

**Consultation
Response Form**

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About Universities Wales

Universities Wales represents the interests of universities in Wales and is a National Council of Universities UK. Universities Wales' Governing Council consists of the Vice-Chancellors of all the universities in Wales and the Director of the Open University in Wales.

Summary

1. Universities Wales remains supportive of the aim of these proposals to improve oversight of the PCET sector. As the proposals currently stand, there are several issues that will need to be addressed to ensure that the existing effectiveness of the PCET sector is not compromised. As such, we do not believe these proposals are ready to proceed to legislative drafting.
2. The consultation states its desire for the Commission to operate as an arms-length body – this is essential. The proposals as stand are too prescriptive, provide too high a level of Welsh Government control, and do not provide for this arms-length approach. This is fundamentally at odds with the progressive system which we want to achieve.
3. Our response focuses on the technical issues raised in the consultation. Currently there is too much detail on areas which should be left to the Commission to decide and yet insufficient detail on important legislative areas such as how the proposed Regulation and Outcome Agreements would operate or the transfer of UK provisions to the Welsh statute book.
4. We believe there are core issues with the proposals as stand. These include:
 - a. Concerns over the proposed unwieldy governance structure of the Commission
 - b. Concerns over Regulation and Outcome Agreements as the model for relationship management
 - c. A lack of clarity on how the Commission will be funded and how the Commission will in turn fund providers
 - d. The need to avoid a one-size-fits-all approach such as the proposal for a single quality body

- e. The lack of an outward-facing approach to the proposals, as demonstrated by the proposed restrictions around Research and Innovation Wales which would hinder the delivery of research and innovation activity in Wales and potentially harm Wales' international reputation for research excellence.
5. We continue to believe there are genuine benefits to be gained from the delivery of the PCET proposals. This includes the potential for the PCET sector to be more responsive to skills needs by making more straightforward the development and delivery of innovative provision such as degree apprenticeships.
6. Similarly, a registration model with baseline requirements for all providers could ensure the entire breadth of higher education provision in Wales continues to be of a good quality and that there are better protection and representation arrangements for all learners across Wales.
7. We also believe the proposals offer an opportunity to continue and secure the implementation of the Diamond and Reid Reviews, the recommendations of which provide a path to a progressive higher education offer which brings social and economic benefits to Wales.
8. At this stage we need the Welsh Government to deliver meaningful stakeholder involvement on official groups that will look at and develop draft legislation to deliver these proposals in an effective, successful way. We believe the core purpose of these proposals needs to be revisited and the proposals amended in response to this core purpose.

The Commission

Question 1:

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

- 1.1 No, not at the moment. Although we remain broadly supportive of the proposals, the proposed structure and governance framework is unwieldy and does not provide a sufficiently arms-length approach.
- 1.2 For the Commission to operate as a genuinely arms-length body, as is intended by the Welsh Government, the proposals should include the below:
 - 1.2.1 The Commission should appoint the Chief Executive with the approval of Welsh Ministers, and not the Welsh Ministers themselves as proposed. The current proposal would undermine the arms-length nature of the Commission. Currently the CEO of HEFCW is appointed by the Council. Similarly, the same arrangements apply in Scotland in relation to the Scottish Funding Council which covers both HE and FE.
 - 1.2.2 The Commission should be responsible for the appointment of the Chair of Research and Innovation Wales, with the approval of Welsh Ministers. It is difficult to see how the Commission could exercise its internal governance of the statutory committee without this. The remaining members of Research and Innovation Wales should be appointed either by the Commission or by

Research and Innovation Wales.

1.3 There is a real danger that the organisation structure proposed will simply be too large and unwieldy to be effective:

1.3.1 A very large number of statutory committees are proposed (nine) and the proposals are overly prescriptive. Subject to comments below on Research and Innovation Wales, the Commission should be free to determine its own committee structure, relying on a general power to establish committees as HEFCW currently does. HEFCW and the former FE funding council are/were only required to have a quality committee.

1.3.2 In requiring the statutory committees to cover the whole of PCET there is a significant danger that the committees will not have the necessary experience and oversight required for each sector. For example, the current statutory arrangements for HEFCW's quality committee ensure that there is sufficient representation from members with experience of higher education while maintaining a workable committee size. It is difficult to see how a statutory quality committee which covers the entirety of PCET could maintain both a sufficient level of expertise and a workable size. We would recommend that legislation enables the Commission to determine how best to take this forward.

1.3.3 Similarly, we are concerned that the proposals for Research and Innovation Wales would allow only 2-3 representatives from higher education. It is essential that, as at present, research and innovation in the higher education sector receives proper support and attention. Our response to Question 57 elaborates on this.

1.3.4 We do not believe the proposed membership of the Commission will be adequate to provide the necessary representation and depth and breadth of experience for all PCET sectors. The consultation proposes 9 to 15 members. However, current legislation already provides that HEFCW has between 8 to 12 members. The Scottish Funding Council which also has responsibility for colleges has between 11 to 14 members.

1.4 Furthermore, the duties and functions currently proposed for the Commission do not appear to provide a sufficient basis for the exercise of functions in relation to each sector. It is proposed that the Commission has a general duty 'to secure or make arrangements to secure the provision of PCET and to administer funds available to it'. However, if the Welsh Ministers' current FE functions are transferred to the Commission this would require the Commission to secure the provision of 'proper facilities' for education and training of persons aged 16 to 19, and 'reasonable facilities' for persons over 19 other than in higher education'.

2 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?

2.1 We do not believe that this should be a statutory committee for the reasons outlined in our response to question 1: the large number of proposed statutory committees and the need for the Commission to operate at an arms-length.

2.2 However, as outlined in our response to questions 82 and 83, 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 including on matters such as the

adequacy of existing provision of education through the medium of Welsh and how current provision can be developed.

3 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?

3.1 Agree in principle. Given the proposed role of the Commission in developing new apprenticeship pathways, as well as the broader role of the Commission in responding to Wales' skills needs, it is sensible for the Apprenticeships Advisory Board (WAAB) and the Wales Employment and Skills Board (WESB) to be part of the Commission.

3.2 However, including this in legislation would be overly prescriptive and, over the longer-term, could limit the Commission's ability to respond to changes to the Welsh and UK-wide skills landscape which may require different engagement structures. As such, we do not believe the WESB and the WAAB should be statutory committees. We would recommend that legislation enables the Commission to determine how best to take this forward.

The Relationship between the Welsh Government and the Commission

4 Question 4:

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

4.1 No, not as proposed.

4.2 We support the Welsh Government's intention to create effective working relationships between the Welsh Government and the Commission, with a clear division of responsibility that enables the Welsh Government to retain responsibility for overall direction, while enabling the Commission to function as an independent/arms-length body with strategic oversight of the sector.

4.3 However, we do not believe that the proposals sufficiently reflect these intentions yet. In particular:

4.3.1 The power to approve or withhold approval of the Commission's strategic plan should not provide an opportunity to prescribe the detail of its content. As an arms-length body, the Commission needs to be accountable to the Welsh Government but not managed by it.

4.3.2 The Commission *should* be accountable for ensuring that its strategic plan for the sector reflects the Welsh Government's strategic priorities and overarching PCET policy, and we would support it being placed under a statutory duty to do so.

4.3.3 However, we are concerned about how the power to approve a strategic plan could be exercised. If the plan is subject to Welsh Ministers' approval, the circumstances in which the Welsh Government could withhold approval must be **clearly prescribed and consistent with the principle of arms-length operation**. This would include limiting the withholding of approval to circumstances in which the Commission has not exercised its statutory duties. It would not include instances where the Welsh Ministers simply do not agree with the Commission about how to align or implement the plan.

4.3.4 The proposals should focus on ensuring that there are robust arrangements in place for governance and on methods of making the Commission

accountable for the exercise of its power. This could include reporting arrangements and exercise of powers of appointment/dismissal of the Commission's members.

- 4.3.5 There needs to be greater clarity about the circumstances in which the Welsh Government could withhold grant funding, and how this would differ, if at all, from the existing powers to withhold grant for higher education under the FHEA 1992. We would not support the withholding of grant funding on general grounds, where there is no direct connection to the use of public funds.
- 4.3.6 The consultation points to potential further powers of intervention but states these are yet to be determined. It is impossible to comment further on the adequacy or need for such powers until there is clarity on what the powers are and the circumstances in which these are intended to be used.
- 4.4 Furthermore, the relationship between the Welsh Government and the Commission cannot be divorced from the ultimate relationship between the Welsh Government and providers. For universities, it is critical that universities continue to act and make decisions independently of government in pursuit of their charitable objectives as required by law. This is essential for the higher education system's international reputation and success.
- 4.5 As highlighted in the preliminary report of the Weingarten Review, operating at arms-length requires great discipline. The Welsh Government must be prepared to operate at system level and be silent on instructing or telling institutions how they might achieve goals.
- 4.6 There is not currently clarity about the respective roles of the Commission and Welsh Government. We have significant concerns about the proposed new powers that would allow and encourage Welsh Government to directly fund higher education providers including research and innovation. The arms-length principles of higher education funding need to be maintained.
- 4.7 In principle we support the intentions to ensure that both the Welsh Government and the Commission consult widely on their plans, and, in particular, to ensure that the interests of students have a high priority. Care needs to be taken to not be overly prescriptive of how and when this achieved.

5 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?

- 5.1 No. The Welsh Government already has powers to withhold funding from HEFCW where it does not comply with the terms and conditions of grant, and to require repayment with interest. There were similar powers in relation to the grant of funding in relation to FE, prior to ELWa's abolition and the Welsh Government absorbing its funding powers. The Welsh Government also remains free to allocate public funding according to its budgetary priorities, and the expected benefits of its investment for Wales.
- 5.2 In particular, as discussed under Question 4, the process of approving the strategic plan should not provide an opportunity for the Welsh Government to determine the detail and implementation of the Commission's strategic plan (see above). The proposal to allow non-core funding to be withheld until the strategic plan is approved, for instance, appears to be inviting engagement at level of detail which is not compatible with its intention to enable the Commission to operate at arms-length.

6 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?

6.1 None. Similar arrangements to current provisions should be sufficient to enable effective working relationships between the Welsh Ministers and the Commission. The Welsh Ministers should focus on holding the members of the Commission (i.e. its governing body) to account, ensuring that they exercise their fiduciary duties responsibly and effectively, and not seek further powers to intervene. It appoints the membership of the Commission and may require information and reports. The Welsh Ministers would also have significant powers to attach terms and conditions to any grant they allocate to the Commission.

**7 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?**

7.1 We agree that the frequency of production of the strategic plan and its planning horizon should not be set in stone. The Commission should have the flexibility to determine the period which the plan should cover for itself. This will be necessary to take into account likely changes in political administrations and policies, as well as identifying the most effective arrangement for providers in all the circumstances.

The Relationship between the Commission and Learning Providers

**8 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?***

8.1 We are concerned about the use Regulation and Outcome Agreements as proposed and the technical consultation provides insufficient detail on how ROAs would operate to make an informed judgement on specifics.

8.2 The regulatory matters identified in the consultation generally relate to areas that are already regulated by robust arrangements for universities. For instance, the provisions of the HE(W)A 2015 prescribe fee limits and the use of fees, measures to promote student access, quality assurance arrangements, and financial management and governance. The provisions of the FHEA 1992 also continue to cover the use of all public funding. We would expect any new model to continue to provide similar coverage for universities. We also welcome the explicit inclusion of learner protection arrangements and learner complaints procedures.

8.3 What should be included in the regulatory part of the ROA also depends on how the ROAs will be used. We need to be much clearer about how the ROAs will be used and about any funding or regulatory implications before we can comment on whether the proposed content is appropriate for the relationship between the Commission and learning providers. In our view, strategic oversight will be best achieved through proportionate assurance and support delivered primarily by developing good relationships and using its powers primarily to incentivise and facilitate.

8.4 We would expect different requirements and arrangements to apply to providers depending on whether providers receive direct public funding or receive course designation which enables their students to access publicly funded student support. There are very significant legal and economic differences between these

kinds of funding and they should not automatically be treated the same for regulatory or other purposes.

