and that many practitioners of one are not the same as practitioners of the other. Hence, there were calls that each should be addressed differently. In coordinating and aligning complementary activities between research and innovation some concern was expressed that innovation activities should not expand at the expense of research, and that complementary funding mechanisms should be developed to drive both in parallel. This would mean that the different funding mechanisms for both would need to be reflected in the way RIW operates.
273. There was general agreement among stakeholders that there are major benefits to be gained by aligning and integrating research and innovation activities with education provision at many levels and across many providers, which supports the intention of integrating post-compulsory education and training with research and innovation in one body.
274. The proposed Commission and its statutory RIW Committee offer an opportunity to strengthen the strategic approach to meeting Wales' major economic, industrial, social, well-being and environmental challenges over the coming decades. Also, it offers a major strategic opportunity to align and integrate education, skills, apprenticeships, life-long-learning with the research and innovation required to take Wales forward under the Welsh Government's Economic Action Plan, Prosperity for All, the Programme for Government and the Well-being of Future Generations Act (Wales) 2015. Prosperity for All and the Economic Action Plan calls for all Welsh Government research funding to be brought into one place and that this should be the Tertiary Education and Research Commission for Wales.
275. RIW would offer greater focus and alignment on cross-cutting issues which demand a much more holistic, inter-disciplinary and multi-skills approach thus fostering a system which is able to respond to the long-term needs of Wales and, where appropriate, Wales as part of the UK and the world.

276. Operating on a strategic basis as part of the Commission, RIW would offer a strengthened identity and voice with clarity of purpose which covers many aspects of research and innovation in Wales. It is proposed to act as a major liaison point with UK research and innovation bodies such as UKRI, UK charities and UK Government.
277. The establishment of RIW is intended to promote actively the exploitation of research and innovation knowledge by driving integration of the links between pure and applied research, innovation, skills and education, industry, business, public bodies and local authorities and other key stakeholders.
278. RIW would set strategic outcomes of achievement and introduce performance monitoring for all funding programmes to ensure maximum success, effectiveness of delivery and value for money. It would coordinate and drive up the effectiveness of decision making and ensure that these are in line with Ministerial and Welsh Government priorities, especially around longer-running Research and Innovation (R&I) funding programmes and one-off, large capital investments.
279. RIW would collect data and evidence of Wales' R&I delivery and performance and engage where appropriate with similar, common UK activities such as Research Excellence Framework (REF), and the new Knowledge Exchange Framework (KEF).

Scope of funding activities of RIW

280. In establishing RIW as an integral part of the proposed new Commission, it will be important that both should have sufficient operational flexibility to succeed. Our intention is that RIW should be able to pursue and fund any eventuality across all activities listed in both groups below and not on an exclusive basis. It is intended to allow either the Welsh Government to fund all R&I activities (as listed in both the groups below) and to allow RIW to do the same, or any combination of both, without prejudice to either. This is designed to protect the integrity of other R&I funding organisations within Wales such as the Welsh European Funding Office (WEFO) (should it receive replacement EU funds from UK Government) and Health and Care Research Wales. It is intended that Health and Care Research Wales funding will not be included in RIW, but a close working relationship would be facilitated between the two bodies.
281. We propose that the overall scope of RIW's activities should be as shown below. Detailed scope implementation for RIW will be subject to the implications of the Reid Review and the Welsh Government's Economic Action Plan and may or may not include all of these in its practical operational remit.

- Management of un-hypothecated QR funding for research and innovation funding in the HE, FE, public and local authorities, NHS and Research and Technology Organisation (RTO) sectors and industry (where there is collaboration with at least FE, HE and RTO partners);
- Management of hypothecated and targeted research and innovation funding in the HE, FE, public and local authorities, NHS and RTO sectors, businesses and industry;
- Innovation, engagement and knowledge exchange and transfer in the HE, FE, public and local authorities, NHS and RTO sectors, businesses and industry;
- Exploitation of research and innovation from HE and FE (technology 'push' activities);
- Research Excellence Framework (REF) and Knowledge Exchange Framework (KEF);
- 'Support' funding to Industrial Strategy Challenge Fund and Global Challenges Research Fund (ISCF and GCRF) and Sector Deals, i.e. funding support as a match contribution towards industry-led activities;
- Management of funding for Innovation Hubs and similar R&I structures (as per the Diamond recommendation).

282. The practical operational scope of RIW activities would not include the activities listed below as these will continue to be within the scope of the existing providers. However, these may be subject to change in the future as practicalities dictate and as will be agreed by Welsh Ministers through the Economic Action Plan and R&I element of the Strategic plan.

- SMART Business/University Collaborations (where the collaboration funding is provided to the business partner);
- SMART Cymru Business R,D&I (where the funding is provided to businesses);
- Knowledge Transfer Partnerships (KTPs);
- Business to UKRI engagement;
- Sector Deals;
- Delivery of, including funding for, technology parks such as the AMRI, Enterprise Zones, UK Catapults.

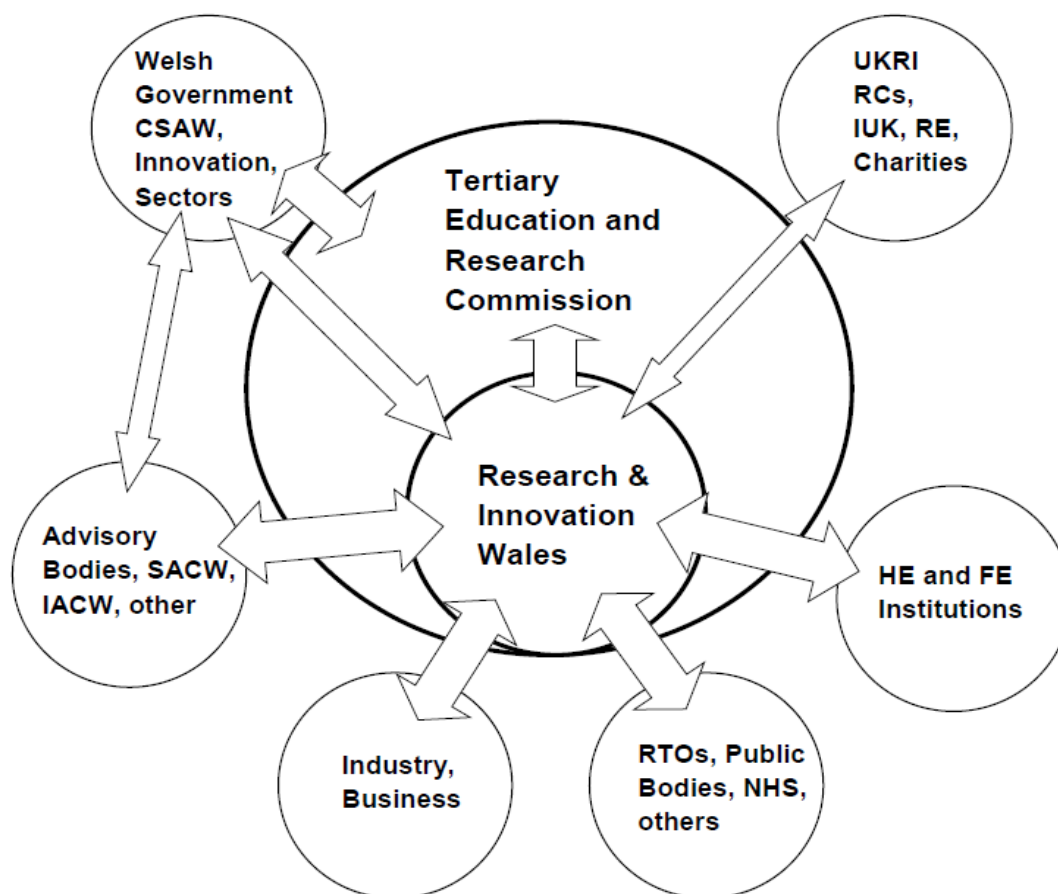
283. The aim of this separation in the short term is to maintain essentially the current situation whereby funding from HEFCW is focused predominantly on HE-led research, innovation engagement (R,I&E) and the Welsh Government is focused predominantly on industry-led R,I&E, although scope will be provided for either the new Commission or the Welsh Government to continue their respective relevant recipient group activities going forward and to align investment appropriately. In the medium to long term, funding responsibilities and activities will be developed according to Prosperity for All and the Economic Action Plan.

Structural arrangements for the Commission, RIW and the R&I Community

284. This consultation document proposes a functional structure for the Research and Innovation Wales (RIW) committee within the Commission.

285. The White Paper proposed that RIW should be a statutory committee of the Commission, and should have the role of implementing the relevant priorities set out within the Welsh Government's overarching policy as developed through Prosperity for All and the Economic Action Plan and the Commission's strategic plan.

Figure 2. Structural arrangements for the Commission, RIW and the R&I Community



Relationship between the Welsh Government and the Commission

286. In keeping with the proposals set out above describing the strategic planning and funding framework within which the Commission would operate, the Welsh Government would continue to set the overarching vision and policy in relation to research and innovation, which might cover economic,

industrial, social, health and well-being, environmental and other priorities. Our intention is that the Commission should be required, within its overall strategic plan, to set out how it proposes to take forward any overarching priorities on research and innovation. In doing so, it will specify the actions to be taken, and the funding to be made available, in pursuit of the Government's national priorities.

287. We propose that major individual capital investments or discrete revenue support programmes above a specified threshold should require Welsh Ministers' approval. For routine funding provision (for example the funding formula for QR), this could be agreed through the research and innovation section of the Commission's strategic plan. For more opportunistic one-off and ad-hoc capital investments which may be proposed by the Commission (such as for large equipment which may not be included within the strategic plan drawn up by the Commission and agreed by the Welsh Ministers), approval would need to be sought from the Welsh Government or else investments approved on a case-by-case basis. For medium and longer-term revenue commitments, such as the funding of Innovation Hubs proposed in the Diamond Report, individual high-level programme commitments would need to be agreed by Welsh Ministers as part of the Commission's strategic plan.

Relationship between the Commission and RIW

288. It is intended that RIW should form an integral part of the new Commission. However, RIW should have sufficient autonomy and freedom to operate in order to allow it to achieve the outcomes within the overall strategic plan of the Commission. We propose that the Welsh Ministers should appoint the Chair of the RIW statutory committee and that the Chair of RIW should be the Vice Chair of the Commission to ensure close integration and alignment between research and innovation activity funded through RIW and the Commission's overarching strategic plan for Wales.

Strategic guidance for RIW

289. In the exercise of its statutory functions, the Commission through RIW would be expected to take appropriate account of strategic guidance from the Welsh Government and other advisory bodies such as the Science Advisory Council for Wales, the Innovation Advisory Council for Wales, industry and business interest groups, and others.

290. Furthermore, RIW would be required to establish mechanisms which encourage joint R&I activity between HEIs and FEIs, RTOs, industry, public bodies and others with the aim of maximising the potential for post-compulsory education, skills and training in line with R&I priorities. For example, the current focus on compound semiconductors should lead to an expanding manufacturing base which will require knowledge and skills at all levels and abilities which will be addressed by other activities of the Commission. Major funding themes should recognise this and require an appropriate response from the whole PCET community. In appropriate cases,

providing support to this wider agenda could be a condition of funding from Government.

Membership of the RIW committee

291. The intention is that the RIW Committee will consist of a Chair and between six and nine additional independent members of whom approximately a third will be from industry, a third from the HE and FE sectors and a third from other stakeholders (including public sector organisations).

Relationships between RIW and the research and innovation community

292. The relationships between RIW and the research and innovation community would vary depending on the nature of the funding mode and the nature of the funding recipient. These are considered below using two separate approaches - that of the type of funding received by the recipients; and that of the nature and business of the recipient.

Funding modes

293. In implementing the R&I elements of the Commission's strategic plan the use of funding would be a principal lever. It is intended that this could be used in 100% funding mode for un-hypothecated and hypothecated theme-based funding mechanisms; (as described below) monies could also be made available by the Commission in order to match fund other sources, e.g. UKRI or industry. The split between un-hypothecated Quality-related Research (and innovation) (QR) funding and hypothecated strategy-related research and innovation funding (SRI) as described in the White Paper is reflected below (these proposals are presented without prejudice to the Welsh Government's response to the Reid Review).

294. It would be open to the Commission / RIW to fund R&I activities at several different types of R&I practitioner as described further below. For each discrete type of funding recipient, there might be different conditions of funding depending on the degree of hypothecation, the magnitude of the funding, the 'Technology Readiness Level' (TRL) and the nature of the recipient. TRL are a method of estimating the technology maturity of the critical elements of a technology program. They are determined by an assessment of technology readiness that examines program concepts, technology requirements and demonstrated technology capabilities. TRL are based on a scale from 1 to 9, with 9 being the most mature technology. Three basic funding modes for RIW are envisaged as described below.

295. **Funding Mode 1: Un-hypothecated funding.** Recipients of un-hypothecated funding would receive funds based on the excellence and relevance of their research as measured by national comparators (e.g. Research Excellence Framework REF). Additional incentives would be offered based on the amount of funding leveraged from other, non-Welsh Government sources of funding, e.g. UKRI. These organisations may be required to align and complement agreed parts of their R&I activities with

relevant educational courses, skills and training development, delivered quite possibly in collaboration with FE providers in response to national priorities and major opportunities. In return, they would receive funding on a basis comparable to the current allocation of Quality-related Research funding (QR). Typically, but not exclusively, the R&I activities would be low TRL levels (i.e. TRLs 1 to 4) but would have to demonstrate at least some relevance (to be agreed with RIW) to Welsh Government national priorities and the Welsh Government's Programme for Government. The base level funding would be long term, typically arranged around the timescale of the REF (6 to 7 years) with the performance incentive element being reviewed and set more frequently (2 to 3 years). The majority of the un-hypothecated funding would be to support research in the same way that HEFCW QR does currently, but with the addition of un-hypothecated innovation and engagement funding (as per Higher Education Innovation Funding HEIF, and as recommended by the Diamond Review and developed further by the Reid Review).

296. **Funding Mode 2: Hypothecated theme-based funding.** Recipients of theme-based hypothecated funding would receive funds based on relevance and need as defined by Welsh Government national priorities (e.g. economic, industrial, social, environmental) and opportunities presented from UKRI and UK Government. The Diamond Review discussed the creation of R&I Hubs in Wales which is a theme developed in the Reid Review. Theme-based funding could be medium term over a period of 3 to 5 years and have the condition that at least some match funds are drawn from elsewhere, such as industry, UKRI, charities or other sources which are not Welsh Government derived. This would establish the principle of 'shared risk' in which beneficiaries of the R&I activities share some of the costs of undertaking the work with the Welsh Government funding source (i.e. any source of Welsh Government public funds which are awarded directly from the Welsh Government, or indirectly through the Commission for research and innovation). For example, a North Wales R&I Hub could focus on aerospace, nuclear and optoelectronics/photonics R&I and draw down match funds from local industry and UKRI, thus adhering to the principle of 'shared risk' between the public and private sectors.

297. Although these hypothecated funds would be theme-based, it is intended that their detailed application would be un-hypothecated, e.g. funding could be provided for 'nuclear R&I' but without detailed specification as to what nuclear R&I activities within this theme should be pursued. However, any application for funding would have to demonstrate relevance to needs of the nuclear industry or other public-funded nuclear research and innovation activities, for example the UK Government's nuclear research programme. Award of funding would be competitive, based on merit and for medium level TRL work, i.e. applied, research, development and near-to-market research. Recipients of this funding could be independent Research and Technology Organisations (RTOs), local authorities, other public bodies and the NHS as well as HEIs and FE colleges.

298. **Funding Mode 3: Hypothecated Specific Project Funding.** It is intended that Hypothecated Specific Project funding should be used to fund

specific projects related to industrial, commercial or other relevant criteria opportunities with the aim of achieving specific, relatively short-term objectives. Such funding could be used for development or innovation around particular products or services for the public and private sectors. Such work could be in a range of TRL levels but predominantly in the higher TRL levels and be subject to the principle of 'shared risk' which would apply to a greater level (i.e. a bigger contribution would be expected from other sources outside of those sourced directly or indirectly from the Welsh Government). The time scales of such funding would be short-term of typically up to three years.

299. We propose that such funding should be open to industry, business, public sector organisations and service providers, RTOs, HE and FE institutions and others as appropriate. Specific terms and conditions would apply to the grant funding in a similar manner to existing funding programmes such as those provided under the WG's SMART initiatives or Innovate UK. Capital funds may be available from RIW and these would be distributed on a strategic basis in line with Welsh Government priorities as defined in the overarching policy.

