



Welsh Government consultation: Public Good and a Prosperous Wales – the next steps

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Introduction

ColegauCymru welcomes the opportunity to respond to the Welsh Government consultation on 'Public Good and a Prosperous Wales – the next steps'.

ColegauCymru is a post-compulsory education charity, representing the 13¹ further education (FE) colleges and FE institutions in Wales² and exists to promote the public benefit of post compulsory education and learning.

Overview

Following the initial Welsh Government consultation, ColegauCymru welcomed the initiative to establish the Commission on the proviso that school-based sixth form provision was to be included in its remit, thus preserving the current arrangements for the planning and funding of all post 16 education, but within the commission. While we welcome the inclusion of sixth forms within this technical consultation, we remain concerned that the provisions as proposed do not fully extend and therefore cannot create the same level of oversight, learner protection and common funding methodology to reach the desired outcome of a sustainable and resilient mixed economy of 16-19 provision. Consequently, our support for the creation of the body remains provisional upon the inclusion of meaningful and immediate provisions to achieve this.

ColegauCymru believes the new Commission and arrangements for its creation must adhere to the following principles:

- The new Commission must be genuinely arm's length, with the relevant ministerial functions transferred;
- All expectations from the Commission must be reasonable and proportionate with due consideration of the work generated for those organisations within its remit. Within our response, we identify specific issues regarding the regulation and quality assurance of NPISH bodies and contracting of private providers in WBL. We also note that there are specific challenges linked to the requirement to maintain global quality assurance mechanisms and recruitment from a market-orientated study within higher education;
- Statutory provisions made for the Commission should enable consistency – across all PCET providers, who must be included from the outset (and specifically for 16-19 learning providers);
- Equitable treatment – for both organisations and the learners wherever they study;

¹ The 13 include 9 FE corporations and two FE institutions, St David's Catholic College and Adult Learning Wales. The College Merthyr Tydfil and Coleg Sir Gâr are part of university groupings.

² In this paper the terms 'FE college' and 'college' are used to cover FE colleges and FE institutions.

- The Commission must seek to remove duplication and increase alignment;
- The establishment of the Commission must be future proofed, and ensure that functions rather than named organisations are included in the relevant legislation.

In addition, in the next stage of engagement, there must be clarity about the implementation costs of setting up the Commission – TUPE, office location, future funding forecasts via a comprehensive regulatory impact assessment. Serious consideration must also be given to the skill set needed to establish the Commission, especially in its early years, and the balance needed to ensure those organisations within its remit have an equal voice.

It is surprising that there is no reference to the former body, Education and Learning Wales (ELWa), which had a similar role and functions, and the reasons why this approach was discontinued. This sort of evaluation should help to provide a basis for the development and discussion of proposals for the Commission.

The lack of reference within the consultation to the Well-being of Future Generations (Wales) Act 2015 is also surprising given the Welsh Government’s commitment to the Act.

Finally, ColegauCymru remains deeply concerned that there remains, as yet, no published vision for the creation of the Commission as recommended by Professor Ellen Hazelkorn. It must be noted as a matter of record that this has compromised our ability to respond to the provisions outlined in the technical consultation.

Response

ColegauCymru notes the difference in the OECD definition of the terms ‘secondary’ (separated into lower secondary and upper secondary) and ‘tertiary’ education as set out in the International Standard Classification of Education Terms and those used by the Welsh Government when discussing the ‘Tertiary Education and Research Commission for Wales’ (TERCW). Much of what the OECD defines as upper secondary education – “the final stage of secondary education in most OECD countries” where “[t]he entrance age to this level is typically 15 or 16 years” – would fall within the remit of the proposed Commission. OECD understanding of what constitutes ‘tertiary’ education is based on the highest level of education, including both theoretical programmes leading to advanced research or high skill professions and more vocational programmes leading to the labour market.³ Consideration should also be given to the inherent distinctions between type A and type B Tertiary

³ <https://stats.oecd.org/glossary/detail.asp?ID=5566>
<https://data.oecd.org/eduatt/population-with-tertiary-education.htm>

Provision and their use included as appropriate in the definitions used throughout further consultation and development⁴.

