

Public Good and a Prosperous Wales – The next steps

Response from the Higher Education Funding Council for Wales,
17 July 2018



Noddir gan
Lywodraeth Cymru
Sponsored by
Welsh Government

Overview

HEFCW supports the ambition for a single PCET body in Wales:

- **Planning** PCET at a high level across Wales, taking account of providers' knowledge about, and responsiveness to, their markets; promoting progression and minimising nugatory competition between providers;
- Rationalising **funding** mechanisms to gain maximum value for Wales;
- Amending and rationalising **contracting** arrangements to gain best value;
- **Ensuring quality** across the PCET sector, recognising where mechanisms may and may not gain from alignment and minimise burden;
- Undertaking robust **financial monitoring**; appropriate **audit**, and assessment of **performance risk**; and
- **leading on research funding** utilising world leading expertise, taking account of Welsh, UK and international expectations.

However, as the organisation most affected by the changes, we have a number of reservations about the proposals, which we summarise here:

- The proposals are too heavily specified and should focus more on what needs to be achieved, rather than how;
- That, if the legislation is overly prescriptive, the system will lose flexibility and responsiveness;
- That the tiered regulation system proposed could cause difficulties in terms of equity of treatment for different types of provider, although there could be operational reasons why some differentiation will be required;
- The specific third party organisations should not be named in the legislation in order to future-proof the legislation.
- A number of questions remain about the purpose of the new body and what it is designed to achieve. Some of the elements above would be part of a vision for the new body. Form follows function and thus it is difficult to comment on aspects of the operations of the new body without a clearer sense of the purpose.
- Linked to that, many elements in the document are overly detailed. If this body is to have longevity, it needs to be flexible and agile to respond to the changing environment. Any legislation must be cast at a high level and allow flexibility for the new body to operate.
- Similarly, if the body is to be arm's length from Government then it needs sufficient independence to operate effectively. That includes in terms of the appointment of senior staff and committees. There should be a high level framework set by the Welsh Government within which the body should operate including approval of a strategic plan and an annual remit.
- It is important to separate the regulatory aspects and those related to the delivery of outcomes linked to Welsh priorities. We recommend a registration process for all providers in relation to the regulatory aspects and separate longer term outcome agreements.

- *TERCW is not an appropriate nor correct name for the new body in a Welsh context. We recommend Education and Research Council or Board.*

The Commission

Question 1:

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

We generally support the proposals for a single PCET body for Wales. However, in the absence of an overarching vision setting out the expectations for the new Commission, we are unclear of the evidence base to inform the recommendations. Much of the evidence for action seems to be based on responses to the previous consultation proposals, rather than on research and evaluation evidence, or other supporting evidence.

A key element here would be to take account of the reasons why the former body, Education and Learning Wales (ELWa), which had a very similar role and functions, was unable to be successful. Lessons learned from that experience should be informing the development of proposals for this Commission, rather than just responses to ideas put forward in the first consultation.

Contrary to ELWa, we will require a body which can be sustainable and function effectively over a long term and be agile to respond to changes in the socio-, economic and political environment. It is also important that the body is properly integrated. This requires legislation to empower the new PCET body – but not constrain it in detail.

We are also aware of the lack of reference within the consultation to the Well-being of Future Generations (Wales) Act 2015. We are not clear how these proposals meet the sustainable development principle (that the body must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs). We are also unclear how this meets the five ways of working: HEFCW, as a body with a direct interest in achieving the well-being goals (and the establishment of the new Commission), has had little involvement with the development of proposals for the new body, other than membership of the stakeholder group (with lots of other public bodies). Not only does HEFCW have significant expertise in one of the sectors to be covered by the new body (higher education), we have newly gained experience in being an education regulator and we work increasingly closely in partnership with students and other providers across the PCET system to achieve important outcomes for Wales.

The seven well-being goals, which formed the basis for our development of a higher education strategy for the Welsh Government in 2016¹ could assist in providing the structure for a vision for the new post-compulsory system, as recommended by Professor Ellen Hazelkorn. In any case, we would expect the new Commission to be working to achieve the seven goals in drafting its strategy and in agreeing outcome agreements.

¹www.hefcw.ac.uk/documents/about_he_in_wales/WG_priorities_and_policies/Draft%20Higher%20Education%20Strategy%20to%202027%20.pdf

It is unclear whether the Commission is supporting learners and/or employers. The foreword sets out a priority for learners and the economy. Data indicates that learners (students) do not always make choices in the interests of the economy and employers. There is therefore a tension between these objectives (to meet the needs of learners and also of the economy) which is not really resolved in the document.

We are unclear about the definition of 'strategy' and 'framework' used in the document and how this will work taking account of the proposal for annual funding of an approved 'strategy' on the basis of a remit letter. It is intended that the proposed registration and outcome agreements are for up to three years. We are unclear how this would align with an annual remit letter.

Approval of the 'strategy' two years into the programme of government will be too late to achieve significant outcomes. The specification for the strategy would need to be given to the Commission within six months of the election and agreement of a new programme of government.

We have a number of concerns about the proposed membership of the Commission in a context where (a) it is intended that the new body should act in a regulatory position (ie needing detailed expertise on regulation and of the specific sectors covered by the Commission) and yet (b) has a very broad remit. A particular concern is how the many proposed committees will be covered by only 15 members. No rationale is given for that number in the document. We recommend a larger membership. While there will need to be representation from industry/employers, much of the work of the Commission will require specialist rather than generalist knowledge. As a regulator, it will be important that no members have interests in the sectors covered and yet the Commission will need expertise in those sectors in order to regulate effectively. This will mean a mix between members external to Wales with relevant sector expertise, whilst ensuring a sufficient number of members who are fully familiar with the Welsh context.

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. In general, we would expect an arm's-length body to be responsible for determining the type and extent of its committees.

We can see the rationale for a statutory committee for quality (to cover the regulatory role) and audit. We also agree the need for a statutory underpinning for the research and innovation committee. However, there is no clear rationale set out in the document for the many other committees and boards suggested, including the Welsh language committee and the widening access committee.

It would be appropriate for the Commission to be given the responsibilities of the two bodies covering skills (WESB and WAB) but we are unclear of the need to bring those particular boards into the Commission, which will have its own views about

committee structures. We recommend that the specification of committees for the new Commission should be kept to a bare minimum in any legislation.

We do agree that the Commission should be placed under a specific duty to have regard to the Welsh language in the exercise of its functions. However, in relation to the specific question about a Welsh language statutory committee, this should not duplicate the work of the Coleg Cymraeg Cenedlaethol. If the Coleg were funded directly by the Commission (which we would recommend) then this function could be delegated to the Coleg Board.

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?

We take the view that the functions of WESB and WAAB should be included within the functions of the Commission but that does not involve bringing in already established boards within the committee structures of the Commission. The Commission will take its own view about an appropriate committee structure to meet its objectives. We take the view that such bodies should not be named in legislation.

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?

As noted above, we think that the allocation of responsibilities is not set out clearly in the document and there are some inconsistencies about timing. Legislation would need to be sufficiently flexible to take account of changes of government, so establishing specific timescales in legislation should be avoided.

We recommend the following indicative timescales, noting the need to retain flexibility as above:

- *Within 6 months of an election, a specification is provided to the Commission stating the high level post-16 outcomes of the new Welsh Government, taking account of its programme of government;*
- *The Commission develops, liaises with Welsh Government about, and consults on a strategy to deliver those outcomes, to be provided to the Welsh Government for approval within a further 6 months;*
- *Once approved, the Commission sets out its expectations in relation to outcome agreements with learning providers within six months.*
- *Outcome agreements are developed over the next six months, to cover the following five year period, with annual monitoring and updates;*

- *Annual remit letters are provided to the Commission, within the overall direction of the agreed strategy.*
- *The Commission will respond to the remits, including where appropriate seeking updates to outcome agreements from providers.*
- *It will be a condition of funding/access to student support that providers agree outcome agreements with annual updates.*

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?

The risk of this happening is so minimal that there is no need for safeguarding measures. The Commission needs to be accountable to the Welsh Government but not managed by it. However, the Welsh Government is the funder and, in extremis, would be able to hold back annual funding were the Commission to deliberately not align its strategic plan with Government expectations. As a public body, the Commission would be subject to judicial review and other statutory duties to act in a reasonable manner, which will ensure that the Commission acts appropriately. In general, there is too much detail in the document about the likely operation of the Commission, given the expectation that it should operate as a body at 'arm's-length' from Government. For example, there is reference to a number of current Welsh Government policies and action plans. This provides only a short term view of policy priorities, whereas the Commission will need to have a longer term view assisted by annual remit letters.

We note, however, that there is very little information included on sanctions available to the Commission to facilitate the delivery of outcome agreements – which would be a matter for legislation. It is important that the legislative powers of the Commission are clear and easy to operate. The sanctions available to HEFCW via the Higher Education (Wales) Act 2015 operate slowly and are largely existentially threatening to providers, making them very difficult to use and not allowing for swift intervention to address problems proportionately. The new Commission should be accorded a range of both funding and regulatory interventions at all levels of operation (ie informal and formal), including the capacity to fine, to ensure effective operation as a regulator and deliverer of Welsh Government priorities.