Funding recipients

300. We propose that the main recipients of potential funding should be those indicated (but not exclusively) below in no priority order. Many of these receive significant levels of funding already, for example the HEIs receive tens of millions of pounds of un-hypothecated funding per year distributed on a formula based on REF performance. Other organisations do not receive any funding on a regular basis although they undertake R&I activities routinely. Making funding available to a greater range of R&I practitioners based on criteria other than research excellence such as 'place' (geographical location) would be a bold move which would be necessary in some cases in taking a more holistic and integrated approach to R&I, education, skills and training. 'Place' based funding could be used to attract investment from other sources, such as the UK Government's Industrial Strategy Challenge Fund.

- Higher Education Institutions;
- Further Education Institutions;
- Research and Technology Organisations;
- Local Authorities;
- NHS;
- Public Bodies;
- SMEs;
- Large Industrial Companies;
- Others.

301. The Welsh Government does not propose at present that Health and Care Research Wales funding should be included in RIW. A close working relationship would, however, need to be developed between the Commission and Health and Care Research Wales to ensure synergy of activity and promote value for money in the investment of public funds.

Scope of funding activities

302. The Economic Action Plan, Prosperity for All and the Programme for Government call for closer integration (bringing together research funding and closer working between industry, schools, universities, colleges and the NHS to raise ambition and increase investment in research, developing the jobs and technologies of the future) of funding and R&I delivery activities in coordination with education and skills development.
303. We propose this should include the activities currently undertaken by HEFCW (Quality-related Research, Post Graduate Research, expensive subjects, etc.) and any additional innovation and engagement funding (HEIF) recommended by the Diamond Review and endorsed by the Reid Review. It also includes all activities which encourage HE and FE engagements with industry, businesses, public sector organisations and commercial entities (business, industry) collaboration and vice versa. Typically, these would be the exploitation of research-led knowledge and innovation.
304. In addition, other Welsh Government funded activities, such as Ser Cymru, could be included in the R&I activities funded by RIW subject to budget allocations and Ministerial approval.
305. Much current research and innovation capacity building and knowledge exchange activity undertaken by the HE sector is funded by WEFO through its ERDF and ESF programmes. While the funding for these or their replacements will be subject to negotiations between the Welsh and UK Governments, it is intended that consideration will be given to the coordination of these funds with those of the Commission going forward.

Performance and delivery monitoring by RIW

306. We propose that RIW should be responsible for monitoring and assessing delivery performance of the R&I community in Wales as a whole, in line with data on economic performance measures such as GERD (Gross Domestic Expenditure on R&D), its subsets BERD, HERD, GovERD and other appropriate national and UK measures such as REF and KEF (Knowledge Exchange Framework). This is so that the detailed impacts and outcomes of RIW activities can be measured and compared against the general backdrop of such statistics and performance measures.
307. In addition, RIW would be responsible for monitoring the delivery performance of its grant awards. The detailed outcomes and impacts would be dependent on the funding mode, the funding recipients, the agreements in place between the Commission/RIW and the recipients and project activities. The main issues to be assessed would be in relation to such things as:
- delivery against general intent, purpose and spirit;
 - effectiveness of delivery;
 - cost effectiveness and value for money;

- detailed output measures and targets;
- alignment and delivery against national priorities;
- other appropriate measures.

308. These would be designed to give feedback on the strength, capacity, relevance and excellence of the R&I community and its activities, both in terms of the research intensive and education organisations and the beneficiaries of such activities (commercial, business, industrial, health and well-being, societal, environmental and others).

309. It is intended that different measures and engagements would be required in line with the Research Excellence Framework (REF), Knowledge Exchange Framework (KEF) and other appropriate measures. These apply to the HE sector principally but where similar measures exist or are required for other types of provider of research, innovation and aligned education activities, for example FE providers, these will be applied or developed accordingly. The aim being that suitable feedback is provided across the spectrum of R&I and aligned education and training initiatives and funded activities. The level of monitoring and assessment would be in line with current norms for much activity but in more depth where performance is below expectation or is required for key outcomes and impacts. It is important to note that it is not the intention that a burdensome and intrusive system would be introduced but a system that, for whatever measures and assessments are used, the results could be used to inform future activities and mechanisms with a view to drive improvements in behaviours, cultures and excellence and demonstrate value for money. The funding landscape in Wales and across the UK is changing and these assessments and measures will be designed to inform funding modes and mechanisms which encourage adaption to this changing environment.

310. Different arrangements would be required for different organisations such as HEIs, FEIs, RTOs, large and small businesses, other private sector and some public sector recipients. Typically, private sector organisations are more used to detailed transactional procurement contracts or grant awards where much more detail is specified, not least to adhere to existing State Aid rules. However, while different levels of detail and specification would be required, it is not intended to be over burdensome, especially on SMEs, and appropriate levels of monitoring and assessment will be adopted.

Engagement with other stakeholders

311. RIW would be required to undertake the same type of engagement with external stakeholders as HEFCW undertakes currently. These would include engaging with the UKRI Board, Research England, the Research Councils, Innovate UK and the R&I funding bodies of the other Devolved Administrations. It would need to engage on such things as REF, KEF and other measures where applicable.

312. RIW would not be expected to engage directly with the UK Government unless specific permission was to be granted by the Welsh Government.

Protecting the Haldane Principle and extending its use

313. The UK Government's Nurse Review recognised that there is a need to maintain a system of strong leadership in individual research discipline areas and that discipline leaders need to retain control over detailed budget allocation decisions. This is enshrined in the Haldane Principle which states that individual budget award decisions are made by appropriate experts in the field. As defined originally by Haldane, this applied principally to research but for RIW, this principle would be extended to innovation and knowledge exchange activities such that appropriate innovation, business, technical and commercial expertise is brought to bear for decision making involving innovation, knowledge transfer, knowledge exchange and other appropriate activities. In research and innovation, KT and KE and industrial/commercial awards decision making, an appropriate level of interdisciplinary and intermixing of TRL level expertise and commercial/business acumen would be required with the balance of weighting being matched and relevant to the funded activity.

Balance of funding between curiosity-driven and challenge-led activities

314. The Welsh Government recognises that curiosity-driven research is a fundamental component of a vibrant R&I community. Also, the Welsh Government recognises that many of the challenges facing Wales and the UK will not be addressed in the short to medium term by curiosity-driven research but will be addressed only by challenge-led research and innovation. Hence, as the UK Government has recognised, there needs to be a major increase in activity in challenge-led R&I and this is reflected in the statements in the Welsh Government's Prosperity for All and Taking Wales Forward (as described earlier). Hence, there would be a balance to be struck between curiosity-driven research and challenge-led research and innovation.

315. However, in the view of the Welsh Government, un-hypothecated QR funding for curiosity-driven research should remain a fundamental component of the funding distributed by RIW but some of the mechanisms by which it is apportioned may need to be subject to change. Furthermore, it is intended that the levels of QR funding would be in line with the recommendations given in the Diamond Review and developed further by the Reid Review. Additional funds may become available also for challenge-led R&I activities. The REF would remain a key determinant for award of QR but other factors may be brought into the distribution mechanism such as an incentive and reward system. Potentially, mechanisms may be developed which bring other recipients into the realms of un-hypothecated and challenge-led funding, for example FEIs, as recommended by Reid.

316. The balance between curiosity-driven research funding and challenge-led research and innovation funding would be subject to review by RIW in line with Welsh Government priorities, strategic intent and available budgets.

Questions

Do you agree with the general proposal and detailed construction of RIW within the Commission? Please explain why.

Do you agree that RIW should have such a wide funding scope to be able to fund the activities described even if its scope is much more restricted in its final implementation and operation, i.e. should it have such flexibility? Please explain why.

Do you agree with the proposals for the relationships between the Welsh Government, the Commission and RIW and the relationships with funding recipients and R&I community? Please explain why.

13. Financial and governance assurance

317. We proposed in the White Paper, that in order to protect the interests of learners and ensure that Wales has a sustainable and high quality PCET sector that the proposed Commission should be placed under a duty to assure the financial health and governance arrangements of all PCET providers in Wales in receipt of funding from the Commission and / or who have their relevant HE courses designated for Welsh Government student support. To achieve this we will need to ensure that the Commission has the necessary functions to be able to regulate and assure the financial management, the financial health and the governance and management arrangements of all PCET providers within its regulatory oversight.
318. Currently PCET providers in receipt of direct funding and / or whose courses are automatically designated for student support purposes are subject to certain requirements in respect of financial and governance assurance. The Welsh Government and HEFCW have powers to undertake assurance activities under the Learning and Skills Act 2000, the Further and Higher Education 1992 and the Higher Education (Wales) Act 2015. For providers of FE, WBL and adult learning the Welsh Government undertakes financial and governance assurance through the application of terms and conditions of funding, contract or grant. For HE, HEFCW has express statutory functions in respect of financial assurance under the 2015 Act. Whilst there are currently no express statutory functions in relation to the assurance of governance arrangements for HE, HEFCW's financial management code contains certain requirements and guidance in relation to these matters with which regulated institutions must comply. HEFCW also continues to be able to attach terms and conditions to the funding it allocates under its 1992 Act powers.
319. As previously stated, we propose that the regulatory system for sixth form provision should treat the local authority as the provider. This approach means that assurance about the financial and governance arrangements of school sixth forms would be achieved between the proposed Commission and those authorities rather than with individual schools. The following proposals should therefore be read as operating within the relationship between the Commission and local authorities rather than the Commission having a direct relationship with individual schools. We do not anticipate that changes to school governance arrangements will be needed, governors will still be responsible for the whole school, including its sixth form. The Schools Standards and Framework Act 1998 established the framework within which local authorities allocate their education expenditure to schools, including sixth forms. It is not proposed to change those arrangements.

Functions proposed for the Commission

320. It will be essential for the new Commission to be able to ensure that all providers within its remit are well run and continue to be financially sustainable in order to protect the public funds they receive, to preserve the

reputation of PCET in Wales, and importantly to protect the interests of learners. There was a general consensus in the responses to the White Paper consultation that the proposed Commission should be empowered to make recommendations to the institution, and/or to the Welsh Government, where an institution is at serious financial risk. Respondents considered that further detail was required about the circumstances under which such action could be taken. A few respondents considered that such action should be the role of the Welsh Government rather than the Commission. The general view was expressed that the interests of learners should be protected but also that institutions should be consulted and supported by the Commission to address financial risks.

321. We have explored whether the transfer of existing financial assurance functions of the Welsh Ministers and HEFCW to the proposed Commission would achieve the desired policy aim. We do not consider this would represent the best option as:

- it would not result in a whole PCET approach;
- it would mean that financial and governance assurance functions would continue to be undertaken on a different basis for different types of providers; and
- the disparate arrangements could lead to confusion with different principles, requirements and standards being applied to different types of providers, in particular for those providers that offer a range of different types of provision.

322. We consider that it would be preferable for the new Commission to have express statutory powers to assure the financial management, financial health and governance arrangements of PCET providers to:

- provide a strong basis for it to assure the financial management and governance arrangements of the PCET sector;
- provide a level of standardisation to the different arrangements that currently exist and introduce a more consistent approach across all types of providers (all would be regulated under the same statutory basis and in accordance with the same broad principles);
- regulate on a whole PCET basis rather than as distinct sectors as is currently the case; and
- provide a greater degree of clarity to the assurance framework under which the PCET sector would operate and ensure that all providers were subject to similar principles and standards.

323. To achieve the above we propose that the new Commission should be enabled to:

- set initial and ongoing requirements for financial management and governance, including the standards that PCET providers must meet, to enter the regulated PCET system and access public funds;
- monitor compliance with those conditions;
- intervene in the event of non compliance; and
- issue guidance.

Question

Do you agree that the new Commission should be given express statutory powers in relation to the assurance of financial management, financial health and governance arrangements for PCET providers?

324. In considering how the Commission's financial and governance assurance functions might operate we identified the following options:

- **Option 1** – All PCET sectors would be subject to the same requirements, monitoring and enforcement arrangements;
- **Option 2** – All PCET sectors would be subject to similar assurance principles but provision would be made to allow different arrangements and requirements to apply to different types or categories of PCET providers in line with the commissioning arrangements under which they operate;
- **Option 3** – All PCET sectors would be subject to different requirements.

325. In our initial appraisal of the above options we concluded that it would not be possible to have a "one size fits all" approach (option 1) due to the different nature of each type of provider (legal and constitutional) and the different commissioning arrangements under which they operate. We also considered that option 3 would not be desirable as it would carry forward existing differences between sectors, it would make it difficult to achieve a consistent level of regulation and assurance, and it would not promote a whole PCET sector approach.

326. On balance we concluded that option 2 would be the preferred approach as it would mean that all providers would be subject to similar regulatory principles. This would allow the Commission to achieve a consistent level of assurance and to take account of different types of provider and the different commissioning arrangements under which they might operate.

Question

Do you agree that all PCET providers should be subject to similar financial and governance assurance principles? Should the Commission be enabled to apply different arrangements and requirements to different types or categories of PCET providers?

327. We have considered the basis on which the proposed Commission's financial and governance assurance functions might operate. Under current arrangements, the majority of HE providers are subject to the requirements imposed on them under HEFCW's financial management code whilst FEIs are required to comply with the conditions set out in the Welsh Government's financial memorandum. For WBL, providers must comply with the requirements set out in the programme specification and contract whilst for adult learning they are set out in the grant award letter.

328. We have identified the following options:

- **Option 1** – Status Quo – all current arrangements could be carried forward, for example conditions and requirements set out in contracts, grant award letters, financial memorandum and financial management code;
- **Option 2** – The Commission would prepare and publish a formal set of requirements and conditions in a similar way to the current FE financial memorandum or HE financial management code;
- **Option 3** – The Commission would adopt a less formal approach setting out a broad principles, best practice and guidance that PCET sectors are expected to take into account.

329. Option 1 would be familiar to all categories of providers. However, different assurance regimes would continue to operate and might lead to difficulties in achieving a standardised level of assurance between different categories of providers and could lead to confusion, particularly for providers that deliver HE, FE and/or WBL and would therefore be subject to different arrangements.

330. Option 2 would be more familiar to FE and HE providers; however, we noted that some flexibility would be needed in the way requirements might be imposed on different categories of providers taking into account the different funding and commissioning arrangements under which they may operate. In particular with regard to governance arrangements, we noted that there is currently a level of self regulation in which adherence to governance codes are voluntary and that consideration would need to be given as to how the Commission's functions might interface with self regulation. It is our view that option 2 would provide clarity in terms of the financial and governance assurance requirements of the Commission and could establish a basis for regulation of PCET providers.

331. We consider that option 3 would not provide a sufficiently strong basis for assurance and could present problems for the Commission to effectively discharge its regulatory functions. It would however, allow the level of self regulation referred to above. Whereas the approach outlined under option 2 is unlikely to be sufficient to encompass self regulation.

332. We do not consider that any of the options identified would lead to a significant increase in the administrative burden for providers as all sectors are currently subject to these types of requirements and to monitoring arrangements by the Welsh Government or HEFCW.

333. We therefore propose a hybrid of options 2 and 3. This would enable the Commission to set and publish initial and ongoing financial and governance assurance requirements with which providers would need to comply. It would also permit those requirements to include guidance and good practice advice which providers would be required to take into account in the establishment and operation of their financial and governance arrangements.

Question

Do you agree with the proposal to enable the proposed Commission to publish a formal set of requirements and conditions as well as to issue guidance to providers and to advise them of good practice?

334. We have considered who should be responsible for developing the operational detail of the PCET financial and governance assurance framework and what the scope of this might be. We have also considered the Welsh Government's role and any scrutiny that might be necessary before implementation of the proposed framework.

335. In terms of the development of the framework, we considered the following options:

- **Option 1** – The Commission would be provided only with the necessary enabling functions to undertake assurance activities with full discretion on the operational detail afforded to the Commission;
- **Option 2** – As well as providing the Commission with enabling functions provision should be made in legislation to set out a broad financial and governance framework with the Commission given discretion to develop its financial and governance assurance requirements within that framework;
- **Option 3** – As well as providing the Commission with enabling functions the Welsh Ministers should prescribe details of the matters to which assurance arrangements can or must relate.

336. Appropriate and effective financial and governance assurance arrangements will be an essential element in safeguarding the significant public investment in PCET provision as well as protecting the reputation of the Welsh PCET sector and the interests of learners. As such we consider that it will be necessary for the Welsh Government to be able to provide the Commission with some level of direction about the scope and reach of the framework for assurance.

337. We consider that option 1 does not contain any checks and balances about the potential reach of the Commission's financial and governance assurance requirements. In contrast option 3 would be highly prescriptive and may be too restrictive for the Commission to develop and implement an effective framework capable of application across the full range of PCET providers.

