

**fforwm response to the Welsh  
Assembly Government's consultation  
document:  
*Framework for Intervention in Further  
Education Institutions***

**fforwm**   
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## **fforwm response to the Welsh Assembly Government's consultation document: *Framework for Intervention in Further Education Institutions***

1. fforwm welcomes the opportunity to respond to the Welsh Assembly Government's (WAG) proposed framework for intervention as set out in the aforementioned consultation document.
2. fforwm is the national organisation representing the 23 further education (FE) colleges and two FE institutions in Wales. It is an educational charity and a company limited by guarantee. fforwm's Board comprises college principals and chairs of corporations, appointed by member colleges. fforwm provides a range of services to its members including networks, conferences, research, consultancy and the sharing of good practice. It also works closely with a wide range of partners in post-16 education and training. Through fforwm, colleges are represented on various committees, working parties and other groups influencing and shaping policy in post-16 education and life-long learning.
3. fforwm representatives have held two informal meetings with DCELLS officials to consider the proposed Framework for Intervention and there has been a meeting of principals of FE institutions attended by DCELLS officials, which have enabled the view of the FE sector to be put across.

### **General comments**

4. fforwm has never seen the necessity for introducing a new intervention framework. We recognise that the Further Education and Training Act 2007 gave this power to the WAG and there is a requirement on WAG to consult on the proposed framework. However, at the time of the passage of the Further Education and Training Bill, fforwm argued that it was a measure influenced by the Foster Review's report on FE in England<sup>1</sup>, which recommended sanctions against poorly performing institutions in England. In addition, the UK Government had set out its proposals in the White Paper *Raising Skills, Improving Life Chances* which had been widely discussed in England and had led to the publication of the Bill<sup>2</sup>. No such consultation had taken place in Wales. In our view, the Minister already has sufficient powers to intervene in a college and any additional powers of intervention are unnecessary.
5. The section on the intervention powers of Welsh Ministers was included in the FE and Training Bill before the setting up of the FE Review in Wales chaired by Sir Adrian Webb and certainly before the report had

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<sup>1</sup> *Realising the Potential' Report of a Review of the Future Role of FE Colleges* by Sir Andrew Foster, November 2005.

<sup>2</sup> Interestingly the reforms in England gave the Learning and Skills Council powers of intervention. A Green Paper, *Raising Expectations*, has just been published (March 2008) announcing the winding up of the LSC.

made its recommendations. In the event, the report of the FE Review<sup>3</sup> complimented FE colleges on their improving performance and made no recommendation aimed at the necessity of intervening in cases of poor performance.

6. The FE and Training Act 2007 gives interventionist powers to Welsh Ministers which they do not have in respect of schools or higher education institutions. Yet, recent evidence has shown that FE is performing above the standards set by Estyn and WAG. Estyn's annual report 2006/07<sup>4</sup> says: "In further-education colleges this year, standards are well above the Welsh Assembly Government target for 80% of courses to be grade 1 or 2 by 2007." Around 90% of FE inspection grades in the past two years have been grades 1 or 2 in Wales. While there is no need to be complacent - and fforwm is fully supportive of the need to raise standards – it seems odd that the Welsh Ministers should be given powers over the sector which has recently been described by a senior civil servant as "the quality sector".

## **Specific comments on the consultation document**

### **Part 1: Introduction and background**

7. fforwm notes the point in para 10 (p.3) that: "intervention will be considered only in the most serious cases of poor performance or where a serious risk to the delivery of education and training become apparent".
8. Para 11 (p.3) defines "an institution within the FE sector" as being institutions conducted by FE corporations and designated institutions. For the sake of clarity, it would be helpful to list these institutions as an appendix or schedule in a similar way that they are set out in Schedule 3 to the instrument and articles of government<sup>5</sup>.
9. fforwm welcomes the comment in para 14 (p3) that the policy will be reviewed every four years. It would be helpful if fforwm and FE institutions covered by the framework would be included in this consultation.

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<sup>3</sup> *Promise and Performance: The Report of the Independent Review of the Mission and Purpose of Further Education in Wales in the Context of The Learning Country: Vision into Action*, chaired by Sir Adrian Webb, December 2008.

<sup>4</sup> *Estyn's Headlines 2006-2007*, Estyn, p.3. available from [http://www.estyn.gov.uk/publications/Headlines\\_Annual\\_Report\\_Summary\\_06\\_07.pdf](http://www.estyn.gov.uk/publications/Headlines_Annual_Report_Summary_06_07.pdf)

<sup>5</sup> The Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006 No. 13.

## **Part 2: Draft Intervention Policy**

10. Para 2 (p.5) makes reference to “capacity to improve” in respect of the most serious cases of poor performance. This measure is used by Ofsted inspectors in England to assess college performance - but not by Estyn. A consistent approach would need to be developed in Wales to measure “capacity to improve”. An additional point is that in Annex 1, “capacity to improve” is seen as being a factor in Stage A of the route to intervention, whereas in para 2 (p.5), the terms seems to refer to the final intervention stage.
11. fforwm gives general support to the principles set out in the framework in para 4 (p.5), i. e. that direct intervention will occur only when necessary; the level of intervention will be proportionate to risk to learners and public funding; as far as possible, actions will be agreed between the governing body, principal and WAG; and the powers will be exercised only as a last resort.
12. Colleges believe strongly that the overall procedures should be conducted in such a way that intervention will be unnecessary. Indeed, if intervention did occur it would be a failure both of the institution and of DCELLS staff in not providing sufficient support during the period of notice.
13. The setting out of three clear stages (Stages A, B and C) is a sensible way forward.

### **Stage A: Dialogue and Identification of Underperformance**

14. Para 8 (p.6) refers to the responsibility of the senior management team for the quality of education and training. It is important to add that the role of the governing body is also crucial. The articles of government state that the governing body is responsible for the “determination of the educational character and mission of the institution and for oversight of its activities” (Article 3 (1) (a)). The oversight of its activities is generally interpreted as being associated with quality. Indeed, Estyn inspection reports make reference to the important role of the governing body in monitoring performance. This point is made in para 13 (p.7) of the document and also addressed in para 18 (p.8) when governance failure in decision-making is used as evidence of institutions failing to meet the “Conditions for Improvement”.
15. Para 9 (p.6) sets out how underperformance or serious concerns will be addressed. The reference to provider performance review (PPR) needs to be amended: DCELLS is now pursuing a “quality and effectiveness framework for post-16 learning”; the framework proposes the replacement of PPR.

16. In addition, the extent of underperformance is not clear. Does it refer to a whole college performance or that of part of a college, or will it even go down to course level? What is to stop a college being deemed to be 'underperforming' as a result of a tough but unpopular decision referred by staff or members of the public to Assembly Members and thence to Ministers? Colleges have expressed concern that decisions might be made on political rather than educational grounds or that issues might be raised maliciously by individuals. Para 18 (p.8) in Stage C goes some way to explaining what underperformance includes, but even here there are grounds for different interpretations.

### **Stage B: Support and Change**

17. The document should clarify the source of payment for the support identified in paras 12-16 (p.7). Is this to be found from within the college budget or from an intervention fund controlled by Ministers? If the latter, has this fund been included in the Welsh Assembly's budget?
18. Para 14 (p.7) refers to the appointment of two observers to the governing body of a college where underperformance is identified. This is an existing power. The document states that these should "ensure that sufficient progress is being made against the Conditions for Improvement". If these appointees are observers, then there is no problem with this role. However, if they are appointed as full governors (within the existing power of the Welsh Ministers), then this would be in apparent contravention of the Instrument of Government<sup>6</sup> which points out that governors cannot accept a mandate from other bodies. To appoint a governor solely to ensure progress might contravene Article 12 (5) set out below:

*Every member of the Corporation is to act in the best interests of the Corporation and accordingly is not to be bound in speaking and voting by mandates given to him or her by any other body of persons. (Instru.12 (5))*

### **Stage C: Intervention**

19. In respect of para 21, line 3 (p.8), it would be helpful to clarify that section 57 refers to the Further and Higher Education Act 1992 (this is referred to in the Introduction and Background para 5, p.1).
20. Different words are used to describe staff that could be affected by intervention. The term "postholder" is used in para 21 (p.8). Para 5 (p.2) refers to a "senior postholder" and paras 20, 24 and 25 (pp. 8-9) refer to "member of staff". For purposes of clarity, it might be useful to refer throughout to "senior postholder". The articles of government define "senior post" as being: "posts of Principal and only such other posts as the Corporation determines for the purpose of these Articles" (Article 1).

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<sup>6</sup> The Further Education Corporations, op.cit.

21. In addition, the Articles several times refer to “senior postholders and the clerk” (e.g. the heading to Article 10). This implies that the Clerk is not a senior postholder although the Corporation has the same direct employment responsibility for the Clerk as for senior postholders (Articles 3 (1) (d), 3 (1) (e), 3 (2) (c), 3 (2) (d)). It needs to be clarified whether or not the Clerk is treated as a senior postholder for the intervention framework. If so, it might be useful to add the words “and the Clerk” each time reference is made to “senior postholder”. If the Clerk is not included, then this needs to be clearly stated at the outset in para 5 (p2).
22. It should be pointed out that the number of senior postholders in colleges varies from one to five or six, with the average probably being between three and five. Thus the intervention powers in respect to senior postholders will differ considerably between colleges.
23. Para 24 (p.9) refers to collaboration and an earlier statement, found in para 5 (p.2), refers to the definition of collaboration set out in section 166 of the Education and Inspections Act 2006. The Act defines “collaboration arrangements” as being: “arrangements for any of the functions of any of the bodies who make the arrangements (‘the collaborating bodies’) to be discharged jointly or by a joint committee of those bodies<sup>7</sup>”.
24. It is suggested that an appendix to the Framework for Intervention could give examples of what is intended by the term “collaboration”. There are many examples of collaboration which do not involve joint committees. Estyn distinguishes between ‘coordination and collaboration’ and ‘cooperation’<sup>8</sup>. ‘Cooperation’ is a weaker form of partnership. Would this be acceptable under the Framework for Intervention?
25. Paras 18 (p.8) and 26 (p.9) list characteristics which might lead to “intervention” and “immediate intervention” respectively. In the section on “immediate intervention” (paras 26-28, pp.9-10), the adjective “serious” is used in respect of each of the four circumstances listed where urgent action is required. In respect of “failures in management” in respect to health and safety (the second of the four listed), similar words are used as in the case for “intervention” set out in para 18 (p.8) where “immediate intervention” is not required (in fact para 18 uses the words “serious and immediate”, whereas para 26 uses the words “immediate serious” – the difference between the two is not immediately apparent). It is suggested that the words “serious and immediate” are removed from the second bullet point in para 18 or that the words ‘very serious’ are used for all the circumstance set out in para 26 to draw a clearer distinction between the grounds for ‘intervention’ and ‘immediate intervention’.

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<sup>7</sup> Education and Inspections Act 2006 para 166 (2)

<sup>8</sup> *Collaboration between Schools with Sixth Forms and Further Education Colleges to Deliver Flexible High Quality Provision that Expands Choice and Achieves Value for Money*, Estyn, 2006

26. In respect to “checks and balances” in para 29 (p.10), the right of appeal against the decision to intervene should be added as an additional safeguard. It may be argued that the consultation document proposes that Welsh Ministers become in effect prosecutor, judge and jury. Welsh Ministers – or their officials - are involved in all stages of the process. Although it is not anticipated that Welsh Ministers would misuse their powers under the FE and Training Act 2007, there should be an open and transparent mechanism in order to ensure this does not (and does not appear to) happen. We recognise that the use of the term ‘Welsh Ministers’ implies Cabinet responsibility for decisions and that it may therefore be difficult for a College to appeal to another Cabinet Minister. However a College should have the right to appeal to an independent senior person appointed by the Minister who has not been involved in any of the proceedings.
27. fforwm representatives have been reassured that the procedures are very unlikely ever be brought into effect. Nevertheless a Framework for Intervention has been drawn up. In the same way, colleges are seeking the ultimate safeguard of an appeal, even though the likelihood of the misuse of powers is remote. This is an essential safeguard in all employment matters affecting grievance and dismissal and the intervention framework needs to recognise this basic principle of human justice.

## **Annexes**

28. These contain useful diagrams showing how the various stages of intervention will be carried out. They need to be revised to accommodate the points made above. Annex 2 (p.13) needs to make reference to some form of internal review using officers not involved in the process before item 6 in the diagram (Welsh Ministers outline why the concerns have not been addressed).

## **Conclusion**

29. fforwm recognises that the Welsh Ministers have the power under the FE and Training Act 2007 to intervene, although the fact that this power has been introduced is to be regretted. The process of intervention should be open and transparent. There should be a more clearly defined appeal process in the event of the governing body and senior management not accepting the decision of the WAG.