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?

Funding is a sufficient lever. We also note that the Welsh Government appoints Council members. We would expect the new PCET body to be subject to a range of other statutory duties in relation to, for example equality and diversity; Welsh Language Standards; Future Generations; audit requirements; annual reporting etc, which provide a framework for compliance. See also our response to question 5.

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?

We note in question 4 a possible timescale for the cycle. However, it would be helpful to allow flexibility, particularly in the early years of the Commission.

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?

As the higher education regulator in Wales, with recent experience of operating the fee and access plan process, we would recommend the separation of regulation and outcome agreements. They have two different purposes and should be treated differently. Such processes would need to include research and innovation providers in addition to all learning providers including work-based learning providers.

We note that the majority of respondents to the consultation supported a registration model. We recommend that providers wishing to gain access to funding and/or student support in Wales, or for Welsh domiciled students, should be required to register annually with the Commission. This process would include an assessment of financial viability and quality, as well as oversight of the management and governance of financial affairs.

This process should apply to all learning/research and innovation providers (albeit that the assurances might be gained differently by the Commission).

The achievement of outcomes to meet the policy needs of Wales is a different purpose and would need to be delivered over a longer term. An outcomes agreement process would meet that expectation. Such outcome agreements would be agreed early in the period of the Programme of Government (as noted in question 4 above) with all registered providers and would run for, say, five years, with annual monitoring and potential for updates. The agreements would be linked to funding and/or access to student support.

We see no reason why work-based learning providers should not be included within the usual registration and outcome agreement arrangements. We reiterate our view, as put forward in our response to the first consultation, that whilst in principle we think that school sixth forms should be included within the work of the Commission, we think this should be an incremental or transitional process over a period of years. We do not support the semi inclusion of school sixth forms. We are unclear how an outcome agreements process for school sixth forms can operate via local authorities,

particularly given that school outcomes are recorded on PLASC2, which is within Welsh Government, and this area needs significant further thought and development.

The consultation document does not address the future role of the fee and access plan, which is the regulatory vehicle under the HE (Wales) Act 2015. We assume that the fee and access plan will be removed in the new legislation and replaced by registration arrangements and outcome agreements.

The Commission will require access to other streams of funding (not necessarily linked to outcomes agreements) to deliver strategic interventions, including where the stability of providers is in question.

We note the respective roles of HEFCW (designated by the Home Office) and Estyn in relation to Prevent for higher education and further education respectively. Consideration would need to be given to the role of the Commission in acting as monitoring authority for Prevent for the whole PCET system.

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?

Given commitments to parity of esteem within the consultation, we would expect that all learning provider organisations would be treated equally in terms of registration and outcomes agreement requirements. Although work-based learning providers are currently subject to a tendering process, the document assumes that these arrangements would need to continue; but there is no requirement for this system to be maintained within the new Commission and we would recommend integrating work-based learning with other types of provision as far as this is possible.

On balance we would not object to providers without charitable status being designated in Wales on the basis that such providers committed to investing surplus funds into activities that support learners or were for the public good, demonstrating this through a public good statement. In general the level of regulation should be proportionate to the risk to the student and taxpayer, and not to the potential benefits to the provider.

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?

This depends on the vision and purpose of the new Commission. If its focus is educational, then the funding which the Commission channels through RIW for research and innovation activity should clearly relate to this educational purpose.

² [Pupil Level Annual School Census](#)

It is difficult to conceive how outcome agreements might be modified for organisations that do not have an educational focus. If they were to be included, they would need to meet the same requirements as other registered providers (of good quality, financially viable and well-managed), given that they would be receiving public funding, and there would need to be assurances about where that public investment is being made.

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?

There might be a case for funding RTOs with charitable status to conduct research and innovation activity for the public good, eg via a commercial contract, under an appropriate regulatory and funding framework. But this would need to be predicated on the availability of additional funding levels as strongly advocated by the Reid Review. There can be no dilution of funding for the research and innovation activity undertaken by universities as the primary contributors to this agenda in Wales. The Reid Review noted that Wales is already at a disadvantage in terms of the funding available to underpin these activities in the HE sector.

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?

These matters should be determined by the Commission. It should be possible for all providers (learning and research) to be able to offer a public good statement covering their contribution to the needs of Wales.

Question 13:

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

We do not favour a single ROA as the way forward and think the two functions of regulation and an outcomes agreement should be separate (see our response to question 8).

See also our response to questions 19 and 20 in relation to research and innovation.

The Welsh Government would need to provide sufficient funding to drive the outcomes agreements and ensuring sustainability so that learning providers can plan more effectively and deliver the outcomes required. This should not be underpinned by student income, which, even though mostly provided by the Government, is regarded legally as belonging to the student, and is not defined as 'funding'. In relation to access to student support, we would also need to be clear what the

consequences were in terms of not meeting the regulatory aspects, which is picked up in sanctions in question 14 below.

Question 14:

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

It is important that the legislative powers of the Commission are clear and easy to operate. The sanctions available to HEFCW via the Higher Education (Wales) Act 2015 operate slowly and are largely existentially threatening to providers, making them very difficult to use and not allowing for swift intervention to address problems proportionately. The new Commission should be accorded a range of both funding and regulatory interventions at all levels of operation (ie informal and formal), including setting terms and conditions of grant; the capacity to require information; powers of entry to inspect and obtain information; withhold approvals for registration; withhold funding; withhold approvals related to access to student support; visit and address the Governing Body/Board; and to fine (see below), to ensure effective operation as a regulator and deliver of Welsh Government priorities.

The Commission will also need the capacity to fine when providers, which are knowledgeable about the requirements, still fail to deliver. This applies particularly in the context of higher education, where such a large proportion of the income comes from tuition fees, which cannot legally be treated by the Commission in the same way as funding.

As noted above in our response to question 8, we do not support the semi inclusion of school sixth forms. We are unclear how an outcome agreements process for school sixth forms can operate via local authorities, particularly given that school outcomes are recorded on PLASC, which is within Welsh Government, and this area needs significant further thought and development.

Question 15:

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

Registration and an outcomes agreements approach should be separate processes. These are two very different functions with different aims and objectives and, in light of our experience of operating a similar system with the fee and access plan for higher education providers, we recommend separating these two elements into a register (for all learning and research providers) updated annually, with core requirements, and a longer-term agreement on outcomes to be achieved. For learning providers, we consider that outcomes should include a focus on the learner voice.

A register of providers is important public information, confirming for students and other stakeholders, the exact status of a provider, and the nature of its responsibilities and duties related to that status. This is particularly important given the existence of such a register in England.

Question 16:

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

This is a matter for the Commission, once established, to consider, in consultation with Government, providers, learners and other stakeholders.

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?

Please see our response to question 15. We advise that the registration and outcomes agreements processes should be separated, with the regulatory aspects checked annually and the outcomes agreement covering a longer period to allow time for outcomes to be delivered (albeit with the potential for monitoring and updating annually).

Question 18:

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

As noted above, we do not consider a single regulatory and outcomes agreement to be effective. It is likely to become bogged down in regulatory bureaucracy and is unlikely to deliver useful outcomes. A separation of these into separate annual registration and, say, five year outcome agreements (monitored annually), with appropriate funding, would be far more effective in enabling providers to plan and deliver outcomes to meet Welsh Government priorities.

As noted in our response to the initial PCET consultation³ outcomes agreements are predicated upon discussions with providers. They would be significantly more resource-intensive than formulaic funding allocations. We included a number of other considerations in relation to the operation of an outcome agreements process in our previous response.

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?

³www.hefcw.ac.uk/documents/publications/hefcw_responses_to_consultations/PCET%20consultation%20response%20-%20HEFCW%20231017.pdf

We are not the best to advise on these matters but the placement of these functions with the Commission sounds appropriate, with the caveats above about maintaining legislation at a high level.

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?

We think that, in general, these matters should be delegated to the Commission. Welsh Government oversight and scrutiny of the Commission (including approval of its strategic plan and an annual remit) should provide a sufficient role in planning.

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?

We think that, in general, these matters should be replicated for the 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?

While we would agree that provisions in the FHE 1992 Act should be replaced with a new power for Welsh Ministers to allocate funding to the Commission for all post-16 provision, we would draw attention to the simplicity and high level nature of the 1992 Act and recommend that that style be retained in any new legislation. We would not expect new legislation to allow the direct funding of PCET providers by the Welsh Government, which would undermine the role of the Commission.

The 1992 Act affords appropriate arm's-length powers to the higher education funding council, covering education, research and other support. The level of detail specified in the consultation document is inappropriate for an arm's-length body (as signalled by Professor Weingarten in his recent report⁴). There would need to be little change to the 1992 Act provisions. In particular, in section 68, it will be essential that the provisions regarding terms and conditions of grant to be set by Welsh Ministers not relating 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

⁴ <https://gov.wales/newsroom/educationandskills/2018/new-report-sets-out-steps-for-a-stronger-post-16-education-system/?lang=en>

academic staff and for the admission of students' are maintained to protect institutional autonomy.