- 8.5 There are inherent problems with the current proposals in extending regulatory requirements to all providers. An essential requirement of the proposed system is that the providers have to enter ROAs as a matter of free choice in order to prevent potential legal conflict with statutory autonomy and charitable status. There is a risk that, in the future, there will be no practical alternative for providers than to enter into an ROA and, as such, the requirements could be regarded as being imposed.
- 8.6 If this was the case, ROAs could cause conflict with other statutory duties and legal requirements. In particular:
- 8.6.1 *Charity law requirements* are clear that it is not for a charity to implement government policy or carry out directions of a government authority. Loss or breach of charity status would have catastrophic and business-critical consequences for universities in financial terms and reputational terms, including loss of tax status, and implications for legal agreements with third parties. All providers would lose 'regulated institution' status, and their students become ineligible for student support.
- 8.6.2 *HE legislation.* HE legislation is based on principles of institutional and academic autonomy. This has long been regarded as a key reason that students in Wales have a sector with a world-class reputation, and it would seriously damage student interests to compromise this. In particular, current legislation in Wales and other parts of the UK expressly prohibits government from imposing requirements which relate to a particular institution or institutions or frame them by reference to particular courses of study or programmes of research.
- 8.6.3 *National accounting classification* - where increasing government control over provision could potentially lead to reclassification. The status of universities is currently under review by the Office for National Statistics and is based on their independence from the government. Re-classification to central government would have a very damaging impact for both Welsh Government and universities, and the sector's international reputation. Surpluses and losses would become Welsh Government funds and have to be managed within the Welsh Government's budget. It would also require all reclassified universities to review their contracts and legal agreements including employment arrangements and collective employment agreements, banking covenants, commercial agreements, joint ventures etc.
- 8.6.4 *Competition law* – the Commission would need to take particular care not to encourage or impose collaboration requirements on providers. A wide range of collusive behaviour can fall under competition law prohibitions. A strategic planning approach that, for example, required sharing commercial information, limiting or controlling provision, sharing markets, or relating to pricing, could infringe the law.
- 8.7 We support the intention to introduce a system that is more clearly built around the needs of students, and this needs to be reflected in arrangements for 'strategic planning'. Ensuring that PCET in Wales is student-centred offers benefits for the economy, local and national government, and individuals in Wales. Furthermore, given the personal investment made by students, financial and otherwise, into their education, then it is appropriate to provide students with the opportunity to input into how higher education is regulated.

8.8 In our view there needs to be basic requirements that apply to all providers of higher education and the White Paper advocated the wrong guiding principle in determining regulatory requirements. **The overriding principle should be that the level of regulation is proportionate to the risk to the student and taxpayer**, and not to the potential benefits to the provider (e.g. access to greater student support or higher maximum fee levels).

9 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?

9.1 A consistent and fair set of principles need to apply to all providers, and we are currently struggling to see how the Welsh Governments proposals will do this.

9.2 The reason for making charity status a requirement to become a regulated institution under the HE Wales Act 2015, automatically conferring designation for student support, was that the “Welsh Government considers that all providers of HE that benefit from Welsh Government financial subsidy in the form of statutory student loans or grants should be expected to make a contribution to the wider public good.”

9.3 All universities in Wales are charities, and the key benefit of this approach is that they are regulated by the Charity Commission in addition to their other statutory duties, and that as not-for-profit institutions any support from public funding is not contributing to shareholder/private profits. As we commented at the time, however, requiring charitable status may not be the best way of protecting the use of public money, protecting student interests, or ensuring that providers contribute to a wider public good.

9.4 Consistency and fairness would appear to require that all providers in receipt of public funding should have charitable status. Alternatively, the Welsh Government may want to rethink what the base requirements for all providers should be. We believe this could be focussed more firmly on protecting the interests of students. The requirement around charitable status might be better articulated as a broader not-for-profit requirement. For example, providers without charitable status could commit to investing surplus funds into activities that support learners or were for the public good, demonstrating this through a public good statement.

9.5 The consultation states an aim for the structures established by these proposals to be sustainable over the long-term. It is possible that, in the long term, the ways that parts of the system are funded may change. As such, the proposals should be written in a way to withstand such changes.

10 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?

10.1 No. Research and Technology Organisations (RTOs) should be eligible for funding from the Commission but we do not believe that Regulation and Outcome Agreements as currently proposed would be a suitable way to manage the relationship.

- 10.2 Requiring individually negotiated outcome agreements for an institution only seeking support for research and innovation activities would seem an inefficient and unnecessarily resource intensive approach for all concerned and may mean that inappropriate conditions are applied.
- 10.3 We note that core funding from HEFCW is currently subject to general terms and conditions of grant, and that competitive funding for specific projects from the Research Councils up to this point has been subject to the specific terms and conditions of the award under contract (UKRI now has statutory powers to set terms and conditions of grant)
- 10.4 We need to have a regulatory and funding framework that covers RTOs satisfactorily. A current limitation of the HE (Wales) Act 2015 is that RTOs would not be eligible to apply for regulated institution status, and there is no way of bringing them within the regulatory framework – even in relation to postgraduate study - unless they deliver higher education to full-time undergraduates. However, they would still be subject to any terms imposed by HEFCW as a condition of core grant funding. Teaching/training provision should be covered by a set of base requirements that apply to all providers. **In our view the registration model provides a more promising basis for this than the outcome agreement model.**
- 10.5 Funding for research should be subject to consistent terms and conditions as currently through HEFCW.

11 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?

- 11.1 We would expect the terms and conditions of grant to continue to be used to support research and innovation activities, under statutory funding powers equivalent to the FHEA 1992 and/or powers to contract.
- 11.2 Teaching/training provision should be covered by a set of base requirements that apply to all providers. In our view the registration model provides a more promising basis for this than the outcome agreement model.

12 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?

- 12.1 We query the basis for exempting providers from the charitable requirement (see Question 9 above), and whether the ROAs will provide the best way forward (see Question 10). We believe a registration model provides a more promising basis for managing relationships than the outcome agreement model.
- 12.2 The regulatory requirements should depend on the type of activity and we would expect arrangements to ensure that a consistent set of principles is applied to all providers delivering higher education, with specific provision for those in receipt of public funding or designated to receive student support, as the case may be.
- 12.3 There are unlikely to be satisfactory and effective means for ensuring that public funding support does not ultimately contribute to company/private profits.

However, all other issues would be better addressed through specific requirements of registration.

13 Question 13:

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

- 13.1 No, there are better and less resource intensive ways of managing relationships between a new body and providers overall (see also our response to question 8). The registration model perhaps has the most potential for further development.
- 13.2 The consultation provides limited detail about the model and how it would work. In particular:
- 13.2.1 We would need clarity on how the ROA would sit alongside (or replace) the powers of intervention enabled by current funding arrangements as there is potential for overlap and conflict.
- 13.2.2 The White Paper discussed a potential link between the use of outcome agreements and funding while the technical consultation is silent on these proposals.
- 13.2.3 It is not clear whether ROAs would replace or sit alongside fee and access plan arrangements. Like the proposed ROAs, these are based on individually negotiated agreements but they are not based on the kind of broad outcomes envisaged in the Weingarten recommendations.
- 13.2.4 There is little detail on the powers proposed to enable the Commission to enforce ROAs or the circumstances in which those powers could be used.
- 13.3 We are unclear how the use of ROAs would improve substantively on current arrangements. In evaluating potential benefits, we note that there are already robust arrangements for the regulation of universities and effective arrangements for ensuring that universities in Wales balance short and long-term strategic thinking. This includes the production of strategic plans, contribution to the sector strategy and HEFCW's corporate plan, and annual financial and student number forecasts. It will be important to ensure that a new body continues to exercise sufficient flexibility to determine the most suitable approach to encouraging strategic thinking among providers.
- 13.4 In our view outcome agreements, while useful in some respects, have limited applicability and would not form the best basis for managing relationships between the new body and providers. There is a potentially useful place for them alongside other approaches, but it would be best to leave it to the new body to determine this and it should not be prescribed in legislation.
- 13.5 Firstly, an outcome agreement based system is typically **extremely resource intensive**, without necessarily delivering better results than alternative approaches. This is certainly a key lesson from experience in Scotland, which has sought to reduce the frequency with which they are reviewed/re-approved. The Netherlands we understand is currently looking to replace the use of performance agreements. In both instances there are questions about whether the system is the most effective use of resource, and whether alternative approaches may deliver the same results more efficiently.

- 13.6 The more providers that are added to the Commission's responsibility, the bigger the challenge will become. We anticipate that significant additional resource would need to be available to the Commission to deliver this.
- 13.7 Using outcome agreements as the main tool for managing relationships would also potentially impact institutional autonomy. This was a general concern about their use in Europe highlighted by the EUA Define Project reports, for instance, which surveyed the use of outcome agreements and similar performance-based systems.
- 13.8 There are two HE systems in particular that use outcome agreements or similar systems to cover the full range of an institution's activities and are linked to funding/regulation – Scotland and Austria. In Scotland, universities have voiced significant concerns about that the current use of outcome agreements and the impact on their institutional autonomy. In Austria, the legislators have gone to great lengths to ensure that the use of outcome agreements is appropriate by prescribing in great detail exactly what can and can't be contained in the outcome agreements, and what interventions are available. The Austria approach, however, highlights the significant drafting challenges and extensive legislation that would be required to achieve the appropriate checks and balances. The model also looks like it may be too inflexible to cope with rapidly changing requirements.
- 13.9 There are well-known pros and cons from focussing exclusively on outcomes, and we would advocate a more balanced approach. Focussing on outcomes, rather than activities can help to ensure effective use of resource to achieve objectives. But at the same time it can be difficult to assess how far a specific activity contributes to an outcome or to distinguish its contribution from other factors (causation issues), or to even to assess whether an outcome is successful given other factors. Frequently, an outcome is achieved or frustrated by factors beyond the control of the provider. It can take many years before activities take effect and we can assess their value (time-lag) and take even longer before it appears in any publicly available data (data lag). There are many activities that are inherently difficult or unsuited to monitoring in this way because of this but are nevertheless important e.g. activities undertaken to raise the aspirations of school-age students for instance, or the evaluation of investment in specific projects.
- 13.10 We see that there are significant potential benefits in being able to demonstrate the contribution of universities to Welsh Government objectives. Indeed, universities have already attempted to adopt this approach with HEFCW in terms of drafting the recent HE strategy in line with the Well-being of Future Generations Act goals.
- 13.11 The Weingarten Report identified this as the key information currently missing from the current measurement and monitoring systems for PCET, while emphasising the need for the Welsh Government to focus on system-level intervention and maintain the arms-length principle. **In our view the Commission should be free to consider the merits of the Weingarten proposals and to use a range of appropriate informational tools.** Making

outcome agreements a statutory requirement of all providers would place the Commission under unnecessary constraint and could lead to the problems identified above.

13.12 On the regulatory part of the ROA we agree that all providers who access funding or student support should meet a core set of requirements relating to their activities. In particular, there is an opportunity to strengthen requirements that protect the interests of students. The absence of detailed proposals in the consultation hinders us in making an assessment of the proposals at this stage. However, the content of the proposed regulatory part of the ROA generally covers matters that are already regulated by robust arrangements in relation to universities. We would expect any new model to continue to provide similar coverage for universities. We also welcome the explicit inclusion of learner protection arrangements and learner complaints procedures.

14 Question 14:

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

14.1 The consultation document does not set out proposals for powers, as we would expect from a technical consultation. It is currently difficult to see how the Commission will work effectively through the local authorities to deliver their statutory duties.

15 Question 15:

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

15.1 Yes. There are two preferable alternatives:

15.1.1 The Commission's relationship with higher education providers could be based on the existing robust arrangements for managing relationships, particularly given the costs and risks involved in getting a replacement model right. This includes the provisions of the HE(W)A 2015 which prescribe fee limits and the use of fees, measures to promote student access, quality assurance arrangements, and financial management and governance as well as the provisions of the FHEA 1992 which continues to cover the use of all public funding. We see no justification for adding any further powers in respect of universities. Such an approach does not preclude the Commission from providing greater strategic oversight over the post compulsory education and training sector.

15.1.2 Alternatively, we believe that a system based on a registration model (without combining this automatically with the use of outcome agreements) would be preferable. This would ensure that all providers meet fundamental requirements that would apply universally. Beyond this, the Commission would have the flexibility to determine and implement the most appropriate tool for managing relationships according to each circumstance. In our view this is not best done by building on the outcome-based models proposed.

15.2 Overall, we welcome opportunities to strengthen how the PCET sector works together at a sector level to deliver genuine practical benefits for students,

employers, industry and providers. As a general comment, the proposed model emphasises regulatory requirements and compliance, and a system built for dealing with breach and failure. There is a necessary place for this. However, we question whether sufficient attention has been given to the design of a system to foster and encourage success.

15.3 There are a number of general features and principles that we would like to underpin any new system. Strategic oversight in our view will be best achieved through proportionate assurance and support delivered primarily through good relationships and with the Commission using its powers to incentivise and facilitate.

16 Question 16:

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

16.1 It is important to recognise that a large amount of public information about universities is already available through StatsWales and UK-wide sources such as the Higher Education Statistics Agency and [Unistats](#).

16.2 There is a strong case for maintaining a register for public information which confirms for students and other stakeholders the exact status of a provider, and the nature of its responsibilities and duties associated with that status. Details should include degree awarding powers, university title, regulated status, how the provider is funded, any courses specifically designated, company registration, and charity status. Given the changes in England and increasing complexity of arrangements across the UK, there is a need for this more than ever.

17 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?

17.1 See above: we do not support the ROA as proposed. We believe a registration model provides a more promising way forward.

17.2 Intervention should only be exercisable where there is a legitimate and overriding public interest. Otherwise the autonomy of providers should be respected and supported.

17.3 The key parameters of scope and content for the ROAs should be determined by legislative process which allows due scrutiny of the provisions, if they are to be relied upon for exercise of any significant powers of intervention. Changes to these should require further legislative process.

17.4 The remaining detail should be left to the Commission to determine, and a simple duty to keep them under review as appropriate with due consultation should suffice to balance the need for flexibility with need for clear boundaries that respect the Commission-provider relationship.

17.5 In practice, the drafting of this arrangement will be critical. It is essential that there is full discussion of specific proposals before entering a legislation stage.

18 Question 18:

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

18.1 No comment

Strengthening the link between planning and funding

19 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?

19.1 In delivering the objectives of the PCET proposals, it would be appropriate for the Commission to have those functions on the condition that this can be achieved without leading to potential conflict with the Commission’s duties in relation to other provision/providers and practical difficulties of the kind that led to the dissolution of ELWa in the first place. More specifically:

19.1.1 The mandatory duties in relation to FE and school sixth forms imply major resource commitments. The legislation will need to ensure that the resource requirements necessary to deliver this are met by the Welsh Government’s budget for it.

19.1.2 In transferring the powers, the Welsh Government would need to ensure that powers designed to be exercisable specifically in relation to FE are not extendable to HE as a result. For instance, the powers to impose conditions under s.35 allow greater intervention and do not follow the arms-length principle for funding HE unlike the corresponding provisions in the 1992 Act which provides for the academic and institutional autonomy.

19.1.3 More generally, LSA 2000 includes provisions for FE that are similar but not identical to HE on a wide range of issues from accounting to information collection powers. We would need to be sure that these continue to apply appropriately to the different sectors.

20 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?

20.1 We agree that the Welsh Ministers should retain a high-level role in planning and funding of provision in relation to HE, which allows them to implement overall policy, but continues to preserve the arms-length relationship between government and autonomous academic providers.

20.2 It will be **essential that the protections of academic and institutional independence are maintained**, as currently built into the system by the FHEA 1992.

21 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?

21.1 Yes. The existing funding powers for higher education in the 1992 Act and

corresponding powers in relation to ITT in the EA 2005 should be unchanged in substance.

- 21.2 It will be essential to ensure that any changes to the legislation do not remove or lessen the provisions that ensure universities continue to operate at arms-length as autonomous academic institutions or place the fulfilment of their charitable duties or national accounting classification at risk.
- 21.3 There are various proposals in the consultation document to allow the Welsh Government to directly fund providers, including as an in-year arrangement and in the context of research. It is proposed that both Welsh Government and Research and Innovation Wales would be able to fund the same set of R&I activities without prejudice to the other – the intention is that in the short term RIW continues to focus on HE/FE research and innovation, and the WG on other sectors. It is not clear at this stage how well the parallel funding powers would work, and we are concerned about the lack of a clear demarcation of responsibilities.
- 21.4 We do not support these powers, which in practice would undermine the authority of the Commission and would not be subject to the checks and balances of the current funding provisions of the FHEA 1992 including protection of institutional and academic autonomy.
- 21.5 Based on experience of HE(W)A 2015, we are also concerned that seeking to replace the provisions in the 1992 Act with Wales's own legislation will raise technical issues relating to cross-border operation. HEFCW's current duties in relation to quality are limited to provision in Wales due to concerns about the boundaries of legislative competence at the time. The Wales Act 2017 has now redefined those boundaries. However, the Welsh Government must be satisfied that it can replicate the territorial extent and applicability of the current legislation or should seek to make any changes through Parliament instead.

22 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?

- 22.1 No. We support the Welsh Ministers having the same powers as it currently does under s.68 of 1992 Act to allocate funding, but to the Commission instead of HEFCW.
- 22.2 Section 68 was drafted to contain essential elements of the corner-stone principle of funding at arms-length. This allows the Ministers to make the funding in relation to HE subject to such terms and conditions as they may determine, but it prohibits the Welsh Ministers from attaching conditions that relate to a specific provider, or to the criteria for the selection and appointment of academic staff or the admission of students.
- 22.3 The current power for HE should be replicated. We would not support it being replaced with a new power or being changed in any way that eroded these principles for HE. The corresponding funding power for FE as contained in s.35 LSA 2000 for instance, does not incorporate the principle of operation of arms-length or the protections of institutional and academic autonomy.
- 22.4 The power to impose terms and conditions should continue to attach to the use of funding grant only, and the current provisions must not be replaced with

provisions that allow terms and conditions to be imposed more generally or to sums otherwise than from the Commission.

- 22.5 We are also unclear how the transfer of these powers unchanged will work with ROAs as proposed, and there needs to be much greater clarity about the proposed link between outcome agreements and funding

23 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?

- 23.1 Yes - in relation to higher education to the extent they are able to do so already, **but not further**. In particular, the Welsh Ministers should hypothecate the funding by further and higher education (see Q24), if the new body is to have responsibility for other PCET sectors as well. This level of hypothecation also ensures Ministerial accountability for further education and higher education budgets and that these budgets are subject to scrutiny by the National Assembly for Wales.
- 23.2 Hypothecation of funding in this way is likely to facilitate its functions in relation to HE, FE and other PCET providers to be exercised without compromise.

24 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.

- 24.1 Yes. It will be essential to hypothecate funding in order for the separate functions in relation to HE, FE and other PCET providers to be exercised without compromise. We believe such a split is also necessary to ensure the continued delivery and implementation of the Diamond Review recommendations.

25 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?

- 25.1 No. We strongly oppose the proposals for the Welsh Government to directly fund higher education providers, either as an end-of-year measure or the parallel funding powers for research (including QR funding) and innovation.
- 25.2 We understand the intentions and support the desire to facilitate flexible funding. The use of this, however, would undermine the role of the Commission including its relationships with providers (who may seek funding directly instead), and would by-pass the arms-length principles of operation and protections of institutional and academic autonomy associated with the funding arrangements under the 1992 Act.
- 25.3 The Welsh Ministers should focus instead on facilitating the Commission to respond flexibly as required.

26 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?

26.1 Funding for HE (including research) should rest with the Commission. However, the consultation makes reference to examples of funding that include Farming Connect and European Social Fund projects delivered by the third sector. Great care will need to be taken when considering the potential transfer of such funding streams into the Commission. A large number of diverse organisations are recipients of such funding and the breadth of engagement this would require from the Commission could impair the Commission's ability to operate effectively.

27 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?

27.1 We agree that it is very important that the Commission should have flexibility to implement policy as it determines, and that it should seek to drive forward greater alignment and consistency across the sectors where this is genuinely appropriate and helpful to do so.

27.2 However, this should not necessarily be constrained to a transition arrangement. **A one-size fits all approach will not work**, and greater coordination across PCET should not be at the expense of the need to apply different approaches in different circumstances.

27.3 For universities it is imperative to ensure that robust quality assurance arrangements for HE remain in place **based on peer-review** in line with UK quality assurance framework, whereas other sectors are currently subject to inspection arrangements. The adopting of different approaches, though, should not prevent a holistic view of quality being taken.

28 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?

28.1 Yes, if necessary. However, this should be by sector level not institution level. The implementation of these proposals should not be an exercise in budget savings.

28.2 We continue to expect core funding for higher education to be increased in line with the Diamond Recommendations as accepted by the Welsh Government. To facilitate this, it is important that any funding is hypothecated by level (see above) to make this clear. Outside of this, the Commission should be free to determine the use of funding, including any policy for mitigating any major transitions in funding at institution level.

29 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?

29.1 It is important that the Commission not only keep under review intelligence around the levy but that it is also empowered to respond to the shifting employer demand in Wales that is being driven by the levy. The levy has had a significant effect on universities in two distinct ways. Firstly, driving a change in employer demand for degree apprenticeships at levels 6 and 7. Secondly, as large employers in their own right, Welsh universities contribute around £3-4 million a year to the levy.

29.2 However, we do not think it appropriate for there to be a specific legislative provision for this, particularly as it seems increasingly likely that the UK Government will revisit the levy and its implementation in the future. Instead this could form part of a wider responsibility around monitoring intelligence around Welsh skills' needs and the UK-wide skills and funding environment, in line with the proposal to bring the Wales Employment and Skills Board into the Commission. There is also an opportunity in this regard for the Commission to support the creation of an agile, responsive environment which enables universities to respond to employer demand for provision such as degree apprenticeships.

30 Question 30:

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

30.1 We agree that there is a role for the Commission to work with the regional skills partnerships and that the Commission should follow in the footsteps of HEFCW in working with relevant organisations across the sector, including the regional skills partnerships. However, we see no need to make specific legislative provision for this, particularly as regional skills partnerships themselves are non-statutory bodies.

31 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?

31.1 No, the Commission should not be able to withhold core budget to be allocated based on the recommendations set out in annual skills plans. Core budget for higher education should continue to be allocated in line with the Diamond Review funding recommendations. Similarly, such an approach would have limited applicability in higher education because, as HEFCW's current funding allocations illustrate, very little of the higher education budget is used to fund teaching.

31.2 Additional requirements would require additional funding. Outside of the hypothecation at a further and higher education level discussed earlier in the

consultation, the Commission should be allowed to make decisions on how best to allocate additional funding.

- 31.3 We are also concerned at the proposal to allocate funding based on the recommendations of annual skills plans. These plans are the product of regional skills partnerships which are non-statutory bodies and operate on a voluntary basis. Similarly, these plans map out skills demand as informed by labour market intelligence. We are currently at the beginning of a period of fast-paced change in the shape of our workforce and the skills needs of our country. The methodology underpinning labour market intelligence in Wales presents limitations in predicting or planning for the sudden changes to Wales' skill needs likely to be brought about by automation.
- 31.4 Universities Wales has consistently called for the proposals to be student-centred, with students empowered to make the choices best for them. The consultation has acknowledged this, frequently citing the importance of proposals being learner-centred. We do not believe that withholding core budget to make allocations based on annual skills plans aligns with this principle.

32 Question 32:

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

- 32.1 No, not at this stage. We welcome the apparent acceptance that the system needs to allow the Commission flexibility in the way it operates to be effective, and that a one-size-fits all approach will not work. We also welcome the recognition of the continuing need to respect institutional and academic autonomy in HE.
- 32.2 However, the proposals lack significant detail at this stage, and we are not convinced that the proposals will deliver these intentions in practice. There is an opportunity for these proposals to provide for a Commission that will enable universities to be agile in responding to the fast-changing skills needs of Wales as well as the increasing opportunities to collaborate and secure investment UK-wide and globally. The proposals at this point do not seem to enable this.
- 32.3 At this stage critical features of the proposed framework are not clear. For instance, how would the ROAs fit with the different funding powers for HE and FE? How would they differ from current fee and access plans in their scope and coverage? The proposal is for the Ministers to have a new funding power in respect of both (para 108). Can we be certain that this will continue to mean that provisions that ensure that HE funding is granted at arms-length will continue to apply to HE?
- 32.4 The intention (rightly in our view) is to incorporate the funding arrangements for HE (and FE) from the FHEA 1992 unchanged in substance. However, we are concerned for instance that the Welsh Government has not yet clearly identified those functions it wishes to retain, and the specific nature of the changes proposed in relation to its powers under the FHEA 1992, particularly if any changes in relation to HE are intended.
- 32.5 In our view the outcome agreement approach, with its focus on detail at institutional level, is not the best way forward and is too inflexible (see our response to Question 13 (ROAs) above). The proposed ROAs appear to simply

combine the registration model and the outcome agreement model proposed in the White Paper, without addressing our concerns about either at this stage. Outcome agreements are highly resource intensive, and the evidence from other education systems is that they are better suited for some contexts than others. Particularly with the number of providers intended to fall within the Commission's remit, we question whether this is cost effective or even workable. We believe a registration model would be the best way forward for these proposals.