In order to avoid confusion and to maintain comparison with internationally recognised terminology, ColegauCymru argues that the name of the new Commission should not refer to 'Tertiary' education.

Once again, the lack of a clear, published vision for the post-compulsory sector is an inhibiting factor in being able to respond to the consultation. The structure and details of such a body as the Commission are dependent on what such a body is intended to achieve and considering form in isolation from function is not ideal.

A significant issue that occurs in several parts of the consultation document concerns the different treatment of school sixth forms. For the purposes of PCET reform, the Welsh Government needs to be clear about whether it sees *school* status as the key aspect of sixth forms, or whether the *post-compulsory* status of sixth forms is the defining feature. ColegauCymru argues that it is the post-compulsory nature of sixth forms that matters most, not that they are part of a school. Parents, teachers and learners are all capable of understanding the difference between compulsory school education and the differences involved once a learner enters (post-compulsory) sixth form. While avoiding unnecessary bureaucracy is vital in the development of the Commission, creating a level playing field and equitable system for post-compulsory learners should take precedence over maintaining the status quo in schools for convenience' sake.

The Commission

Question 1:

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

The proposed governance framework is overly prescriptive and we are concerned that the number of non-executive Board members proposed will be insufficient for the number of statutory committees suggested. A more flexible position on the governance of the Commission needs to be taken to allow it a greater degree of autonomy to assess what is adequate and necessary for the efficient running of the organisation. While representation must include industry and employers etc., much of the work of the Commission will require specialist rather than generalist knowledge and this must be taken into account in deciding the make-up of the Board. Further Education must have a fair and proportionate representation on the Commission Board.

⁴ <https://stats.oecd.org/glossary/detail.asp?ID=5440>

ColegauCymru is content with the suggestion that there should be a statutory committee named Research and Innovation Wales. However, it does not necessarily follow that the Chair of Research and Innovation Wales should be the Vice Chair of the Commission. This should be left to the Commission which should have the power to decide on the most appropriate appointments. We are concerned that there could be inadequate representation of the Further Education sector across the Commission, including on Research and Innovation Wales. Consideration should be given to a minimum number of Further Education representatives during the early years of the Commission to ensure parity of voice.

The National Assembly for Wales should be responsible for appointing or approving the appointment of the Chair, Chief Executive and non-executive Board members for the Commission, rather than Welsh Ministers. **A key element of our submission on the question of governance is that the Commission should be accountable to the National Assembly for Wales who should be able to provide direct scrutiny rather than solely via Welsh Ministers. The body should be expected to receive and have a statutory duty to take into account guidance issued by the Welsh Ministers, as is currently the case for the Higher Education Funding Council for Wales by virtue of section 49 of the Higher Education (Wales) Act 2015.⁵**

The relevant functions not already transferred to HEFCW by virtue of current statute should be transferred from Welsh Ministers to the new body and those already transferred consolidated within the new provisions as appropriate, rather than delegated.

Consideration should be given as to whether funding for the Commission should appear as a line in the Welsh Consolidated Fund to allow for full scrutiny and transparency by the National Assembly for Wales.

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?

No. Welsh language and the development of Welsh-medium provision should be integrated throughout the Commission and its statutory committees. Having a separate committee risks marginalising Welsh language issues by implying that they are the concern of solely one committee. This is not the most effective way of addressing Welsh language issues consistently across the Commission. All statutory committees of the Commission should take account of Welsh language issues.

⁵ <http://www.legislation.gov.uk/anaw/2015/1/section/49/enacted>

Where specific pieces of work or research are necessary, short-term task and finish groups should be established to undertake such work, drawing on co-opted external members as necessary.

Should the Commission itself decide that a Welsh language and development committee is desirable in the future, it should have the discretion to establish such a committee.

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?

ColegauCymru is supportive of the suggestion of bringing the functions of the Wales Employment and Skills Board (WESB) and Wales Apprenticeships Advisory Board (WAAB) within the remit of the new Commission and abolishing them in their current form, to be replaced with a specific committee to advise on employment, skills and apprenticeships.

However, membership of this committee should be subject to a transparent selection process with individuals demonstrating that they have the requisite level of skills and knowledge to provide effective scrutiny and direction, rather than relying on the 'usual suspects' or automatic carry-over of existing members. While members would not be formal members of the Commission, Nolan principals should still be applied to these and any similar appointments.

WESB, WAAB and any other non-statutory bodies should not be specifically named in the legislation establishing the Commission in order to ensure that the legislation is future-proofed and able to adapt to changing circumstances.

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?

No. The new Commission needs to be a genuinely arm's length and autonomous body with functions transferred from Welsh Ministers. The current proposal is not set at the correct level and is overly influenced by current Government policy and strategies. The Welsh Government should retain powers 'in extremis' but other than this should not constrain the Commission.

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?

No. As above, the new Commission needs to be a genuinely arm's length and autonomous body with functions transferred from Welsh Ministers. Consideration should be given to measures which operate in other spheres when there is operational failure, such as the case when Welsh Government arranged commissioners to intervene in Anglesey Council for a time-limited period, or the special measures arrangements in health boards, such as the Betsi Cadwaladr example.

In the event of dispute, there should be no impact on learners on the day-to-day delivery of learning activities, including to the staff and facilities involved in delivery.

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?

As above.

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?

No. A seven-year cycle should be set as the standard length of time. This has the advantage of depoliticising the Commission to a certain extent by taking it out of the five-year electoral cycle. Flexibility should be allowed, especially in the early years of the Commission while it is being established. The strategic plan should include funding estimates as far as possible to enable providers to undertake longer term planning.

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?

ColegauCymru would like to see a draft or sample ROA in order to form a more detailed opinion.

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?

Charitable status should be required in order to receive grant funding. Other types of provision to providers without charitable status should be via contract. Contracted provision should be available to the providers who can offer the best quality outcomes.

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?

As above, funding to RTOs should be on a contractual basis only.

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?

This should be set within the terms of the specific contract.

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?

ROAs should apply to organisations with charitable status only. All other provision should be contracted.

Question 13:

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

The management of all relationships needs to be reasonable and proportionate to the element of risk posed by individual providers. The process must not be overly complex or duplicate existing procedures. The drafting of the proposed legislation should not be overly prescriptive.

It would be useful to see an example of what a draft 'ROA' might look like in order to form a more detailed opinion. ROAs must be as consistent as possible across the PCET sector.

If the approach is accepted, ROAs must be introduced at the same time for all providers and not simply 'piloted', for example, with Further Education providers.

Question 14:

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

Potentially via withdrawal of funding but also the Commission should have the legal capacity to require information, withhold funding; visit and address the Governing Body/Board and to fine, to ensure effective operation as a regulator and deliverer of Welsh Government priorities.

Question 15:

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

ColegauCymru would like to see further exploration and detail on ROAs.

Question 16:

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

This should include (but not be limited to) name of organisation/institution, funding award, expected outcomes, terms of the ROA, timeframe, details of direct allocation where applicable (e.g. HE and sixth forms).

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?

Reconsideration should be permissible with the flexibility to adapt to changing external circumstances.

In terms of Further Education, ROAs need to have at least a three-year cycle of provision and planning. This would help address the issue of stability as raised in the Wales Audit Office report published in 2017 on 'Welsh Government oversight of further-education colleges' finances and delivery'.⁶

Question 18:

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

The Commission needs reasonable powers of entry to inspect institutions, see relevant accounts, capacity to require information, withhold funding, visit and address the Governing Body/Board and to fine, to ensure effective operation as a

⁶ Report available at: Welsh Government oversight of further-education colleges' finances and delivery'

regulator and deliverer of Welsh Government priorities etc.

Penalties, such as withholding funding, should only be used as a last resort and cannot be allowed to negatively impact on learners.

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?

Yes, these functions should be transferred to the Commission. In order for the new Commission to succeed, all relevant functions should be transferred in full and not reserved or held back partially by Government.

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?

No. There must be no duplication between the role of Welsh Government and the role of the new Commission. Unless there is good reason, Welsh Government oversight and scrutiny of the Commission (including approval of its strategic plan) should provide a sufficient role in planning. A consistent approach must be taken regarding provision to learners from the outset.

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?

Yes, the powers should be replicated largely unchanged for the new Commission. However, in addition, regarding section 66(1) on consultation, the relevant Further Education bodies should also be consulted, along with appropriate employer representation.

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?

Yes.

Are there any specific inclusions or exclusions that should be considered as part of this new power?

No.

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?

In our consultation with the Further Education sector, it is clear that significant stakeholders have concerns over the move towards a single un-hypothecated budget given to the Commission via its annual grant. However, ColegauCymru offers its views based on the establishment of a genuinely consultative and representative body working in the interests of all providers to secure the best outcomes for learners and students. On this basis, there should be no hypothecation of the grant from Welsh Government.

The Commission should decide on funding arrangements. The legislation should give the Commission the autonomy to allow hypothecation during the transition period in its early years. Any hypothecation should be strictly time limited.

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.

As above. Any initial hypothecation should be strictly time-limited.

However, ColegauCymru notes that there is no mention of adult learning and the role of the Commission needs to be clarified here. We would like to see a differentiation between adult upskilling and further learning (adult continuing education), which should be part of the Commission's remit, and adult learning with a social mission (adult community learning) whose primary function is engagement. We note the current Welsh Government consultation on 'Delivery and funding of community-based adult learning' (WG34302) and reserve the right to further develop or amend this position.

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?

No. This undermines the principle of the Commission being responsible for funding and risks duplication or distortion of priorities. If the Commission is truly to operate as an arm's length body, Welsh Ministers should respect this in terms of funding. There is no reason why a suitably functioning Commission could not absorb additional funding for specific PCET provision. The number of bidding/business case mechanisms for additional funding should be kept to a minimum so as to avoid bureaucracy and complexity for providers, especially where relatively small amounts of money are involved.

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?

Responsibility for the replacement for ESF and other European funding needs to remain in its current mechanisms, overseen by Wales Programme Monitoring Committee or future replacement.

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?

'Short' here needs to be clearly defined - this may be necessary in order for the Commission to be established effectively but should be strictly time-limited and for no longer than is absolutely essential. More broadly, this is a matter for the Commission when established rather than the current consultation.

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?

Again, this is a matter for the Commission.

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?

Yes, but only as part of an expectation that the Commission would keep abreast of all such relevant developments. The direct reference to the levy is not helpful as this is an immediate concern rather than something which should impact on the ongoing future of the Commission.

Question 30:

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

No. The Commission should undertake engagement with appropriate bodies and determine these - it should determine and agree its own arrangements regarding information to assist with planning provision. This may or may not include RSPs whose role is not statutory and who are subject to change. No non-statutory bodies should be named in the legislation regarding the Commission as this inhibits future-proofing.

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?

As skills plans and RSPs are not statutory, potential changes in the future might result in amendment to the requirement for skills plans. These should therefore not be written into the new Commission. The Commission must have full autonomy. As above, references to skills plans are time sensitive and not guaranteed to endure, mitigating against future-proofing.

Question 32:

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

No. They do not allow sufficient autonomy for the Commission.

Question 33:

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

Establishing the Commission as a genuinely arm's length body is the most effective way of securing 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?

Yes.

Question 35:

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

This should form part of the Commission's corporate plan rather than being addressed via legislation. Core principles must be developed in a participatory or co-productive manner, including all elements of learner voice.

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?

LPP Plans should be consistent across the PCET sector, including school sixth forms. The legislation should ensure that there is parity for PCET learners as far as possible whether they are in school, FE, HE or other settings. The legislation should ensure that plans can be designed in such a way as to minimise duplication and bureaucracy for all providers, including schools.

More broadly, the consultation seems overly focused on 'protection' to the detriment of 'progression' and encouraging a system which is flexible enough to meet the needs of learners at all stages of their journey and interactions. The appropriate sections of the legislation should be based on this principle.

Question 37:

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

The ROA could be removed from charitable providers and contracts ended for non-charitable providers.

Question 38:

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

No. There should be consistency across the PCET system, including in terms of complaints. If the role of the OIA is to be extended to cover unresolved complaints for instance, this should cover sixth forms. All learners should expect and receive high levels of service. The fact that there is a different system for compulsory education and post-compulsory education in schools should not be overly confusing and all systems should be designed to minimise bureaucracy. Parents are perfectly capable of understanding that some circumstances are different when their child reaches sixth form. For instance, Education Maintenance Allowance (EMA) is only available to post compulsory learners.

Allowing and legislating for difference between providers (such as sixth forms and FEIs) risks setting the Commission up to fail. The legislation should ensure that 16

and 17 years olds are included in the governance mechanisms of institutions wherever they choose to study. ColegauCymru believes that this will strengthen learner voice and should be read in conjunction with the paragraphs that follow below.

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?

Yes, this is welcome and it should apply to all learners and providers, including those in sixth forms and adult learners. However, as noted elsewhere, this is for the Commission to develop.

Question 40:

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

Yes. This should be undertaken on a consistent basis. The suggestion that for sixth forms, learner involvement in developing the outcome agreement element of ROAs would be less direct with the Commission requiring only evidence of how schools take account of the views of their sixth form learners is too weak and marginalises the voices of learners at sixth forms in comparison to other PCET learners. This needs to be revisited and a way of grouping learners together to help local authorities shape the ROA more directly is needed.

It is also important to consider the skills necessary for learner representatives to make a meaningful contribution to the development of the outcome agreement element of ROAs. Appropriate training may need to be made available to a wide range of learners to ensure they feel confident to input. This would also assist with equipping candidates for membership of the Commission. This could be a condition of the ROA or contract or undertaken via a representative body.

Likewise, expectations of any learner representatives need to be made clear and a distinction drawn between whether they represent their own experiences or are representative of learners more broadly. In the latter case, expectations for engaging with the wider community of learners, including adult learners, will need to be established.

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?

Yes, but there needs to be flexibility on delivery to suit individual providers and institutions. The Commission should be required by statute to provide a mechanism for learner voice.

Question 42:

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

The content of the framework and its establishment should be left to the Commission to decide in consultation with relevant stakeholders, although the principles set out would seem a sound basis.

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?

Yes, but the establishment of learner-led representative bodies must be subject to flexibility depending on the specific circumstances of the provider or institution. ROAs should help enable this for providers with charitable status and learner voice should be included in contracts for other types of providers.

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?

The proposed principles in para 171 of the consultation document seem broadly adequate and are welcome but must be applied to all providers for consistency. A consistent approach with clear and consistent KPIs is essential. A new model of quality assurance taking the 'best of both' of QAA and Estyn needs to be explored.

However, the legislation guiding the Commission should simply require that there is a quality framework, periodically reviewed, that should be developed in consultation with the sector. There is no need for further levels of detail to be included in the legislation.

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.

Consideration should be given by the new Commission to a single body in due course but this should not be specified in the legislation guiding the Commission. Quality Assurance needs to be consistent across all areas of learning.

Question 46:

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

The proposed definition is acceptable as a starting point but this should be for the Commission to decide. More broadly, it is not especially helpful to use the term 'enhance' within the definition of 'quality enhancement'.

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?

It is vital that the Commission does not duplicate existing work undertaken by other agencies and should have responsibility for sixth forms. This should include the current administrative arrangements involving Regional Education Consortia as appropriate but contact should not be limited to working through the consortia. The Commission should be able to contract as appropriate and no non-statutory bodies should be specified in the legislation regarding the Commission.

Question 48:

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

This is for the Commission to decide. There should be an obligation to engage with the Education Workforce Council or successor bodies, employers and other relevant organisations.

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?

Participation in sixth forms in Wales continues to fall, with over half of learners continuing their study in Further Education institutions. The current arrangements regarding governance of sixth forms should not be hardwired into becoming the future arrangements and inhibiting innovation and change. The powers of the new Commission regarding sixth forms need to be in line with those in respect of other providers.

Question 50:

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

The legislation must ensure that there are consistent expectations across the PCET sector. The reporting arrangements for sixth forms regarding the Certificate of Expenditure and how it has been spent should be clarified during the preparation of legislation to establish the Commission, with schools declaring separate accounts for sixth forms. Local Authorities should no longer be able to retain up to three per cent of allocation for schools for centrally retained services which relate to post-16 education.

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?

The legislation should allow for ROAs to require segregation of funding and separate performance assessments of sixth forms.

Question 52:

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

It is imperative that the legislation enables the Commission to have commensurate powers for sixth forms as for other areas of the PCET landscape; there is a need to maintain as much consistency as possible across the PCET sector in its entirety to ensure the best possible outcome for all learners, including those in sixth forms.

The establishment of the Commission requires the PCET sector as whole to adjust to new arrangements and this should be no different for school sixth forms, who are

a key part of the PCET sector. There is change and, consequently, some disruption planned across the PCET sector as a result of the proposed reforms. School sixth forms cannot be exempted from this simply on the basis that they also deliver compulsory education. Treating learners differently on the basis of where they study as opposed to what they study (in terms of qualifications etc.) is not equitable or acceptable.

Consideration should be given as to whether the Commission should be able to set a legally enforceable threshold regarding the size of sixth forms in order to be eligible for funding. This would be in the interests of learners in terms of choice and quality of provision available.

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?

Yes, this seems sensible.

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?

This is not a matter for the current technical consultation.

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?

Apprenticeships should be within the remit of the arm's length body that is the new Commission and should be left to the Commission, subject to input from stakeholders including employers, learners, providers and other sources of intelligence. The WAS should be part of the Commission.

Question 56:

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

The Commission needs the powers covering the WAS and a duty to create a framework. There is no need for further detail in the legislation to establish the

Commission. The employer-led system proposed is stronger than the current situation.

Research and Innovation

Question 57:

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

The publication of the Reid Review impacts on the proposals regarding RIW. It is unfortunate that the current consultation was drawn up and published prior to the publication of the Reid Review.

ColegauCymru broadly agrees with the majority of the proposal regarding RIW but the number of members of the RIW Committee should be left to the Commission to define and not be prescribed by Welsh Government. This includes the split of stakeholders. Should a third of members of RIW be drawn from HE and FE collectively, FE should not be disadvantaged or marginalised within this third. There needs to be adequate representation from the FE sector from the establishment of RIW.

We welcome the Reid Review recommendation that Further Education colleges should also be made eligible for Innovation & Engagement Funding and would like the earliest opportunity to help develop appropriate criteria for funding and performance metrics. These principles should be enshrined within the legislation to establish the Commission

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.

This question is unclear. Innovation funding should cover a range of published priorities and powers in order to enable this should be set out.

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.

The Chair of RIW, along with the chair of the Commission, should be appointed by the National Assembly for Wales rather than Welsh Ministers. The statutory procedures put in place should support the vision for research and innovation as outlined within the Reid Report.

RIW needs to have the freedom to engage directly with potential funders and relevant stakeholders as it sees fit and the statutory provisions should allow this. However, within the draft statute, the ability to fund a range of recipient bodies should not be allowed to dilute its primary purpose, which is the funding of research and innovation as it relates to educational activity.

While RIW should keep the Welsh Government informed of relevant discussions it should not have to seek permission from the Welsh Government to engage with UK Government. This seems overly controlling and bureaucratic, mitigating against innovation, responsiveness and building the relationships necessary for success.

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?

Yes, subject to taking into account differences between the types of institution covered by the new Commission. A rigid 'one size fits all approach' will not be appropriate. ColegauCymru reserves the right to change our view on this matter, subject to seeing the drafted statute and provisions.

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?

Yes, but there should be a differentiation made between regulated (ROA) bodies and contracted bodies e.g. training providers, as set out earlier in our response.

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?

Yes.

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?

Yes.

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?

Yes.

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?

Yes, but this should be reasonable, not onerous and the detail of the statute should allow and safeguard the independence of the body.

c) the above requirements would provide sufficient safeguard in respect of the scope and reach of the Commission's financial and governance assurance arrangements?

Yes.

Are there any other safeguards you consider to be necessary?

No other safeguards other than the principles outlined above are necessary to ensure the statutory independence of the body.

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?

Elements of this question are not a matter for the current technical consultation. In practice, duplication and/or overly bureaucratic systems should be avoided. Establishing the Commission should provide an opportunity to streamline and simplify processes for requesting information in addition, the right to enter premises, for instance, should be qualified so as to be linked to the specific requirement of assurance.

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?

Yes, but these powers need to be stipulated in the legislation regarding the Commission. Following the initial drafting of the legislation, ColegauCymru seeks an opportunity to review these proposed powers.

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?

No. These powers should be transferred to the Commission.

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?

Yes. In principle, ColegauCymru is of the view that the proposed Commission should have full regulatory and governance functions. Full and careful consideration should be given to rationalising the mechanisms for regulating all institutions in the sector.

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?

No view.

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?

No view.

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?

No view.

Question 72:

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

No view.

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?

No view.

Question 74:

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

In order to embed links between HEIs and FEIs, all HEIs should be required by the legislation to have a local FE College Principal as part of the University's Governing Body.

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.

No view.

Question 76:

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

No view.

Question 77:

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

Such conditions should be in a manner in keeping with powers over Further Education Institutions.

Question 78:

Should dissolution powers only be exercisable on recommendation of the Commission?

Yes.

If so, should this also be extended to the existing arrangements for FE institutions?

Yes.

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?

The possibility of transferring relevant powers to the Commission should be explored.

Question 80:

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

All relevant and related powers should be held by the Commission.

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?

Yes, this seems sensible, although this is not a matter for the technical consultation.

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?

Yes. This should be via the Welsh Language Measure or any subsequent legislation.

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?

No. While valuable, these are all goals for the current administration and are liable to change in the future; therefore, they should not form part of the legislation to set up the Commission. The Commission, when established, may decide that these are specific pieces of work to be undertaken. There is a risk that the current consultation seeks to bind the future of the Commission to current government policy.

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.

The Coleg Cymraeg Cenedlaethol should be regulated and funded by the Commission in respect of its FE and HE work.

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.

This should be external and not regulated by the Commission, in a similar way to that we suggest for adult community learning which has a specific social mission.

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?

This is a good idea and provides a chance to review the data collected, arrangements for publication and how such data is presented in the public domain.

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?

Yes. This should allow all transitions to be as smooth as possible and planned in the best interests of learners. Intra-school transfers should not be treated differently to those between school and Further Education.

However, this could be achieved more quickly via inclusion in the planned Curriculum Reform Bill.

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?

Data requests and storage should be reasonable, proportionate and not duplicate existing data sets.

Student Finance Issues**Question 89:**

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

Yes, but that should be the subject of a separate consultation by the Commission in due course.

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?

Possibly but again, that should be the subject of a separate consultation.

Question 91:

How might accelerated degrees be defined?

This should be the subject of a separate consultation. It is not appropriate for inclusion in the current technical consultation.

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?

Further consultation with ColegauCymru members is necessary on this issue, which should itself be the subject of a separate consultation.

Question 93:

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

This issue should be consulted on separate to the current technical consultation.

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?

Yes.

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?

There is some merit in continuing this distinction but this should not be based on whether study is full time or part time. We are concerned that this contravenes equality principles. Again, this is a matter for the Commission to consult upon in due course. The Commission will need adequate powers to address course designation.

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?

ColegauCymru rejects the proposal that course designation remains a function of the Welsh Ministers and argues that these functions should instead be transferred to the Commission. There should be no reference to fee levels in the legislation regarding the Commission.

Option (a) where providers seeking course designation in either category would be required to be charities is the preferred option.

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?

There should be a specific Equality Impact Assessment of this aspect.

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?

As above.

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

An annual equality statement or report should be required, guided by best practice from the Equality and Human Rights Commission Wales.

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.

The Commission should be subject to the Welsh Language Standards as set out in the current Measure or in any further legislation. The Welsh language must be incorporated into all aspects of the Commission's work rather than solely the remit of one committee, risking marginalisation.

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:

There is much content in the current consultation which would better inform a series of separate consultations. Several issues are not directly pertinent to the legislation needed to establish and determine the Committee.

Adult learning, in either its upskilling function or social mission element, has not been adequately addressed throughout this consultation.

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