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?

We do not generally agree with hypothecation on the basis of the type of provision to be funded, although initially, hypothecation between education and research could be appropriate to assist in the establishment of the requirements of the new Research and Innovation Committee. However, this should be a matter for the Commission and should not be covered in legislation or regulation. It will need to be able to change over time and be responsive to changing priorities.

The rationale for the establishment of a commission must relate partly to the expertise which that body can bring to PCET matters and the arm's-length nature means that it should be enabled to determine its own funding priorities, in accordance with the agreed strategy.

We also note a tension between the Commission's role as a funder and that involved in regulating providers' access to student support. Student support and institutional funding are very different aspects. We note that the former – which is the larger budget – supports Welsh students wherever they choose to study and does not necessarily impact on meeting Welsh priorities or employer needs.

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.

No. This should be a matter to be determined by the Commission. If there are specific statutory responsibilities in relation to the funding of further education, then the Commission would have to pay due regard to those matters. The Commission would also have to pay due regard to adult learning, which features little in the document, work-based learning and school sixth forms.

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. We do not agree with a power for the Welsh Ministers to directly fund PCET provision, including higher education, either as an end-of-year measure or the

parallel funding powers for research (including QR funding) and innovation. This should be a matter for the Commission, as an arm's-length body, and the inclusion of such powers, even if infrequently used, would undermine the role of the Commission from the start. The Commission will have to take a holistic view in determining funding allocations and have oversight of the sustainability of provision, of individual institutions and of sectors within the PCET system. This holistic expertise and information will not be readily available to Welsh Government.

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?

There are currently many additional streams of funding from Welsh Government departments to learning and research providers. We would expect these to be directed through the Commission where possible, and where this does not expand the breadth of work of the Commission. Where this is not possible, we would expect the Commission to have some involvement in their determination and allocation. At the very least, the Commission should have oversight of all streams of funding from Welsh Government departments (including health, communities, capital, economy etc) to learning and research providers.

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?

This is a practical suggestion which we would support. It is in line with our general support for incremental and transitional approaches to the establishment of the new body. We take the view that it is unnecessary to specify the operational details of the planning and funding approach to be adopted by the Commission. Specification at a much higher level than is implied in the consultation would facilitate the operational flexibility which the Commission will need.

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?

We would be content with transitional arrangements which provided initial protection and continuity for individual providers. This approach could be important to maintain institutional stability in a time of flux. However, the legislation should not require this level of detail.

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. It is important to maintain a UK perspective, as well as perspectives on Wales in this context, where employers operate across the UK and we need to ensure that our learning providers are not competitively disadvantaged in UK markets. Priorities change and develop and it is important that these are kept under review and that legislation and regulation is not applied so tightly as to inhibit flexibility to make changes and respond. The direct reference to the Levy may not be helpful in this context.

We advise against making specific reference to bodies such as the regional skills partnerships. The Commission will need to be responsive to employer needs but the actual machinery should not be specified. We support including the functions of WAAB and WESB within the Commission - but not as separate boards.

Question 30:

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

The Commission should consider regional skills needs in its funding allocations to encourage collaboration and avoid nugatory competition. However, we do not recommend reference to bodies such as RSPs within legislation, given that RSPs are themselves non-statutory bodies. RSPs currently work in relation to local regional provision. However, the Commission should also have oversight of the Wales position and UK developments to ensure that the needs of employers can be addressed. Many learning providers work at local, regional, national and international levels in terms of their work with employers and the work of the RSPs is only part of this. As indicated above, we don't believe the RSPs should be referenced in the legislation.

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?

No. This could create issues for the sustainability of learning providers and their ability to plan to meet longer term skills needs. There is no need for matters such as this to be set out in legislation or regulations.

Question 32:

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

The Commission will have an important role in monitoring performance and accountability but also in assuring the sustainability of individual providers and the PCET system. As noted above, the Commission will need to have sufficient funding and regulatory powers to achieve this and such powers should be specified at a very high level within the legislation to allow detailed intervention powers to be developed and consulted on by the Commission. A 'one-size fits all' approach is unlikely to be 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?

HEFCW continues to support the reconfiguration of the HE sector into fewer, stronger providers. We would also recommend a similar approach, which encourages critical mass as well as scope to respond flexibly to changing conditions and markets for other sectors, within the PCET system. This work has not yet completed. The Welsh Government's vision for the PCET body could help to support this direction of travel. In a context where additional funding cannot be guaranteed, all providers need to consider the efficiency of their operations and whether more can be gained through collaborative working or merger. Encouraging providers to diversify into markets which are already covered by other providers in Wales is not necessarily a sensible approach as it encourages duplication and nugatory competition. Providers need longer term assurances about funding in order to plan. There is an opportunity within the new Commission to rationalise such duplication and focus on progression, within a more equitable funding regime.

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?

We welcome the prominence of the learner protection arrangements within the proposals and consider that if a set of common principles were to be developed then these should be high level and should be flexible enough to be applicable to all types of provision, both in the short and long term. The principles would also need to be able to be adaptable, in order to address changes in the educational context.

We consider that any learner protection arrangements should focus on the learner rather than the provider and should ensure a consistency of experience for learners across all parts of the PCET system (including sixth form, adult learning, work-based learning, and postgraduate students).

It is imperative that learners should be involved in learner protection arrangements in order to monitor effectiveness and lead on their review as appropriate, though we

recognise that in some parts of the system (e.g. where an ethos of learner engagement and partnership may be less developed) this may present a challenge.

The development of a common set of learner protection arrangements across each sector within the system should add value to student protection arrangements already in place, e.g. via Student Charters already in place in the HE sector. This would help to provide a consistent approach to protecting the interests of learners, and would also enable learners to be clear regarding how their interests are protected.

We consider that it would be useful for the Commission to undertake sampling of learner protection arrangements in order to check compliance with the principles.

We consider that it would be useful to produce a set of expectations to underpin the principles, which should be developed by the Commission in partnership with learners and PCET sector organisations. This could be undertaken by an independent body.

Question 35:

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

We consider that the principles suggested are appropriate, however we would emphasise the need for a set of high level principles rather than a focus on the requirement for overly detailed arrangements such that “Learners should know in advance of starting their programmes what protections are in place”. It should be for the Commission to work with learners and providers to develop the principles to be applied.

We consider that the requirement for providers to have in place a system for complaints and concerns should be recognised within the set of learner protection principles.

Clarity would be required as to the roles and responsibilities of other partner organisations (such as the NHS/employers) in relation to learner protection.

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?

No. We take the view that learner protection and learner progression are two different things and it is probably not appropriate to combine them in this way.

We would suggest that providers be expected to develop learner protection plans as a condition of registration. Progression is something which should be dealt with (and secured) through other means by the Commission, using funding and other levers. Progression includes broader considerations around employability, credit accumulation and transfer, articulation between different providers, and learner

journeys, and is not appropriate for regulation. How these matters would be encouraged by the Commission would depend upon the vision and priorities set by the Welsh Government, for example what type of progression is sought – further education, apprenticeships, higher education, employment etc – and to what extent.

It would be appropriate for the Commission to determine the level of detail which is included in the learner protection plan so as not to limit innovation and creativity by providers and also to ensure that the Commission has the capacity to respond in all cases and in varying circumstances.

The plan should include a reference to consumer law and guidance from the Competition and Markets Authority, as well as information on financial protection for learners more generally. It should clearly outline the responsibilities of providers, e.g. in the case of students of work-based learning where a provider or employer might cease operations. The plan should make specific reference to how Welsh Medium requirements will be dealt with. Credit accumulation and transfer arrangements would also need to be considered.

In terms of progression arrangements, this could be an opportunity to integrate the use of the Unique Learner Number (ULN) in order to track students within the system and help reduce duplication. We would also need to ensure effective credit accumulation and transfer opportunities through the Credit and Qualifications Framework for Wales (CQFW). This could be something which the Commission could consider and take forward on behalf of Welsh Government.

Question 37:

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

We consider that learner protection should be one of the elements with which providers are expected to engage as part of the regulatory system to gain registration. The plan would need to be monitored and improvement would be required if monitoring processes indicated that this was unsatisfactory. Sanctions could form part of the options available to the Commission but these should be flexible, allowing the Commission to take a measured approach, and to recognise where the availability (or non-availability) of local provision may affect a provider's ability to act/influence. See also our response to Question 14.

We consider that it will be a challenge to establish a consistent approach to sanctions for all parts of the sector, particularly as sixth forms will need to align with requirements of local authorities and may lack the autonomy to influence their own activities. However, the principle that all learners should have recourse to an independent body should they have complaints is appropriate, and should remain consistent through all parts of the PCET system (see question 38 below).

Question 38:

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

Not in the longer term. It is imperative that there is consistency in the learner experience in relation to complaints, therefore we consider that it would be useful to focus on the need for a high-level principle that ensures there is access to an independent body for complaints for all learners. This could be the Office of the Independent Adjudicator. School learners do have recourse to the local authorities, but these are not independent of the schools. It will be important for the views of schools to be reflected within any proposed changes to arrangements and there may need to be a transitional period while arrangements are aligned.

The Commission will need to be clear regarding how it will interact with local authorities, and the circumstances under which all parts of the system might raise complaints with the OIA.

There will need to be clear guidance for learners as to what types of complaints can be investigated by the independent body.

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, we welcome the proposal to develop a consistent set of principles and values for learner voice and representation. This is a task for the new Commission. We consider that these should be high level and flexible enough to take account of different levels of provider maturity and distance to travel, to ensure that current good practice is able to continue and to recognise distinct variations in provision and sectors across the system. We consider that it would be useful for the Commission to review the principles and values from time to time where required, in consultation with learners and the PCET system.

The principles will need to enable good practice in some parts of the sector (particularly HE) to be retained and to encourage other parts of the sector to aspire to such practices.

Question 40:

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

We consider that it is important for the learner voice to be considered in the development of the outcome agreements but that the Commission should be able to develop an overarching approach for the system which reflects the level of variation by sector, and which can highlight good practice. As with the HEFCW fee and access plan, the outcome agreement must include a requirement for engagement with learners at all levels, including within Work-based Learning arrangements. We consider that it would be useful for the National Union of Students in Wales (NUSW)

and the National Society of Apprentices (NSOA), as appropriate, to have a prominent voice in the development of the proposals.

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?

We consider that it may not be practical, initially, to develop a framework for learner voice and representation across the PCET system. Instead, the Commission could work with NUSW/NSOA and other organisations to embed the principles and underpinning values across the system as a whole, followed by a longer-term review as to whether a framework would add value. We recognise that it could be challenging for Work-based Learning providers to adhere to a formal framework for learner voice. It may be possible to put the onus on the awarding body, though there may be challenges where the awarding body is based outside of Wales.

The proposals should ensure that arrangements can evolve in response to the changing context of education in Wales.

Question 42:

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

We consider that the Commission should be responsible for ensuring that the learner voice is appropriately reflected in its work, and in the provision within its oversight, and that all organisations should be affiliated with a student representative body.

We note that there is a measure of student satisfaction at national level in the National Student Survey in higher education and would expect the Commission to seek mechanisms for measuring student satisfaction across all parts of the PCET system.

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?

We consider that this would be appropriate.

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?

We consider that these matters should be delegated to the Commission, as the body with statutory responsibility and expertise, working in consultation with learners and providers.

It would be useful to include a stronger focus on outcomes and achievements, recognising distinct differences between types of provision. A set of high level principles could accommodate these. The proposed principles are appropriate in some aspects, for example in covering the student voice, but there would need to be scope for these to be reviewed over time and for the Commission to lead on this and adapt the principles accordingly. The document does not contain a single definition of 'quality'. This could lead to varying interpretations of good quality provision.

There are areas of concern, for example a focus on assuring the quality of teaching (rather than on the learning expected in higher education). An assessment of the mechanisms taken by the institutions to assure the quality of its teaching would be appropriate in the context of higher education but not inspection at classroom level. It is essential to recognise that the definition of quality of teaching and learning will vary throughout the PCET system, as learners progress through different levels. It is also important that to recognise the awarding body role of universities in any quality system. We are also unclear about what is meant by 'the commission should support CPD of teaching, learning and academic professionals'. Does this mean that the Commission should offer individual CPD provision? We would see this to be part of the role of the body responsible for individual practitioner registration across most parts of the PCET system (except for HE), the Education Workforce Council, whereas the focus of the Commission is on learners and providers. The approach taken will also need to take appropriate account of new and emerging types of provision, eg degree apprenticeships.

The principles should recognise the national and international context of some types of provision, such as higher education, but also that other elements of the sector operate on a more local and regional basis. Trans-national Education (TNE) is widely regarded as the highest risk in relation the quality of provision and, linked to this, financial sustainability and reputation. Given risks to the reputation of education in Wales the Commission will need powers to secure the quality of this provision. The Commission will also need to recognise, and take steps to mitigate, the risk to ensuring an ongoing UK perspective of HE due to the divergence in arrangements across the nations.

Ultimately, high quality teaching needs to result in high quality outcomes. Due care and consideration must be given to ensuring that a new system does not lead to any potential unintended consequences such as the issue of grade inflation in higher education or the value for money agenda in England. Some of the aspects put forward in the principles are not about quality. Clarity would be welcomed on how Welsh Government wishes to define value for money, for example.

We consider that it would be important for the system to focus on students and learners as partners, ensuring their voice is heard within evaluation as well as design and implementation. The Commission will also need to consider how the needs of those with additional learning needs are met across all parts of the system, including in terms of progression.

We consider that the development of principles, in partnership with learners and providers, should be within the remit of the Commission. Clarity would be welcomed over Welsh Government's longer-term vision for quality assessment.

The over-arching approach to quality assessment should make reference to the UK Quality Code in relation to higher education. We recognise that thematic reviews of quality may not be appropriate for all and therefore the objective of this might be achieved through programmes of work on a theme, with appropriate support and funding attached.

The quality framework could make appropriate reference to the overall strategy and mission of institutions and providers, recognising that standards and national requirements vary by sector.

The framework should recognise that learner engagement is a journey which is not one-size-fits-all. The learner voice should therefore be reflected in as many aspects of the framework as possible, where the Commission deems it to be appropriate.

Quality is also an important consideration in relation to RTOs. The Research Excellence Framework currently measures quality in relation to UK research and we would expect those in receipt of funding from the PCET body to have research assessed. However, in addition, RTOs would need to gain similar assurances to learning providers in relation to quality, financial sustainability and management of financial affairs. This would include, for example, the student experience of postgraduate research students

The framework should recognise the arm's length responsibilities of the Commission.

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.

No. We consider that the proposal as a long-term aspiration is admirable but would not be deliverable in the short to medium term as there is no single body currently which has the expertise, experience or UK track record, to provide robust quality assurance for all types of PCET provision in Wales. We note that the higher education sector in Wales operates a six year contract for quality assurance arrangements, which will continue for some years (longer than current work-based learning contracts for example).

Developing this capacity within a single new or existing body would be expensive and the body could lack credibility in the new areas, at least initially, including with overseas partners. The expense in contracting such a body to cover the whole breadth of PCET in Wales would not be a good use of public monies because it would minimise the opportunities for joint working, economies of scale and partnership approaches with other parts of the UK, where these matters are dealt with by separate bodies. This would raise questions about value for money. Similarly, we understand that the proposal to involve international reviewers in

assessments was trialled and has recently been stopped in Scotland because of the cost. It would be inadvisable for Wales to expend monies introducing this system without a full evaluation of the benefits and costs.

Appropriate arrangements for assessing degree awarding powers and university title applications also fall into this category (questions 79 and 80). What would be the link between the single quality body and the body selected to assess DAPs and UT?

We understand that the equivalent body in Ireland (QQI) covers the majority of PCET provision, as its remit includes universities, institutes of technology and the education and training boards (for post-compulsory FE and training, including adult and 2nd chance education). Private HE and FE and training providers can choose to have their programmes validated by QQI. Legislation is underway to enable QQI to regulate English Language Education, and approve other awarding bodies that are active in the state (such as City and Guilds etc) to have their awards included (regulated) in the Irish National Framework of Qualifications, if they choose. However, QQI has no track record in a UK or Welsh context and has not been part of UK higher education quality developments, such as the quality code.

The current system for higher education allows for some join-up across the UK and economies of scale in approaches to quality assessment where appropriate, which is particularly important for HE. In addition to having the expertise to cover the breadth of PCET provision, a new body would need to be registered on the European Quality Assurance Register for Higher Education to ensure international comparability of standards in higher education, including via the Bologna process, and maintain reputation. The body would also need to have the appropriate capacity to undertake quality reviews through the medium of Welsh.

Instead, it would be possible initially to commission more than one body to undertake quality assurance on a joint basis which would allow for the better integration of sixth form provision, in particular, into the system and for a more holistic approach to be taken for organisations with both HE and FE provision. This approach would enable separate reports to be produced for each sector, which is particularly important for sixth form provision, while ensuring that appropriate account is taken of other inspection/assurance arrangements, to share outcomes and minimise burden to providers. We would support this approach as being more realistic, deliverable and provide value for money.

In order to have effective oversight of the quality assurance of the sector, the Commission will need to have the appropriate authority over the relevant assessment/inspection bodies and be able to instruct the relevant quality bodies to undertake activity as it deems necessary, including joint working.

Question 46:

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

No. We welcome the focus on quality enhancement in the proposals. We do not consider that it is helpful to use the term 'enhance' within the definition of 'quality enhancement'. There is a difference between quality improvement (to meet the

threshold) and quality enhancement (to go beyond that). The QAA has defined [quality enhancement](#) as ‘the process by which higher education providers systematically improve the quality of provision and the ways in which students’ learning is supported’. The way in which quality enhancement is achieved and manifested will vary throughout different parts of the PCET system.

It is important that enhancement focuses on planned developments in the interests of learners, rather than pockets of good practice. Within this definition, we think there is scope for providers to develop their own definitions and approaches to enhancement. This is key, in order to recognise the diversity of provision at individual institutions, and within and between sectors. It would not be easy to have a single standard for all providers.

We would welcome clarity as to how the proposals will link to quality assurance. In HE currently, quality enhancement is incorporated within external quality assurance reviews of regulated institutions as well as HEFCW’s own assurance processes.

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?

No. We consider that it is helpful for the Commission to be able to take a strategic approach to quality enhancement across the system and that it should be for the Commission to determine how this is done, in consultation with learners and providers. Approaches may need to vary across different parts of the PCET system.

We consider that it may be useful for providers to have access to external training opportunities and support in respect of their own quality enhancement activities. This could be provided on a sector basis. Currently in HE institutions access this support through subscription to sector agencies, such as Advance HE⁵. Advance HE, in its previous incarnation as the Higher Education Academy, is also responsible for the oversight of the UK Professional Standards Framework for Higher Education.⁶ It may be appropriate for the Commission to have the remit to support the sector in this respect, with appropriate funding. As noted above in question 44, it is important that this is about support for providers, rather than individual practitioners.

Clarity would be welcomed as to how quality enhancement links to the regulation/registration process, to ensure there is not unnecessary duplication of effort or burden on providers; also recognising that regulation is about threshold and not enhancement, and not all enhancement activities can be measured.

Clarity would be welcomed on the duties and authority of all relevant organisations in respect of this agenda.

⁵www.advance-he.ac.uk/

⁶www.heacademy.ac.uk/ukpsf

Question 48:

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

The Commission is a body responsible for the funding and regulation of PCET learning providers, in the learner interest. It is important to ensure that the Commission does not duplicate the work undertaken by other bodies. For example, there is already a body in Wales with responsibility for individual practitioners working in the PCET system outside of higher education. Whilst the Commission will need to take an active interest in workforce development it should work in partnership with the Education Workforce Council, and Advance HE in the case of higher education provision, and not undertake this work itself. Therefore the Commission may need to engage more directly only with parts of the system which are not covered by these bodies.

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?

Others are better placed to advise on this matter.

Question 50:

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

As an education regulator with some experience, we consider that the outcomes agreement process would need to be operated directly with the funded school and would not be possible to operate with a third party on behalf of the school, such as the local authority. Given this position, we reiterate our view that school sixth forms should be brought incrementally, through an agreed transition period, fully into the processes of the new Commission. We take the view that the half inclusion of school sixth forms proposed in the consultation document will not be operable.

Under the proposals in the document, identical provision in schools and in FE colleges would be treated and judged in completely different ways. This approach is not addressing the issues of parity of esteem or equity of treatment and requires a longer term ambition to bring school sixth forms into oversight by the Commission on the same basis as other PCET providers.

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?

As noted in question 50 above, we consider that school sixth forms should be brought incrementally, through an agreed transition period, and with an appropriate transition plan, fully into the processes of the new Commission.

Question 52:

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

As noted in question 50 above, we consider that school sixth forms should be brought incrementally, and with an appropriate transition plan, through an agreed transition period, fully into the processes of the new Commission.

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?

We agree that the Commission should play a central role in delivering Welsh apprenticeships. This should include the funding of all apprenticeship providers. It is important that Work-based learning providers are included in the regulatory and outcomes functions of the Commission to ensure that all providers are treated equitably. This would also facilitate progression through the apprenticeship system and help to achieve parity of esteem between academic and vocational education. Proposals to fund work-based learning in a completely different way will never address issues related to parity of esteem. We recommend that current arrangements for contracting for work-based learning provision should end at the completion of the current contractual arrangements and the responsibility moved to the Commission.

We would also want to see a system which enables prior learning to be recognised and learners able to upskill in a manner which minimises the repetition of learning. This points to the need for a credit transfer and accumulation system based on the Credit and Qualifications Framework for Wales (CQFW).

Proposals in the document seem to be largely changes in nomenclature or a ‘re-branding’. We consider that powers should be kept flexible for the Commission to issue, or designate a body to issue, a certificate and to implement an apprenticeship system that is flexible to meet employers and learner needs, recognising that many employers work across the UK. Such matters of detail should not be set out in legislation.

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?

We consider that an integrated approach to apprenticeships is required to enable more progression from lower to higher to degree apprenticeships. It should be the aim of the Commission to achieve this integration.

Although this system is designed to be responsive to the needs of employers, providers have been unable to fully achieve that because of the extent to which apprenticeships are prescribed in legislation. This means that changes in policy across the other parts of the UK have made it difficult for the Welsh Government to respond as flexibly as it would have liked.

A view needs to be taken about knowledge and competency certificates L3 to L5. These can be separate or integrated within a qualification but this often causes duplication and confusion. A single integrated approach to qualification development would be more practicable and provide consistency with the integrated delivery approach at L6.

The Specification of Apprenticeship Standards for Wales (SASW) currently sets out the minimum requirements to be included in a recognised Welsh apprenticeship framework. Compliance in the context of Essential Skills could be viewed as a constraint and may need to be revisited in the review of arrangements.

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?

Significant detail is included in the document about the arrangements. As noted in question 54 above, it is important that only high level arrangements are set out in any legislation or regulations; the current difficulties with the development of degree apprenticeships indicates very clearly the importance to retaining flexibility of operation. As an arm's-length body, the Commission should be trusted to act with powers to set out an appropriate system. The Commission should be given the authority to publish a document which sets out the requirements for an apprenticeship in Wales in a document such as the Wales Apprenticeship Standards. We consider that the powers of Welsh Ministers in this area should relate to setting the overall context and remit expectations for the Commission.

Question 56:

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

As noted above, it will be important for the delivery of the Apprenticeship agenda that the Commission is able to operate with flexibility. The Commission may issue, or designate a body to issue, apprenticeship certificates but the details should not be specified in legislation. The Commission would be enabled to cover the full range of apprenticeships, including at degree level whereas other bodies, such as

Qualifications Wales, which has sector level experience in other contexts, would not be able to cover degree level apprenticeships awarded by universities.

Through its remit to the Committee, its approval of the strategy and its allocation or otherwise of funding, the Welsh Government will retain leverage to ensure that the system operates effectively. By including the existing functions of WESB and WAAB within the Commission, there is an employer voice informing the work of the Commission.

As with expectations regarding the student voice in other parts of the PCET system, we would expect the learner voice to be recognised fully in the delivery of apprenticeships.

Research and Innovation

Question 57:

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

We welcome the strong identity for research and innovation within the Commission, as described in the consultation. The scope of the Commission and the range of activities it will undertake are very broad, and so it is important that the research and innovation functions have a strong presence within the new organisation. The establishment of RIW would help ensure that this is the case.

Our reading of the consultation is that RIW would be an integral part of the Commission as one of its statutory committees. This addresses our concerns about the separate governance arrangements previously proposed.

We also welcome the recognition that research and innovation are complementary but different activities and need to be addressed differently.

However, our view is that the overall vision for the Commission and RIW need to be specified more clearly; only then can the mechanisms for delivery be established. The consultation document states that the establishment of RIW is intended to actively promote 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 (paragraph 277). We endorse this statement as an objective for the Commission. However, this vision is limited by the fact that it does not sufficiently recognise the importance of developing and maintaining a strong and excellent research base within universities in Wales. In order to exploit research activity for the benefit of the economy and the wider society, Wales needs to invest in a robust and highly competitive research base of which it can be proud. This ambition should be reflected in the Welsh Government's vision for the Commission and for RIW.

We suggest that the proposed governance arrangements for RIW need further consideration. The consultation proposes that the RIW Committee will consist of a Chair and between six and nine additional members, of whom approximately a third

will be from industry, a third from the HE and FE sectors and a third from other stakeholders (paragraph 291). This would mean that the representation from the sector which contributes most to the research and innovation agenda in Wales is disproportionately low. The structure, as proposed, would not provide RIW with sufficient knowledge of the HE sector, or of the complexities of funding methodologies, to enable it to take well-informed decisions. It should be for the Commission to consider the constitution of RIW in relation to its overall size and make-up, depending on how its scope is defined. The Commission will want to ensure that it receives expert advice from members able to take a broad cross-sector view, avoiding “turf wars” across current divisions.

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.

The statements in the consultation about the funding scope are somewhat confusing and therefore appear contradictory. The document proposes that RIW should be able to fund a wide range of organisations in addition to HE, including FEIs, Research and Technology Organisations, Local Authorities, the NHS, Public Bodies, SMEs and large industrial companies (paragraph 280). At the same time, it specifies that the vehicles which Welsh Government currently uses to provide funding to business (e.g. Smart Expertise and KTPs) would not form part of RIW (paragraph 282). It also indicates that the initial focus of funding should be on HE and FE, with the wider scope potentially following at a later date (paragraph 283)

As a regulator, the new PCET body would expect all bodies wishing to be in receipt of funding to meet financial viability, quality and management of financial affairs requirements which could not be easily applied to these bodies and there may not be equivalent measures in place which could be used instead. We assume that such bodies would require a regulation and outcomes agreement or registration.

From the above, the question of whether or not the business-related funding activities currently operated within Welsh Government would be brought into RIW seems unresolved. In the absence of that information, it is difficult to comment in detail, because we do not have the full picture of what is proposed or how it would operate. We do, however, offer the following observations:

- *The proposal to extend the scope of funding to organisations beyond HE would reduce the funding available to support research in universities, currently the largest contributors to the research agenda in Wales. This would occur:*
 - *if QR funding (in Wales, currently determined by HEFCW) were reduced in order to provide some of the hypothecated funding streams for research and innovation described in the document; or*
 - *if eligibility for QR were extended to organisations outside HE.*

QR funding in universities across the UK is absolutely fundamental for supporting high quality research and generating the ideas which lead to the products and innovations of the future. QR in Wales, currently determined and allocated by HEFCW, is already low compared to the rest of the UK (only 3.9% of the UK total). If QR for universities is reduced, the quality and volume of research in Wales will fall, and the ambition set out in the consultation to promote the exploitation of research and innovation knowledge would not be attainable, because it depends on the availability of high quality innovative research outputs in the first place. If RIW provides any funding to sectors outside HE, the funding must come from additional resources, not from QR.

- The UK HE funding bodies currently allocate their respective QR funding streams on the outcomes of a UK wide research excellence framework (REF). Furthermore, they restrict eligibility to enter the REF to HEIs. Any intention to extend Wales' QR funding to organisations outside the HE sector (as opposed to other forms of R&I funding), would deviate from this UK wide system and would place our universities at a competitive disadvantage in terms of attracting the best researchers to Wales.*
- Extending the scope of funding from HE and FE to include RTOs, the NHS etc would mean that the remit of RIW would be extremely wide. The responsibilities of the rest of the Commission would already be very broad, covering HE, FE, work-based learning providers, life-long learning, apprenticeships and sixth forms. The regulatory and funding framework would need to cover all, so expanding the scope of the research and innovation function to include the range of organisations proposed risks creating an organisation which is over-complex and unwieldy.*
- More fundamentally, it seems illogical that a sub-unit of an organisation which is has a (post-compulsory) education focus should be responsible for providing funding to organisations which are far removed from the education sector. The vision and purpose of the Commission needs to be set from the outset. We suggest that funding programmes that provide incentives for enhanced collaboration between universities and businesses in Wales might be included in the Commission's remit; funding programmes that fund business activity (currently the remit of the Welsh Government) should not.*
- There is a danger that proposed funding scope of RIW would lead to greater parochialism as the representatives of the various different sectors fight their own corners.*
- On a point of detail, the document notes that Health and Care Research Wales would not be included within RIW (paragraph 281). It therefore seems surprising that the NHS is included in the list of organisations within the scope of RIW funding, as this would result in potential duplication and overlap.*

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.

No. The consultation proposes that routine funding provision (e.g. QR) and medium term revenue commitments (e.g. the Innovation Hubs proposed by Diamond) would need to be agreed with Welsh Government through the Commission's strategic plan; and that Ministerial or Welsh Government approval for other investments would be required on a case-by-case basis (paragraph 287). This would represent a very high level of direct Welsh Government control over RIW. We would urge caution:

- This degree of control is not consistent with the principle of an arm's-length body. The Hazelkorn review specifically recommended that the proposed Commission should operate at arm's-length from Welsh Government. That implies that Welsh Government should set the overall strategic direction but leave its arm's-length body to implement it.*
- The requirement for all funding commitments to be approved by Welsh Government would be extremely bureaucratic and time-consuming. It would result in substantial delays and prevent RIW from operating in an efficient and timely manner.*

The consultation document appears confusing and contradictory in setting out proposed arrangements for the provision of funding for research (QR) and innovation and engagement. Further clarification is needed. We do not disagree with the provision of hypothecated funding framed around themes, and hypothecated funding to support specific project activities, provided that this is introduced without reducing QR funding (unhypothecated funding, currently determined by HEFCW). We do, however, have concerns that these proposals are far too detailed for inclusion in primary legislation. This level of detail would limit RIW's ability to respond flexibly to changing circumstances in future.

The consultation specifies that recipients of QR may be required to align their activities to Welsh Government priorities. We have concerns that too much alignment to short-term priorities could damage universities' capacity to engage with new fields of research which will produce the discoveries of the future.

We welcome the commitment to protect the Haldane principle, which states that individual budget award decisions should be made by experts in the field (paragraph 315).

We agree that RIW should monitor the delivery performance of the grants that it awards, and the wider performance of the research and innovation base, and that this should include the use of recognised UK-wide measures (REF and KEF). HEFCW currently performs a monitoring function for research and innovation activities in the HE sector.

We welcome the acknowledgement that curiosity-driven research is a fundamental component of a vibrant R&I community (paragraph 314). We also very much welcome the statement that levels of QR funding would be in line with the recommendations given in the Diamond review and developed further in the Reid review (paragraph 315). However, we remain concerned that, elsewhere in the document, the message about levels of QR funding is less clear. As indicated under question 58, we are concerned that the proposed R&I funding for non-HE organisations may be taken from QR, rather than provided through additional

resources. There is also a reference to reviewing the balance between curiosity-driven research funding and challenge-led research and innovation funding in line with Welsh Government priorities. Statements within the consultation that confuse curiosity-driven research with QR are not helpful in this regard: these are not interchangeable terms – unhypothecated QR funding provided by HE funding bodies across the UK underpins the breadth of the research base, from curiosity-driven to applied activity. We re-iterate that the R&I system in Wales will only flourish in the long term if QR funding is maintained at levels competitive with the rest of the UK. The Reid review provided ample evidence for this claim.

Some more minor comments:

- The consultation says that Welsh Government funded activities, such as Sêr Cymru, **could** be included in the R&I activities funded by RIW. We would argue that such activities definitely **should** be included within RIW, rather than continuing to be operated by Welsh Government directly. There is currently some duplication of function between Welsh Government and HEFCW in this area, and the establishment of a new PCET body would provide an opportunity to streamline.
- Paragraph 312 states that RIW would not be expected to engage directly with the UK Government unless specific permission was granted by the Welsh Government. This seems unduly restrictive. At present, HEFCW has direct links with UK Government (i.e. the Department for Business, Energy and Industrial Strategy - BEIS) through the UK Research Funders Group and on specific funding schemes (GCRF and Research Capital). This is necessary for effective operation. The restriction on engagement with UK Government also seems inconsistent with the statement elsewhere that RIW would be a major liaison point with UK bodies, including UK Government (paragraph 276).
- The organisational diagram at Figure 2 retains the Industrial Advisory Council for Wales as an Advisory Body. If RIW becomes the key body for research and innovation funding, we question whether IACW would still be required.

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, 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.

In respect of sixth forms, we consider that the proposal at paragraph 319 that 'the regulatory system for sixth form provision should treat the local authority as the provider' is unlikely to be workable, with schools responsible for their own financial

viability. We reiterate our view in question 50 above, that school sixth forms should be brought incrementally, through an agreed transition period, fully into the processes of the new Commission. We take the view that the half inclusion of school sixth forms proposed in the consultation document will not be operable.

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?

We agree that all providers within the PCET system should be subject to similar financial and governance assurance principles, as the basic principles will apply regardless of whether a provider is, for example, a WBL company, an FE College or an HEI. This would also need to apply to RTOs, if included.

However, whilst the basic principles will apply for all providers, a 'one size fits all' approach to finance and governance assurance requirements, monitoring and enforcement arrangements would not be practical or appropriate in view of the diversity of PCET providers. For example, it is critical that that the finance and governance assurance arrangements for HEIs take account of UK expectations. We therefore consider it to be crucial that 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?

Yes, we agree that the Commission should be able to publish a formal set of requirements and conditions; and issue guidance and advice to providers in respect of good practice. In terms of the proposed options, whilst Option 2 ('The Commission would prepare and publish a formal set of requirements and conditions...') would be appropriate, we consider that the Commission must have the flexibility to adapt requirements and conditions to different types and category of PCET provider, following consultation. This flexibility would ensure practicality and proportionality of the requirements and conditions; and take account of differing expectations (e.g. the UK expectations in respect of HEIs).

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?

As an organisation which will have specialist knowledge of the sectors within the system which it regulates, we consider that the Commission will be best placed to

define the arrangements for financial and governance assurance, with 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') being preferable and most clearly aligning with the feedback received at stakeholder roadshow events that legislation should not be too prescriptive. In terms of the 'checks and balances' associated with Option 1, we consider that the general principles that: the Commission consults on its proposals; acts reasonably, or potentially faces judicial review; and reports to/is scrutinised by Welsh Ministers, would be sufficient to ensure that the Commission acts appropriately in establishing and undertaking its assurance activities.

We only 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 (Option 2), provided that the framework is set out at a very high level. In that context, whilst the bulleted list of matters (point 338, page 99) that might be included within a broad framework under Option 2 appears reasonable, we consider that any further expansion of such a list would result in overly prescriptive and inflexible legislation.

Whatever approach is adopted, we consider it crucial that the Commission is able to respond flexibly to a changing environment, to ensure that its financial and governance assurance arrangements are fit for purpose. We therefore agree that formal Ministerial approval of the Commission's arrangements for financial and governance assurance should not be required.

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?

We consider that, as good public administration would require, the Commission consult with providers and other appropriate persons on its financial and governance assurance arrangements. It would not be strictly necessary to place a duty on the Commission to consult.

- 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?

We consider that, as good public administration would require, the Commission take into account guidance from Welsh Ministers regarding its financial and governance assurance arrangements. It would not be strictly necessary to place a duty on the Commission to take this 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?

No, we consider that the above requirements provide sufficient safeguard in respect of the scope and reach of the Commission's financial and governance assurance arrangements.

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?

In order for it to be able to discharge its functions effectively, it will be critical that the Commission can request information from all PCET providers, undertake periodic assurance reviews, enter premises and inspect documents/materials in support of its financial and governance assurance functions. The general principles that: the Commission operates reasonably, or potentially face judicial review; and reports to/is scrutinised by Welsh Ministers, will be sufficient to ensure that the Commission does not overstep what is reasonably required to undertake its duties.

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, we agree that the Commission should have a range of intervention powers at its disposal to deal with a failure to comply with financial and governance assurance requirements. These intervention powers should be sufficiently robust to enable the Commission to protect the interests of learners, public funds and the reputation of the PCET system in Wales, whilst being flexible enough to allow the Commission to intervene in a timely and proportionate manner.

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?

It will be important that the general approach to intervention is broadly aligned across the various sectors within the PCET system. In HE, intervention largely involves engagement with an HEIs Executive or Governing Body, with involvement by Welsh Ministers only in limited circumstances (e.g. withdrawal of an HEI's Fee and Access Plan).

We would suggest that a similar broad approach is adopted for FE as for other parts of the PCET system, with the Commission informing Welsh Ministers if there are serious concerns. However, we consider that the retention of intervention powers for FE by Welsh Ministers would not enable alignment between the various sectors within the PCET system and would likely duplicate or undermine aspects of the

Commission's role. Involvement by Welsh Ministers in the intervention process might also deter the sharing of confidential information by FE institutions, as for example, it would be easier for the Commission to manage exemptions from Freedom of Information requests. We would therefore suggest that all the Welsh Ministers' intervention powers in respect of FE are transferred to the new 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?

In respect of the charity regulation of FE institutions, we agree that the Principal Charity Regulator role for FE institutions should be transferred from Welsh Government to the Commission. Were the Principal Charity Regulator role for FE institutions not to be transferred, this would cause potential problems in the event of intervention, as the new Commission, Welsh Ministers and the Charity Commission would all need to be involved. As we consider it to be important that the general approach to regulation is broadly aligned across the various sectors, we would also support the transfer of the Principal Charity Regulator role for HEIs to the new Commission. However, in the context of the other significant changes involved in the establishment of the Commission this is not considered to be a high priority for implementation from the start. Such a change could be implemented once the Commission was established and operated for a few years.

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?

Yes. The Privy Council role provides additional scrutiny and enables the maintenance of consistency in governing documents in areas of public interest.

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?

There is merit in the Commission considering these proposals at a later stage with a view to enabling consistency between the governing documents of HEIs (chartered and HECs) and with FEIs as appropriate. However, in the context of the other significant changes involved in the establishment of the Commission this is not considered to be a high priority.

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?

There is merit in the Commission considering proposals for making these changes at a later stage to enable improved consistency. However there are no significant issues arising from the current arrangements and there may be significant practical implications for institutions to manage these changes as well as the other consequences of the proposed legislation.

Question 72:

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

Yes we agree that the Commission should be involved in considering any proposed amendments to the governing documents of HEIs and FEIs from the start of the application process. However we believe that this could be achieved by making changes to the current arrangements and working practices to ensure that the Commission was appropriately involved, rather than legislative changes being required.

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?

We agree that these should be addressed but not as a first priority at the same time as establishing the Commission. The Commission, once established should review and consult on the matters of public interest that should be subject to Privy Council oversight and approval. It is not clear to us why the Welsh Government would need to issue guidance to the Commission in relation to those public interest matters.

Question 74:

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

Yes – though as noted above, the changes should not be implemented at the same time as establishing the Commission.

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.

There should be powers of dissolution available to the Welsh Ministers to enable the implementation of future policies which would require structural changes such as mergers. We agree that these powers should only be exercised following recommendation by the Commission. In practice the Commission is unlikely to be able to make such a recommendation, and not be subject to legal challenge or appeal, without having consulted with the HEC as part of the process.

Question 76:

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

Option 2 provides consistency between FEIs and HECs but would maintain an inconsistency with Ministerial powers to dissolve chartered institutions and Ministerial powers in England with respect to English HECs. The arguments for maintaining this inconsistency are not clearly articulated. The dissolution powers proposed would only be exercised as a “last resort” in the event of institutional failure or serious mismanagement. In practice, it would be preferable for the Commission to have sufficient powers to allow it to intervene and apply sanctions, such as the ability to attend governing body meetings or require changes to governing body membership, to avoid such a last resort. In such circumstances the Commission should have sufficient powers to enable action to be taken to prioritise safeguarding the interest of students above those of providers.

Question 77:

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

Where there is agreement by the HEC to facilitate a merger and as a last resort where it is necessary to protect the students (both current and potential future students).

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?

Yes we agree that dissolution should only be exercisable on recommendation of the Commission for both HECs and FEIs.

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?

Yes, we consider that the changes in the Higher Education and Research Act in England, which lower the threshold for applications for degree awarding powers are inadvisable and are likely to result in higher risks to the quality of provision. We note, however, that this will place a pressure on the reciprocal arrangements for student support between Wales and England, in that the Welsh Government could be providing support to a Welsh domiciled learner to study at an institution which would not meet degree awarding powers criteria in Wales. This matter will need further consideration.

Question 80:

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

Yes. but in a context where no significant changes should be made overall to the current procedures and criteria.

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?

We are happy to support this recommendation. However, this is an odd question for inclusion under the section on degree awarding powers and raises questions about the nature of this proposed review and its objectives. Consideration of issues like this could be initiated by the Commission at any point and does not need to be specified in legislation.

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. HEFCW welcomes the statement of commitment towards bilingualism across PCET. We agree that the Commission should have a specific duty to enhance and facilitate the Welsh language in the exercising of its functions. We regard it as essential that there is an integrated approach across all parts of the PCET system to facilitate the growth of the Welsh language and progression, including in work-based learning. This should allow for progression to be tracked and for reasonable and proportionate expectations concerning the Welsh language to be formed. HEFCW would advise that the commitments to the Welsh language should be embedded throughout the consultation and not referred to as an addendum.

HEFCW oversaw the establishment of the Coleg Cymraeg Cenedlaethol, working with other partners, and welcomes the extension of the Coleg's role to incorporate further education. We consider that the Coleg should maintain its independence from Government by moving back under the oversight of an arm's-length body. This is particularly important given that the remit of the Coleg will now align with that of the new PCET Commission. However, we do not consider that specific bodies should be mentioned in 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?

Yes. HEFCW agrees that the Commission should have regard to all of the above matters through its remit. Given the focus and challenge of the Cymraeg 2050 objective, it is important to involve individuals already in the learning environment. Higher Education, supported by the Coleg Cymraeg, has enabled growth in Welsh medium provision and plays a crucial part in Welsh for Adults provision, working within the new National Centre for Learning Welsh. Given Welsh Government's ambitious objective to increase the number of Welsh speakers, working efficiently to maintain and expand the current provision should remain a priority.

HEFCW recognises the importance of not duplicating current provision and unnecessary burden on institutions. However institutions should be required to set specific and reasonable but ambitious targets with regards to Welsh medium and bilingual provision. We note that the ability to undertake modules in both Welsh and English is welcomed by learners. Very few learners undertake all of their studies through Welsh medium.

We consider that there should be a focus on recognising and enhancing the informal provision available for learners, to supplement formal Welsh language provision. Where there is the ability to learn in bilingual environment and assessed in English only, learners should be made aware of potential benefits for doing so. We think this could provide the opportunity for further growth in Welsh medium provision in work-based learning

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.

We consider that the Commission should fund the Coleg Cymraeg Cenedlaethol to provide Welsh medium support in an appropriate and responsive way across the PCET system. We recognise the recent uncertainties experienced by the Coleg in terms of ongoing funding and would recommend agreement by the Commission of a longer term package of funding for the Coleg. Such funding should include two elements, one to support the core infrastructure of the Coleg and the other ring fenced for the purpose of enhancing and facilitating Welsh medium provision, across the PCET system.

The Commission should monitor performance of the Coleg against a range of targets developed to meet the vision and priorities of the Welsh Government, including Cymru 2050. We would support the use of an outcomes agreement for overseeing funding and delivery by the Coleg. We do not consider that specific bodies should be mentioned in the legislation.

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.

HEFCW is of the view that the National Centre for Learning Welsh (the Centre) should have a direct relationship with the Commission. Given the nature of the work undertaken at the Centre it would be reasonable for the Coleg Cymraeg Cenedlaethol (the Coleg) to work closely with the Centre in the continuum of Welsh language learning and Welsh medium provision. We do not consider that specific bodies should be mentioned in the legislation.

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?

We agree that this should happen. Many of the analyses carried out by HEFCW involve looking at trends over a number of years and not having access to historic datasets would cause difficulties in monitoring policies, funding outcomes and trends in equality and diversity, student characteristics and uptake and outcomes of provision. If we are moving to a more integrated post compulsory education system, then the new body will want to use data linked between schools, FE and HE to track progression and assess outcomes and this would not be possible if data owned by Welsh Government and other agencies were not available to the new body.

It should not just be data collected by the predecessor bodies that should be transferred to the new body (Paragraphs 439 and 444 'Legacy data') but any data they hold.

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?

This would be a helpful way to ensure that learners can be tracked throughout their education, in order to analyse progression, equality of opportunity, outcomes etc. It would have to be done so that the learner is assured of the purposes for sharing these data and is confident that the data are being properly safeguarded and transported between providers. Any privacy or data collection notice should specifically set this out and ensure that the same duty of care for the data is placed on the provider or body that the data are being shared with as is on the provider or body sharing the data.

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?

Currently, data relating to HE provision is collected on HEFCW's behalf by the Higher Education Statistics Agency (HESA). The same data are supplied to Welsh Government and a number of other UK funders, regulators, government bodies and devolved governments. We would envisage that HESA would remain the organisation collecting HE related data for the new body. Some of the reasons for this are:

- *HE operates in a UK wide environment and having information comparable across the UK is important, particularly given the level of cross border flow with England.*
- *The HESA student record collection has undergone a review recently (the Data Futures programme) which is leading to major changes in the way that HE data are collected. HEFCW has contributed to this programme by providing both funding and staff time in order to ensure the data collection is fit for purpose for Welsh providers.*
- *Data can be linked across HE, FE and schools data. Efforts can be made to improve linking, for example, by ensuring identifiers are present on datasets throughout a learner's education.*

We therefore would want to ensure that any legislative powers for collecting data include the option of having an organisation collecting data on behalf of the new body. We would also recommend that any legislation is not restrictive in how data are collected, i.e. there is allowance for HE related data and FE and other data to be collected via different systems where appropriate.

We would recommend that any legislation is not prescriptive in terms of data collection and does not specify particular bodies' data can be shared with. Instead, it should ensure that data can be collected and shared safely, as necessary to implement Welsh Government priorities. The education landscape changes over time and the legislation should be sufficiently flexible to allow for changes to policies, priorities and organisations. Codes of practice, data collection or privacy notices and data sharing agreements should then exist to cover the most recent good practice and data protection legislation requirements and sharing with specific bodies.

The new body should be the core provider of data about post-compulsory education in Wales.

Legislation relating to data and statistics should not unintentionally take away powers already held by predecessor bodies. Restrictions imposed on use, sharing or retention of data could impact on the ability to keep up with UK developments or carry out analysis relating to policies and Welsh Government priorities.

Student Finance Issues

Questions 89 - 93:

- 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?

We support the introduction of accelerated degrees to improve learner choice. Some learners will wish to take up this opportunity, although we would welcome more research on the evidence base for this, and some providers would wish to meet such demand. We take the view that HEFCW is already free to develop such provision, working with learners and providers, with a small development budget and changes to the Welsh Government student support arrangements. We consider that the Commission should be similarly enabled to take this forward. We are therefore surprised at the level of detail included in the consultation document, which is disproportionate to the issue, and should be dealt with separately.

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?

We fully support the recommendation that the Commission should have regulatory oversight of all types of HE providers in Wales seeking designation of their HE courses for purposes of student support. This is consistent with our view that the Commission has oversight of all providers of post-compulsory education and training in Wales.

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?

We accept that there may be a political rationale to have two categories of course designation to allow learners at those alternative providers, which may not wish to be restricted by a maximum fee limit, to access some level of student support.

We do not, however, believe that there should be different levels of regulation for two categories of course designation as suggested in para 472 of the consultation. We are of the view that all PCET providers in Wales should meet the same regulatory requirements. The Cabinet Secretary, in her foreword, highlights her ambition to “create a whole-system...which will be truly effective for learners”. She is also seeking parity of esteem between different types of provision. We fully support this ambition and believe that this must be underpinned by learners having full confidence that the providers that they study at, regardless of the level of support that is invested in those providers by the public purse, are of good quality and are financially sustainable. This resonates with para 466 of the consultation that the key principles underpin each designation. In general the level of regulation should be proportionate to the risk to the student and taxpayer, and not to the potential benefits to the provider.

It is also not clear why there would be no fair access requirements for some providers of higher education when improved educational outcomes can support social mobility.

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?

As we have noted previously, we believe that all PCET providers should be treated equally and equitably, regardless of the way in which they are constituted or the type of education and training they provide. We recognise the reasons for considering charitable status as a requirement for providers and we support the principle that funds received from public funding should not be used to benefit shareholders of for-profit organisations. We also believe that there are enough providers in Wales that are charities to ensure that the learning needs of Wales are met. On balance we would not object to providers without charitable status being designated in Wales on the basis that providers without charitable status committed to investing surplus

funds into activities that support learners or were for the public good, demonstrating this through a public good statement.

We take the view that the legislative responsibilities for the Commission should be limited to only Welsh providers. However, should Welsh Ministers, as they currently do, wish to support Welsh students to study at alternative providers in other parts of the UK then Welsh Ministers should retain the power to specifically designate providers for student support. Those alternative providers should not be treated any differently to those providers in Wales regulated by the Commission and should meet the same regulatory requirements that are set out by the Commission. The Commission could administer that process in the way that HEFCW currently does. Welsh Government should also give consideration to applying consistent measures when reciprocating designation arrangements across the UK and when prescribing a recognised awarding body in its Education (Recognised Bodies) (Wales) Order.

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?

As noted in our response to question 8 above, we strongly support a system of registration to ensure that all providers meet regulatory requirements. Registration was supported by a majority of the responses to the initial consultation. Outcomes agreements may also apply to these providers.

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.

- *Compliance with the Welsh Public Sector Equality Duty: The Future Commission could provide cross-sector guidance, which enables a consistent approach across all of post 16 providers in meeting the Welsh Public Sector Equality Duty. Brief desktop analysis would suggest*

differences across the current PCET system in terms of strategic equality planning, equality data publishing and annual reporting.

- *Current and future Welsh Government and HEFCW staffing considerations: There would need to be full analysis of the numbers of staff with protected characteristics by each employer. We would also need to consider gender pay differences across both organisations.*
- *Learners within the system: Learner information is currently collected on different records systems, HESA and LLWR. A full analysis of the number of learners with protected characteristics would need to be conducted and considered.*
- *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.*
- *Apprenticeships: We would need to consider the outcomes of the Estyn review into barriers to apprenticeships arising from any difficulties experienced by learners from ethnic minority groups and those with disabilities when entering apprenticeship programmes. Findings should inform the work of the Commission which will provide an opportunity to develop a consistent approach in apprenticeships across the different levels and providers*
- *Membership of the Commission: HEFCW's Council membership goes through the Welsh Governments public appointments process. Equality and diversity of the current council and future commission membership should be impact assessed against the protected characteristics.*

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:

We feel strongly that the title: Tertiary Education and Research Commission is not appropriate for the new body. We understand that similar objections have been raised by other stakeholders and yet there is no acknowledgement of this in the technical consultation document.

The word 'tertiary' has a particular meaning in a Welsh context which relates to sixth form/FE provision and those arrangements. Indeed, the consultation document uses the term 'tertiary' in this way on page 202 of the consultation document.

The term 'tertiary' in the Hazelkorn report, which has been carried forward through the consultations into the proposed title of the new body, uses a European understanding of tertiary to mean everything beyond secondary education. This is not how the term is used in Wales and it will cause much confusion when different parts of the education sector use the term in this way, including in the consultation document itself, paragraph 202.

We also query the use of the word 'Commission'. There is no proposal for a Commissioner within the consultation and thus 'Commission' is not meaningful.

We would strongly advocate seeking another name. Our suggestion is Education and Research Council (Cyngor Addysg ac Ymchwil). or Education and Research Board (Bwrdd Addysg ac Ymchwil)

As previously noted, this consultation sets out operational detail at an inappropriate level. We understand that this is to meet National Assembly expectations in responses as legislation is considered, and is at a greater level of detail than would be expected in Westminster. We find this surprising and difficult to reconcile with the responsibility to establish legislation which is future proof, as required by the Well-being of Future Generations (Wales) Act 2015.

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:

We will publish our response and consider that all responses should be published by the Welsh Government, unless respondents have specifically indicated to the contrary.