- 32.6 It is a concern that no single overall system has been identified. ROAs are not proposed for all providers, including RTOs and alternative providers, and would operate alongside a registration only model and other potential models. This implies that the outcome agreement element of the ROAs would only be relevant to those designated for student support or receiving funding. We need to be sure that these models could operate in conjunction as intended, and that the content and powers to intervene appropriately reflect the different purposes.
- 32.7 In particular, the proposed monitoring and performance system will need to take into account the advice of the Weingarten Review that the Welsh Government should focus on system level, and the warning against setting up a system that provides the temptation to intervene or increase control at a more local level. The system – at least in respect of HE – needs to be focussed on the sector level with providers working within a system of assurance and accountability and not management. The practical effect of this distinction is not yet apparent in the proposals, and reference is confusingly made e.g. to management of performance.
- 32.8 In terms of the mechanisms for monitoring performance, there are few details set out in the consultation paper and a full discussion of the recently published Weingarten proposals now needs to take place.
- 32.9 In advance of more detailed comments on its proposals, we would argue that a balanced system of funding and regulatory approaches will be required, in which a number of different schemes are likely to play an important part in the informational infrastructure. An effective approach is likely to require a combination of measures of both the performance and drivers of performance (e.g. mix of outcomes and critical success factors, or enablers).

33 Question 33:

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

- 33.1 To be sustainable in the longer term the system will need to be more clearly adaptable and responsive to the particular needs and circumstances of different PCET providers. A one size fits all approach will not work, even if we allow for transitional arrangements.
- 33.2 The HE system in Wales in particular will need to build on the strong international UK and Wales brand. It also needs to recognise that much of the HE infrastructure remains UK wide, including data and quality assurance bodies and the UK-wide research infrastructure. With the increasing number of opportunities to collaborate and secure investment into Wales both UK-wide and globally, a sustainable long-term PCET system must enable universities to be responsive to those opportunities.
- 33.3 In seeking to enhance PCET across Wales, it is absolutely essential that we do not place the core business of universities and the current strengths of a higher education system that contributes almost £4bn to the Welsh economy at risk. In particular, it needs to be recognised that universities are international

institutions and operate in a competitive global context, and that it would be damaging for students and the Welsh economy if universities were prevented or constrained from operating this way.

- 33.4 Similarly, Wales faces substantial challenges in the coming decades as technological change risks shrinking some of [Wales' highest employment sectors](#). In this environment, the delivery of higher level skills and cutting-edge research will become increasingly important to ensuring Wales' economic well-being. A long-term, sustainable system will need to allow Welsh universities to be agile and responsive in responding to these challenges.
- 33.5 A clear set of principles need to be underpin the system. We would like the system to be based on the principle of student choice being freely exercised within a system of appropriate assurance.
- 33.6 There needs to be a greater emphasis on positive support and facilitation. At the moment the proposals are focussed on regulatory compliance, and tools for intervention and 'managing performance'. The sustainability of the system, however, will ultimately depend not just on how well the system is built to avoid and deal with failure, but **how well it nurtures and encourages success**. Currently there is a very clear danger that in seeking to enhance arrangements we lose sight of the strengths of the current ones.
- 33.7 Finally (see comments under Q32), subject to further discussion of the Weingarten Review, the monitoring and measurement systems should reflect oversight objectives appropriately at different levels, e.g. sector level, institutional level and student level.

34 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?

- 34.1 To an extent we agree. We welcome the prominence of a student-centred approach in the proposals. As acknowledged in the consultation, a one-size-fits-all approach would not be appropriate or effective. The consultation talks about how learners should be able to 'expect the same level of protection, wherever they choose to study and learn'. Due to the diverse nature of providers across the post-compulsory landscape, some are more volatile and subject to short term market forces. As such, providing learners with the same level of protection does not mean the same protection arrangements at every provider. Instead arrangements should be proportionate to the risk to student.
- 34.2 That said, some consideration should be given to the level of detail included in the principles and the extent to which this may conflict with the principle of the Commission operating as an arms-length body. We would recommend that the Commission be responsible for developing the common set of principles for learner protection plans in partnership with learners.
- 34.3 It is also important to recognise that, in higher education, the arrangements being discussed intersect with a wide range of other learner protection arrangements that universities are subject to including consumer protection law and, accordingly, [guidance from the Competition and Markets Authority](#).

35 Question 35:

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

- 35.1 We broadly agree with the principles outlined. However, the responsibility for developing a common set of principles for learner protection and progression plans should sit with the Commission.
- 35.2 In terms of the suggested principles, the higher education sector in Wales has consistently highlighted the importance of any system being learner-centred and we are pleased to see this as the first principle outlined. It is important to recognise that, in higher education, many of the principles are already comprehensively adhered to and often through UK-wide structures such as the UK higher education quality code.
- 35.3 Similarly, we also welcome the principle of collaborative approaches and that the arrangements should be developed in consultation with student representation. Universities have long valued partnership working with independent students' unions as demonstrated through the sector's commitment to [Wise Wales](#) and universities' well-established collaboration with their independent students' unions.
- 35.4 In terms of compliance and monitoring, the consultation refers to annual monitoring to measure the effectiveness of arrangements. There may be challenges in annual monitoring of arrangements in higher education given the areas outlined – such as campus closure, provider closure – are rare occurrences. It would be appropriate to make monitoring proportionate and it may be worthwhile considering different timescales dependent on risk. That said, this decision is something that should be within the remit of the Commission as an arms-length body and not prescribed on the face of the Bill.

36 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?

- 36.1 While the approach outlined seems fairly straightforward – and we welcome the proportionate approach and the ability to include learner protection and progression plans into other documents – we also feel that this level of detail is something that should be left to the Commission to decide in its role as an arms-length body. It would be inappropriate to have this level of detail included in legislation.
- 36.2 We also think that it important that any guidance around learner protection and progression plans recognise the various protections for students currently in place in higher education including the ways in which higher education is subject to consumer protection law and CMA guidance.

37 Question 37:

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

- 37.1 It is difficult to provide a view on this question given the consultation does not outline what sanctions are being considered, if any.
- 37.2 In respect of higher education, we believe that existing legislation provides a useful framework with which to develop proposals for the Commission. However, again we would recommend that proposals take into account the ways in which universities are already subject to consumer protection law and CMA guidance.

38 Question 38:

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

- 38.1 No comment.

Strengthening the Learner Voice and Representation

39 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?

- 39.1 Yes. The higher education sector has long valued the contribution that learner representation makes to universities in Wales. This can be seen in the role students play in universities' governance structures as well as the sector's investment into student voice through the [Wise Wales project](#), delivered by NUS Wales. Similarly, every university in Wales has an autonomous, representative student body funded by the university to fulfil this function.
- 39.2 We were pleased to see consultation recognise great work done by higher education in Wales in paragraph 139. The principles will need to enable good practice in sectors such as HE to be retained.
- 39.3 It is important that the principles and values discussed in the consultation should be within the remit of the Commission to develop. In terms of what is included in the proposed Bill, a more general duty may be appropriate.

40 Question 40:

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

- 40.1 Yes, if it is decided to use regulation and outcome agreements as the vehicle for managing relationships between the provider and the Commission, then it would be appropriate for learner representatives to be involved in developing the outcome agreement. We have consistently highlighted the importance of the proposals being student-centred.
- 40.2 That said, please note our response to earlier questions which raises general concerns around regulation and outcome agreements. We do not consider regulation and outcome agreements to be the best way forward for managing relationships between the Commission and providers.

41 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?

41.1 Yes, it important that it applies to all learning providers although recognising that there will be a greater distance to travel for some sectors/providers than others. As outlined previously in this response, partnership with students is embedded in higher education and all universities in Wales have autonomous, student-led representative bodies.

42 Question 42:

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

42.1 Yes, the responsibility for establishing the proposed national framework should sit with the Commission, particularly given the proposal for learner representatives to be members of the Commission itself.

43 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?

43.1 In principle, yes. Universities Wales has consistently highlighted the importance of any post-compulsory education and training system being student-centred. That said, it would be important that providers that have a long history of championing this activity are not disadvantaged as a result of additional support given to other providers.

Quality Assurance and Enhancement

44 Question 44:

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

44.1 No. Overall, we believe that there is far too much detail, the proposals are too prescriptive and the overall principles lack some fundamental criteria which we believe should be included as outlined below.

44.2 The proposals do not fully take account of the European Standards and Guidelines (ESG). You will be aware that the purpose of the ESG is to:

44.2.1 Set a common quality assurance framework across the European Higher Education Area

44.2.2 Enable the assurance and improvement of quality

44.2.3 Support mutual trust, recognition and mobility within and across national boundaries

44.2.4 Provide information on quality assurance in the European Higher Education Area

- 44.3 The current body tasked with assessing the quality of HE provision across the UK, the QAA, underwent the independent European Association for Quality Assurance in Higher Education review this year and **received a Commendation around protecting student interests** and its work towards higher education quality advancements internationally. It was also regarded as a 'recognised and respected agency' in the professional circles within which it operates, and we would not wish to move to a body that does not have this international reputation or reach - quality assurance arrangements **must** be internationally recognisable.
- 44.4 The proposal that the Commission is both a funder and a quality assurance regulator, in our view, threatens the independence and impartiality of decision making. This can be avoided by placing more responsibility for quality with an independent and internationally credible quality assurance agency.
- 44.5 The proposals are silent on the commitments expressed by both the UK and Welsh Governments to the Bologna process.
- 44.6 The criteria for a quality framework must ensure that the body engaged in this work has the necessary experience to assess applications for degree awarding powers and university title.
- 44.7 The proposals intend the Commission to undertake a vast amount of quality assurance and enhancement responsibilities which we believe should be the responsibility of a quality body that is independent, involves peer reviewers, including students, and can include international reviewers and employers. There are serious questions over the capability, expertise and capacity of a Commission to undertake such work particularly around the international recognition of UK quality assurance.
- 44.8 Some of the wording around, for example, the need to 'assure of the quality of teaching' is clumsy and unworkable in an HE context. That is not to say that the *principle* that the quality of teaching should not be assured within the approach taken by the HE sector. For example, AdvanceHE is currently examining the role that the HEAs Teaching Fellowships will play within the new organisation
- 44.9 Many aspects listed are not actually quality related and there is no mention of the cost of implementing the quality assurance aspects as outlined. The quality section of the consultation interchanges the terms quality assurance and quality assessment and it is not clear whether this is the intention or rather a lack of understanding between the terms.

45 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.

- 45.1 No - There is currently no organisation with the experience to undertake external quality assessment of all PCET provision in the UK. It simply does not exist. What was a clear steer and gained cross sector support at the Welsh Government stakeholder workshop was that a single quality *framework* that enables coherence with flexibility to appoint an appropriate body to undertake quality assessment reviews could be a workable solution but there was little appetite in either of the existing bodies such as QAA or Estyn trying to develop the expertise of the other.

45.2 We consider it a much better option to delegate an overarching framework to the Commission and allow it the flexibility to engage organisations with the strengths and expertise in their field to work cooperatively. This would deliver greater benefits as the organisations would spend far less time competing and taking on new areas of work that they are unfamiliar with and have no expertise in. An overarching framework could work in practice by the Commission seeking a single review for a provider, whether that be in an FE or HE institution, and engaging one or more quality assurance body as appropriate to undertake the quality assessment dependent on the provision being delivered.

45.3 It needs to be recognised that current contractual arrangements in HE are 6 years. As mentioned in response to question 44, higher education must be reviewed by an arms-length body on the European quality assurance register in order to maintain comparability and credibility internationally and also have suitable Welsh language capacity.

46 Question 46:

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

46.1 No – The definition as drafted is not consistent with the definition to which all HE providers across the UK adhere to in the UK Quality Code. The definition as drafted is inadequate in that it does not encourage improvement and the language used is tentative and unambitious. There should be more reference to the positive engagement of learners and include the terms ‘deliberate’ and ‘strategic’ in its definition as the draft implies that enhancement happens by accident. The current draft does nothing to emphasise the stages that an institution undertakes to achieve this recognition of best practice. It is also unhelpful to have the word ‘enhance’ in the definition.

47 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?