338. On balance, we consider that option 2 presents the most appropriate approach. It would allow a broad framework for financial and governance assurance to be set out in legislation. The Commission could be given discretion to develop its own arrangements within such a framework, and the ability to make different arrangements for different categories of providers as the Commission considers appropriate. This approach would align with the feedback received from the stakeholder roadshow events held in autumn 2017 that legislation should not be too prescriptive and that the Commission should be given autonomy to develop arrangements in consultation with providers. The types of matters that might be included within the broad framework could, for example, include:

- assessing the audit and accounting arrangements of PCET providers;
- assessing the financial sustainability/viability of PCET providers;
- ensuring that providers have appropriate governance arrangements and that there are robust systems of internal control and risk; and
- provision of relevant information to the Commission by PCET providers.

339. It is our view that this type of framework could operate effectively for all PCET sectors as they are already subject to these types of requirements under the current oversight arrangements.

Question

Do you agree with the proposal to provide the Commission with enabling functions and that legislation should set out a broad framework for financial and governance assurance with the Commission given discretion to develop its requirements within that framework?

340. We consider that the Welsh Ministers should be able to issue guidance to the Commission in relation to the development and scope of the financial and governance assurance framework. This would ensure that the requirements did not go beyond the intended scope. We also considered that it would be appropriate to require the Commission to consult with PCET providers and other interested stakeholders in the development of its approach to financial and governance assurance.

341. Under the 2015 Act, HEFCW's financial management code is subject to a formal procedure whereby it must be approved by the Welsh Ministers and the National Assembly for Wales before it can take effect.

342. We have considered whether a similar approval approach might be appropriate in respect of the financial and governance requirements of the proposed Commission. This type of approach would allow for scrutiny of the arrangements proposed by the Commission and provide a safeguard that requirements do not go beyond the intended scope. However the formal approval process is lengthy and it may hamper the Commission's ability to respond flexibly to urgent changes that may need to be made to financial and governance assurance arrangements. Additionally, we consider that the ability of the Welsh Ministers to issue guidance to the Commission, the broad financial and governance framework being prescribed in legislation coupled with a duty for the Commission to consult on its proposed requirements, would provide sufficient safeguards to ensure that those requirements do not go beyond the intended scope. As such we consider that formal approval of the Commission's requirements would not be necessary.

343. In developing its financial and governance assurance requirements we would expect the Commission to take into account the need to protect institutional autonomy and academic freedom as well as having regard to the charitable status of institutions and any impacts on governing documents.

344. In 2014 the Welsh Government legislated¹⁸ to enhance the autonomy and decision making abilities of FE institutions in Wales. When developing proposals for the Commission's financial and governance assurance functions we will be mindful of the classification of FE and HE institutions as "Non-profit Institutions Serving Households" (NPISH) for the purpose of government accounts and balance them with the need to safeguard public funds, the interests of learners and the reputation of the Welsh PCET sector.

Question

Do you agree that:

- the Commission should be placed under a duty to consult with PCET providers and any other persons it considers appropriate in the development of its financial and governance assurance arrangements?
- the Welsh Ministers should be able to issue guidance to the Commission with regard to financial and governance arrangements and that the Commission be required to take such guidance into account?
- the above requirements would provide sufficient safeguard in respect of the scope and reach of the Commission's financial and governance assurance arrangements? Are there any other safeguards you consider to be necessary?

345. We consider that the proposed Commission would need a range of supporting powers to enable it to effectively carry out its financial and governance assurance functions. This would include the ability to:

¹⁸ The Further and Higher Education (Governance and Information) (Wales) Act 2014

- request information from PCET providers;
- undertake periodic on site assurance reviews;
- enter premises and inspect documents or materials.

346. Such an approach would largely be a continuation of current practice, albeit undertaken by a range of different mechanisms at present, and would not significantly increase the administrative burden on providers.

Question

Do you have any comments or concerns about the proposal for the Commission to request information from PCET providers, undertake periodic assurance reviews, enter premises and inspect documents or materials in support of its financial and governance assurance functions?

347. In the event that PCET providers fail to demonstrate appropriate financial and governance management it will be necessary for the Commission to be able to intervene to rectify such failures. Currently the Welsh Government and HEFCW have a variety of interventions at their disposal. These are summarised below for different types of provision:

- WBL - the Welsh Government may withhold, withdraw payments or require repayment, require the provider to take specified actions and in the most serious cases terminate a contract;
- Adult learning - the Welsh Government may withhold, withdraw or require repayment of grant;
- FE – the Welsh Government may withhold, withdraw or require repayment of grant. In addition the Welsh Ministers may intervene¹⁹ in the event they are satisfied that an FE institution is being mismanaged or failing. Interventions include removing or appointing new members of the governing body, directing the governing body or directing an FE institution to dissolve itself. The Welsh Government’s overall approach to addressing serious concerns identified in further education institutions, when intervention may be required, and how that intervention will operate in practice has been set out in its Further Education Intervention Policy²⁰. In addition to their powers of intervention provision has recently been made in legislation²¹ for the Welsh Ministers to apply to the Courts for a special

¹⁹ These intervention functions are conferred on the Welsh Ministers under section 57 of the Further and Higher Education Act 1992.

²⁰ Welsh Government: Further Education Intervention Policy (May 2017):

<http://gov.wales/topics/educationandskills/learningproviders/further-education/intervention-policy-for-fe-institutions/?lang=en>

²¹ The Technical and Further Education Act 2017 sets out the main parameters for an education administration regime. Implementation of the regime will be subject to regulations to be made by the Secretary of State. The Welsh Government intends to issue guidance for governing bodies in due course.

administration procedure to be ordered for a FE college in Wales which is unable to pay its debts or is likely to become unable to pay its debts;

- HE - HEFCW has a range of enforcement functions at its disposal in the event that a regulated institution fails to comply with the financial management Code. HEFCW may give direction requiring the institution to take certain action, give notice of refusal to approve a new fee and access plan and, in the event of serious failures, withdraw an existing fee and access plan. These sanctions are subject to a review procedure. In addition, HEFCW is required to publish a statement setting out how it will exercise its intervention functions. Under 1992 Act arrangements, HEFCW is able to withdraw or withhold funding;
- Sixth form provision – there are currently a range of intervention powers available to local authorities and schools are subject to the financial controls set out in their local authority's Financial Scheme. Local authorities, may under specified circumstances, suspend a school's right to a delegated budget.

348. It will be important that the Commission is able to take timely, appropriate and proportionate action to safeguard public funds, preserve the reputation of the PCET sector in Wales and protect the interest of learners. To enable it to take such action, we propose that the Commission should be equipped with a suite of intervention powers which will allow it to provide support to providers, impose sanctions and where necessary enforce compliance measures appropriate to the particular circumstances.

Welsh Ministers powers related to financial and governance assurance

349. Currently the Welsh Ministers may intervene in the conduct of an FE institution if they are satisfied that any one of the conditions listed in section 57 of the Further and Higher Education Act 1992 is met. These conditions are:

- that the institutions' affairs have been or are being mismanaged by its governing body;
- that the institution's governing body have failed to discharge any duty imposed on them or for the purposes of any Act or any Measures of the National Assembly for Wales;
- that the institutions' governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act or any Measure of the National Assembly for Wales;
- that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training.

350. Subject to the satisfaction of any of the above conditions the Welsh Ministers may intervene in the following ways:

- removing all or any of the governors;
- appointing new members to the governing body, if there are vacancies;
- directing a governing body as to the exercise of their powers and performance of their duties, including, for example, to make collaboration arrangements with another FE institution or school;
- giving directions to the governing body including directing a governing body to resolve to dissolve itself.

351. We envisage that the proposed Commission would, through the discharge of its regulatory oversight functions, identify and inform the Welsh Ministers if an FE institution's financial affairs were being mismanaged or if an institution was performing significantly less well than it might reasonably be expected to perform or failing to give an acceptable standard of education and training.

352. We propose that the Welsh Ministers retain powers of intervention in further education and that the Commission should be enabled to make a recommendation to the Welsh Ministers about the exercise of those powers. We consider that the Commission should also be able to provide advice to the Welsh Ministers about actions that FE institution governing bodies should take to improve when serious concerns about their conduct or performance are identified.

353. The Technical and Further Education Act 2017 creates a special administration regime (SAR)²² for FE corporations known as "education administration" and sets out the main features of the regime. The main features of an education administration are that it can be used where an FE corporation is unable to or is likely to become unable to pay its debts; the court appoints an education administrator on the application of the Welsh Ministers; and the education administrator manages the corporation's affairs, business and property with a view to avoiding or minimising disruption to the studies of existing learners. The Act applies normal insolvency procedures to FE colleges in England and Wales that are statutory corporations. In doing so, it will allow insolvent colleges to be treated in a similar way to insolvent companies. The Act provides restrictions on the use of normal insolvency procedures through its interaction with the education administration. It ensures that, in relation to FE colleges in Wales, the Welsh Ministers are given notice of the use of those procedures and can then decide whether or not to initiate an education administration. The Welsh Ministers may apply to the courts for a SAR to be ordered for an insolvent FE college in Wales. This arrangement provides an alternative to any normal insolvency procedure and creates an orderly regime for learners, creditors and others, with a special objective which provides some overarching protection for the studies of existing learners.

²² Secondary legislation is required to implement the insolvency regime. The UK Government intends to make the necessary regulations when Parliamentary time allows and anticipates the necessary legislation being in force to allow the education administration regime to be in place by late 2018. <https://consult.education.gov.uk/fe-college-quality-and-resilience-team/fe-insolvency-regime/>

354. We envisage that the proposed Commission, in the discharge of its financial assurance functions would identify and inform the Welsh Ministers if an FE college in Wales is likely to become insolvent. The intention is that the Welsh Ministers would retain their power to initiate an education administration having taken into account advice supplied by the Commission.

Principal Charity Regulator

355. Further and Higher education institutions Wales are all charities and as such must comply with charity law. The Charities Act 2011 makes provision for certain charities to be exempt from registering with the Charity Commission. Exempt charities must either have a principal regulator or register with the Charity Commission (in the latter case they would cease to be exempt charities). An exempt charity must comply with charity law, its governing document and any regulatory regime relevant to its area of operation.

356. The main duty of a principal regulator is to promote compliance with charity law by the charities they regulate²³. The power to appoint a principal regulator rests with the Secretary of State²⁴. A principal regulator tends to regulate the charity in question for other purposes and does not have any power to enforce charity law. Regulatory activities are carried out by the Charity Commission, but before undertaking those activities it must consult with the charities principal regulator. In particular the Charity Commission can only open a statutory inquiry if the relevant principal regulator asks it to.

357. Further education corporations and charities connected to them are exempt charities²⁵ under the Charities Act 2011. The Welsh Ministers are the principal regulator of further education corporations (and St David's Catholic College) as well as maintained schools in Wales. If a complaint is raised about an exempt charity that concerns its compliance with charity law, the Welsh Ministers as its principal regulator will refer the matter to the Charity Commission. The Charity Commission will enter into a memorandum of understanding (MOU) with each principal regulator²⁶.

358. The proposal to transfer responsibility for regulatory oversight of FE institutions from the Welsh Ministers to the Commission raises the question as to whether the Welsh Ministers should remain the principal regulator for FE corporations in Wales. We would welcome stakeholders' views on this matter.

²³ Section 26 of the Charities Act 2011.

²⁴ Section 25 of the Charities Act 2011 (as amended).

²⁵ Charities Act 2011 paragraphs 7 and 28 of Schedule 3 refer.

²⁶ In respect of further education corporations see:

<http://gov.wales/topics/educationandskills/learningproviders/further-education/principal-regulator/?lang=en>

359. The situation in respect of HE institutions is somewhat different. HE institutions in Wales are registered charities. We do not think that these arrangements should change but we would welcome stakeholders' views on this matter.

Questions

Do you agree that the Commission should have a range of intervention powers at its disposal to deal with failure to comply with financial and governance assurance requirements?

Do you agree with the proposal that the Welsh Ministers should retain their powers of intervention under section 57 of the Further and Higher Education Act 1992 and that the Commission should be enabled to make recommendations to the Welsh Ministers as to the exercise of those powers?

Do you agree with the proposal that the Welsh Government should explore the possibility of transferring the Principal Charity Regulator role for FE institutions to the proposed Commission? What are your views on the proposal to retain the current requirement for HE institutions in Wales to register with the Charity Commission?

14. HE governance

360. Higher education plays an important role in the social, cultural and economic life of Wales. As such, it is vital to ensure that our universities are well governed, not only to protect the interests of students and the taxpayers, but to preserve and promote the reputation of Welsh higher education on a global stage.
361. In Wales there are currently nine HE Institutions (including the Open University in Wales), six of which are established by Royal Charter and three are Higher Education Corporations (HECs). In recent years, higher education in Wales has seen considerable structural, funding and regulatory change. The Welsh HE sector has been subject to significant reconfiguration geared towards the establishment of a smaller number of larger HE institutions that will increase the sector's sustainability and strategic direction. Informed by HEFCW's 2012 report, *Future Structure of Universities in Wales*, this programme of reconfiguration has led to a number of mergers within the Welsh higher education sector.
362. Since 2012/13, there has also been a significant change in the public funding and regulation of higher education in Wales, with funding previously provided to institutions by HEFCW through recurrent grant being increasingly redirected through student support arrangements. This shift in funding led to the introduction of a revised regulatory framework under the Higher Education (Wales) Act 2015 ('the 2015 Act') that did not solely rely on terms and conditions attached to grant funding.
363. Currently, higher education governance in Wales is underpinned by the legislative framework set by the Education Reform Act 1988 (ERA 1988) and the Further and Higher Education Act 1992 (FHEA 1992). ERA 1988 makes provision for the governance arrangements that apply to HECs in Wales whilst FHEA 1992 includes provision relating to the granting of degree awarding powers (DAPs) and university title (UT). Prior to the enactment of the Higher Education and Research Act 2017 (HERA 2017), this formed a joint framework for both Wales and England, however, the reforms to be introduced under HERA 2017 will effectively bring this shared approach to an end and make significant changes to the legislative arrangements for HECs and to the procedures for granting DAPs and UT in England. The UK Government set these reforms in the context of opening the HE market to competition, simplifying and shortening the process for new providers to enter the sector and to create a more 'level playing field' between institutions established under different constitutional arrangements.
364. In Scotland, the legislative framework for higher education governance is provided for by the Universities (Scotland) Acts of 1858, 1889, 1922, 1932 and 1966, the Further and Higher Education (Scotland) Act 1992 and the Higher Education Governance (Scotland) Act 2016 ('the 2016 Act'). The 2016 Act makes provision about the composition of, and appointment to, the governing bodies of higher education institutions, and also the composition of the academic boards. The Further and Higher Education (Scotland) Act 1992

makes provision for the Privy Council to grant DAPs and UT to institutions in Scotland. Applications for DAPs and UT are assessed in accordance with published criteria. The Further and Higher Education (Scotland) Act 1992 also allows the Privy Council to make provision by Order relating to the composition and functions of the governing body of higher education institutions that are “designated” under that Act. Alongside these statutory arrangements, the Scottish Funding Council requires institutions to comply with principles of good governance as a condition of a grant of public funding.

365. As a consequence of the significant changes that have occurred in Wales and across the UK since the current legislative framework was created, the White Paper consultation in June 2017 sought initial views on whether any change was needed to existing HE governance arrangements in Wales to ensure that they remain fit for purpose in the future. In particular, views were sought on how extant legislation governing HECs in Wales might be modernised to place them on a more equal footing with other providers of higher education incorporated under different constitutional arrangements, and whether any reform to the process and criteria for granting degree awarding powers and university title in Wales were necessary in light of changes elsewhere in the UK.

The Legislative Framework for HECs in Wales

The Amendment of governing documents

366. Higher education institutions are conducted in accordance with their governing documents. For chartered bodies this is the charter and statutes whilst for HECs, incorporated under the ERA 1988, governance arrangements are set out in their instrument and articles of government. Under current arrangements, amendments to charters and statutes and instrument and articles of government must be approved by the Privy Council.
367. ERA 1988 provides the legislative and constitutional framework that applies to HECs in Wales. Amongst other matters, this includes provision relating the content of their governing documents and the procedural requirements for making amendments to those documents.
368. Under section 124A of ERA 1988, HECs in Wales that were established after 6 May 1992 must have in place an instrument of government which provides for the constitution of the institution. This instrument of government for HECs in Wales is made and modified by order of the Privy Council and must comply with the requirements of Schedule 7A of the 1988 Act. The Schedule prescribes requirements concerning the membership of the corporation, the number of members and the appointment of members to the governing body. HECs that were established before 6 May 1992 must meet the requirements of Schedule 7 to the 1988 Act, until such time as an instrument of government is prescribed by the Privy Council under section 124A.

369. Section 125 of ERA 1988 requires a HEC in Wales to have articles of government relating to the conduct of the institution. Section 125 prescribes what the articles of government of a HEC in Wales must contain. Broadly the articles determine the distribution of functions between the board of governors, the Principal and the Academic Board and regulate the constitution and functions of committees of the corporation. They may also make provision authorising the board of governors to make rules or bye-laws for the government and conduct of the institution.
370. Section 125 also sets out procedural requirements whereby the initial articles must be prepared by the HEC and approved by the Privy Council. The HEC is able to amend its articles with the approval of the Privy Council.
371. Universities established under Royal Charter are not subject to the provisions of ERA 1988 and therefore have greater freedom to amend their governing documents than HECs incorporated under the ERA 1988 as the statutory requirements do not apply. However, it is important to note that amendments to their charters and statutes are subject to the approval of the Privy Council in a similar way to changes to HECs' instruments and articles of government. As part of the current procedural arrangements for amendments to the governing documents of both HECs and chartered institutions in Wales, the Privy Council seek advice from the Welsh Government and the First Minister in his capacity as lead Privy Counsellor for higher education matters in Wales, before giving approval to any proposed amendment.

Deregulation and The Law Commission consultation on Charity Law

372. In 2006, Welsh Ministers wrote to all higher education institutions in Wales²⁷ regarding the deregulation of their governance arrangements and providing an opportunity for institutions to consider amendments to their governing documents so as to remove the requirement for Privy Council approval for certain matters. At the same time, the letter recognised that there is a significant public interest in the governance arrangements of higher education institutions and included a list of those matters for which Privy Council oversight and control should be retained. These are set out below. This approach relied upon the reallocation of provisions amongst institutions' governing documents so that only amendments to certain matters that were deemed to be in the public interest required the approval of the Privy Council. Other provisions could be reallocated to lower level governing documents so that an institution could change these without referral to the Privy Council.

²⁷ "Deregulating Higher Education Institutions' governance arrangements" issued in February 2006

Key principles of public interest over which Privy Council control should be retained:

- Degree awarding powers, university title, powers and objects – essentially covered in Charters;
- Functions, responsibilities and over-arching powers of the Governing Body;
- Delegation of the Governing Body’s powers;
- Composition of Governing Body and terms of office of members;
- Quorum for conducting Governing Body business;
- The over-arching powers of the Court and Senate (ensuring that they are subsidiary to the Governing Body);
- Auditors and audit committee;
- Academic Freedom provisions;
- Method of amending main governance documents;
- University years;
- Student unions;
- The Model Statute.

373. The Law Commission has also considered matters of higher education governance as part of its *Charity Law: Selected Issues* project. In July 2015, the Law Commission issued a consultation paper on *Technical Issues in Charity Law*²⁸ which included proposals relating to the way higher education institutions and charities more widely amend their governing documents. The Law Commission’s final report was published in September 2017²⁹ and made specific recommendations in respect of the amendment of governing documents for higher education institutions in Wales. The report supports an extension of the 2006 reallocation approach described above and includes the following recommendations that concern higher education governance arrangements in Wales:

²⁸ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/06/cp220_charities_technical.pdf

²⁹ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2017/09/6.3781_LC_HC304_Technical-Issues-in-Charity-Law_FINAL_080917_WEB.pdf

To facilitate the amendment of, and the re-allocation of provisions within, the governing documents of Welsh higher education institutions (“HEIs”), the Welsh Government should consider introducing the following measures:

- (1) the publication of guidance concerning the process for amending governing documents;
- (2) following consultation with the sector, the publication of guidance (either by the Welsh Government or some other public body) setting out the matters of public interest in the governing documents of HEIs, amendment of which should remain subject to oversight; and
- (3) the removal of the requirements in the Education Reform Act 1988 as to the content of the governing documents of higher education corporations so as to enable those bodies to re-allocate provisions in accordance with guidance concerning public interest matters.

White Paper consultation

374. In our initial consultation in June 2017, we asked whether existing prescriptions placed on the governing documents of HECs should be removed and whether the requirement for Privy Council approval should be removed for certain types of amendments to HECs’ governing documents.

375. Generally, stakeholders who responded to the consultation felt that the current arrangements worked well and provided a robust framework in respect of the oversight and amendment of governing documents. Some questioned whether it was necessary or appropriate to make significant changes to arrangements at present given the wider reforms that are happening in Wales and across the UK. There was support for the retention of oversight and scrutiny for certain types of amendments, particularly those that were considered to represent matters of public interest. Many considered that this role should continue to be performed by the Privy Council as it offers a breadth of knowledge and experience in higher education matters and provides strong and independent oversight of amendments. Some argued that the Commission should also have a role in the process.

376. In terms of the current prescriptions placed on the governing documents of HECs, a number of stakeholders argued for their removal, pointing to the need for parity of approach across all institutions regardless of the constitutional arrangements under which they operate. Removal of these prescriptions would allow HECs similar flexibility to amend their governing documents as that afforded to chartered institutions. Other stakeholders felt that current prescriptions should be retained as they provided a level of accountability for the governance arrangements of higher education institutions.

Proposals

377. The Welsh Government welcomes, in principle, the idea of simplifying the process for higher education institutions to make amendments to their governing documents. However, in considering how this could be achieved it is important to acknowledge the unique position that higher education institutions occupy. Not only do they play a vital role in the social and economic life of Wales but they are also recipients of significant public investment, either directly through grant funding or indirectly through student support. As such there is considerable public interest in their governance arrangements. It is also important to note that the Welsh higher education sector has undergone significant change in recent years, including a number of institutional mergers.
378. We are of the view that time needs to be allowed for the changes arising from the recent mergers to bed in and for wider PCET reforms to be completed before any fundamental systemic change is considered. Consequently, we do not consider it appropriate to lessen oversight and scrutiny of governance arrangements at Welsh higher education institutions at this point in time. Instead, we support the broad approach recommended by the Law Commission in its recent report as an appropriate way forward. We are of the view that such an approach will create greater consistency across all types of institution while at the same time providing an appropriate level of accountability that reflects the significant public interest in the governance arrangements of higher education institutions.
379. As part of this approach we consider that there should continue to be oversight and scrutiny by the Privy Council for those amendments to governing documents that are considered to be in the public interest. We consider this necessary to protect the interests of students and the reputation of the sector in Wales. The Privy Council has extensive expertise, knowledge and experience of higher education and is able to provide strong and effective oversight of the governance arrangements of HEIs and any proposals to amend their governing documents. Consequently, we do not consider that it would be prudent to transfer this role away from the Privy Council at the present time.
380. We do, however, consider that there is scope for the Commission to be involved in the process for considering amendments to governing documents. This would include assessing the compliance of requests against the public interest list and wider principles of good governance and making recommendations to the Welsh Government. We consider that this would sit comfortably with the Commission's proposed role in relation to the assurance of institutional governance arrangements across PCET providers. It should be noted that should such an arrangement be taken forward, the Welsh Government would continue to have a role in providing advice to the First Minister as lead Privy Counsellor for higher education matters in Wales³⁰.

³⁰ The diagram at the end of this chapter compares the current procedural arrangements for amending HEIs' governing documents with the proposed options for the revised approach set out in this chapter.

381. In terms of the amendments to governing documents that will be subject to scrutiny and approval by the Privy Council, we propose that the approach set out in the Welsh Ministers letter to HEIs in 2006 be built on and extended to all institutions. This will allow institutions the autonomy to consider reallocating provisions between their governing documents so that only those matters deemed to be in the public interest would continue to be subject to Privy Council oversight and scrutiny.
382. To support this approach we propose that guidance be issued by the Welsh Government on the procedures for amending governing documents and by the Commission on the public interest matters that will remain subject to Privy Council oversight and approval. In developing this guidance we consider that the list of public interest matters that was contained in the 2006 letter should be reviewed by the Commission and revised where necessary to ensure that it remains up to date. The Commission should undertake this review and issue guidance in consultation with relevant stakeholders. We also propose that the Welsh Ministers be given powers to issue guidance to the Commission in relation to the public interest matters that should continue to be subject to oversight.
383. We recognise that, in order to fully extend this approach across the sector, existing legislation will need to be amended to remove the current statutory requirements that currently apply to HECs. We therefore propose to remove the requirements in the ERA 1988 that relate to the content of the governing documents of HECs to enable those bodies to reallocate provisions in accordance with the guidance concerning public interest matters referred to above in a similar way to universities established under different constitutional arrangements, thereby ensuring parity of approach.
384. We believe that adherence with the public interest matters and the wider institutional governance assurance arrangements of the Commission will provide an appropriate level of accountability and scrutiny in the absence of statutory requirements for the governing documents of HECs. The approach will also provide greater flexibility for HECs to amend their governing document in accordance with the public interest matters and will help to level the playing field between HECs and chartered universities. It would also align more closely with arrangements for FEIs in Wales who have greater flexibility to amend their governing documents without Welsh Government approval provided they align with certain requirements set out in the FHEA 1992.

Questions

Do you agree that those amendments to HEIs governing documents considered to be in the public interest should continue to be subject to oversight and the approval of the Privy Council?

Do you consider the proposed extension of the 2006 reallocation approach for the amendment of HEIs governing documents to be appropriate? If not, why?

Questions

Do you agree that existing statutory requirements that apply to HECs governing documents should be removed so that the proposed approach can be extended to all higher education institutions?

Do you agree with the Commission's proposed role in relation to the consideration of amendments to HEIs governing documents?

To support the proposed approach, do you agree that:

- a) the Welsh Government should issue guidance on the procedure for amending governing documents?
- b) the Commission should review the 2006 list of public interest matters in consultation with stakeholders and issue guidance on those matters that will continue to be subject to Privy Council oversight and approval?
- c) the Welsh Government be enabled to issue guidance to the Commission in relation to the public interest matters that should continue to be subject to oversight and approval?

Do you consider that the proposed approach would safeguard the public interest in the governance arrangements of HEIs in Wales?

The Welsh Ministers' powers to dissolve a HEC in Wales

385. Under the current legislative framework for HECs in Wales, section 128 of ERA 1988 provides the Welsh Ministers with the power to dissolve any HEC in Wales whether or not the process has been instigated by the institution itself. The 1988 Act does not place any limitations on the use of this power other than requiring the Welsh Ministers to first consult with the institution and HEFCW. In exercising their powers under section 128, the Welsh Ministers are able to dissolve a HEC and transfer its properties, rights and liabilities to one of a number of prescribed bodies, including another educational body, a higher education funding council or the Welsh Ministers themselves. There are no equivalent powers for the Welsh Ministers to dissolve a university in Wales established under Royal Charter.

386. Currently, the provisions of section 128 apply to HECs in both Wales and England. However, once the relevant provisions of HERA 2017 are in force they will amend this provision insofar as it is applied to institutions in England and introduce new provision which removes the Secretary of State's power to dissolve a HEC in England unless the process is initiated by the HEC itself.

White Paper consultation

387. In our initial consultation, we sought views on whether the Welsh Ministers' current power to dissolve a HEC in Wales should be retained or removed. Differing views were expressed by stakeholders. Some argued that the Welsh Ministers existing powers should be removed as this would provide equivalence and equity between HECs in Wales and other parts of the UK and between HECs and universities established under Royal Charter. Others felt the powers should be retained as they provided a necessary tool to facilitate merger or provided a powerful sanction of last resort that was necessary to protect the interest of students in the event of institutional failure or serious mismanagement. Some stakeholders expressed concern about the lack of qualification for the use of these powers on the face of current legislation and argued that they should be removed or modified to make clear the circumstances under which they could be exercised. There was a view amongst some stakeholders that other regulatory sanctions such as those available under the 2015 Act provided equally significant powers of intervention that could be used as an alternative means to address serious quality or governance concerns.

388. These views give rise to a number of potential options which we present below.

Options for consideration

389. **Option 1 - Status Quo:** This option would mean that existing provisions of ERA 1988 would remain as they currently are.

390. **Option 2 – The FE Model:** The Further and Higher Education (Governance and Information) (Wales) Act 2014 made provision relating to the dissolution of FECs in Wales. The effect of this provision was to remove the Welsh Ministers' power to dissolve FECs and transfer their property, rights and liabilities to another education provider and introduce in its place, a new power that enabled FECs to resolve to dissolve themselves.

391. Alongside these changes, the 2014 Act also provided the Welsh Ministers with revised intervention powers whereby they can direct the governing body to use its new powers to resolve to dissolve itself if the Welsh Ministers are satisfied that the FEI is being mismanaged or otherwise failing. Institutions are required to comply with such a direction. The intention behind such an action would be for the institution to formally merge with another or should that not be possible revert to public control until such time that a merger partner is established. The Welsh Government's further education intervention policy sets out that this type of intervention would only be considered as a "last resort" and initiated after a lengthy process of support and dialogue with the institution³¹.

³¹ <http://gov.wales/topics/educationandskills/learningproviders/further-education/intervention-policy-for-fe-institutions/?lang=en>

392. This option would consider a similar model being put in place for HECs incorporated under the 1988 Act.
393. **Option 3 – The HERA 2017 Model:** This option would consider the introduction of similar amendments to ERA 1988 that have been or are to be made in England under HERA 2017. As noted above, HERA 2017 will remove the Secretary of State’s power to dissolve a HEC in England unless the process is instigated by the HEC itself.
394. **Option 4 – Amend ERA 1988 to set out the conditions under which dissolution powers can be exercised:** This option would effectively retain the Welsh Ministers’ power to dissolve a HEC in Wales but would amend existing legislation to set out the circumstances in which the powers could be exercised. These might include dissolution as a means to facilitate merger or as a sanction of last resort to address institutional failures or mismanagement. Under this option consideration would need to be given to the circumstances under which the power could be used and for each condition the party instigating the process. There may be scope within this option to remove the Welsh Ministers’ power to dissolve a HEC in its entirety and provide powers for the Welsh Ministers to direct an institution to dissolve itself in certain prescribed circumstances. This would mirror arrangements in the FE Model and would create a similar model to the one described under option 2 above.
395. Under current arrangements, the Welsh Ministers must consult HEFCW and the relevant institution before an order can be brought forward to dissolve a HEC in Wales. **We would welcome views on whether this arrangement should continue to operate in future so that the Welsh Ministers would be required to consult with the Commission and the HEC in question or whether provision should be made for these powers to be exercisable only upon recommendation by the Commission.**
396. Some stakeholders were of the view that other regulatory sanctions could be used as an alternative to dissolution powers as they would provide equally significant powers of intervention that could be used as a means to address serious concerns. We do not consider that such an approach would present a viable option. Such sanctions usually address specific types of regulatory breach and are exercised under prescribed conditions and would therefore not provide an effective means of dealing with wider or more urgent instances of institutional failures or mismanagement. For example, there might be circumstances where it would be necessary to dissolve a HEC due to a pressing need such as insolvency or irrevocable reputational damage.
397. A key focus of the Welsh Government’s wider proposals for PCET reform is protecting the interests of learners. In considering any options for change to dissolution powers, it is important to take into account the potential impact on students. Under the current legislative framework for HECs, the rights, properties and liabilities of a dissolved corporation may transfer to another educational provider as part of a merger process with the agreement of the receiving organisation. Similar provision is made under the Further and Higher Education (Governance and Information) (Wales) Act 2014 for FEIs in

Wales and for HECs in England under HERA 2017. We consider that this provision contributes to safeguarding the interests of learners and means that the impact of dissolution is likely to be less disruptive than regulatory interventions as it provides for a managed transfer of provision to a merged institution in a way that regulatory sanctions do not.

398. For these reasons we consider that some form of dissolution power should be retained in Wales.

Initial appraisal of options

399. In appraising each of the options set out above, we consider there to be a number of factors that must be taken into account, one being the degree of parity each provides for HECs against universities established under other constitutional arrangements and with HECs in other parts of the UK. However, the need for parity of arrangements needs to be balanced against the wider purpose of such powers. We consider that the power for the Welsh Minister's to dissolve a HEC in Wales provides a necessary tool to facilitate merger. It also provides a powerful intervention of last resort to protect the interests of learners where serious institutional failures have been identified. We consider these to be important functions of dissolution powers and ones that should be retained. As such, it is necessary to consider how effectively these functions would operate under each of the options presented above. At the same time, it is necessary to explore how each option would address concerns about the current lack of limitations for the exercise of dissolution powers under the existing legislative framework.

Summary of option appraisal

	Option 1	Option 2	Option 3	Option 4
Provides for a managed transfer of provision	✓	✓	✓	✓
Powers could be used to facilitate merger	✓	✓	✓	✓
Powers would provides a sanction of last resort to address institutional failures or serious mismanagement and protect interests of students and the reputation of the Welsh sector	✓	✓	✗	✓
Would provide a level of parity with other HEIs by:				
<ul style="list-style-type: none"> • removing the Welsh Minister's power to dissolve a HEC in Wales; or • qualifying the circumstances under which they can be used 	✗	✓	✗	✗
	✗	✓	✓	✓
Would align with a wider Welsh PCET approach	✗	✓	✗	✗

400. Under option 1 existing arrangements would continue as they are now. The Welsh Ministers power to dissolve a HEC in Wales would be retained and would continue to be exercisable whether or not the process is instigated by the institution itself. While these powers could continue to be used for the purpose of facilitating merger or addressing serious institutional failures, the status quo would not address concerns over the lack of limitations for the exercise of such powers, nor would it provide clarity on the circumstances under which they might be used. Maintaining existing arrangements would also not provide parity with higher education institutions incorporated under other constitutional arrangements or with HECs elsewhere in the UK.

401. Options 2, 3 and 4 would all introduce a level of equivalence between HECs and chartered institutions in Wales by either removing the current power for Welsh Ministers to dissolve a HEC or making provision for the circumstances under which powers could be exercised. All options would retain powers that could be used as a means to facilitate merger. Options 2 and 4 would allow the use of dissolution powers as a “last resort” sanction in the event of institutional failure or serious mismanagement, either through the introduction of powers for the Welsh Ministers to direct an institution to resolve to dissolve itself (option 2) or through the amendment of existing legislation to make clear the circumstances under which the Welsh Ministers would be able to dissolve a HEC in Wales (option 4). We consider it unlikely that option 3 would support the use of dissolution powers as an intervention of last resort as, under that model, the process must be instigated by the institution itself. Option 2 would align closely with arrangements for FEIs in Wales under the 2014 Act and would serve to create a consistency of approach across different PCET sectors in Wales.

402. We consider there to be a strong argument for the retention of dissolution powers in Wales in some form. Powers to dissolve a HEC and transfer its rights, properties and liabilities are necessary not only as a means to facilitate merger but as a way to address significant institutional failures or mismanagement, in order to protect the interests of learners and the reputation of higher education in Wales. However, we consider it necessary to address the current lack of qualification associated with the exercise of these powers and thus place HECs on a more level footing with chartered institutions. On the basis of our analysis, we consider that either option 2 or option 4 would present the most appropriate way forward, however, we welcome the views of stakeholders on the options presented.

Questions

Which option do you consider to be the most appropriate and why? Are there other options that should be considered?

Under what conditions or circumstances do you consider it appropriate for dissolution powers to be exercised?

Should dissolution powers only be exercisable on recommendation of the Commission? If so, should this also be extended to the existing arrangements for FE institutions?

Degree Awarding Powers and University Title

403. The Further and Higher Education Act 1992 (FHEA 1992) provides the legislative basis for the award of degree awarding powers (DAPs) and university title (UT) in Wales. Under the current approach the power to grant these awards rests with the Privy Council.

404. Under section 76 of the FHEA 1992, the Privy Council may grant powers to award three categories of degrees; foundation degree awarding

powers (FDAPs); taught degree awarding powers (TDAPs) and research degree awarding powers (RDAPs). Section 76 enables the Privy Council to grant TDAPs and RDAPs to any institution which provides higher education. The Privy Council is also able to grant FDAPs to institutions within the further education sector in Wales. Under the provisions of the FHEA 1992 an institution with TDAPs can also award its own foundation degrees, however, an institution with FDAPs can only award degrees at that level.

405. Section 77 of FHEA 1992 makes provision for the award of university title whereby an institution in the higher education sector is able to use the word “university” in its name with the consent of the Privy Council. Section 77 also makes provision for the award of university college title for those higher education institutions that do not fully meet the criteria for the award of university title or who do not wish to use it.

406. Applications to secure these awards are made in accordance with criteria and guidance published by the Welsh Government. To make an application for TDAPs, an institution must be able to demonstrate a four year track record of delivering higher education at a level equivalent to level 6³² immediately preceding the year in which they apply and have the majority of their students enrolled on programmes of study at level 6 or above. Further education (FE) institutions may apply for FDAPs, and in doing so must be able to demonstrate a similar track record delivering higher education programmes of level 5 or above. FE institutions applying for FDAPs must also provide a progression statement demonstrating that the FE institution has agreed and is promoting clear progression routes for learners wishing to proceed to a course of higher-level study on completion of the foundation degree. Any institution seeking RDAPs must have first secured TDAPs. To apply for university title (UT) an institutions must have TDAPs, meet prescribed student number criteria³³ and be able to demonstrate that it has regard to the principles of good governance.

407. Under the existing procedural arrangements for DAPs and UT, the Welsh Government advises the Privy Council on applications following a detailed assessment by the QAA and the receipt of advice from HEFCW on the financial sustainability of the institution. However, the final decision to approve or reject an application lies with the Privy Council.

408. Under current arrangements TDAPs are awarded on an indefinite basis to those institutions that are publicly funded, i.e. institutions that receive grant funding from HEFCW. All other institutions are granted awards on a six year fixed term renewable basis. In the case of FDAPs, current criteria sets out that “the Welsh Government is likely to recommend to the Privy Council that a FE institution should have restricted powers and that the powers should be time limited to six years in the first instance. Subject to a satisfactory QAA assessment before the end of this six year ‘probationary’ period, the Welsh

³² In accordance with *The Framework for Higher Education Qualifications of Degree-Awarding Bodies in England, Wales and Northern Ireland* (FHEQ).

³³ Normally have at least 4,000 full time equivalent higher education students, of whom at least 3,000 are registered on degree level courses (including foundation degree programmes).

Government will advise the Privy Council on the scope of the powers to be awarded”.

409. Prior to HERA 2017, the legislative framework for DAPs and UT set out above applied to institutions in both Wales and England with applications being assessed against similar criteria. However, the 2017 Act will introduce a range of reforms to the way in which HE providers in England can award their own degrees and secure university title.

White Paper consultation

410. As a result of the policy divergence between Wales and England our initial consultation sought views on whether any reform to the process and criteria for granting degree awarding powers and university title for institutions in Wales was necessary. In particular, we sought views on:

- the Privy Council’s role in relation to the granting of awards in Wales;
- any changes that might be necessary in respect of the eligibility criteria for awards and the basis for awarding indefinite degrees;
- whether the introduction of flexible degree awarding powers and powers to vary and revoke DAPs and UT in Wales should be explored; and
- any changes that might be necessary to degree awarding powers and validation arrangements to improve the effectiveness of current partnership arrangements for the delivery of higher education by further education institutions.

411. Many stakeholders expressed the need for caution in considering any change to existing procedures and criteria for the award of DAPs and UT in Wales in response to changes elsewhere in the UK. There was support for the retention of current arrangements and eligibility criteria as they were considered well established and had worked well over a number of years. Many felt that they provided a robust framework to ensure the quality and reputation of Welsh higher education and safeguarded the interests of students studying at Welsh HEIs. A number of stakeholders were of the view that the Commission should have a role in the process for the award of DAPs and UT.

412. Some concerns were expressed with regard to the introduction of revocation powers. In particular these focused on how the interests of students might be protected should an institution lose its degree awarding powers or university status. Some stakeholders argued that the use of other regulatory interventions would be a more appropriate means of addressing quality issues. There was some support amongst FE stakeholders for the exploration of flexible or limited subject DAPs.

Proposals

413. In considering any changes to existing arrangements for granting DAPs and UT in Wales in light of changes elsewhere in the UK, it is necessary to take account of a number of key factors.
414. Importantly, we must recognise the different policy context in Wales and other parts of the UK. In Wales the direction of travel is geared towards the establishment of a planned and coherent higher education sector that operates strategically and is sustainable for the future rather than the more market driven approach that has been pursued elsewhere.
415. Changes must also be considered in the context of the wider PCET reform programme being taken forward in Wales. It is necessary to ensure that any reform of arrangements for DAPs and UT in Wales aligns with wider PCET proposals and does not lessen the level of protection for students or negatively impact on the quality of Welsh higher education. The sector in Wales is significantly smaller than other parts of the UK and as such the risk of significant reputational damage is proportionally far greater.
416. In practice, applications for DAPs and UT in Wales are few. All Welsh HEIs have TDAPs and have secured university status, and most have RDAPs. To date, no FEI in Wales has applied for FDAPs.
417. The UK Government has recently consulted on the new process and criteria for DAPs and UT in England and on the associated regulatory framework to be established under HERA 2017. We anticipate that the new arrangements in England will be fully implemented from the beginning of the 2019/20 academic year. We are of the view that any changes that might be necessary in response to the new arrangements in England cannot be fully considered until the detail of those arrangements is known and the new processes have been fully embedded. This would also allow time for the wider PCET reforms in Wales to be fully considered.
418. For the reasons set out above, we do not consider it appropriate to make significant change to the current arrangements for DAPs and UT in Wales at the present time. Consequently, we propose that the current Privy Council role in relation to granting of DAPs and UT be retained in Wales and that no change to existing criteria is made in the short term. It is worth noting that under the current arrangements, eligibility criteria such as track record requirement are set out in guidance issued by the Welsh Government rather than being prescribed in legislation. This means that any changes to existing criteria that might be considered necessary in future can be made in consultation with stakeholders and would not require legislative change. This would include any future changes that might be necessary to the criteria for the award of indefinite degrees in light of reforms to the PCET governance, funding and regulatory arrangements in Wales.
419. In line with our proposals set out earlier in this section relating to the procedural arrangements for the amendment of higher education institutions'

governance documents, we consider there to be scope for the Commission to play an enhanced role in the provision of advice on applications for DAPs and UT in Wales. In particular, we consider that the Commission could be responsible for the commissioning of advice on the quality and financial sustainability of applicant institutions and of assessment against prescribed criteria before making recommendations to the Welsh Government in respect of the approval or rejection of applications based on the outcome of those assessments. Under current arrangements, this role is performed by the Welsh Government.

420. It is important to note, however, that the Welsh Government would continue to be involved as recommendations made by the Commission would be subject to the agreement of the First Minister in his capacity as lead Privy Counsellor for higher education matters in Wales. Whilst it could be argued that this will impose an additional tier of bureaucracy in the process, we consider there to be benefits should the Commission perform this role as it would streamline the commissioning of advice on applications and align with the Commission's wider functions for quality and financial and governance assurance. We consider there is also scope for the Privy Council to seek advice directly from the Commission.

421. The diagram below compares the current procedural arrangements for amending HEIs' governing documents and for considering applications for DAPs and UT in Wales with the proposed options for the revised approach set out in this chapter.

422. Under current arrangements guidance on applications for DAPs and UT is issued on behalf of the Privy Council by the Welsh Government. We propose that this role be retained.

423. Some stakeholders did consider that the introduction of flexible or limited subject DAPs in Wales should be explored. They argued that allowing specialist provision at FEIs and other PCET providers to be recognised in its own right could promote widening access to HE by increasing higher education options in geographically distant areas and enabling learners to access opportunities in their own localities. There were also views expressed that eligibility for FDAPs could be reviewed to allow a broader range of institutions to offer these qualifications. The Welsh Government will continue to engage with stakeholders in respect of these and other HE governance matters set out here.

424. As part of its strategic remit, we also propose that the Commission consider current partnership arrangements for the delivery of higher education by further education institutions and any changes that might be necessary to improve their effectiveness in future.

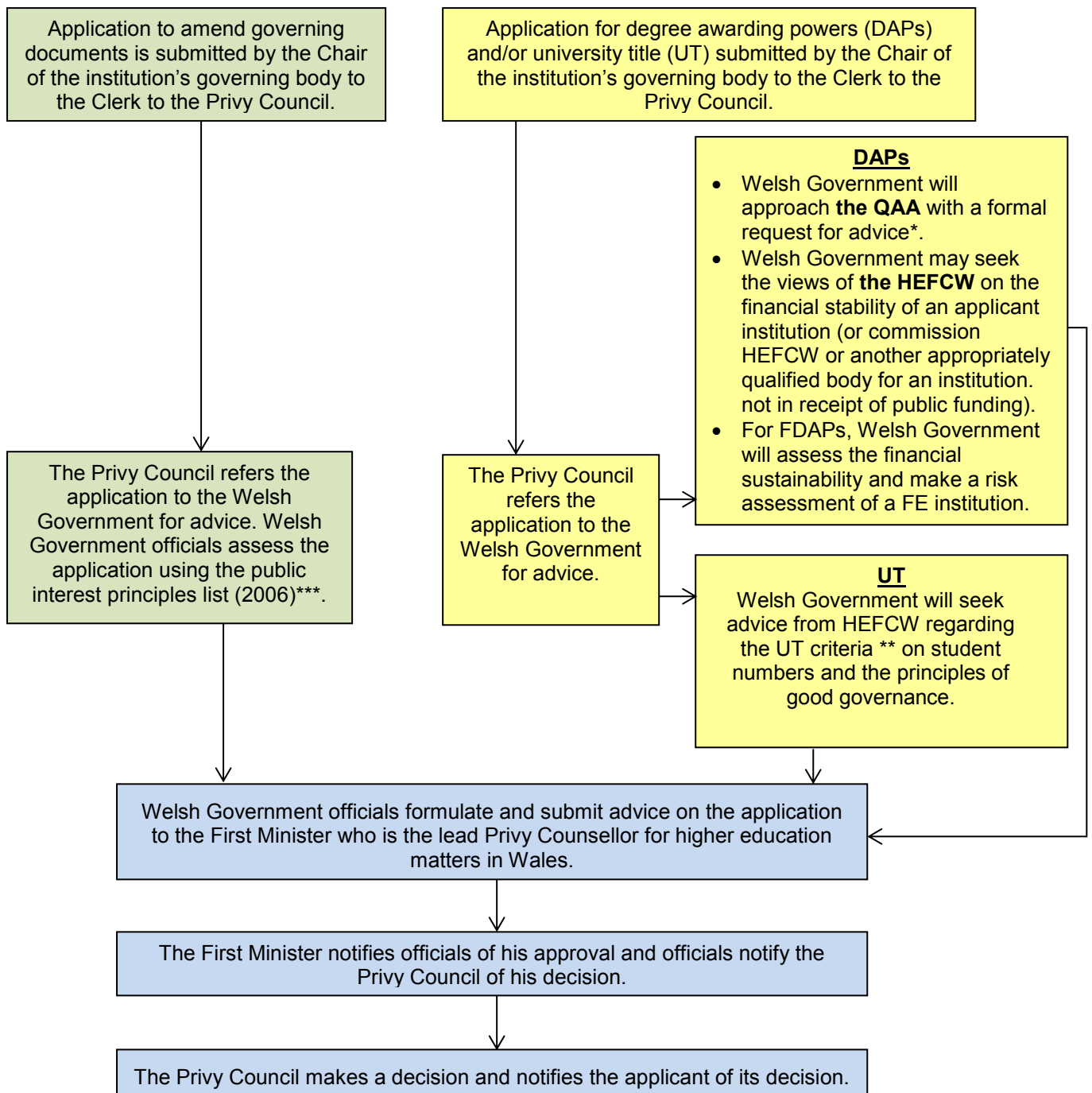
Questions

Do you agree with the proposed approach, i.e. that no significant changes should be made to the current procedures and criteria for granting DAPs and UT in Wales for the present time?

Do you agree with the Commission's proposed role in relation to the consideration of DAPs and UT applications in Wales?

Do you agree that the Commission should consider the effectiveness of existing arrangements for the delivery of HE in FE as part of its wider strategic remit for PCET provision?

Current application process for amendments to governing documents and grant of degree awarding powers and university title

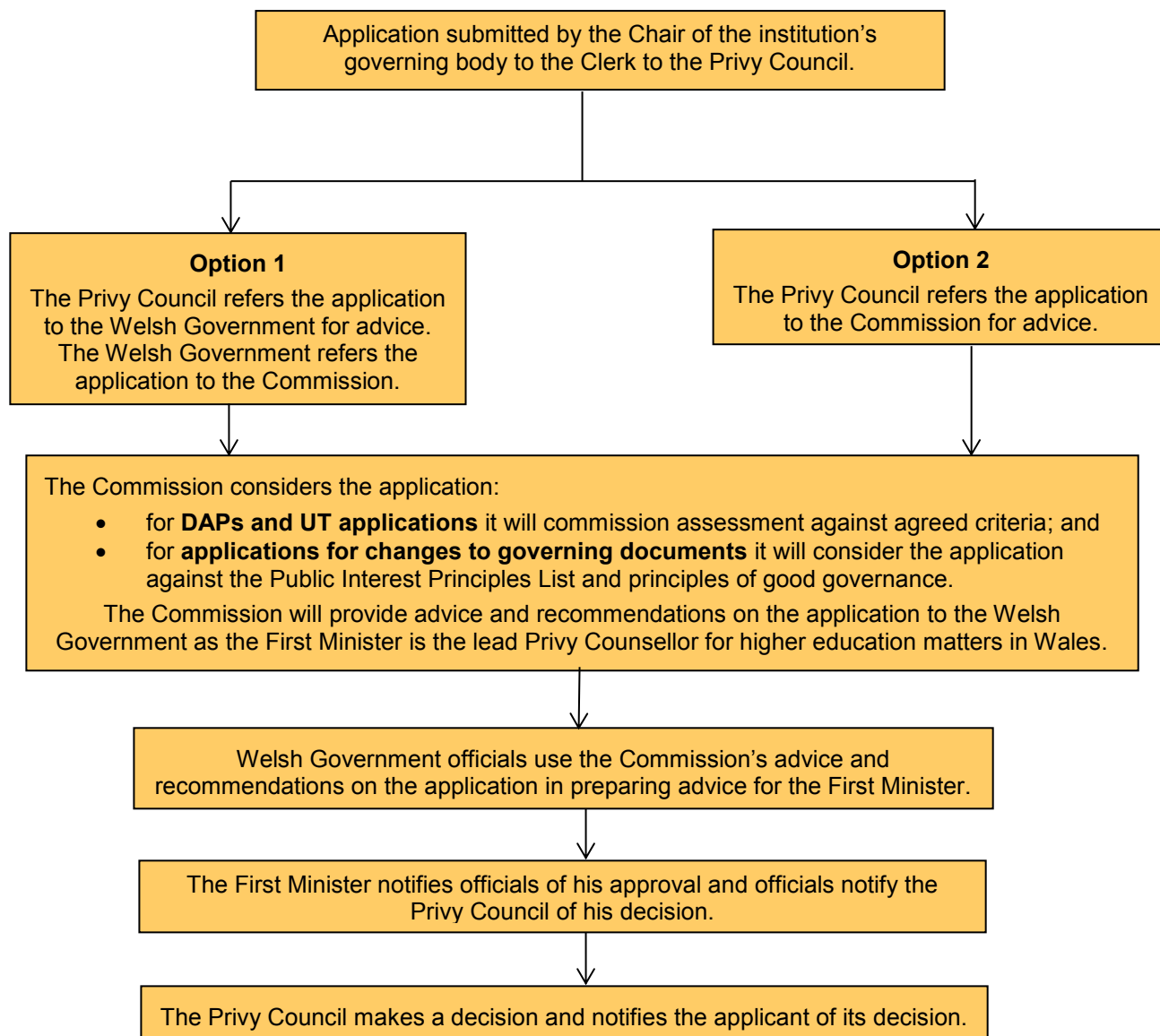


* Scrutiny by the QAA, utilising the criteria laid out in *Applications for the grant of Degree Awarding Powers: guidance and criteria for applicants in Wales (2017)*, determines whether or not an applicant institution is fit to exercise the powers being sought.

** Currently laid out in *Applications for the grant of Taught Degree Awarding Powers, Research Degree Awarding Powers and University Title (2004)*.

*** Attached as an annex to *Deregulating Higher Education Institutions' governance arrangements (2006)*.

Proposed application process for amendments to governing documents and grant of degree awarding powers and university title



15. Supporting the Welsh language

425. *Cymraeg 2050 – A million Welsh speakers* the new Welsh Language Strategy was published on 10 July 2017. It outlines the vision of the Welsh Government of achieving a million Welsh speakers by 2050.

426. *Cymraeg 2050* sets a specific aim to:

Develop post-compulsory education provision which increases rates of progression and supports everyone, whatever their command of the language, to develop Welsh language skills for use socially and in the workplace.

427. Post-compulsory education and training is important in achieving the vision of a million Welsh speakers. The activities of the proposed Commission will play a part in this. The Commission will need both to maintain current provision, and to build for the future by working with PCET providers to ensure that the Welsh language is considered and supported at all levels. This could have implications for how provision is offered and delivered across the post-16 sector.

White Paper responses

428. The vast majority of respondents to the White Paper consultation considered that the Commission should be responsible for the Welsh language and Welsh-medium learning in the PCET sector. Numerous responses also closely linked the Commission with the *Cymraeg 2050* Strategy. The responses to the White Paper consultation reiterated a requirement for the Commission to take a proactive and strategic role in developing Welsh-medium provision and that this should be a requirement immediately upon its establishment.

429. Opinion on the transfer of responsibilities for activities that support the Welsh language and the development of Welsh-medium learning was divided among respondents. There was a clear view from some institutions that the Commission should have responsibility for funding the Coleg Cymraeg Cenedlaethol, while there were related concerns regarding securing of future budgets to maintain activities and associated support mechanisms. A similar situation exists in respect of the National Centre for Learning Welsh.

Proposals

430. The Welsh Language (Wales) Measure 2011 imposes a duty on some organisations to comply with standards of conduct on the Welsh Language. As a new body with an extensive remit, the Welsh Government intends that the Commission should be made subject to the Welsh language standards.

431. A White Paper on a new Welsh Language Bill was published in August 2017 and proposes replacing some categories of standards with Language Planning Duties. The Commission could be subject to the new Language

Planning Duties which will impact on its consideration of the Welsh Language in its day to day activities.

432. The post-compulsory education sector has a critical role to play in ensuring that young people, on leaving statutory education, maintain and develop their Welsh language skills for use in future employment. This not only refers to fluent Welsh speakers, but to opportunities provided for new learners to learn the language and opportunities for returning Welsh learners and those who are not confident in using Welsh to re-engage in speaking the language.
433. To achieve this, the Commission will need to be able to plan for the development of Welsh-medium provision across post-compulsory education. That might include, a strategy to promote Welsh-medium provision and to provide support, both financial and practical, for institutions and other learning providers in developing Welsh language provision.
434. We anticipate that the Commission will seek to support, through its activities, the implementation of the Welsh Government's Welsh language strategy - Cymraeg 2050. The Welsh language and the development of Welsh-medium provision will, of course, be considered throughout the development of any legislation.

Questions

Do you agree that the Commission should be placed under a specific duty to have regard to the Welsh language in the exercise of its functions?

In having regard to the Welsh language, do you agree the Commission should be expected to consider matters such as:

- the Welsh Government's vision for a million Welsh speakers by 2050;
- the adequacy of existing provision of education through the medium of Welsh;
- how it can support existing provision through the medium of Welsh;
- how current provision through the medium of Welsh can be developed;
- promoting the Welsh language throughout the PCET sector?

The Coleg Cymraeg Cenedlaethol

435. The recent Review of the Activities of the Coleg Cymraeg Cenedlaethol³⁴ recommended that the Coleg should broaden its remit from higher education to cover the whole of the PCET sector. The Coleg, which

³⁴ <http://gov.wales/topics/educationandskills/allsectorpolicies/welshmededuca/review-of-the-activities-of-the-coleg-cymraeg-cenedlaethol/?lang=en>

provides independent oversight, strategic direction, and support to the development of Welsh-medium higher education across Wales, could in future work with the Commission, and enable Welsh-medium education to be 'fully embedded' within the whole of the PCET sector.

436. Since its establishment the Coleg has previously been funded via HEFCW, but more recently it is being funded directly by Welsh Government. The current activities of the Coleg will be an asset for the proposed Commission as it develops future Welsh-medium provision and its relationship with the Commission will be important to the success of the new body in responding to Welsh Government language policy.

Question

What are your views regarding the future relationship between the Coleg Cymraeg Cenedlaethol and the Commission? Please include comments on the relationship regarding funding of the Coleg and its operational activities as well as the accountability of the Coleg to the Commission.

The National Centre for Learning Welsh

437. The National Centre for Learning Welsh was established in 2015 to provide strategic leadership to the Welsh for Adults sector and to plan and deliver funding to learning providers in this area. There are two distinct functions to the centre:

- the strategic and operational planning functions for the programmes and management of the network of providers; and to develop specific aspects of the programme e.g. Welsh in the family, training for tutors, national marketing and informal learning, and;
- allocating funding to the providers which allows them to pay tutors; teaching classrooms; curricular development; marketing; assessment/accreditation; tutor training and quality procedures.

438. The activities of the Centre fall within the scope of the proposed Commission, although its activities are distinct and specific in response to the demand by individuals to learn Welsh and to the aims of the Welsh Government in response to Cymraeg 2050.

Question

What are your views regarding the future relationship between the National Centre for Learning Welsh and the Commission? Please include comments on the relationship regarding funding and operational activities of the National Centre and accountability of it to the Commission.

16. Data, statistics and research

439. In order to carry out its role in relation to the PCET sector, to oversee its work and performance, to set and monitor its strategic and operational priorities, and to distribute funds in accordance with its statutory responsibilities, the new Commission will need to collect and use data and other evidence, and to have a role in influencing learning providers' data, statistics and research responsibilities.
440. For these functions, the Commission will require powers in law and the capability and infrastructure to allow it to efficiently collect and process data about:
- providers, their plans, finances, activities and staff;
 - learners and potential learners, their courses and activities and their achievements and other outcomes;
 - educational and other organisations involved in research, their activities and outcomes.
441. The function and role of the Commission needs to be well-defined to ensure that personal data is only collected where it is necessary to meet specific functions.
442. Current law about the responsibilities of the Welsh Government and other bodies in relation to powers and duties relating to data, statistics and research will also need to change, to reflect the Welsh Government's role in transferring its current information assets to the Commission and in oversight and challenge of the Commission.
443. Responses to the White Paper consultation have already indicated that providers should be placed under a duty to provide the Commission with learner application and progression rates by certain equalities characteristics.

Data

444. We believe the Commission should:
- Have a duty to store, collect and process data on post-16 providers (activities, plans, finance and staff) and learners (characteristics, activities, academic achievement and outcomes.);
 - Have responsibility for data relating to funding for research and research outcomes;
 - Have power to request and access data from other external public and private sector organisations where required to carry out its work;
 - Be responsible for onward sharing of data to researchers and other prescribed persons, who should be specified in regulations;

- Have powers to pass on data to WG as required and reasonable³⁵;
- Have powers to link personal data with other relevant³⁶ data held by third parties to support its functions around performance and quality, and outcomes;
- Have powers to collect data from learning providers, impose quality standards on this data, and should have a duty to support good management information systems (IT and culture around data) across the sector;
- Have responsibility for promoting appropriate data sharing across providers to support learner experience and outcomes;
- Have powers to share data under the Digital Economy Act;
- Have the power to receive personal (and sensitive) data about learners including characteristics and attainment from providers (and awarding organisations (AOs)) and to share these data with other providers (and AOs) to support smooth and efficient transition of learners between settings and to promote this occurring between providers.

Legacy data

- The Commission should become data controller for data collected before the body is created³⁷, relating to the provision of PCET including archiving, record keeping and disposal.

Research and statistics

445. The Commission should:

- Have the power to commission, conduct and publish research (to support its duties and functions);
- Have powers to publish official statistics under the Statistics and Registration Service Act 2007 and should have responsibility for publishing data on the PCET sector;
- Be responsible for collaboration and communication with other UK bodies on research and statistics around PCET provision including co-ordinated research, but also data collection (e.g. engagement with HESA groups).

Supporting quality and effectiveness

446. The Commission should:

- Be encouraged to develop evidence of effective teaching and learning in the sector and to promote evidenced-based improvements in teaching and learning amongst providers (perhaps becoming a What Works Centre for PCET);

³⁵ Regulations exist in some cases, which stipulate the recipient organisations with which WG must share this data, e.g. Education Workforce Council.

³⁶ Data about student educational records and other student characteristics, where the law allows.

³⁷ This would include personal data on learners, their characteristics, activities and attainments, and data on learning providers, their staff, their provision, management and finance.

- Have a role in developing providers' research capacity.

Resourcing and capability

447. The Commission should have appropriately skilled staff, including members of the Government Statistical, Social Research, Operational Research and Economic Services (GSS, GSR GORS and GES) and sufficient capacity to undertake required duties.
448. Granting these powers and imposing these duties upon the Commission and the other organisations with which it will need to share data, will require changes to the law as it currently stands.

Questions

What are your views on the new body taking ownership of datasets currently owned by the Welsh Government and other agencies?

Do you consider that a duty should be placed upon secondary schools and other learning providers and examining bodies to share data about learners' characteristics and attainment, with a new learning provider with which a learner is enrolling?

Are there any further powers, duties or other matters that should be considered in developing proposals for these functions of the new body?

17. Student finance issues

449. The White Paper consultation recognised that Welsh stakeholders have identified a wide range of interests and concerns arising from the UK Government's HE reforms and sought views on whether policy and legislative change is necessary for matters including:

- arrangements for student protection in the event of course closures or provider failure at institutions designated for statutory student support;
- improvements to widening access, retention and achievement in HE through the transparency of applications to institutions and data-sharing in connection with admissions to acceptance data;
- modernisation of the legislative and procedural arrangements for institutional governance and possible reform of the process and criteria for granting degree awarding powers and university title; and
- changes in arrangements for the designation of higher education courses for student support purposes.

450. The above matters have been considered and are referred to at relevant sections of this consultation. Another reform being taken forward in England which has implications for Wales concerns accelerated degrees. The section below sets out the current situation in Wales and seeks views from stakeholders on the possible need for legislative reform.

Accelerated degrees

451. At present the traditional route to achieving an undergraduate degree through full-time study is to undertake a three-year or sometimes a four-year course. Only a limited number of institutions UK-wide offer full-time undergraduate courses to shorter timescales and generally for a limited range of subjects. Accelerated or 'fast-track' degrees are one of a range of modes in which higher education opportunities may be offered in more flexible ways to meet the needs of learners and employers.

452. There does not appear to be an accepted definition of what constitutes an accelerated degree. A literature review³⁸ undertaken by the Institute for Employment Studies, on behalf of the UK Government, settled on a working definition currently used by the Higher Education Funding Council for England, which involves a number of elements. Accelerated degrees:

- are structured differently to traditional degrees;
- deliver the same number of credits (360) as a three-year degree;

³⁸ Accelerated degrees in Higher Education Literature Review, Pollard, Hadjivasiliou, Swift and Green, Institute for Employment Studies, March 2017
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/595637/Accelerated_Degrees_Literature_Review.pdf

- offer the same number of teaching weeks as a three-year degree, but they are scheduled so they are (or can) be completed in a shorter period. They reduce the overall duration of the course by utilising the traditional summer holiday for teaching and learning; and,
- they effectively reduce full-time study time to two years and part-time study to four years.

453. In May 2016 the UK Government consulted on accelerated degrees³⁹ alongside its White Paper proposals for a new regulatory system for HE in England. The consultation explored, amongst other things, the demand for and the barriers to provision of accelerated degrees. A key finding was that the main barrier to institutions providing accelerated courses was the inflexible fee structure provided for by the legislation that applied to institutions in England, whose courses are automatically designated for the purpose of undergraduate student support. The UK Government has indicated that it intends to make regulations to implement a higher fee cap for accelerated courses. The UK Government's intention is that higher fees will incentivise more providers to offer accelerated degrees, increase choice and provide better value for students. The UK Government has indicated that accelerated degrees will cost students less than an equivalent traditional length degree.

454. In Wales, regulations made under the Higher Education (Wales) Act 2015 prescribe the maximum amount which an institution with an approved fee and access plan in force is able to charge by way of tuition fees for full-time undergraduate courses. Currently the annual fee limit for such courses is £9,000. No specific provision is currently made for accelerated degrees and regulated institutions may not charge annual tuition fees in excess of the amount set out in regulations for traditional length undergraduate degrees.

455. The post-compulsory system in Wales will need to respond to future trends and the demands of more diverse learners. This means all elements of the system becoming more flexible and adaptable to the needs of learners and employers, trying and adopting new ways of delivering high-quality education and training. Accelerated degrees could contribute to more flexible approaches to learning, and subject to the cost of such courses being less than the equivalent 3-year degrees; they could result in lower debts for students. The Diamond Review did not make recommendations about accelerated degrees. However, an approach that makes student finance cheaper to administer and reduces overall costs for students would be in line with the thrust of the Review's recommendations. The literature review commissioned by the UK Government identified a number of concerns and challenges in relation to accelerated degrees including: perceptions that the courses may be of lower quality than traditional length degrees; possible barriers for students such as increased workload and less time for reflection; possible constraints for providers including staff concerns about increased

³⁹ UK Government Findings from Call for Evidence: Accelerated Courses and Switching University or Degree December 2016:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579438/Findings_from_the_Call_for_Evidence_on_Accelerated_Courses_and_Switching_University_or_Degree.pdf

workloads and perceptions that accelerated degrees are more costly to develop and deliver.

456. In this context, we are interested in exploring whether institutions in Wales may wish to offer accelerated degrees and whether there would be a demand for such courses from learners and employers. We recognise that there are potential advantages and disadvantages to introducing changes to fee limits and we are, therefore, seeking stakeholders' views on this topic alongside our proposals for wider legislative reform.

Questions

Could an increase in the availability of accelerated degrees better meet the needs of employers and learners in Wales?

Do the current legislative arrangements, in particular the absence of distinct fee limit for accelerated courses restrict the development and delivery of accelerated degrees in Wales?

How might accelerated degrees be defined?

What are your views about the potential costs associated with delivery of two-year accelerated degrees? In particular what are the potential implications for tuition fees chargeable for such courses and for maintenance support for eligible students?

Are there any other matters relating to accelerated degrees that you consider should be taken into account?

HE course designation for the purpose of student support

457. Students ordinarily resident in Wales may elect to study undergraduate level HE courses at universities, colleges and other providers throughout the UK. If their course is designated by the Welsh Ministers for the purpose of student support then eligible students are entitled to apply for tuition fee and maintenance support in connection with their studies.

458. The fee support payable is set out in the Welsh Government's student support regulations and reflects the extent of regulatory oversight over the course provider. Currently, the maximum fee support payable for the courses of 'recognised educational institutions' is of the order of £9,000⁴⁰. Whereas the maximum fee support payable for courses of other providers of designated courses is £6,165. Maintenance support is means-tested and is not dependant on the regulatory oversight of the course provider. A 'recognised educational institution' is:

⁴⁰ This fee limit applies to the majority of full-time courses but there are some exceptions e.g. in sandwich courses and Erasmus years. The maximum support aligns with the fee limits applicable in the relevant devolved administration and is currently £9,000 in Wales but £9,250 in respect of English regulated institutions.

- (a) a Welsh regulated institution i.e. an institution which has a fee and access plan approved by HEFCW whilst that plan remains in force;
- (b) an English regulated institution i.e. an institution maintained or assisted by recurrent grants from HEFCE; and
- (c) an institution situated in Scotland or Northern Ireland maintained or assisted by recurrent grants out of public funds.

459. The current course designation arrangements comprise two distinct functions:

- course designation - currently a power of the Welsh Ministers; and
- regulatory oversight - currently achieved by a variety of means and relies on the functions of the Welsh Ministers, HEFCW and other regulatory bodies.

Course designation function

460. The main Student Support Regulations enable the Welsh Ministers to designate HE courses for the purpose of providing student support. Courses are either designated by the Regulations (automatic designation) or by the Welsh Ministers under the Regulations (specific designation).

461. **Automatic designation:** a recognised educational institution will qualify for automatic designation of its full-time HE courses that satisfy the criteria in the Student Support Regulations. In practice this means that the courses of all the universities in Wales, some FE institutions in Wales, the majority of universities in England and all the universities in Scotland and Northern Ireland have their undergraduate HE courses automatically designated for Welsh Government student support. No further checks are undertaken by the Welsh Government in relation to such courses and reciprocal arrangements currently operate throughout the UK.

462. **Specific designation:** Where a course is not automatically designated it will need to be specifically designated to enable students ordinarily resident in Wales to apply for student support. The Welsh Government's specific course designation policy sets out the criteria that the Welsh Ministers take into account when deciding whether to specifically designate courses for the purpose of student support. The policy applies to those providers in Wales and elsewhere in the UK whose courses are not automatically designated. The majority of providers whose HE courses are specifically designated for Welsh Government student support are providers in England.

Regulatory oversight function

463. Currently there is a two tier approach to regulatory oversight of providers whose courses are designated for student support.

464. **Automatically designated courses:** reliance is placed on the regulatory oversight undertaken by the relevant funding and / or regulatory body in each of the UK administrations. In Wales the regulatory requirements

are established by the Higher Education (Wales) Act 2015 and are overseen by HEFCW. This oversight is considered to provide sufficient assurance about the quality of education and the financial viability of these institutions for their courses to be automatically designated for student support. Depending on the regulatory regimes in each administration fee limits and fair access requirements may also apply.

465. **Specifically designated courses:** the requirements relating to providers throughout the UK whose HE courses are specifically designated are provided for by the administrative arrangements set out in the Welsh Government's policy for specific course designation published in June 2017. From April 2018, HEFCW will administer the specific course designation policy and provide advice to the Welsh Ministers to inform decisions on course designation applications. The decision on whether to designate courses will remain with the Welsh Ministers.
466. While the regulatory oversight for each route to designation is distinct, the general position is that the same core principles should underpin each. In particular the Welsh Ministers consider that institutions that have their courses automatically designated and other providers of HE whose courses are specifically designated should provide education of an adequate quality, be financially viable and make a significant and ongoing contribution to the public good in connection with education.
467. A diagrammatic representation of the current arrangements is shown below:

HE current course designation arrangements

Designation of courses for statutory student support Function: Welsh Ministers

Automatic designation	Specific designation
<p>No application, dependent on ‘recognised educational institution’ status, applies to institutions throughout the UK</p>	<p>Applications required (currently to Welsh Government) by providers that are <u>not</u> recognised educational institutions each time a new course is offered.</p>
<p>All relevant courses automatically designated</p>	<p>Relevant courses individually designated</p>
<p>Regulatory oversight by relevant authority (HEFCW/ HEFCE/ SFC/ DELNI) all include quality assessment and financial & governance assurance on an ongoing basis, and where relevant fee limits and fair access requirements.</p>	<p>Monitored on an ongoing basis. Satisfaction of Welsh Government’s specific designation policy criteria including: quality of provision, financial viability, evidence of contribution to the public good; as and when new designation applications are made.</p>
<p>Student support package</p> <ul style="list-style-type: none"> • Tuition fee support up to maximum fee chargeable by institution (varies throughout UK of the order of £9 k) • Maintenance support 	<p>Student support package</p> <ul style="list-style-type: none"> • Tuition fee support up to £6,165 • Fees may be charged in excess of maximum support • Maintenance support

Proposals

468. The White Paper indicated that we propose to arrange for certain existing functions of the Welsh Ministers and HEFCW to be transferred to or undertaken by the Commission. The Commission will need to work with a range of bodies in Wales and across the UK which play a role in the regulation of PCET. These reform proposals provide an opportunity to review and revise the current arrangements for HE course designation in Wales and also allow consideration to be given to the regulatory regime changes being introduced in England.

469. The current arrangements for course designation in Wales have developed incrementally in response to changes in the HE funding and

student support environment. They do not comprise a coherent regulatory system. We propose that the following principles should underpin any future reforms:

- simplifying the administration of arrangements as far as possible;
- developing coherence for all categories of HE providers in Wales; and
- taking into account the cross-border interfaces to make the designation arrangements as streamlined and efficient as possible.

470. We have identified three broad options within an overall approach that would establish a single overarching system for course designation. In each of the options all providers in Wales who wish their relevant HE courses to be designated for Welsh Government student support would be subject to regulatory oversight by the Commission and they would be required to apply to the Commission for approval of a regulation and outcome agreement. Subject to approval of that agreement, and to ongoing compliance with regulatory requirements, their relevant HE courses would be designated by the Welsh Government for the purpose of statutory student support.

471. It is proposed that course designation remains a function of the Welsh Ministers and that the regulatory oversight of all providers in Wales whose HE courses are designated for student support would be undertaken by the Commission. The proposal is that all such providers would need to apply to the Commission for approval of a regulation and outcome agreement (ROA) and, subject to approval of that agreement, their relevant HE courses would be designated for Welsh Government student support. All such providers would be obliged to comply with the Commission's requirements relating to quality of education, financial assurance, management and governance, provision of information and assistance as specified in part I of the agreements. It is proposed that as at present there are two categories of course designation:

- **Category 1 designation:** additional regulatory requirements relating to prescribed fee limits and fair access would apply and student support payable would be up to the fee cap (currently £9,000).
- **Category 2 designation:** there would be no fee cap or fair access requirements. The student support would be payable up to a maximum defined in the student support regulations (currently approx. £6k).

472. The different levels of regulation would determine the amount of student support payable to eligible students undertaking qualifying courses at such providers. As now, the amount of student support payable for relevant courses would be dependent on the extent of regulation.

473. In order for providers in Wales to be eligible for their courses to be designated for Welsh Government student support in either category they would be required to have an approved ROA in force. To be eligible to apply

for approval of a ROA we consider that providers in Wales should satisfy one of the following options:

Option (a): providers seeking course designation in either category would be **required to be charities**

Option (b): no requirement for providers seeking course designation in either category to be charities

Option (c): providers **seeking category 1 designation would be required to be charities** (as is currently the case for regulated institutions under the 2015 Act) whereas **providers seeking course designation in category 2 would not be required to be charities.**

Questions

Do you agree with the proposal that the Commission should have regulatory oversight of all HE providers in Wales seeking designation of their HE courses for the purpose of student support?

Do you agree with the proposal that there should continue to be two categories of course designation for providers of HE in Wales for the purpose of student support?

Which of the three options do you consider to be most appropriate and why?

Do you think that HE providers outside Wales should also be required to satisfy one of the three options?

Are there any other matters which you consider should be taken into account in respect of the proposed arrangements for the designation of HE courses for the purpose of student support?

Annex A

Identifying and setting out the costs and benefits of the options for PCET reform.

1. Introduction

- 1.1. The Cabinet Secretary for Education has indicated that the Welsh Government intends to reform post-compulsory education and training in Wales. When proposals are introduced, the National Assembly as a whole, its Finance Committee, stakeholders and members of the public will wish to closely scrutinise them. They will be particularly interested in the case for change, and to understand why arrangements for PCET currently are felt to not allow our critical priorities for learners to be delivered.
- 1.2. They will also require assurance that careful consideration has been given to the widest possible range of options for achieving the desired objectives and will want to know how each alternative approach might allow the Welsh Ministers' post-16 learning and research priorities to be delivered.
- 1.3. They will need to understand the potential impacts, both positive on negative, on all key stakeholders and organisations that the proposals will affect, and to weigh the pros and cons of the different options for reform for all these groups, including the option of 'doing nothing' and maintaining the status quo.
- 1.4. To ensure that the Assembly as a whole and the Finance Committee, stakeholders and members of the public have all the information they need for their scrutiny role, each major proposal brought to them must be accompanied by a detailed document called the Explanatory Memorandum (EM). The EM includes a section called the Regulatory Impact Assessment (RIA), which sets out:
 - the best estimates of:
 - a. the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;
 - b. the administrative savings arising from the Bill;
 - c. net administrative costs of the Bill's provisions;
 - d. the timescales over which all costs and savings would be expected to arise; and
 - e. on whom the costs would fall;

- any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially;

1.5. A robust and thorough approach to estimated costs and benefits is important for Welsh legislation. Responses to the White Paper consultation stressed that the proposed reforms should be fully costed before implementation, and that robust assessment of impacts is essential in order to identify how destabilisation of the sector will be avoided.

2. Options for PCET reform

2.1. Following the publication of Professor Hazelkorn’s recommendations in March 2016⁴¹, Ministers gave careful consideration to a number of broad approaches to taking them forward. The table below sets out the different options that were considered by Ministers in January 2017.

Option
<p>1. Maintaining the status quo. This would involve retaining all current structures and functions as they are.</p>
<p>2a. Consolidation This approach is similar to option 1 and would involve retaining current structures and functions. It would, however, require strengthening and enhancing the discharge of those functions, for instance by:</p> <ul style="list-style-type: none"> • Collaborating to develop and implement a clear, strategic vision for the post-compulsory sector. • Increasing focus on evaluation, monitoring performance and international benchmarking. • Supporting development of more effective and coherent progression pathways/ learner transition, evaluated through comprehensive destinations analysis. • Modernising the apprenticeship model and securing better alignment with FE ('Skills Pathways'). • Developing sixth form policy and undertaking 16-19 area reviews. • Continuing and building on current/proposed strategies to enhance governance and leadership within the FE and HE sectors.
<p>2b. HEFCW reform Use existing powers to modify the duties and responsibilities of HEFCW.</p>

⁴¹ <http://gov.wales/topics/educationandskills/publications/reports/review-of-the-oversight-and-regulation-of-post-compulsory-education-and-training-in-wales/?lang=en>

<p>3. Adopting the approach developed in England The Higher Education and Research Act 2017 has created an Office for Students as a market-style regulator for HE, and has made it easier for institutions to become Universities and to award degrees.</p>
<p>4a. Centralisation, retaining all FE-WBL-sixth form functions within WG and transferring all HEFCW functions to WG</p>
<p>4b. Centralisation, but with a separate body responsible for research</p> <p>This option is very similar to 4a above, except that it includes the establishment of a separate research body.</p>
<p>5a. Establishing a small scale Tertiary Education Authority (TEA) to absorb most of HEFCW's functions and take on responsibility for, among other things, regulation and oversight across PCET</p>
<p>5b. As with 5a but also giving the TEA responsibility for developing labour market intelligence (LMI) and Regional Skills Partnerships (RSPs) functions and advising the WG on the future strategy for PCET</p>
<p>5c. As Option 5b, but with a separate body to oversee research</p> <p>This option is very similar to 5b above, except that it includes the establishment of a separate research body.</p>
<p>6a. Establishing a large scale Tertiary Education Authority, to take on all of HEFCW's functions and other functions across the PCET sector</p>
<p>6b. As option 6a, but with a separate body to oversee research</p> <p>This option is very similar to 6a above, except that it includes the establishment of a separate research body.</p>

- 2.2. Ministers have directed officials to take forward option 6a, the creation of a single body to fund and regulate the whole of the PCET sector as they felt this was the only option with the potential to address all of Professor Hazelkorn's recommendations. Proposals reflecting this option were made the subject of consultation in the White Paper, published on 20th June 2017⁴².
- 2.3. Responses to the White Paper consultation⁴³ also indicated overwhelming support for option 6a.

⁴² <https://consultations.gov.wales/consultations/reformed-post-compulsory-education-and-training-system>

⁴³ https://beta.gov.wales/sites/default/files/consultations/2018-02/171204-summary-of-responses-en_0.pdf

3. Identifying and setting out the costs and benefits of the options for PCET reform.

- 3.1. To ensure the most robust possible estimates of the costs and benefits of the proposals, for a ten-year period following implementation, officials are taking a number of specific steps:

Estimating and comparing the financial costs of options

- Setting out the current costs to the public purse of delivering governance and regulation of post-16 learning and research. This is being done by identifying the different functions, responsibilities and activities that currently rest with HEFCW, different Welsh Government Departments, and other organisations, and summarising the staff, other budget resources and wider infrastructure costs in an accessible and comparable format.
- Identifying the changes in resource requirements which would result from reform, including staff, grant budget and infrastructure costs, in terms of both transitional, one-off costs, and ongoing costs for the new body, its delivery partners and other key stakeholders.

Estimating and comparing the longer term impacts and benefits of options

- Commissioning experts in economic analysis of education reform, to draw together and analyse the most robust evidence available to identify and quantify broader costs and benefits to the sector, its stakeholders, and the people of Wales.

Developing our methods and assumptions with stakeholders and experts

- Engaging peer-reviewers with expertise in assessing the costs of creating a new public body, to ensure our estimation methods and assumptions are optimal.
- Consulting with key stakeholders on whom costs and benefits of the reforms will impact, to scrutinise our methods and ensure key potential impacts are not overlooked.

Post-implementation review

- 3.2 Proposals will be set out for assessment of the actual impacts of the reforms over time. Officials will develop a framework to assess the extent to which the aims of the reforms are met and any negative or unforeseen impacts occur over time. We anticipate that the new body and Welsh Ministers will each have specific responsibilities for post-implementation review. Review approaches will include:
- a. Periodic performance reports from the new body to Welsh Ministers
 - b. Formative evaluation of the progress of the new body in developing the systems required to deliver its statutory functions and responsibilities
 - c. Measurement of levels of stakeholder and wider public confidence in the new body as the independent regulator of PCET and research provision
 - d. Monitoring and long-term evaluation of wider impacts upon qualification levels and economic factors, including skills, employment and growth
 - e. Improving our estimating techniques by comparing actual costs to estimates presented in the RIA.

4. Assessing the potential impact of the proposals.

Impact upon competition in Wales

- 4.1. We want to be sure to understand any impact that the reforms might have on fair competition between businesses in Wales. We applied a 'competition screening' exercise. The exercise identifies the sectors affected by the proposals and the impact upon competition they will have.
- 4.2. The organisations that will be affected by the legislation include:
- Sector 1: Organisations funding and regulating post-16 education and training, and research.
- Sector 2: Organisations delivering post-16 training and education
- Sector 3: Commercial and charitable organisations carrying out and participating in (part) publicly-funded research.
- Sector 4: Providers of goods and services to the above organisations.
- 4.3. Currently competition exists amongst the organisations within each of Sectors 2, 3 and 4.
- 4.4. It is anticipated that the new Commission will influence the training and teaching offer that institutions in Sector 2 will make. It will, positively, promote co-operation between post-16 providers and support the creation of new courses that are

required to meet Welsh Government objectives to improve learner opportunities. It may, negatively, become aware of provision which is regarded as sub-standard, or duplicative, and accordingly approach a provider with a request to modify its offer. It may ultimately refuse to fund or otherwise support provision.

- 4.5. Further, the Commission may fund or otherwise support research by the organisations in Sector 3. It is anticipated that the Commission will positively influence the growth of research capacity in Wales. This growth is expected to increase the success rate of Wales' research organisations in winning competitive research funding.
- 4.6. However, these functions already sit within the powers of the Welsh Ministers, HEFCW and the UK Research Councils, and the PCET proposals are not expected to have a significant impact upon competition within the Sectors set out above.

Other specific impact assessments

- 4.7. A series of further impact assessments are being undertaken in relation to the proposals emanating from the White Paper. As is the case for all policy and legislative proposals, Ministers are concerned to understand the potential impacts of the proposed reforms upon all groups that may be affected. The principal reason for reform is that positive impacts will result for individuals, groups and ultimately the people of Wales, and there may be opportunities within the reforms to increase these positive effects. Where potential negative impacts are identified, Ministers will seek ways of minimising them. The impact assessments that are under way include mandatory assessments for equality, children's rights, rural proofing, Welsh language and privacy. These will be used to assess the impacts of the proposals before they are implemented and ensure that they will be developed with a view to maximising economic, social and environmental well-being currently and for the long term.

5. Questions for the Technical Consultation

- 5.1. We would welcome views from stakeholders about the approach we are taking to assessing the impacts of the proposals, and would be grateful to hear suggestions about how we might improve this process.

Consultation Response Form

Your name: Post-Compulsory Education and
Training (PCET) Reform Team

Organisation: Welsh Government

email: PCETReform@gov.wales

Your address: Cathays Park 2, Cardiff, CF10 3NQ

The Commission

Question 1:

Is the proposed governance framework appropriate given the remit of the new Commission?

Question 2:

Do you think that the Welsh language and development of Welsh-medium provision should be supported through a statutory committee within the Commission's statutory governance framework?

Question 3:

Do you agree the Wales Employment Skills Board and the Apprenticeships Advisory Board should be brought within the Commission to strengthen links between the Commission and employers?

The Relationship between the Welsh Government and the Commission

Question 4:

Is the proposed allocation of responsibilities for strategic planning between the Welsh Government and the Commission appropriate?

Question 5:

Are the proposals for dealing with funding appropriate, in the event of the Welsh Government withholding approval of the strategic plan? What safeguards or interim measures should be considered?

Question 6:

Apart from withholding approval of the strategic plan, what intervention powers may be required by the Welsh Ministers to ensure that the Commission complies with its duties and fulfils the terms of its strategic plan?

Question 7:

Would a five-year cycle be an appropriate length of time for the Commission's strategic plan to cover or should flexibility be allowed?

The Relationship between the Commission and Learning Providers**Question 8:**

In the regulation section of the ROA, are there other matters that should be included? If so, what are they? Should any be removed? If so, which ones?

Question 9:

While we recognise that, in light of their contractual obligations, work-based learning providers would not require charitable status to receive public funding, should other types of learning providers be required to have charitable status in order to receive such funding? What might be the advantages and disadvantages?

Question 10:

Should RTOs be eligible for funding from the Commission under Regulation and Outcome Agreements? If so, how might the regulation element of ROAs need to be modified to reflect the fact that RTOs do not provide learning?

Question 11:

If they should not be funded under ROAs, in what circumstances and by what mechanisms should they be funded? What mechanism(s) could be put in place to ensure the appropriate use of any public funding that RTOs might receive?

Question 12:

If learning providers that did not have charitable status could enter a regulation agreement, how might that differ from the regulation element of the ROA entered into with other learning providers?

Question 13:

Is the ROA the best way forward? What are the advantages and disadvantages?

Question 14:

What powers may the Commission need to ensure that learning providers and local authorities carry out their responsibilities under the ROA?

Question 15:

Is there another model that we should consider? If so, what is it and what would be the benefits?

Question 16:

What information about learning providers and research and innovation communities with approved ROAs should the Commission make publicly available?

Question 17:

Once approved, should the regulatory section of the ROA be ongoing, or should it be reconsidered from time to time? If so, how often should it be reconsidered? How often should the outcome agreement element be re-negotiated?

Question 18:

Please let us have your views on the issues listed in the 'Additional Matters' section of this paper.

Strengthening the link between planning and funding**Question 19:**

Do you agree that the Welsh Minister should cease to have their functions (i.e. duties and powers) under sections 31, 32, 33, 34, 35 and 36 of the Learning and Skills Act 2000 and that the Commission should have those functions or functions very similar to those instead?

Question 20:

Do you consider that the Welsh Ministers should retain a role in respect of the planning, provision and funding of 16 to 19 and post 19 education and training? If so what should that role be?

Question 21:

Do you agree that the powers in section 65 and 66 of the Further and Higher Education Act 1992, along with powers in sections 86 and 87 of the Education Act 2005, should be replicated largely unchanged for the new Commission?

Question 22:

Do you agree that section 68 of the Further and Higher Education Act 1992 should be replaced with a new power that allows Welsh Ministers to allocate funding to the Commission for all post-16 provision? Are there any specific inclusions or exclusions that should be considered as part of this new power?

Question 23:

Do you agree that the Welsh Ministers should hypothecate between elements of the total grant available to the Commission on the basis of type of provision to be funded?

Question 24:

Do you agree that the hypothecation should be split at a FE/HE level to give the Commission as much flexibility as possible, but to acknowledge the fact that we propose specific statutory responsibilities in relation to the funding of further education, which should pass to the new Commission? These do not have a current counterpart in relation to higher education.

Question 25:

Do you agree that there should be a power available to the Welsh Ministers to

directly fund PCET provision (including higher education), having first shared any such proposals with the Commission, and where there is a strong public interest in doing so?

Question 26:

We know there are additional funding streams, outside core funding. If you receive such funding can you indicate whether you think responsibility for the funding you receive should rest with the Commission?

Question 27:

Do you agree that the Commission should have the flexibility during a short transition period to operate different planning and funding models across each type of post-16 provider, whilst driving forward alignment and consolidation as the Commission matures in its operation?

Question 28:

Should there be transition arrangements in place to ensure that core funding to any institution is initially protected? What would constitute a reasonable protection?

Question 29:

Do you agree that the Commission should be expected to keep under review intelligence around the apprenticeship levy and consider new ways of allocating funding across the system if the Levy is not seen to be meeting the needs of employers in Wales?

Question 30:

Do you agree that the Commission should continue to work collaboratively with the RSPs to inform provision delivered by learning providers?

Question 31:

Do you agree that the Commission should be able to withhold some of the core budget for each sector to be allocated based on the recommendations set out in the annual skills plans?

Question 32:

Do you consider that the proposals above for monitoring performance and achieving accountability across the PCET system are sufficient and appropriate?

Question 33:

What more might need to be done to secure the sustainable operation of the PCET system in Wales over the longer term?

Protecting the Interests of Learners

Question 34:

Do you agree that learner protection arrangements should align with a common set of principles to ensure consistency for learners across the PCET sector?

Question 35:

Do you agree with the principles suggested? Are there any that should be omitted or additional principles which should be included?

Question 36:

Do you agree with the suggested content for inclusion in a Learner Protection and Progression Plan? Is there anything that should be added or omitted?

Question 37:

What sanctions, if any, should the Commission have in relation to Learner Protection and Progression Plans?

Question 38:

Do you agree that the current complaint resolution arrangements should remain in place for school sixth forms?

Strengthening the Learner Voice and Representation**Question 39:**

Do you agree that consistent principles and values should be developed for learner voice and representation and that learning providers should be required to adhere to these?

Question 40:

Do you agree that learner representatives should be involved with developing the outcome agreement element of the ROAs?

Question 41:

Do you agree with the proposal to develop a national framework for learner voice and representation? Do you think this would work for all learning providers?

Question 42:

If so, do you think responsibility for establishing the proposed national framework should sit with the Commission?

Question 43:

Should the Commission work with all educational providers in Wales to ensure the establishment of learner-led representative bodies are adequately resourced and supported?

Quality Assurance and Enhancement**Question 44:**

Do you agree with the proposed overall principles for the quality framework? Should anything be added, removed or changed?

Question 45:

With the exception of school sixth forms, should a single body be designated to undertake external quality assessment of all PCET provision? Please explain the reasons for your response, and any particular positive or negative impacts that you anticipate.

Question 46:

Do you agree with the proposed definition of quality enhancement? If not, what would you change?

Question 47:

Do you agree with the proposed scope of the Commission's role in relation to quality enhancement? If not, what would you change?

Question 48:

How could the Commission's role in workforce development be tailored to reflect the needs of different sectors and providers?

Sixth Forms**Question 49:**

Should the Commission have any other powers to instigate a regulated alteration in terms of a sixth form such as closure, or is this better achieved via the negotiation of Part II of the ROAs?

Question 50:

What reporting should be required of the local authority to show effective use of funding given for sixth form provision?

Question 51:

Is the role of the Commission when a sixth form is judged as causing concern appropriate, or should it be different in some way?

Question 52:

Are there any other powers the Commission should have as regards sixth form provision?

Supporting and Developing Apprenticeships in Wales**Question 53:**

Do you agree that the Commission should play a central role in delivering Welsh Apprenticeships? In particular, should the Commission have the power to issue Apprenticeship Pathways, as well as Apprenticeship Certificates?

Question 54:

Which elements of the current apprenticeships system work well and should be retained and where can delivery be improved by removing complexity and onerous statutory requirements?

Question 55:

Do you foresee any issues with the Welsh Ministers being able to determine the high level requirements for the operation of the apprenticeship system in the manner currently being proposed via the WAS?

Question 56:

Do you foresee any issues, or have any comments about the reformed apprenticeship system we have proposed?

Research and Innovation**Question 57:**

Do you agree with the general proposal and detailed construction of RIW within the Commission? Please explain why.

Question 58:

Do you agree that RIW should have such a wide funding scope to be able to fund the activities described even if its scope is much more restricted in its final implementation and operation, i.e. should it have such flexibility? Please explain why.

Question 59:

Do you agree with the proposals for the relationships between the Welsh Government, the Commission and RIW and the relationships with funding recipients and R&I community? Please explain why.

Financial and Governance Assurance**Question 60:**

Do you agree that the new Commission should be given express statutory powers in relation to the assurance of financial management, financial health and governance arrangements for PCET providers?

Question 61:

Do you agree that all PCET providers should be subject to similar financial and governance assurance principles? Should the Commission be enabled to apply different arrangements and requirements to different types or categories of PCET providers?

Question 62:

Do you agree with the proposal to enable the proposed Commission to publish a formal set of requirements and conditions as well as to issue guidance to providers and to advise them of good practice?

Question 63:

Do you agree with the proposal to provide the Commission with enabling functions and that legislation should set out a broad framework for financial and governance assurance with the Commission given discretion to develop its requirements within that framework?

Question 64:

Do you agree that:

- a) the Commission should be placed under a duty to consult with PCET providers and any other persons it considers appropriate in the development of its financial and governance assurance arrangements?
- b) the Welsh Ministers should be able to issue guidance to the Commission with regard to financial and governance arrangements and that the Commission be required to take such guidance into account?
- c) the above requirements would provide sufficient safeguard in respect of the scope and reach of the Commission's financial and governance assurance arrangements? Are there any other safeguards you consider to be necessary?

Question 65:

Do you have any comments or concerns about the proposal for the Commission to request information from PCET providers, undertake periodic assurance reviews, enter premises and inspect documents or materials in support of its financial and governance assurance functions?

Question 66:

Do you agree that the Commission should have a range of intervention powers at its disposal to deal with failure to comply with financial and governance assurance requirements?

Question 67:

Do you agree with the proposal that the Welsh Ministers should retain their powers of intervention under section 57 of the Further and Higher Education Act 1992 and that the Commission should be enabled to make recommendations to the Welsh Ministers as to the exercise of those powers?

Question 68:

Do you agree with the proposal that the Welsh Government should explore the possibility of transferring the Principal Charity Regulator role for FE institutions to the proposed Commission? What are your views on the proposal to retain the current requirement for HE institutions in Wales to register with the Charity Commission?

HE Governance

Question 69:

Do you agree that those amendments to HEIs governing documents considered to be in the public interest should continue to be subject to oversight and the approval of the Privy Council?

Question 70:

Do you consider the proposed extension of the 2006 reallocation approach for the amendment of HEIs governing documents to be appropriate? If not, why?

Question 71:

Do you agree that existing statutory requirements that apply to HECs governing documents should be removed so that the proposed approach can be extended to all higher education institutions?

Question 72:

Do you agree with the Commission's proposed role in relation to the consideration of amendments to HEIs governing documents?

Question 73:

To support the proposed approach, do you agree that:

- a) the Welsh Government should issue guidance on the procedure for amending governing documents?
- b) the Commission should review the 2006 list of public interest matters in consultation with stakeholders and issue guidance on those matters that will continue to be subject to Privy Council oversight and approval?
- c) the Welsh Government be enabled to issue guidance to the Commission in relation to the public interest matters that should continue to be subject to oversight and approval?

Question 74:

Do you consider that the proposed approach would safeguard the public interest in the governance arrangements of HEIs in Wales?

Question 75:

We would welcome views on whether this arrangement should continue to operate in future so that the Welsh Ministers would be required to consult with the Commission and the HEC in question or whether provision should be made for these powers to be exercisable only upon recommendation by the Commission.

Question 76:

Which option do you consider to be the most appropriate and why? Are there other options that should be considered?

Question 77:

Under what conditions or circumstances do you consider it appropriate for dissolution powers to be exercised?

Question 78:

Should dissolution powers only be exercisable on recommendation of the Commission? If so, should this also be extended to the existing arrangements for FE institutions?

Question 79:

Do you agree with the proposed approach, i.e. that no significant changes should be made to the current procedures and criteria for granting DAPs and UT in Wales for the present time?

Question 80:

Do you agree with the Commission's proposed role in relation to the consideration of DAPs and UT applications in Wales?

Question 81:

Do you agree that the Commission should consider the effectiveness of existing arrangements for the delivery of HE in FE as part of its wider strategic remit for PCET provision?

Supporting the Welsh Language**Question 82:**

Do you agree that the Commission should be placed under a specific duty to have regard to the Welsh language in the exercise of its functions?

Question 83:

In having regard to the Welsh language, do you agree the Commission should be expected to consider matters such as:

- the Welsh Government's vision for a million Welsh speakers by 2050;
- the adequacy of existing provision of education through the medium of Welsh;
- how it can support existing provision through the medium of Welsh;
- how current provision through the medium of Welsh can be developed;
- promoting the Welsh language throughout the PCET sector?

Question 84:

What are your views regarding the future relationship between the Coleg Cymraeg Cenedlaethol and the Commission? Please include comments on the relationship regarding funding of the Coleg and its operational activities as well as the accountability of the Coleg to the Commission.

Question 85:

What are your views regarding the future relationship between the National Centre for Learning Welsh and the Commission? Please include comments on the relationship regarding funding and operational activities of the National Centre and accountability of it to the Commission.

Data, Statistics and Research**Question 86:**

What are your views on the new body taking ownership of datasets currently owned by the Welsh Government and other agencies?

Question 87:

Do you consider that a duty should be placed upon secondary schools and other learning providers and examining bodies to share data about learners' characteristics and attainment, with a new learning provider with which a learner is enrolling?

Question 88:

Are there any further powers, duties or other matters that should be considered in developing proposals for these functions of the new body?

Student Finance Issues**Question 89:**

Could an increase in the availability of accelerated degrees better meet the needs of employers and learners in Wales?

Question 90:

Do the current legislative arrangements, in particular the absence of distinct fee limit for accelerated courses restrict the development and delivery of accelerated degrees in Wales?

Question 91:

How might accelerated degrees be defined?

Question 92:

What are your views about the potential costs associated with delivery of two-year accelerated degrees? In particular what are the potential implications for tuition fees chargeable for such courses and for maintenance support for eligible students?

Question 93:

Are there any other matters relating to accelerated degrees that you consider should be taken into account?

Question 94:

Do you agree with the proposal that the Commission should have regulatory oversight of all HE providers in Wales seeking designation of their HE courses for the purpose of student support?

Question 95:

Do you agree with the proposal that there should continue to be two categories of course designation for providers of HE in Wales for the purpose of student support?

Question 96:

Which of the three options do you consider to be most appropriate and why?
Do you think that HE providers outside Wales should also be required to satisfy one of the three options?

Question 97:

Are there any other matters which you consider should be taken into account in respect of the proposed arrangements for the designation of HE courses for the purpose of student support?

Question 98:

To help inform our assessment of the possible impact of these proposals, can you foresee any particular impact on those with protected characteristics (within the meaning of the Equality Act 2010) and how they might be particularly affected by these proposals?

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 99:

Please also explain how you believe the proposed policy could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 100: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: