



**fforwm response to
*Delivering Skills That Work for Wales:
Draft Regulations for Collaborative
Arrangements between FE Institutions
and FE Institutions and Schools***

fforwm 
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Delivering Skills That Work for Wales: Draft Regulations for Collaborative Arrangements between FE Institutions and FE Institutions and Schools

fforwm response

1. fforwm welcomes the opportunity to respond to the Welsh Assembly Government's (WAG) *Delivering Skills That Work for Wales: Draft Regulations for Collaborative Arrangements between FE Institutions and FE Institutions and Schools*.
1. fforwm is the national organisation representing the 23 further education (FE) colleges and two FE institutions in Wales¹. 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.

General comments

2. The Draft Regulations extend to Wales powers that exist in England for FE governing bodies. They clarify the position of joint committees and the powers of governing bodies to delegate certain matters to them. The Regulations may require that some revisions or clarifications be made to the Articles of Government of FE colleges. There is some doubt as to whether the draft Regulations apply to the governing bodies of those designated FE institutions that are charities – Coleg Harlech/WEA North, WEA South and YMCA Community College. It would be helpful if the Explanatory Note (page 9 in the consultation paper) to the Regulations should name the institutions covered by these Regulations.
3. As a result of the Regulations, and once some of the issues raised in this response have been addressed, FE institutions and schools will be in a clearer legal position in respect of collaborative arrangements. As pointed out in the DCELLS letter accompanying the Draft Regulations², existing collaborative arrangements are informal and the law is unclear on which body has ultimate responsibility for actions arising where two bodies collaborate.

¹ In this response, the terms further education institution (FEI) and FE colleges are used interchangeably to describe all of fforwm's members.

² *Consultation on the Draft Regulations*. Letter from Mike Hopkins, Head of Lifelong Learning and Providers Division, DCELLS, 27 June 2008

4. Setting up joint committees will be an important additional power for FE institutions within the current context of Transformation. In the WAG publication *Transforming Education and Training Provision in Wales*³, the setting up of joint committees is one possible option listed under Model 1: Consideration of 16-19 Provision.
5. The current powers of FE governing bodies to delegate are restricted. The Articles of Government therefore will need to be revised to take account of the potential establishment of a joint committee.
6. Under the current Articles⁴ (Article 5 (1)), a governing body has powers:
 - ‘to establish a committee of the Corporation for any purpose or function other than those assigned elsewhere in these Articles to the Principal or to the Academic Board and may delegate powers to:
 - (a) such a committee
 - (b) the Chair or, in his or her absence, the Vice Chair; or
 - (c) the Principal’
7. To take account of the Regulations, Article 5 may have to be amended along the lines of:

‘Article 5 (2): Any reference to a Committee includes a joint committee as defined in the Regulations...’
8. Article 5 (9) states that the principal may delegate any of his or her functions other than the management of budget and resources. However this delegation can only be to ‘appropriate members of staff’ and presumably not to a joint committee.
9. Article 5 (7) sets out responsibilities that a governing body cannot delegate. These include the determination of the educational character and mission of the institution, approval of annual estimates of income and expenditure, responsibility for ensuring the solvency of the institution and safeguarding their assets, appointment of senior posts including the clerk, responsibility for hearing appeals of senior post holders including the clerk. These responsibilities cannot be delegated to a joint committee.
10. Delegation to a joint committee must be viewed in the context of the legal independence of governing bodies of FE institutions. Governing bodies would remain legally liable for any decisions taken by a joint committee.

³ *Transforming Education and Training Provision in Wales* Welsh Assembly Government, September 2008.p14

⁴ The references to the articles of government are taken from *The Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006* No 13, National Assembly for Wales.

Part 1: Introduction and Background

11. The Introduction and Background explains how the Regulations might work in practice. A joint committee could 'jointly plan and commission actions on behalf of its constitutive governing bodies' (para 10). This might include 'commissioning provision directly from a third party on behalf of the constituent members of the collaborative consortium'.
12. Para 11 states that possible benefits include reducing provider competition, overlap and duplication of provision; securing cost efficiencies, and increasing opportunities available to learners within the consortium. These benefits are of major significance. They may well have some impact on the educational character of a college and on its duties with respect to finances. This might conflict with the fact that a governing body cannot delegate responsibility for the educational character of its college (see para 11 above of this response).
13. Para 14 points out that Welsh Ministers have the power to direct collaborative arrangements.⁵ However, it is important to point out that this intervention power will only occur under exceptional circumstances when a college has serious financial or quality problems; that it will only take place as a last resort; and that it will be proportionate to the risk to learners and public funding. As far as possible, actions will be agreed between the governing body, principal and WAG.
14. Para 17 refers to the fact that a governing body of an FE college will retain legal responsibility for all decisions taken on its behalf and will need to receive regular reports including signed minutes from any joint committees. This raises the question about how what can be effectively delegated to these joint committees.

Draft Regulations for Collaborative Arrangements

Collaboration between schools and further education bodies

15. Regulations 3 (5) line 5 and 3 (7) (b) line 4 refer to 'the relevant provisions of the instrument and articles' in respect of making collaborative arrangements. It is suggested that these provisions should be identified and listed.

⁵ *Framework for Intervention in Further Education Institutions*. Consultation paper, Welsh Assembly Government April 2008

Establishment of joint committees

16. The Regulations are silent on the overall composition of a joint committee other than the appointment of a chair (regulation 4 (5)), the fact that a joint committee may include 'non-governors' (regulation 4 (6)) and that governors should be in a majority (regulation 4 (7)). The intention is presumably to give maximum flexibility over the size and membership of a joint committee. Nevertheless some general guidance on overall size might be helpful. Too large a joint committee could become unwieldy; too small a joint committee might be unrepresentative of the local community. fforwm believes that a joint committee should have a membership no larger than 16 and no smaller than 10.
17. There also needs to be advice as to whether members of joint committees are appointed in their own capacity or as representing the bodies that nominated them. Regulation 9 (2) (b) makes reference to 'a person's ability to act impartially' in respect of restrictions on a person taking part in proceedings. This seems to imply that members are not appointed as representatives.

Clerk to joint committees

18. Regulation 5 refers to the appointment of the clerk. Does the post have to be advertised locally or nationally, and does it have to be advertised through a particular kind of media? Can the post be ring-fenced so that only the clerk of the collaborating institutions may apply? Are there any rules about the composition of the appointing panel?
19. Guidance may need to be given as to how the remuneration of the clerk is agreed and who has responsibility for appraising the clerk's performance – the chair of the joint committee or the separate governing bodies?
20. A more general point is that a joint committee is not a legal body and does not have authority to employ staff. The clerk would presumably need to be employed by one of the collaborating bodies.

Non governor members

21. Regulation 4 (6) allows for 'non governors' to be appointed and Regulation 6 sets out limits to their membership and powers. The use of the negative term 'non governor' is curious. Surely a more positive term such as 'external member', 'associate member' or equivalent should be used. FE governing bodies have found that bringing in individuals from outside the governing body to serve on audit, search and other committees can be of major benefit.

Proceedings of joint committees

22. Under Regulation 8 (4) (b), proceedings cannot be invalidated by 'any defect in the appointment of any member of the joint committee'. Given the importance of joint committees, it is surprising that something as important as a 'defect' can be overlooked. Surely the emphasis must be to ensure that the appointment of members to a joint committee is carried out rigorously and within the law.
23. Regulation 8 (7) points out that the chair has a casting vote but that if a 'non governor' is in the chair, s/he does not have a casting vote. The assumption therefore is that the joint committee cannot make a decision in this case. Is this assumption correct?

Schedule

24. The Schedule refers (para 3 (2)) to a meeting of the joint committee where the pay or performance appraisal of the head or principal is considered. It is difficult to envisage a situation where the pay or appraisal of a principal or headteacher would be considered by a joint committee unless the principal/headteacher has been seconded to work for the joint committee. Surely the responsibility for pay should rest with the respective governing bodies of the collaborating institutions.

Conclusion

25. fforwm gives a general welcome to the Draft Regulations which will provide FE governing bodies with the power to establish joint committees with other FE governing bodies or with school governing bodies. The WAG document, *Transforming Education and Training Provision in Wales*, makes reference to joint committees as one option for developing more formal collaborative arrangements.
26. The Articles of Government are likely to need amending in order to reflect the Regulations. It will be important to clarify which FE institutions are covered by the Regulation.
27. It will be useful for guidance to be published to clarify how joint committees may be established as there are many procedural points such as determination of membership and the appointment of the clerk which are not explained in the Draft Regulations. fforwm would be pleased to work with the Welsh Assembly Government in producing such guidance.