47.1 No – as outlined in response to question 44, the scope of the Commission’s role is too prescriptive. Although we welcome the Welsh Government’s proposal to legislate responsibilities for quality enhancement, we believe that this should sit with an arms-length quality assurance body. It is also unclear as to the statutory basis for the Commission’s involvement in quality enhancement and, although there could be a coordinating role for the Commission in this area, we do not believe that it should be taking on this work in-house for all the reasons outlined in previous questions.

48 Question 48:

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

48.1 The proposed Commission is a body responsible for the funding and regulation of PCET learning providers, in the learner interest. We do not believe the Commission can or should undertake workforce development itself.

48.2 In regard to higher education, universities make a sizeable contribution to the apprenticeship levy. A positive step forward would be if a suitable mechanism was identified that meant this contribution to the levy could be reflected in training provision made available to staff in higher education.

Sixth forms

49 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?

49.1 No comment

50 Question 50:

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

50.1 No comment

51 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?

51.1 No comment

52 Question 52:

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

52.1 No comment

Supporting and developing apprenticeships in Wales

53 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?

53.1 The ongoing development of degree apprenticeships in Wales, and the challenges encountered through this process, has highlighted the potential benefits that could be gained by the Commission have an overarching role in this way. Similarly, if the Commission is to deliver effectively of the post-compulsory sector then it is difficult to see how the apprenticeship role outlined in the consultation could be delivered by another organisation.

53.2 In terms of the power to issue the proposed 'Apprenticeship Pathways', we would tentatively agree that the Commission should have this power. However, it is important that employers and providers are empowered to develop Apprenticeship Pathways as needed. This is stated in paragraph 260 but does not seem to align with paragraphs 249 and 257 which talk of the Apprenticeship Advisory Board advising the commission on which pathways are needed and how the Commission will have the option to *either* commission the development pathways or contract its power to other bodies, respectively.

53.3 It appears that there may be some confusion in the document over what is intended to be the initial development of new apprenticeship pathways (outlined

in the three phases) and what would be ongoing arrangements for the development and review of apprenticeship pathways.

53.4 From a higher education perspective, the most important thing is that universities and others, including employers, are empowered to respond to identified skills need. The Welsh workforce is predicted to go through significant changes in the coming decades as a result of automation and it will be imperative for Wales' economic prosperity that Welsh universities are empowered to respond to Wales' changing skills needs. Existing arrangements do not enable providers or employers to be responsive to need.

53.5 Finally, paragraph 248 describes how 'phase one will identify the need for apprenticeships to be set up in response to industry demand'. **We have some concerns that this approach is present-facing, rather than future-facing.** Given the expected pace of workplace change in Wales and the lead-in time required to develop new programmes., the development of pathways must be able to be very responsive to future demand.

54 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?

54.1 There is a simplicity to funding arrangements in Wales now absent in England where a digital voucher system has been implemented. That said, following the introduction of the Levy there has been a shift in employer expectation and perception around value for money which may make it worthwhile to expand opportunities for employers to access new forms of apprenticeship provision such as degree apprenticeships and to identify ways to make the funding of apprenticeships 'visible' to employers.

54.2 Due to the widespread availability of degree apprenticeships in England in the past three years there is an increasing perception among employers that Wales is not as 'responsive' to demand at this level. **However, this is something that should be addressed in the short term whereas the proposals included in this consultation are, by their nature, longer term with implementation a number of years away.**

54.3 We are not convinced of the need to 'rebrand' frameworks as pathways. Similarly, the use of the word 'pathway' has the potential to cause confusion given its usage across the PCET sector, for example such as 'learning pathways'.

55 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?

55.1 We have concerns over the level of control that the Welsh Government would be able to exercise over the commission in the new proposals. Paragraph 255 states that should the Commission fail to fulfil the requirements of the WAS, that Welsh Ministers will have the power to direct them to comply. However, the requirements of the WAS are far-reaching.

55.2 For example, it is proposed that the WAS outline which pathways should be developed and which sectors of the economy apprenticeship pathways should be issued to. This would provide Welsh Government with the ability to greatly constrain the Commission's effectiveness and responsiveness. This is particularly notable given that the proposed structures intended to inform decision making on priorities sectors and pathway development – such as the WESB and the WAAB – would be within the Commission not Welsh Government. This raises questions over the appropriateness of the Welsh Government determining what pathways or sectors the Commission chooses to support. Ultimately, this is a level of control inappropriate for an arms-length body and would undermine the Commission's ability to respond to identified skills needs in Wales.

56 Question 56:

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

56.1 The reformed apprenticeship system must ensure responsiveness and allow employers and providers to respond to need, including where demand exists for degree apprenticeships. There seems to be a lack of clarity in the proposals where the responsibility for pathway development sits as the figure has employer evidence feeding both informally into Welsh Government and formally into the Commission via committee structures.

56.2 We welcome the suggestion in 269 that learning providers delivering degree apprenticeships will be regulated under the same structures as higher education more broadly. Given the nature of higher education, and how higher education qualifications are awarded, this seems a sensible approach.

Research and Innovation

57 Question 57:

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

57.1 We agree with some of the general proposals – particularly that Research and Innovation Wales should be established as a statutory Committee within the Commission - but we agree with very little of the detailed construction of RIW. Whilst this is partly due to the inconsistencies and lack of clarity throughout this section of the consultation, of most concern is that the proposed level of detail and apparent increase in Welsh Government control is not consistent with what is intended to be an arms-length body. These concerns are expanded upon further below.

57.2 We agree that RIW 'should form an integral part of the new Commission' and that it should have 'sufficient autonomy and freedom to operate'. However, the proposed construction would not achieve this sufficient autonomy and freedom:

57.2.1 The proposed make-up of the RIW committee in paragraph 291 would see only one, or a maximum of two, HE representatives on a panel of up to nine. This is highly disproportionate to the contribution of HE to the research and innovation space proposed within RIW's apparent scope. The specific make-

up of the RIW committee should be left to the Commission to determine. This will allow it the flexibility to respond to future changes.

- 57.2.2 The amount and level of proposed approval that would need to be sought from Welsh Government for RIW funding decisions would not allow RIW to operate with the intended ‘autonomy and freedom’ to achieve strategic outcomes.
- 57.2.3 Paragraph 312 states that RIW ‘would not be expected to engage directly with the UK Government unless specific permission was to be granted by the Welsh Government’ This would be an unnecessary restriction on ‘freedom and autonomy’ without a given reason for why it has been included. We understand HEFCW already engages constructively with the department for Business, Enterprise and Industrial Strategy (BEIS) and do not see a benefit to research and innovation in Wales from adding additional restrictions to relationships.
- 57.3 In general, the Research & Innovation section of the technical consultation lacks clarity on what the proposals around the detailed construction of RIW within the Commission are aiming to achieve and why it will benefit research and innovation, the post-compulsory education and training (PCET) sector and Wales as a whole. We agree that the PCET sector should be trying to ‘foster a system which is able to respond to the long-term needs of Wales’ (paragraph 275) and ‘meet Wales’ major economic, industrial, social, well-being and environmental challenges over the coming decades’ (paragraph 274), however it is not clear why or how the proposed reforms would enable these aims to happen.
- 57.4 Furthermore, and of most concern, there are areas where the proposed reforms would hinder the PCET sector in delivering. In particular:
- 57.5 **QR Funding**
- 57.5.1 We welcome the commitment to protecting QR funding in line with the recommendations given in the Diamond Review and developed further by the Reid Review as detailed in paragraph 315.
- 57.5.2 Both the Diamond and Reid Reviews included recommendations on QR funding because of the recognised value it has as part of the dual support system. The QR funding stream is ‘core’ funding from Welsh Government and distributed by HEFCW. It is unencumbered funding that is granted on the basis of research excellence, rather than to fund a particular named research project. It funds basic research infrastructure and investment, including the salary costs of permanent high-quality academic researchers, support staff, equipment, facilities and libraries. **QR-funding provides the foundations on which the competitive, project-based funding streams from other sources depend.**
- 57.5.3 We fully support Prof Reid’s Review which states “The Welsh Government’s decision, following Sir Ian Diamond’s review, to protect QR funding levels over the next few years will provide underlying support for the Welsh research base. But more recent decisions by the UK government may well bring an increase in QR funding for English universities, leaving Wales at a disadvantage yet again unless it keeps pace with English QR.”

- 57.5.4 Therefore, we do not agree with any proposed reforms that would decrease the level of QR for universities. There are several instances where this is implied, although it is not completely clear in the consultation.
- 57.5.5 Paragraph 281 states RIW's scope would include 'management of unhypothecated QR funding for research and innovation funding in the HE, FE, public and local authorities, NHS and Research and Technology Organisation (RTO) sectors and industry'. This appears to suggest that the amount of QR funding recommended by Diamond and Reid will be opened up to other bodies. Whilst this would not be as much of a concern if this increased scope of QR funded bodies was accompanied by an increased QR budget, it is crucial that the principle of Professor Reid's recommendation is adhered to – QR funding for Welsh universities must keep pace with its competitors elsewhere.
- 57.5.6 Paragraph 316 states that 'the balance between curiosity-driven research funding and challenge-led research and innovation funding would be subject to review by RIW in line with Welsh Government priorities, strategic intent and available budgets.' It should be noted that the document frequently interchanges 'unhypothecated QR funding' as 'curiosity-driven research funding'. This is inaccurate as unhypothecated QR funding supports much more than curiosity-driven research. The Reid Review describes the activities covered by QR funding of which 'curiosity driven research' is just one. Any reduction in the levels of QR funding proposed for universities by the Diamond and Reid Reviews would have a negative impact on the capabilities of the Welsh research base to carry out challenge-led research and innovation, as well as curiosity-driven research.
- 57.5.7 Paragraph 315 states that some of the mechanisms by which QR funding is apportioned may be subject to change with other factors brought into the distribution mechanism such as an incentive and reward system. We do not agree with any changes to the mechanism by which QR funding is distributed. QR funding is allocated by **all UK funding councils** on the basis of the outcomes of a UK-wide research assessment exercises. To deviate from this UK-wide system could harm Wales' international reputation for research excellence and seriously affect Welsh universities' ability to recruit and retain researchers, placing Wales' research base at a competitive disadvantage to the rest of the UK.
- 57.6 **Accessing UKRI and other external funds**
- 57.6.1 We agree with the proposal that additional funding incentives (in addition to QR) should be offered based on the amount of funding leveraged from other, non-Welsh Government sources of funding, e.g. UKRI. This aligns with the Reid Review recommendation for a the 'Future of Wales Fund'¹. However, paragraph 295 states that these organisations may be required align parts of their research and innovation activities with relevant educational courses,

¹ **Reid Review Recommendation 2:** Once QR funding levels reach the level proposed by Diamond, I recommend the creation of a new funding stream, the Future of Wales Fund, which should be allocated to universities in direct proportion to the amount of additional funding they secure in competitions outside Wales.

skills and training development, possibly delivered in collaboration with other providers.

57.6.2 We do not agree that further requirements should be placed on this funding, as is proposed in paragraph 295. Additional funding should act as an incentive not a disincentive to increase the return to Wales of universities' research activities.

57.6.3 The consultation includes the specific remit of “‘Support’ funding to Industrial Strategy Challenge Fund and Global Challenges Research Fund (ISCF and GCRF) and Sector Deals”. Given the purpose of this consultation is to inform primary legislation, it is inappropriate for specific external funds to be referenced. Furthermore, we anticipate it will be several years before the proposed reforms are in place and so these specific funds may be obsolete. As covered above, we support the ambition and associated “support” funding to match contributions towards industry-led activities, but this requires a Commission that can be flexible and agile to respond to future opportunities. We also strongly support the Reid Review’s observation that this support funding is needed now. While structures that will provide “support” funding to future opportunities should be built into the PCET reforms, the match funding for Industrial Strategy Challenge Fund and Global Challenges Research Fund (ISCF and GCRF) and Sector Deals should be dealt with quickly and separately to ensure it is delivered at the point that it will be most effective for Wales.

58 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.

58.1 We strongly agree that core research and innovation funding to universities i.e. QR and HEIF should be in RIW’s scope. However, the consultation is not completely clear on what will be in scope. In some cases there are inconsistencies e.g. NHS funding in scope but Healthcare Research Wales out of scope.

58.2 Furthermore, there are inconsistencies on innovation funding and its recipients being in scope.

58.3 We fully support the Reid Review recommendation that “Welsh Government increases the visibility, coherence and impact of research and innovation in Wales by creating a single overarching brand for its innovation activities”. However, we would advise that careful consideration needs to be given to how this is best achieved. Universities work in collaboration with an enormous multitude of public and private organisations of different sizes and around the world on innovation activities. For all these organisations to be in scope would be very burdensome and would require a high level of resource within RIW.

58.4 Regardless of whether all the organisations listed are in or out of scope, the best way of achieving the Reid Review’s recommendation is by having a RIW

Committee that is given the autonomy and flexibility to work with all innovation partners as required and as part of an overarching strategy.

- 58.5 The summary of the responses to the White Paper consultation says there was concern among responses that *“the major research strengths of HE would be diluted by the inclusion of other players eligible for funding”* (para 271). This was also a concern in Universities Wales’ White Paper consultation response, but it has not been addressed in the technical consultation as there is a long list of organisations that it is propose will be funded e.g. para 281. Furthermore, in para 300 the main recipients of potential funding are listed but it is not clear which ‘modes’ of funding i.e. unhypothecated or hypothecated, this applies to.
- 58.6 As outlined in our response to question 57, we have concerns regarding the effect of a wide funding scope on QR funding. Both the Diamond and Reid reviews recommended QR funding because of the recognised value it has as part of the dual support system. QR funding is ‘core’ unhypothecated funding that is granted on the basis of research excellence. It funds basic research infrastructure and investment, providing the foundations which enable universities to secure competitive, project-based funding streams. In his review, Professor Reid states that Wales will be at a disadvantage if QR funding in Wales does not keep pace with increased QR funding for English universities.
- 58.7 We do not agree with any proposed reforms that would decrease the level of QR for universities. There is a suggestion that there will be a greatly increased scope for QR funded bodies. It is crucial that the principle of Professor Reid’s review is maintained – that QR funding for Welsh universities must keep pace with that of English universities.
- 58.8 Similarly, the consultation document suggest changes to the mechanism through which QR funding is distributed. We do not agree with any changes to this mechanism. QR funding is allocated by all UK funding councils on the basis of the outcomes of UK-wide research assessment exercises. To deviate from this UK-wide system would seriously affect Welsh universities’ ability to recruit and retain researchers and put Wales’ research base at a competitive disadvantage to the rest of the UK.
- 58.9 In addition to this, the scope for the funding modes described in para 293 - 299 is also of concern. For example, in para 295 on the scope for funding mode 1 it is not clear which organisations are in scope for unhypothecated funding or the additional incentives and which organisations are in scope for the additional restrictions around aligning R&I activities with activities ‘in response to national priorities and major opportunities’. We recommend that the design of funding mode 1 is based on the recommendations of the Reid Review in order to ensure Welsh universities have the foundations and freedom to deliver for Wales.
- 58.10 The introduction of the R&I section of the consultation refers to Welsh Government’s Prosperity for all and Economic Action Plan calling for all Welsh Government research funding to be bought into one place (para 271). However, para 280 in the consultation states *“RIW should be able to pursue and fund any eventuality across all activities listed in both groups below and **not on an exclusive basis**. It is intended to allow either the Welsh Government to fund all*

R&I activities (as listed in both the groups below) and to allow RIW to do the same, or any combination of both, without prejudice to either.” This is another example of a lack of clarity and purpose for RIW and why it will benefit R&I in Wales.

58.11 We agree that RIW should have flexibility, but, as a statutory Committee within an arms-length body, RIW and the Commission should be the decision makers on much of the detail that has been proposed in the consultation.

59 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.

59.1 No. The proposed relationships do not reflect the formation of an arms-length body. We have provided examples of this in our response to question 57 and can be summarised as below.

59.2 Disproportionate representation in the proposed governance arrangements:

59.2.1 Para 291: The proposed make-up of the RIW Committee would see only one, or a maximum of two, HE representatives on a panel of up to nine. This is highly disproportionate to the contribution of HE to the R&I space proposed within RIW's apparent scope. The specific make-up of the RIW Committee should be left to the Commission to determine. This will also allow it the flexibility to respond to future changes in strategy, scope etc. of the Committee.

59.3 High level of approval required from Welsh Government on funding:

59.3.1 Para 287: the amount and level of proposed approval that would need to be sought from the Welsh Government for RIW funding decisions would not allow RIW to operate with the intended 'autonomy and freedom' in order to achieve strategic outcomes.

59.3.2 *Para 312: "RIW would not be expected to engage directly with the UK Government unless specific permission was to be granted by the Welsh Government."* This appears to be an unnecessary restriction on 'freedom and autonomy' without a given reason for why it has been included. We understand HEFCW engage constructively with the department for Business Enterprise and Industrial Strategy (BEIS) and do not see a benefit to research and innovation in Wales from adding additional restrictions to relationships such as this.

Financial and Governance Assurance

60 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?

- 60.1 No not at this stage. We agree that the Commission should have appropriate powers to enable it to fulfil functions in these areas. However, the consultation indicates that the current powers will not be transferred but does not set out what those express statutory powers would be. The proposed powers must be clearly identified and discussed in detail before we could support them.
- 60.2 We support the intention to review the consistency of arrangements for different PCET sectors, particularly where this relates to the same types and level of activity. However, it is unclear how these would work together and improve consistency at this stage. For universities it is crucial that they are able to operate as autonomous institutions.
- 60.3 Although greater consistency is possible and, in some cases, desirable, a one-size fits all approach to all sectors would not be workable. The specific legal and constitutional arrangements, and market and operating environments, for each need to be taken into account. The arrangements must respect university autonomy and recognise the global market place within which universities operate.
- 60.4 In particular, we note that the new arrangements are intended to introduce governance assurance for HE. This was avoided in the case of HE (Wales) Act 2015, we understand, due to concerns that this could conflict with institutional autonomy including e.g. charity law requirements.
- 60.5 The system needs to be genuinely based on assurance principles (which do not raise significant legal challenges for universities) and not management principles (which do). Previous experience has shown a tendency in practice for the principles of assurance and management to become blurred, and without well drafted legislation there is a natural temptation to seek to determine matters for an institution.
- 60.6 An assurance system would focus on ensuring that robust systems and arrangements are put into in place and adhered to but would leave the institution free to determine what those systems are, how they operate, even if that may mean the Commission or Welsh Government do not always agree with the institution's decisions. Good governance arrangements should always be sufficient to prevent unreasonable decisions being made, however, and provide redress where they are not. Importantly, the checks and balances currently in place for HE must not be eroded.

61 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?

- 61.1 Yes, we agree with Option 2 in principle. All PCET providers should be subject to similar assurance principles, but the Commission should be able to apply different requirements which appropriately reflect the differences in the nature of provision and providers.
- 61.2 Option 1, making all providers subject to the same requirements, would be a fundamentally wrong approach in principle and in practice would be impossible. A one-size fits all approach to all sectors would not work. For instance, the specific committee requirements currently required in HE may not be feasible for many providers (including single persons) or would conflict with constitutional arrangements beyond the Commission's control (e.g. for providers based outside Wales applying for specific designation). The specific legislative, market and operating environment for each needs to be taken into account. In particular, the arrangements must respect university autonomy, and recognise the global market place and wider economy within which universities operate.
- 61.3 We would expect regulation to be proportionate to the relative risks for students and the public purse, and appropriate for dealing with those risks. In our view a set of core requirements that protect the interests of students, and the use of public funding and student finance should apply to all providers.
- 61.4 There is a case for improving consistency of requirements for different providers for activities of the same kind and level. However, robust arrangements are already in place for universities and it is important for the international reputation of the sector that these are not seen to be diminished. There is a very real risk that in pursuit of improvement, we lose the foundations of a successful higher education system which is critically important for Wales.

62 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?

- 62.1 Yes, we agree that the proposed approach (a hybrid of Option 2 and 3) would be the best option to explore further.
- 62.2 We would, however, like to see the principles of assurance enshrined more clearly. This is explored further in our response to question 60.

63 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?

- 63.1 In general, it is essential that the Commission has as much as flexibility as possible to operate according to need and circumstance. However, the

Commission must act within clearly defined parameters that include appropriate checks and balances.

- 63.2 The issue in practice is drawing that balance. For this, the precise content and drafting of the framework is essential. We are concerned that this has not been developed in further detail at this stage, as it would be inappropriate to leave full discussion of this to the legislative process.
- 63.3 Our experience of the HE (Wales) Act, for instance, was that it was overly prescriptive on process and procedures, but underly prescriptive on the content and scope of the financial assurance arrangements. An issue we raised at the time for instance was that the arrangements include a number of specified matters but are not limited to them – in theory they could still cover almost anything.
- 63.4 Getting the balance right between which matters should be left to the Commission and what should be laid out in legislation will require careful consideration and discussions with stakeholders. It is essential that we are not provided with a framework Bill which leaves important matters to be worked out later through subordinate legislation or guidance. This would be a recipe for inconsistency and unintended consequences.

64 Question 64:

Do you agree that:

a) the Commission should be placed under a duty to consult with PCET providers and any other persons it considers appropriate in the development of its financial and governance assurance arrangements?

b) the Welsh Ministers should be able to issue guidance to the Commission with regard to financial and governance arrangements and that the Commission be required to take such guidance into account?

c) the above requirements would provide sufficient safeguard in respect of the scope and reach of the Commission's financial and governance assurance arrangements? Are there any other safeguards you consider to be necessary?

- 64.1 A) Yes, we agree that the Commission should be under a duty to consult appropriately before developing or proposing changes to the financial and governance assurance framework. This should include providers and any other persons it considers appropriate – which for instance should in most instances also include students and the Welsh Government.
- 64.2 B) Yes, but we need to be clear about the nature of such guidance, and we do not agree that the proposed process for developing and amending the financial and governance assurance framework is appropriate (see next).
- 64.3 C) No. We do not believe that the proposed approach will provide sufficient checks and balances. The proposals are represented as largely a continuation of current practice in HE (which we in general support) but removing the formal process for approving changes to the Financial Management Code which involves both the Welsh Government and the National Assembly for Wales. We agree that the current process for approval is overly prescriptive and cumbersome, and that the Commission would benefit from greater flexibility to determine both the procedures and detail of the Code. However, the broad

parameters set out in the HE(W)A 2015 were insufficient to provide the necessary checks and balances and assurance required, given the new regulatory powers of the HEFCW. In short, the Financial Management Code operates as quasi-legislation, and breach of its terms can lead to very significant consequences for providers. We view the opportunity for the National Assembly to scrutinise the Code in this context to have been crucially important. It is essential that we get clearly defined and sufficiently detailed legislative parameters in place on the key issues of substance before this process is relaxed. There is insufficient detail at this stage to be confident that this can be done.

65 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?

65.1 Yes. The Welsh Government rightly highlights the issues that these intervention and regulatory powers raise regarding institutional and academic autonomy. We are pleased to see that it is the intention to take these into account. However, we would need to see the detail of the proposals to ensure that does in fact do so.

65.2 Getting this right was a considerable challenge for the Higher Education (Wales) Act, and, in our view, the resulting powers for higher education are still excessive. The powers need to be appropriate and proportionate. Getting this right for all sectors and types of PCET provision in a single Bill, replacing current arrangements, will be a considerable risk and challenge.

66 Question 66:

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

66.1 Yes, this is essential to make the system work. However, we have several concerns.

66.2 It is proposed that the Commission will have responsibility for FE and PCET, but seemingly not all of the powers of intervention. There is a lack of clarity around what powers Welsh Ministers will retain in relation to other PCET sectors including FE and schools, although that is primarily a matter for those sectors to comment on. It is not immediately clear to us that the powers of the Commission will reflect its responsibilities, and there is a clear danger that this could have a knock-on impact for exercise of its functions in relation HE.

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?

67.1 This is primarily a matter for the FE sector to comment on. However, it is not immediately clear to us that the powers of the Commission will reflect its responsibilities, and there is a clear danger that this could have a knock-on impact for exercise of its functions in relation HE.

68 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?

- 68.1 We agree that arrangements for HE should remain unchanged at this stage, and the principal regulator remain the Charity Commission.
- 68.2 The protection of institutions' charity status will need to be strengthened in the drafting stage to ensure that it provides protection at least similar to the current duty applying to HEFCW. The current proposals only include a duty for the Commission to 'have regard' to the charitable status of institutions whereas HE(W)A 2015 ensures that HEFCW is not able to require the governing body of an institution to do anything that is incompatible with its charitable status or duties.
- 68.3 The separate role of the Charity Commission is an important part of the current checks and balances designed to ensure regulatory powers are exercised appropriately. Making the Commission the principal regulator would remove the Charity Commission's power to make its own inquiries regarding institutions. In practice the Commission would be judge and jury on whether it has complied with its own obligations. It is vitally important that the regulatory roles of the Charity Commission and the proposed Commission remain separate to prevent this.

HE Governance

69 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?

- 69.1 Yes, except for introducing the public interest requirement. We agree with the views expressed unanimously by members of the HE focus group, that current arrangements for changing the governing documents and the role of the Privy Council should not be fundamentally changed at this stage.
- 69.2 The role of the Privy Council is currently regarded as positive and arrangements are seen by stakeholders to work well. There is no overriding need for change in Wales, despite the changes in England.
- 69.3 There are however significant reputational risks involved in replacing the role of the Privy Council and potential consequences for academic and institutional autonomy. There is good reason to wait until the main PCET reforms including the remit and structure of the Commission are determined and settled, and the consequences of change in England are clearer, before reviewing the role of the Privy Council in relation to Wales.

70 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?

- 70.1 No, we agree with the views expressed unanimously in the consultation event, that arrangements for amending governing documents should not be changed at this stage. See also the concerns we raised in question 8.
- 70.2 In principle, there is merit in further investigating the approach outlined by the Law Commission at a later stage and that the Welsh Government's list of matters considered to be in the public interest is a good starting point. The intention of the Law Commission was to simplify matters and to avoid unnecessary regulation of minor changes which we welcome.
- 70.3 However, the clear evidence from the members of the consultation focus group was that, without significant further work, the proposed approach would not simplify matters and could instead raise a range of other issues. The consideration of whether an amendment fitted the list of matters in the public interest could potentially add an extra stage to the process, rather than simplifying it. There was also general agreement that the matters on the list would need to be defined more carefully and require careful guidance provided, but there were concerns about the nature and operation of that guidance.
- 70.4 Discussions also clearly revealed uncertainty about how the list was to be used and that a more careful distinction would need to be drawn between using the list of matters of public interest simply to identify matters which need not be considered by the Privy Council (i.e. as a filter) and using the list as the basis for approval them (i.e. as approval criteria). The latter use, effectively introducing new approval criteria would need much greater consideration.
- 70.5 The evidence from the focus group members was that the proposed changes were not a priority at this stage and unlikely to significantly impact on universities – since all matters likely to involve change would involve matters listed as public interest in any case, and changes are sought infrequently.
- 70.6 There is, however, significant risk that seeking to deal with this alongside the other proposals will result in poor legislation and prevent more pressing consultation issues being given due consideration. We do not think universities or other providers will have the necessary time to consider this at an appropriate level. It would be better to uncouple this project and consider it separately at a later date to enable universities and other stakeholders to concentrate on the main PCET Reforms.

71 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?

- 71.1 No, the existing statutory requirements for HEC's governing documents and the role of the Privy Council should not be changed at the moment for the reasons discussed in Questions 69 and 70 above.
- 71.2 We are unclear what the Welsh Government means by 'extending the approach' to all HEIs.

71.3 However, we agree in principle that we could review arrangements at a later stage to align and increase consistency in governance arrangements for all higher education institutions, and to remove fundamental differences between HECs and those with Royal Charter or other incorporation.

72 Question 72:

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

- 72.1 Yes, we agree in principle that the Commission could have a useful advisory role, but it is not fully clear what role is actually proposed. We would not support a more formal role for the Commission without there being much clearer specific proposals outlined.
- 72.2 The proposed new process appears to not require changes to the legislative basis for amending the governing documents through the Privy Council. Current legislation requires the Privy Council to consult with the HEC before approving any changes only. The Privy Council, however, chooses to seek advice from the First Minister as lead Privy Counsellor for higher education in Wales, before making its decision.
- 72.3 The Commission could potentially have a useful role in advising the First Minister, given its expertise, experience and knowledge of the institutions and sector. However, it is not clear whether formalised or specific legislative provisions would be required to enable this.
- 72.4 The Commission's role should remain a support role. We would not support revisions to the process which effectively result in decisions being taken away from the hands of the Privy Council and vested in the Welsh Government and/or Commission instead. The provisions of the 1992 Act were set up to ensure that changes to governing documents were independently considered by the Privy Council, and not approved directly by the Secretary of State or Welsh Ministers – and the independent process continues to be extremely important.
- 72.5 Although we do not think it is intended, the Welsh Government would need to address concerns that revisions to the process may empower the Commission or Welsh Government to control the governance arrangements of an institution more closely. We note that Welsh Government currently base their approval on the public interest criteria only. The new proposal seeks to extend this to include consideration of principles of good governance. Although this sounds sensible in principle, we would need much greater clarity and consultation on exactly how these are to be used, and what would constitute good governance for these purposes. This should be consistent with the principle that it is for the institution itself to determine its governance.

73 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?**

- 73.1 a) No, we do not think the process for revising documents should be changed at this stage. We appreciate that the Law Commission's recommendation is intended to provide definitive formal guidance on matters deemed to be in the public interest that will enable HECs to identify when approval is required by the Privy Council.
- 73.2 However, if this is reviewed in the future, there needs to be much greater clarity about the nature of any such guidance, and how it is to be used, to avoid concerns that it may provide opportunities for greater control of institutional governance arrangements rather than deregulation as intended by the Law Commission.
- 73.3 b) Yes, but not at this stage. In principle we are not against the Commission leading on the work to explore the merits and workability of approach outlined in the consultation, but in practice we believe that more time and consideration needs to be given to it than will be possible in the context of current PCET consultation. This project needs to be deferred to a later date.
- 73.4 c) No, the process should not be changed at this stage and further work in this area deferred to a later date for the reasons cited above. In particular, there needs to be much greater clarity about the nature of any such guidance, and how it is to be used, to avoid concerns that it may provide opportunities for greater control of institutional governance arrangements rather than deregulation as intended by the Law Commission.

74 Question 74:

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

- 74.1 No, not at this stage. To operate as intended will require significant further work. The process should not be changed at this time and any further work in this area should be deferred to a later date for the reasons identified above.

75 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.

- 75.1 We welcome the plans to change this power and in line with our previous submissions on this issue, we strongly support the removal of the powers to dissolve HECs against their will. The same power in relation to FE colleges led to them being reclassified to central government by the ONS, and there continues to be a real risk that it will contribute to reassessment of the national accounting classification of HECs in Wales, which would have major implications for both the government and the HECs.
- 75.2 The Higher Education and Research Act 2017 addressed this problem for HECs in England. Previous legislation in Wales has already addressed the problem for FE. There are no equivalent powers to dissolve higher education institutions incorporated by Royal Charter or other means. **HECs in Wales should be placed on the same footing other as other universities in Wales and England to avoid potential reclassification as soon as possible.**
- 75.3 The proposals, though welcome, do not go far enough. The current legislation requires the Welsh Ministers to consult with the HEC in question and HEFCW before exercising powers to dissolve. The power to dissolve against the

institutions will need to be removed altogether. However, we support an equivalent role for the Commission in **advising** on the exercise of any powers.

76 Question 76:

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

- 76.1 Option 3 is the most appropriate, although alternative drafting variants to the same effect could also be considered. The key provision of option 3 is that a HEC cannot be dissolved against its will.
- 76.2 In line with our previous submissions and the majority view expressed at the HE governance Focus Group there is a pressing need to make changes that will enable HECs to avoid reclassification by the OfS. This rules out the status quo (Option 1). The power should be changed as soon as possible.
- 76.3 In weighing up options 2 to 4, we should be clear that all these options retain the power to dissolve HECs with their consent. This enables the Welsh Ministers, for instance, to facilitate mergers within the sector. The key issue is whether the power should (or could) ever be exercisable against the HECs will.
- 76.4 Option 2 and 4 are similar. Option 2 currently gives FECs the power to dissolve themselves but the Welsh Government retains the power to direct the FEC to dissolve itself if it considers the FEC to be mis-managed or otherwise failing. Option 4 also seeks to retain the power to dissolve a HEC (or direct the HEC to dissolve itself) as a sanction of last resort, including for institutional failures and mismanagement. The further circumstances under which this power could be used are not fully identified but would include insolvency or irrevocable reputational damage.
- 76.5 These options are an improvement on the status quo. Option 2 sufficed to avoid the reclassification of FE colleges in Wales by ONS and both Option 2 and Option 4 would be likely to help avoid ONS reclassification of HECs in Wales. However, there needs to be caution against the assuming that it will fully solve the national accounting classification issue for HECs, since ONS classification depends on assessment of all factors in the particular circumstances. It should also be understood that, if the power was ever actually exercised, it would mean that the HEC in question would be reclassified as central government, potentially retrospectively (as was the case for FECs when reclassified as central government), with all the serious consequences for government and the rest of the sector that that may entail.
- 76.6 Options 2 and 4 also do not remove more fundamental objections to the exercise of the power. There is a question whether it could ever be exercisable under current human rights law which would normally prevent a government from dissolving an organisation and transferring its assets. It is fundamentally wrong to treat HECs as different in this respect from other universities – and we note that the legislation states that an institution with university title should be treated as universities for all purposes. The exercise of the power to dissolve a HEC against its will could also conflict with charity law, which requires that charities are independent from government.
- 76.7 It is wholly inappropriate in principle, to exercise additional powers in respect of HECs only. Consistent regulatory principles need to apply across the university sector.
- 76.8 We struggle to see any context in which these powers would be genuinely helpful or necessary. In all instances identified so far it appears that there are

preferable alternatives to explore, and we do not support the retention of back-stop power for a select number of institutions only without a clear basis for doing so.

76.9 It is hard to see how a power to dissolve an institution would best protect the interests of students in insolvency. Instead the focus should be on ensuring that student protection measures are in place. Current insolvency laws which apply to other universities better address this issue and allow for a range of intervention in the interests of stakeholders (these were extended recently in England in relation to FE but this was not felt necessary in relation to HE, despite removing the Secretary of State's power to dissolve HECs). Similarly, it should be remembered that universities are subject to charity law, and the Charity Commission has a duty to intervene in cases of mismanagement. If the Commission has similar powers to HECFCW it would also have significant powers to withdraw or withhold funding, and remove eligibility for student support etc.

76.10 In our view Option 3 is the only option that avoids the problems above. If the Welsh Government is seeking to draft a variant based on this, it would be possible to incorporate the key principle of the HERA 2017 (that an institution should never be dissolved against its will) within a provision that is otherwise consistent with Option 2 and allows greater consistency between the provisions for FE and HE.

77 Question 77:

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

77.1 Dissolution powers must be exercised only at the instigation or with the consent of the HEC. They should never be exercised to dissolve a HEC against its will: see our response to Question 76.

78 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?

78.1 Dissolution powers must be exercised only at the instigation or with the consent of the HEC. They should never be exercised to dissolve a HEC against its will: see our response to Question 76.

79 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?

79.1 Yes. The consensus at the Welsh Government stakeholder workshop was that in reality there would be limited applications for DAPs or UT so there seems to be nothing gained from changing an already established and working process. WG officials have the longstanding relationships with the Privy Council Office and there is no good reason that we can see to require the Commission to build new relationships and establish a new process.

80 Question 80:

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

- 80.1 No. See response to question 79, WG officials have longstanding relationships with the Privy Council Office there is no good reason that we can see to require the Commission to build new relationships and establish a new process.
- 80.2 It is worth noting that Wales should be cautious in seeking to follow the changes made in England which has chosen to depart from successful UK arrangements. In particular, we are concerned to ensure that student interests are central to any new PCET approach we may take. A number of the provisions in England, such as the probationary use of degree awarding powers, and arrangements for fast-tracking new providers as hinted at in paragraph 423, appear to pursue liberalisation of the market for providers at the expense of appropriate levels of protection for the student and should be guarded against in Wales.

81 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?

- 81.1 There is very little clarity on what is intended by this proposal in paragraph 424.
- 81.2 In principle, the Commission considering existing arrangements for the delivery of HE in FE is sensible but what follows could present challenges. For example, if the Commission were to require providers to operate or collaborate in a particular way this could present a challenge to institutional autonomy or may have consequences under competition law.

Supporting the Welsh Language

82 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?

- 82.1 Yes - There are a number of issues that the Commission will deal with that will have a direct impact on the higher education sectors' ability to further develop bilingual study and contribute to the government's goal of a million Welsh speakers. We believe that having a clear remit will allow the Commission to take a holistic view of these matters as outlined in question 83.

83 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?**

83.1 Yes – See response to question 82. Post compulsory education provides a significant opportunity to support the Welsh Government’s aim of securing one million Welsh speakers by 2050. Having left compulsory education, learners and students should have the opportunity and support to further enhance their Welsh language skills and to develop those skills ready for an increasing number of bilingual workplaces.

83.2 Historically, the reality of the post-compulsory system is one of limited opportunities for bilingual study and patchy Welsh medium support at best. More recently, considerable progress has been made in the higher education sector following the establishment of the Coleg Cymraeg Cenedlaethol. The Coleg working with universities in Wales has secured significant growth in the range of subjects offered significantly through the medium of Welsh and this has been reflected in growing student numbers – particularly in areas such as the social sciences and health sciences.

84 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.

84.1 The establishment of a Commission is an opportunity to build on the existing good work in higher education and to develop a structure that can ensure sustainable growth across the whole post compulsory education in bilingual opportunities and support. In practical terms this requires the new Commission to have a clear remit to support and develop Welsh Medium post compulsory education, as mentioned in response to question 82, and to have robust structures in place to ensure that such a remit is reflected in the core priorities of the Commission. We welcome the Welsh Government’s promotion of the budgetary framework set out in the Diamond review and this should form the basis for close cooperation and collaboration between a Commission and the Coleg Cymraeg Cenedlaethol. However, the key to success would be to ensure that the robust independent structure for the Coleg is appropriately funded.

85 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.

85.1 The Coleg Cymraeg Cenedlaethol has a positive and cooperative relationship with the National Centre for Learning Welsh. It seems sensible that the National Centre is considered as part of the new structure.

Data, Statistics and Research

86 Question 86:

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

86.1 This seems appropriate. Universities already provide extremely detailed information via HESA and UCAS. Section 27 of the Higher Education (Wales) Act 2015 obliges HEFCW to publish a financial code for universities, and this code in turn requires HE providers in Wales to provide information to HEFCW.

86.2 Any changes would also need to acknowledge the UK-wide higher education environment. For example, the Higher Education Statistics Agency delivers data to the higher education funding councils in the UK, which are considered statutory customers. HESA's relationship with funding councils is formalised by a written agreement. Similarly, various agreements between funding or regulatory bodies and universities specify that information requirements are fulfilled through submission of data to HESA.

86.3 Given the robust and extremely detailed information already provided by universities, the key issue in any new arrangements will be that reporting burdens are not unnecessarily increased and that the new arrangements align with wider higher education reporting arrangements.

87 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?

87.1 We agree with this in principle. However, caution should be exercised in how this duty is constructed. For example, the term 'characteristics' suggests that this data would include information about protected characteristics and as such there are potential implications for this under equality legislation.

88 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?

88.1 HE operates in a UK-wide environment and data relating to HE provision is collected on HEFCW's behalf by HESA. As such, any powers relating to data collection must include the option of having an organisation collect data on behalf of the Commission. Similarly, legislation should not be restrictive on how data is collected. For example, HE and FE data should be able to be collected via different systems where appropriate.

Student Finance Issues

89 Question 89:

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

89.1 In meeting the needs of employers and learners, a diverse mix of higher education provision is needed including flexible methods like part-time and distance learning. Accelerated degrees potentially have a place in this mix.

89.2 Several universities in the UK have been offering two-year degrees for a number of years. As such it is important to not rule out new approaches to meeting employer and learner need and Welsh universities report an appetite among individuals and employers for accelerated degrees. As such, increasing the availability of accelerated degrees could play a role in meeting the needs of employers and learners in Wales.

90 Question 90:

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

90.1 The absence of a distinct fee limit does restrict the development and delivery of accelerated degrees in Wales. On an annual basis, an accelerated degree would require more resource than a traditional degree programme. Existing models will often include an additional 'semester' in the summer period. Given this, for an accelerated degree to be viable an institution will need to charge a higher fee, recognising that each year a student on an accelerated degree programme will be completing a greater number of credits than a student on a traditional full-time programme. It is important to recognise that a student on an accelerated programme would, over the entire course of the programme, still be receiving the same amount of teaching and achieving the same number of credits.

91 Question 91:

How might accelerated degrees be defined?

91.1 The consultation document highlights HEFCE's working definition of accelerated degrees, in particular that accelerated degrees deliver the same number of credits as a three-year degree, offer the same number of teaching weeks but do both of these things in a shorter period of time – typically two years for a full-time degree. We would support this definition. Given Welsh higher education operates within the UK-wide higher education infrastructure, it is recommended that any definition adopted aligns with definitions used elsewhere in the UK.

92 Question 92:

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

92.1 The delivery of two year accelerated degrees is potentially costly to universities given the logistical and structural challenges of delivering a three-year programme in a shorter timeframe. For example, providing teaching over the summer period would have scheduling and staffing implications. Similarly, there may be opportunity costs as the summer period is often when an institution's equipment and facilities are maintained or updated and is also used by staff as an opportunity to write new lecture courses or complete grant applications.

92.2 From a student perspective, the implications of the accelerated approach on maintenance support would also need to be considered. The current student maintenance package does not include the summer period in its assessment of how much a student needs to live on. If a student on an accelerated programme was studying in this period, they would potentially need increased annual maintenance support. Although this would still likely present a 'cost saving' on the three-year maintenance package, it would not present a 'one third' saving as a two year programme would suggest.

93 Question 93:

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

- 93.1 A key consideration would be the level of flexibility that could be built into the provision. For example, whether those who were studying on an accelerated degree would be able to lower their intensity to a 'traditional' full-time or part-time course if personal circumstances required it.
- 93.2 In implementing accelerated degrees, Welsh Government may want to consider whether such provision is line with the Bologna Process and whether it meets European Standards and Guidelines.

94 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?

- 94.1 Yes, in principle this makes sense. We would welcome a model which applies core regulatory requirements and powers to all providers receiving student support and or funding.
- 94.2 However, the Commission will need the resources to exercise their duties properly.

95 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?

- 95.1 Yes, but not as currently used. The two categories provided by the current legislative framework under the THEA 1998 provide an adequate basis for regulatory framework.
- 95.2 However, we disagree with the fundamental principles on which the HE (Wales) Act 2015 was based. Regulatory requirements should be determined by the needs of students and all providers should meet the same regulatory requirements. The regulatory requirements should not be based on the financial benefits for providers. **The interest of the student should be driving the decisions.**
- 95.3 The success of the current arrangements is very dependent on funding arrangements despite its attempt to work independently. At the moment all universities in Wales have chosen to become regulated institutions, but it is possible to conceive scenarios under which this would no longer be a sensible decision. With further changes in England, care will need to be taken to ensure the system is flexible enough to cope with future change.
- 95.4 Further consideration also needs to be given to how regulation of specifically designated providers from across the border can operate effectively, and reciprocal arrangements for recognition of providers for purposes of student support.

96 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?

- 96.1 The reason for making charity status a requirement to become a regulated institution under the HE Wales Act 2015, automatically conferring designation for student support, was that the “Welsh Government considers that all providers of HE that benefit from Welsh Government financial subsidy in the form of statutory student loans or grants should be expected to make a contribution to the wider public good.”
- 96.2 All universities in Wales are charities, and the key benefits of this approach is that they are regulated by the Charity Commission in addition to their other statutory duties, and that as not-for-profit institutions any support from public funding is not contributing to shareholder/private profits.
- 96.3 As we commented at the time, however, requiring charitable status may not be the best way of protecting the use of public money, protecting student interests, or ensuring that providers contribute to a wider public good. Charitable status can be derived from a number of charitable purposes, not necessarily relating to higher education, and does not imply a wider contribution to public policy goals.
- 96.4 From a regulatory perspective, we believe that the system needs to focus on the interests of students and provide base regulatory requirements for all providers. Options (a) and (b) are preferable on grounds of consistency, i.e. charity status for all or none, but the latter should only be considered if we are satisfied that regulatory requirements can be fully addressed by the regulatory framework which replaces it. The current proposals need much further developing before we can be confident of that. There are likely to be greater risks for students and stakeholders where institutions are not subject to charity regulation. If eligibility is extended, we would expect equally robust, if not even more robust, measures to be put in place for providers without charitable status.
- 96.5 If it is decided to follow option (b) and not require charitable status of providers, it would still be vitally important that the legislation does not jeopardise the charitable status of those providers which are charities.
- 96.6 From the perspective of public funding, we would expect non-charitable status to be taken into account when assessing the relative benefit and value of any public investment, particularly where this may be at the expense of investment in charitable providers which operate as not-for-profit institutions.

97 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?

- 97.1 Yes. The current provisions under the HE(W)A 2015 need to be reviewed. At present, not all providers are eligible to apply for regulated institution status, even though they may be good candidates for automatic course designation. This potentially includes, for instance, part-time only providers and postgraduate only providers.
- 97.2 We would support a system of registration that ensures all providers meet regulatory requirements. As outlined above, a registration model may be worth exploring.

98 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?

99 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.

100 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.

100.1 Due to the size of this consultation and number of questions, there is a very real danger that the wood will not be seen for the trees.

100.2 In summary:

100.3 Universities Wales remains supportive of the aim of these proposals to improve oversight of the PCET sector. As the proposals currently stand, there are a number of issues that will need to be addressed to provide for a long-term, effective, PCET system that does not compromise the existing effectiveness of providers within the PCET sector.

100.4 The consultation states its desire for the Commission to operate as an arms length body – this is essential. The proposals as stand are too prescriptive, provide too high a level of Welsh Government control, and do not provide for this arms-length approach. This is fundamentally at odds with the progressive system we say we want to achieve.

100.5 Our response focuses on the technical issues raised in the consultation. Currently there is too much detail on areas which should be left to the Commission to decide and yet insufficient detail on important legislative areas such as how the proposed Regulation and Outcome Agreements would operate or the transfer of UK provisions to the Welsh statute book. In our view, these proposals are not ready to proceed to legislative drafting at this stage.

100.6 We believe there are core issues with the proposals as stand. These include:

100.6.1 Concerns over the proposed unwieldy governance structure of the Commission

100.6.2 Concerns over Regulation and Outcome Agreements as the model for

relationship management

- 100.6.3 A lack of clarity on how the Commission will be funded and how the Commission will in turn fund providers
- 100.6.4 The need to avoid a one-size-fits-all approach such as the proposal for a single quality body
- 100.6.5 The lack of an outward-facing approach to the proposals, as demonstrated by the proposed restrictions around Research and Innovation Wales which would hinder the delivery of research and innovation activity in Wales and potentially harm Wales' international reputation for research excellence.
- 100.7 We continue to believe there are genuine benefits to be gained from the delivery of the PCET proposals. This includes the potential for the PCET sector to be more responsive to skills needs by making more straightforward the development and delivery of innovative provision such as degree apprenticeships.
- 100.8 Similarly, a registration model with baseline requirements for all providers could ensure higher education provision in Wales continues to be of a good quality and that there are better protection and representation arrangements for all learners across Wales.
- 100.9 We also believe the proposals offer an opportunity to continue and secure the implementation of the Diamond and Reid Reviews, the recommendations of which provide a path to a progressive higher education offer which brings social and economic benefits to Wales.
- 100.10 At this stage we need the Welsh Government to deliver meaningful stakeholder involvement on official groups that will look at and develop draft legislation to deliver these proposals in an effective, successful way. We believe the core purpose of these proposals needs to be revisited and the proposals amended in response to this core purpose.

Regulatory Impact Assessment

- 100.11 It is essential that the regulatory impact assessment does not focus narrowly on the cost to the Welsh Government budget but must also take into account the wider benefits such as higher education's significant economic and social impact.
- 100.12 Delivering the proposals outlined in the consultation will include a number of significant additional costs. These include:
- 100.12.1 The costs of implementing the additional governance and committee structures as proposed, including the establishment of a large number of statutory committees.
- 100.12.2 The implementation of Regulation and Outcome Agreements will involve very significant additional costs, and there are likely to be much more cost-effective ways of delivering the same outcomes. Extending outcome agreements to cover the full range of HE activities would require significant senior and specialism staff time within universities. However, the most critical implications would be for the Commission which would need to significantly increase staffing levels to have the expertise and skills levels required to

make this work effectively.

100.12.3 Similarly, the proposal for a single quality body would have major cost implications to implement. No single body currently exists that could perform functions across the PCET sectors. It would take major additional resource to invest in/create one. Any damage to the reputation of quality assurance for higher education would have major reputational, financial and operational consequences.

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: