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**Ymateb i Ymgynghoriad / Consultation Response**

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**Background information about Estyn**

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referral units, further education, adult learning in the community, local government education services, work-based learning, learning in the justice sector and teacher education and training.

Estyn may give advice to the Assembly on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

## Response

### Introduction

Overall, Estyn believes that setting up the Commission for Tertiary Education and Research has the potential to improve coherence in post-16 education and training, particularly in terms of the connection between higher and further education, but the policy thinking relating to the 16-19 education and training age range needs greater clarity. We have indicated a few specific areas in our responses below which we think could be further strengthened in relation to the overall provisions in the Bill.

In relation to Estyn's role, we welcome the Draft Bill's proposals that Estyn will retain our statutory powers for education and training at post-16 and we are already working with QAA to develop shared approaches to aspects of quality across areas of further and higher education. We would prefer that the funding for our work came to us centrally as one allocation, rather than partly through the Commission, a Welsh Government sponsored body. However, we would welcome a mechanism also being in place to allow the Commission to directly fund us for specific additional in-year work it may identify in relation to its remit.

We think that the Bill would also be an opportunity to specify statutory powers for Estyn in relation to the inspection of initial and ongoing professional learning for the tertiary education workforce in sectors we inspect, either on the face of the Bill or through accompanying regulations. It would also be helpful to clarify the role that Estyn would play in relationship to degree apprenticeships.

## Consultation questions

### Section A – General Questions

#### Civic Mission

The Draft Bill (Section 7(4)) defines “civic mission” to mean “action for the purpose of promoting or improving the economic, social, environmental or cultural well-being of Wales (including action that may achieve any of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015.”

1. Do you agree the approach taken to civic mission in the Draft Bill will be useful to the Commission in discharging its functions?

✓ Yes

Estyn agrees that the approach taken to civic mission in the Draft Bill will be useful to the Commission in discharging its functions. The emphasis on a wide “civic mission” should help ensure that actions taken across the post-16 sector focus on promoting or improving the economic, social, environmental or cultural wellbeing of

Wales rather than being focused too narrowly on individual factors, interests or agendas. For example, whilst it is important for actions to support the interests of employers by addressing issues of employability and skills, it is also essential for decision makers to consider fully the wider impact of their actions, including any personal, social, environmental and cultural impacts.

It is appropriate that the duty to promote the civic mission by 'institutions' in Wales within the HE and FE sector is included as one of the specific strategic objectives set out in the legislation. As recognised within Section 8.44 of the Explanatory Memorandum, the concept of the civic mission is already familiar to the HE and FE sectors, and is an extension of their obligations under the Well-being of Future Generations Act (Wales) 2015 (National Assembly for Wales, 2015). This means that at least some of the necessary infrastructure and frameworks are already in place. It is also appropriate for the Commission to promote the pursuit of a civic mission by other persons who are funded by the Commission, as stated in 7(3) of the legislation.

We particularly welcome the Commission's expectation that academic institutions reach beyond their classrooms and campuses and work closely with their host communities in promoting knowledge, learning and skills across society.

## **The needs of the learner**

### **Learner Protection**

2. The Commission will need to determine the format and contents of Learner Protection Plans in consultation with stakeholders (Section 114(6) and (7)), including how the plans are to be communicated to learners and prospective learners. Do you agree with this approach?

✓ **Yes**

Estyn agrees with the proposal that the Commission must consult with stakeholders about the format, contents and communication of Learner Protection Plans. It is important that, notwithstanding the different legislation applicable to post-16 learners in school sixth forms, these learners have equitable protection to other learners who are more directly under the Commission's remit. In carrying out their consultation, the Commission will need to give due regard to the wide range of stakeholders who are likely to have an interest in Learner Protection Plans. For example, we suggest that the Commission ensures that the interests of learners in work-based learning providers and adult learners in community-based provision are not overlooked in any consultation.

While the Explanatory Memorandum makes explicit reference to consulting with local authorities, it will also be important for the Commission to take into account the views of school sixth form learners and their parents.

## Learner Engagement Code (Section 117)

3. The Commission's aim will be to ensure that the interests of learners are represented, and every learner has the opportunity to participate and give their views. Are you confident that the Learner Engagement Code is likely to be inclusive of all learners, and sufficiently representative of the whole of the Post-16 sector?

✓ **Neither Yes or No**

The proposals make provision for a transition period to allow the Commission to develop the code. This is sensible. The proposals also recognise appropriately that the code may need to make different provision for different purposes and institutions – one size will not fit all. In order to ensure that the Learner Engagement Code is inclusive, the code will need to recognise and take particular account of the general differences in maturity, independence and communication skills of pre-18 and post-18 learners.

Not all learners in the post-16 sector attend a regular place for education or training. Work-based learners may only occasionally attend a centre for training, or may be enrolled with a sub-contractor of a larger provider. It will be important to ensure that these learners are included. They rarely have 'group representative' figures through whom they can voice their views, and this is a similar situation for adult learners in community-based adult learning partnerships. Whereas for learners in further or higher education, representation via student union and course representatives is common practice.

Learners with additional learning needs, those with communication difficulties and those for whom English is an additional language will also need special consideration. The Commission will also need to pay due regard to learners who study or work wholly or partly through the medium of Welsh, and take into account their needs.

The proposals specify that school sixth forms within local authorities will not be required to adhere to the code, and that it would be helpful for the Commission to consult with them when developing the code in order to share good practice. The rationale for not including sixth forms comments that sixth form learners' interests are represented at a school level through the associate governors and school council but it is unclear about how these learners' interests are considered at a local authority level in planning provision across its sixth forms. While the Explanatory Memorandum notes that 'only the requirement for school councils is contained in legislation' (7.290 and 7.298), which includes sixth form learners, it does not explain why the legislation will exclude this group of learners from benefitting from the Learner Engagement Code. Overall, we believe it would be more useful if all post-16 learners were brought under the code, including school sixth forms. This would be in keeping with Hazelkorn's recommendation of a more joined up approach to learner engagement (Welsh Government, 2015), as well as fulfilling the objectives noted in the Explanatory Memorandum (3.241 and 3.242) about promoting collaboration and stronger links between providers to enhance support for learners.

From the detail given in the proposals, it is not possible to say if the code will be sufficiently inclusive of all learners. In developing the code, the Commission will need to ensure that it consults with a wide range of learners, and takes into account the very diverse nature of learners in the post-16 sectors.

## Information, Advice and Guidance

4. The Draft Bill (Section 93) allows the Commission to fund information, advice or guidance for learners in Wales. Are there further considerations that should be taken into account to ensure that all learners receive advice or guidance to support learner pathways, transition and progression to enable them to make a contribution to, and succeed, in a fair and inclusive society and a thriving economy?

✓ Yes

Estyn thinks that all tertiary education and training providers should be able to demonstrate how they will:

- upskill teachers and trainers to understand the needs of the labour market fully and provide learners with up-to-date labour market intelligence
- ensure that young people are fully aware of the range of post-16 and post-18 options, including work-based learning, and the relative merits of these options
- develop effective employer partnerships that enable learners to have regular access to employers and the world of work

We think that it should be for the Commission to build these requirements into the outcome agreements, and ensure that outcome agreements with local authorities for their sixth form provision consider these points. Also, we think the Commission could consider the opportunities to promote professional learning across the tertiary education and training workforce in relation to understanding of the labour market.

We think that that there should be mechanisms in any commissioning process for funding information, advice and guidance to ensure that any provider of information, advice and guidance is able to:

- provide its service impartially and show how it will maintain and manage the impartiality of its services
- show how they will support learners to develop skills that enable them to research and plan their progression into the world of work, understanding and taking full account of the range of options available to them, and the consequences of their choices at each progression stage

- demonstrate how they will develop information to enable learners to understand the pathways that will lead them towards their longer term goals
- show how it will meet the needs of learners to support them in making fully informed progression choices by:
  - evaluating the impact of online services to establish how effective these are in improving learners' understanding of the labour market and enabling learners to develop career plans, based on a clear understanding of the relative merits of a range of progression routes
  - developing services to support those learners who wish to enter the labour market at any stage of their progression
  - developing on-line materials that engage and are accessible to all learners, including those who experience IT poverty
  - delivering a differentiated service that supports all learners, including those who are vulnerable and at risk of disengaging
  - working well with all education and training providers to identify those learners who need guidance in order that support is provided in a timely manner
  - ensuring a balance between face-to-face and online delivery of guidance services that best meet learners' development, support and guidance needs
  - providing support for learners to access the most helpful and appropriate opportunities for experiential learning of education, training and employment and reflect on these experiences in order to better inform their planning decisions
  - developing a consistent approach to supporting learners involved with the justice system

We believe that any provider of information, advice and guidance should demonstrate how they will:

- balance the need to support the Commission with the service's professional need for impartiality
- provide data on clients' sustained progression destinations to inform the Commission's planning
- provide forecast data on learners' progression demands for work-based learning, or continuing education
- advise the Commission on education and training providers' provision of support for information, advice and guidance
- advise the Commission on employers' participation in activities related to information, advice and guidance and their impact
- integrate the services they provide to best meet the needs of Working Wales

### **School sixth form reorganisation proposals**

The Commission will have a role in relation to maintained school sixth form reorganisation. The Draft Bill enables the Commission to direct a local authority to

bring forward re-organisation proposals, or bring forward its own proposals, in limited circumstances. The limitations on what would trigger such an approach would be consulted on and included in amendments to the statutory School Organisation Code.

5. Do you agree that the School Standards and Organisation code is the most appropriate vehicle for setting out the systems and processes and do you have any views on what those triggers should be?

✓Yes

Estyn agrees that amending the School Standards and Organisation Code is a suitable way to setting out the systems and processes for the Commission to direct a local authority to bring forward re-organisation proposals, or bring forward its own proposals, in limited circumstances. By enabling the Commission to direct a local authority or governing body to bring forward reorganisation proposals, the Commission can secure proposals that are produced at a local level. We feel that it is important that even in cases where the Commission brings forward its own proposals, public consultation through the Code is part of the process, together with the input of locally elected representatives.

We believe that it would be useful to reference here the degree to which the Commission will be able to exercise similar authority over further education institutions that provide equivalent sixth form provision (in terms of its enforcement powers in instances where quality fails to meet the standards expected – as in paragraph 3.135 on page 35 of the explanatory memorandum).

Currently, the School Organisation Code has nine factors or triggers to be taken into account for sixth form reorganisation proposals. These reference the Learning and Skills (Wales) Measure 2009 for 14-19 learners (National Assembly for Wales, 2009), and in particular the regional 14-19 networks, which were widespread in 2013 when the School Standards and Organisation (Wales) Act (National Assembly for Wales, 2013) was passed, but several/many are no longer in existence.

We agree that it is important that the triggers for instigating sixth form reorganisation by the Commission itself are consulted upon, and subsequently defined clearly. Ideally, these would dovetail with the triggers in the School Organisation Code and should focus on the improvements that any proposals would bring. In addition to the existing triggers, the Commission may want to consider:

- whether proposals would significantly improve the wellbeing of learners, staff members or the wider community
- whether the proposals would allow a more financially sustainable provision of tertiary education in the area or address an increased demand

## Strengthening collaboration

6. Part 3 of the Draft Bill provides functions to fund mainstream school sixth forms, further education, higher education, apprenticeships and adult learning and research and innovation related to educational providers. Do you think there are any further funding or other functions that will enable greater collaboration across the tertiary education sector?

✓ Yes

The wording of the Draft Bill with regard to funding of PCET provision to encourage greater collaboration is useful and provides the Commission with the flexibility to optimise such arrangements over time. For example, the reference in section 93 (1) (c) to the funding of 'facilities that are designed to form links between (on the one hand) employers and (on the other) persons who provide or receive education or training in Wales' is suitably broad to allow the Commission to determine the most effective way to achieve this. There is the potential for the Commission to use outcome agreements to further encourage collaborative approaches in specific areas if desired.

The Commission's proposed role in allocating research and innovation funding to a range of registered post-16 providers across the sector, as well as higher education and other registered organisations, is sensible, though we explore some of the possible unintended consequences in question 13 below. Furthermore, the ability of registered organisations, given the Commission's consent, to pass such funding on to partner providers/organisations, has the potential to facilitate collaboration across sector boundaries. The requirement for the Commission's consent for such arrangements is reasonable, provided that it can be obtained in a suitably timely and efficient manner that does not place too significant a burden on the collaborating organisations.

Providing short-term funding for specific projects that increase collaboration can lead to the degree of collaboration decreasing once the funding for the project ends. More effective evaluation of the long term impacts of such projects and greater clarity around the expectations of longevity of collaboration beyond any initial funding period would help improve this. Carefully set conditions on longer term funding, based on collaboration, would also help mitigate against such effects.

We believe that there are broader functions, beyond funding alone, which can be used to encourage positive actions such as collaboration. For example, the arrangements for quality and accountability can also drive collaboration. The main benefits of collaboration can be outlined as:

- improved efficiency and, depending on funding methodology, increased funding
- recognised improvements in the outcomes for learners
- Improved effectiveness of teachers, lecturers, assessors, researchers, leaders and other staff members



If learner outcomes improve because of collaborative work, then this serves as a strong incentive to continue such work. Furthermore, where the positive impacts of collaboration are recognised as part of evaluation and quality improvement processes, for example within internal evaluation and improvement processes, inspection reports or quality reviews, this incentivises such efforts. Similarly, if the effectiveness of staff members' work can be improved through partnerships and collaborative professional development, then this may also prove to be a driver.

Once established, the Commission could work with Estyn and the designated quality body to produce a quality framework that encourages collaboration where it is in the best interests of learners. Arrangements for shared accountability could be explored as a mechanism for promoting effective collaboration. Through the Learning and Skills Act 2000, Estyn has previously conducted area inspections which reviewed the quality of provision for 14 to 19 year old learners across a local authority. These inspections focused on the collaboration and partnership-working of schools, further education colleges, work-based learning providers and the local authority. There would be the potential to carry out area inspections with a specific focus to encourage collaboration.

## Welsh Language/Welsh-medium

We would like to know your views on the effects that the establishment of the Commission (Section 8) would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

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

The establishment of the Commission provides the opportunity for post-16 providers to plan strategically and work together, within and across sectors, to increase the use of the Welsh language, particularly for vocational education and training. The need to do so was highlighted clearly in our report *Welsh-medium and bilingual teaching and learning in further education* (Estyn, 2017, p.6) which included a recommendation to 'Strengthen Welsh language strategic plans to increase the number of learners who learn in Welsh or bilingually, particularly in the occupational areas for which there is an increasing demand by employers for bilingual skills.'

We welcome the fact that the proposed legislation aligns appropriately with the Well-being of Future Generations (Wales) Act 2015 regarding the Welsh language, and its inclusion within the concept of civil engagement as action for the purpose of promoting or 'improving the economic, social, environmental and cultural well-being of Wales' (National Assembly for Wales, 2015, p.3). The Integrated Impact Assessment states usefully that 'a thriving Welsh language is also part of one of the seven well-being goals set out in Well-being of Future Generations (Wales) Act 2015. The impact assessment notes that these principles underpin the Cymraeg

2050 strategy (Welsh Government, 2017a) and the Prosperity for All: national strategy (2017c).

The Welsh Government may want to consider whether there is a need to make the Commission a statutory consultee when local authorities develop their Welsh in Education Strategic Plans.

8. Please also explain if you believe the provision included in the Draft Bill to establish the Commission could be formulated or changed so as to have increased positive effects on opportunities for people to use the Welsh language.

The provision to ensure that the Commission is within Schedule 6 of the Welsh Language (Wales) Measure 2011 is a positive one (National Assembly for Wales, 2011). We agree with the rationale in the Explanatory Memorandum that this would ensure that the Commission considers the Welsh language in all of its activities and 'can be required to provide Welsh language services'. However, the wording 'can be required' implies that this is a possibility rather than a definite intention. Substituting 'can' with 'will' would avoid any possible ambiguity.

The duties in relation to Welsh-medium tertiary education set out under Part 1 of the Draft Bill, section 8 Point (b) states that the Commission must 'take all *reasonable* steps to ensure that there is sufficient tertiary education provided through the medium of Welsh to meet *reasonable* demand'.

The definition of reasonableness is open to interpretation, even within a legal context. Previous Welsh language legislation, such as The Welsh Language Act 1993 (Great Britain, 1993) established the Welsh Language Board and provided that certain public bodies should give effect, so far as is appropriate in the circumstances and *reasonably practicable*, to the principle that the Welsh and English languages should be treated equally in the conduct of public business in Wales. However, the definition of reasonableness often became a moot point and one that too often led to inadequate provision that failed to ensure equality for the Welsh language. The Welsh Language Standards introduced following The Welsh Language (Wales) Measure 2011 introduced much more definite legal obligations on the bodies subject to them with relevant compliance mechanisms.

To avoid ambiguity, it would be clearer and more strategically focused to state that the Commission has a duty to ensure that there is sufficient provision through the medium of Welsh and to delete any references to 'reasonable', which is open to individual or organisational interpretation. In a similar vein, it would be clearer to delete the use of the words 'encourage' in section 8 (a) and (c) in the Draft Bill and impose a statutory duty on the Commission to achieve these aims.

9. What are your views on the duties to be placed on the Commission in relation to Welsh-medium tertiary education?

The Explanatory Memorandum (3.314 – 3.317) states that the Commission will play a critical role in realising the aims of the Cymraeg 2050: A million Welsh speakers. This rationale is clear and broadly consistent with aims 4 and 5 of Cymraeg 2050. However, Aim 4 refers to the fact that learners should develop their Welsh language skills ‘whatever their command of the language’ (Welsh Government, 2017a, p.32) while paragraph 3.317 refers to ensuring ‘all Welsh speakers who continue in tertiary education... continue to develop their Welsh language skills’. It is vital that learners, wherever they are on the language continuum, have meaningful opportunities to build on the Welsh language skills they previously acquired during statutory education.

It is also worth noting that there are specific objectives for post-compulsory education in the Cymraeg 2050 Work Programme (2017-21) (Welsh Government, 2017b). These would be achievable under the proposed Draft Bill to establish the Commission. A number of useful relevant initiatives are already under way. For example, the recent consultation by Qualifications Wales regarding the availability of qualifications in Welsh and the Coleg Cymraeg Cenedlaethol’s *Further Education and Apprenticeship Welsh-medium Action Plan* (2018) sets out the steps it will take to develop learners’ awareness, understanding, confidence or fluency. The plan identifies the need to increase significantly the post-16 workforce’s bilingual skills. Currently, only 8.9 % of work-based learning practitioners and 11.3% of further education teachers are able to work through the medium of Welsh (Education Workforce Council, 2020). It would be helpful to place a specific duty on the Commission to promote the development of Welsh language skills in the tertiary education workforce.

The Commission can play a vital role in co-ordinating and developing these and similar strategic initiatives to ensure that there is increasing equity in the provision offer available through the medium of Welsh and/or bilingually. In order to achieve this, the Commission will need to ensure that there are sufficient Welsh language resources available to learners as this is too often an issue in the post-16 sector and impacts negatively on learners’ perception of the educational validity of the language.

3.322 in the Explanatory Memorandum notes ‘that Welsh Ministers will continue to be able to allocate financial resources to support both the development and delivery of Welsh-medium tertiary provision. For example, it is envisaged that Welsh Ministers will continue to provide funding directly to the National Centre (for Learning Welsh) and Coleg (Cymraeg Cenedlaethol) in the short to medium term following the establishment of the Commission.’ We believe that it is important that strategic objectives are agreed and shared between Ministers and the Commission and that there are clear channels of communication in order to achieve the objectives and targets outlined under Cymraeg 2050. For example, the Cymraeg Gwaith/Work Welsh scheme is an essential part of the strategy to improve and extend the Welsh language skills of the workforce in post-compulsory education, as well as in other sectors.

The Explanatory Memorandum comments on the Commission’s funding powers by giving examples relating to allocating funding for providers to teach Welsh and

fund providers for Welsh language acquisition courses (3.324 and 3.325). This underlines further the need for clarity of strategic purpose. It is important to make the most of the expertise and experience within national bodies such as the National Centre for Learning Welsh and Coleg Cymraeg Cenedlaethol and ensure that different funding mechanisms or lines of accountability do not have a negative impact, particularly in a post-COVID landscape in which there may well be competing claims for limited funding.

The Explanatory Memorandum notes that the Commission will be required to submit an annual report to the Welsh Ministers including information on the extent of Welsh-medium tertiary education provided and the extent Welsh was taught to persons above compulsory school age in a given year and compare with that provided in previous years (3.326). This is a positive step and could help form the foundation for strategic linguistic planning in post-compulsory education. However, any guidance for monitoring provision developed by the Commission needs to be unambiguous and targets for strategic linguistic planning should be agreed between providers and the Commission and reviewed annually. Targets should ensure that providers adhere to the principle of the 'proactive offer' for Welsh-medium provision rather than reacting to alleged or perceived demand for Welsh medium or bilingual courses. The annual report should also include targets for ensuring that providers/institutions have sufficient numbers of staff across learning areas, to deliver such courses. At present, Welsh-medium secondary schools often feel obliged to offer vocational provision in order to ensure that learners continue to use and develop their Welsh language skills due to a real or perceived lack of Welsh-medium vocational opportunities in colleges. Annual monitoring reports could outline clearly how tertiary education providers co-operate to ensure an equitable and meaningful provision offer to all young people continuing in post-16 education.

The need for such purposeful linguistic planning is essential. In Estyn's inspection reports on further education and work-based learning providers, a common recommendation in recent years has been to improve the focus on developing learners' Welsh language skills as an employability skill and to encourage learners to use and develop their language skills in the workplace. Across the post-16 sector, leaders and managers have not linked the benefits of using the Welsh language clearly to employment opportunities, despite competence in the Welsh language being in demand in a number of geographical regions and learning areas. This is notably the case in health and care sectors, especially in the care home sector. It is also a highly desirable employment skill for learners on vocational programmes who visit the homes of Welsh-speaking and bilingual customers to undertake work (Estyn, 2019, p.60). These findings emphasise the need for the Commission to ensure that providers'/institutions' quality assurance processes and provision planning include the Welsh language in a strategic and focused manner.

## Registration

10. Do the proposals for Access and Opportunity Plans (Sections 32-41) go far enough in ensuring that the Commission has the powers to drive transformative change in widening access and opportunity in higher education?

✓ **Neither Yes or No**

Estyn considers the proposals for access and opportunity plans present a helpful approach that is likely to provide the Commission with a structure and process to contribute to transforming access to higher education for learners from under-represented groups.

The proposals place the responsibility to address the impact of socio-economic disadvantage central to strategic planning and delivery and not at the fringes of higher education activity. However, to meet the aim of transforming opportunities for those learners from under-represented groups, monitoring processes should not be overly focused on compliance alone, but focused on reviewing and regulating the quality and impact of access and opportunity plans.

We support the intention to introduce a longer life cycle for access and opportunity plans. The current one year cycle does not encourage institutions to address the issue of equality and equity alongside their long term strategic planning. The existing arrangements for plans often result in short-term 'projects' rather than viewing this ambition as one which is pivotal to the role of higher education institutions in improving social justice and mobility, through access and opportunity to higher education in Wales.

In general, we agree with the principle to discard the previous arrangements for financial planning where institutions are required to estimate the costs of widening access in respect of total fee income. This will support the intention to ensure that widening access becomes an integral part of the civic mission of higher education providers in Wales. In addition, removing the 'quid-pro-quo' status of funding for widening access activity is more likely to ensure that this work is embedded in the mission and moral purpose of higher education providers and not viewed as short-term initiatives or projects that might be delivered peripheral to core provision. However, it is important to ensure that there is sufficient funding to provide enough capacity to support under-represented groups and non-traditional learners to be successful in higher education.

We support the expectation that further education providers will be expected to take appropriate steps to widen access and opportunity in relation to their provision. In addition, we agree with the proposal for the Commission to monitor and assess the steps taken by the whole of the tertiary education sector to widen access and opportunity.

Generally, we agree that the four areas of focus provide a broad overview of what should be included in access and opportunity plans. However, the detail and expectations of what should be included within each area of focus will be crucial to

the success and impact of the plans. It will be important for access and opportunity plans to specify clear, measurable actions to achieve these ambitions. These actions should be part of a meaningful strategic approach that is deeply embedded in the day-to-day work of the institution rather than projects that happen outside of course and programme provision. We have found that in initial teacher education, for example, previous widening access initiatives have not been successful in addressing the challenges.

We welcome the proposal to enable access and opportunity plans to address specific subjects or courses where there is a need to improve access from under-represented groups. It would be useful if the regulations referred to how higher education providers might work with professional bodies, such as in law, medicine or teacher education and national bodies, such as Careers Wales, to attract under-represented groups into these and other professions. In addition, it would be helpful if provisions within the Draft Bill required providers/institutions to include actions in their plans for how they will work strategically together with other providers to provide coherent progression routes for under-represented groups in particular subject areas or courses. This might include, for example, the consideration of non-accredited experiences or developing a shared approach around the use of equivalency for non-traditional entrants into higher education.

It is not clear whether access and opportunity plans will be expected to contain references to widening access through the provision of part-time and flexible programmes, including distance learning. Learners from under-represented groups often have additional challenges to manage, such as those related to family circumstances or funding, which can impact negatively on their success in tertiary education. Unless the plans are sufficiently broad and strategic to include programme planning for access and opportunity then the current proposals do not go far enough to drive transformative change in this area.

Estyn's thematic inspections may be a helpful mechanism to help the Commission monitor the effectiveness of actions taken to promote progression in relation to different under-represented groups.

11. Will the proposed powers for the Commission to monitor, review, and ensure compliance with registration requirements (Sections 22-26) provide sufficient flexibility for it to regulate proportionately and appropriately?

✓ **Neither Yes or No**

Generally, Estyn supports the proposals in the Draft Bill for the Commission to have powers to monitor and support registered institutions' compliance with registration conditions. Broadly, these provide flexibility for proportionate and appropriate monitoring. However, the Draft Bill and Explanatory Memorandum does not establish with sufficient clarity the interrelationship between monitoring compliance and reviewing the quality of provision or the role of existing regulators and the inspectorate in carrying out these functions on behalf of the Commission.

The proposal regarding the Commission's powers to monitor, review and ensure compliance with the terms of registration would be strengthened further if these points could be clarified.

The proposed powers for the Commission to monitor, review and ensure compliance with registration requirements are suitable and sufficiently flexible, providing there is clarity and transparency in how quality and compliance monitoring is undertaken and by whom. For instance, the process of monitoring compliance with regulations and the inspection of quality might be better undertaken as separate functions but with clarity about the interrelationship of the processes and the outcomes.

We broadly agree with the proposal for the Commission to arrange for HMCI or a designated quality body to monitor, review and ensure compliance with registration requirements (section 24). This is appropriate and enables the Commission to draw on existing expertise and understanding of tertiary education. This would contribute to securing continuity and consistency at a time when providers are facing changes to governance and funding arrangements. However, it will be important to consider how the outcome of inspection relates to decisions about whether a provider is compliant with regulations. Clarity about roles, responsibilities and the purpose of monitoring, reviewing and ensuring compliance with regulations should be confirmed prior to the Commission undertaking its powers in this area of its work.

We agree that regulatory intervention in the case of non-compliance must be timely. Whilst support for those providers who may be in breach of regulatory conditions is important, it is equally important that the learner experience is not negatively affected by protracted actions to provide support. This means that the Commission must be clear about roles, responsibilities and expectations of all agencies responsible for monitoring compliance, evaluating quality and providing support. There must be absolute clarity in these expectations so that weak provision or non-compliance does not fall between systems, processes and responsibilities which have not been made absolutely clear. We welcome the addition of new additions to the regulatory framework regarding learner protection and learner engagement for higher education, but would also wish to refer to our points in questions 2 and 3 in relation to their application to sixth form learners.

## Quality

12. The Draft Bill (Sections 42-60) proposes a more aligned and coordinated approach to quality and inspection across tertiary education. Do the proposed arrangements find the right balance between building upon the current arrangements in higher education, further education and training and maintained school sixth forms and working towards a more aligned and coordinated approach across the tertiary education sector?

✓ **Neither Yes or No**

Estyn welcomes the continuity in carrying forward Estyn's statutory powers from the Learning and Skills Act 2000 in relation to further education and training. A key strength of the inspectorate is that Estyn has well established expertise and experience in inspecting across all the post-16 sectors other than most of the work funded via HEFCW. The proposals in the Draft Bill recognise more fully the strengths of current arrangements for quality assurance and quality improvement across the PCET sectors than earlier consultations and seek to build on these rather than creating a 'one size fits all' approach.

The wording of Section 45 allows the Commission the flexibility to carry out or arrange reviews of the quality of tertiary education. While this is open-ended, it may lead to situations where requests to carry out, or arrange, reviews relevant to the quality of tertiary education, or a particular course of tertiary education could duplicate or conflict with other arrangements. Further clarification within this section would mitigate against this risk. The use of thematic reviews as carried out by Estyn currently, in addition to institutional reviews/individual provider inspections, can help to improve quality across the post-16 sectors in relation to a particular aspect of provision or practice.

Section 46 seeks to deal with assessment of higher education. However the definition of higher education is not made sufficiently clear within this section. In particular, the Draft Bill does not distinguish between what has been traditionally referred to as prescribed higher education and those aspects of provision above level 3 that do not fall within the definition of prescribed higher education provision and generally referred to as non-prescribed higher education. Examples of non-prescribed higher education include many professional qualifications at level 4 and above that are delivered in further education institutions and work-based learning providers. Currently, different arrangements for quality assurance and improving quality apply to prescribed and non-prescribed higher education. We currently undertake inspection activity for non-prescribed higher education in further education and work-based learning and QAA undertakes reviews of prescribed higher education. It would be useful for the Draft Bill to clarify these distinctions.

We already have expertise in aspects of higher education quality assurance, for example in our experience of inspecting initial teacher education and our thematic inspections of youth and community worker training. Youth and community worker training is an aspect of higher education for which the draft TER Bill carries forward our inspection powers. Through our work in this area we have been influential in helping to shape and support the Welsh Government's youth work policy.

It is important that responsibility for the inspection or review of degree apprenticeships are defined clearly within the Draft Bill or through secondary legislation, as indicated in the Statement of Policy Intent (page 19). The legislation as drafted appropriately leaves open the possibility to clarify these responsibilities in future, as the future policy direction for degree apprenticeships is clarified. This responsibility could include Estyn. This would ensure that inspection



arrangements for work-based learning provide an integrated and joined-up approach to the quality assurance and improving quality of all work-based learning provision at whatever level. As part of such arrangements, Estyn could collaborate with the designated quality body for higher education, where the expertise of a quality body such as QAA in reviewing the higher education content of the degree apprenticeships programmes could combine with Estyn's experience of inspecting higher apprenticeships in the workplace.

We recognise that the degree apprenticeship programme in Wales is a pilot and, as a relatively new programme, it needs to be fully evaluated to determine what quality assurance is needed. When the pilot degree apprenticeship programme was first being developed, we were asked by HEFCW to support the new providers by contributing our insights from inspecting higher apprenticeships and from our *Higher Apprenticeships* thematic report (Estyn, 2018) at a workshop in January 2019. Recently, we have contributed our knowledge and expertise in inspecting higher apprenticeship provision to QAA as they develop their framework for the quality review of the pilot degree apprenticeships. We already have good working relationships with other inspectorates and quality assurance bodies. Our MOU with HEFCW and QAA enables us to share information and practices and we would be keen to continue to evolve our opportunities for collaboration and joint working across the tertiary education sector to support a more aligned and co-ordinated approach to quality.

Section 49 of the Draft Bill carries forward the provision from the Learning and Skills Act 2000 which requires the Chief Inspector to include in publishing each inspection report whether the financial resources made available to the provider of the education or training are managed efficiently and used in a way which provides value for money. We have found it helpful through the provisions within section 41A of the Education Act 1997 to seek the Auditor General's assistance during the inspection of local authority education services. We have also piloted similar collaborative work with one of our further education college inspections. It would be an opportunity to include this provision for post-16 sectors we inspect, and for any area inspections that the Commission requests Estyn to conduct, although there may be financial implications of doing this in practice.

It will be essential that the Commission quickly establishes a shared understanding of what behaviours, culture and practices support effective quality enhancement in post-16 sectors and ensure these are promoted, for example within outcome agreements. Our inspection arrangements already strive to do this. In addition, it will be important to reach shared understanding of when an 'institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training' as a trigger for intervention by the Commission or Welsh Ministers.

Section 53 carries forward additional functions of the Chief Inspector from the Learning and Skills Act 2000, which may be specified in regulations including functions in respect of training of or for teachers, lecturers, trainers or other persons in the provision of further education and training. We would prefer that this aspect of work be confirmed in regulations as soon as possible, as this was

not done after the Learning and Skills Act 2000. This would support greater consistency and rigour in supporting professional development of the further education and training workforce.

It should be noted that the selection, training and regular updating of Estyn peer inspectors provides an important opportunity for practitioners and leaders from all providers across the post-16 sector to access training and professional development that enables them to contribute to overall quality assurance and improving quality both in the sector and in their own organisations. We would be keen that this aspect of work was recognised in any quality framework developed by the Commission.

Section 60 states that the Commission will provide such funding to the Chief Inspector as it considers appropriate for the discharge of the Chief Inspector's functions, so far as the functions relate to education and training that is funded or otherwise secured by the Commission. We also note that the Draft Bill proposes that Section 104 of the Government of Wales Act 1998 (Great Britain, 1998) (c. 38) is amended to remove responsibility from Welsh Ministers for providing funding for discharge of the Chief Inspector's functions so far as they relate to education or training that is funded or otherwise secured by the Commission. We do not support either of these proposals as they undermine our position as an independent Crown body, established under the Education Act 1992, as they would considerably and unnecessarily duplicate and complicate Estyn's accounting and reporting responsibilities.

Estyn is independent of the National Assembly for Wales, but receives its funding through the Welsh Government under Section 104 of the Government of Wales Act 1998. Our scope in inspecting and providing advice to policy makers is broad and covers all education and training provision funded in Wales, other than that currently funded and regulated via HEFCW. We are independent of government and will be of the Commission, which is vital so that we can inspect and report on the state of education and training in Wales without fear or favour. It will be important to recognise in any quality framework the value of independent inspection and advice to support the Commission in its quality monitoring role.

It is also important to note that inspection arrangements for secondary schools include scrutiny of sixth form provision where this is provided by these schools and that many of Her Majesty's Inspectors who inspect post-16 provision also inspect pre-16 activities in other education settings. It is therefore difficult and unhelpful to distinguish pre- and post-16 resource and activities for funding purposes when such activities and resources are inextricably linked. However, we would welcome a mechanism also being in place to allow the Commission to directly fund us for specific additional in-year work it may identify in relation to its remit.

## **Research and Innovation**

13. Should the Commission's functions in relation to research and innovation (Sections 95-97) be broadened beyond just registered tertiary education providers?

✓ **Neither Yes or No**

Overall, we support the intentions as set out in the Draft Bill to “bring together all research funding and ensure that funding decisions reflect Welsh priorities, including the needs of the national and regional economic sectors” and to “ensure closer working between industry, schools, universities, colleges and the NHS to raise ambition and increase investment in research, developing the jobs and technologies of the future.” There may be positives and unintended consequences of broadening the scope of research and innovation funding which we outline in the following paragraphs.

When considering the criteria for deciding which type of organisation should be eligible for receipt of funding for the purpose of research or innovation, it is important to consider whether narrowing the scope to specified registered providers (advanced registrants) poses the risk of an insufficient match between the research priorities and capacity of those providers covered by the proposals and the innovation priorities of niche or regional businesses or sectors of the economy. We suggest that an organisation's capacity to carry out research and innovation and how this aligns to the growth needs of the Welsh economy might be a more suitable consideration rather than the type of registrant.

We support Reid's recommendation to create 'a single overarching brand' for Wales' innovation activities to increase the 'visibility, coherence and impact of research and innovation in Wales' (Reid, 2018, p.5). This should include support for innovation in business as well as the public sector. The Welsh Government may wish to consider whether the proposed approach might heighten the potential for institutional strategic interests to outweigh those of potential partners leading to insufficient collaboration between different organisations. This might have the unintended consequence of not attracting or retaining business investment in research and innovation in Wales.

There may be other organisations that would not be eligible for funding under the current proposals that make a valued contribution to research and innovation in Wales. This poses the question whether needs of business and innovation, in particular at local and regional level, will be met appropriately through the current proposals. It is important to consider whether the aims of the Commission to bring together all research funding and ensure that funding decisions reflect Welsh priorities, including the needs of national and regional economic sectors, can be realistically achieved. Current proposals could limit business and employment growth to those regions and providers covered, to the exclusion of other partnerships worthy of merit. This might de-incentivise business and innovation partnerships with a broad range of PCET providers. In this context, the proposed approach may pose a missed opportunity to develop strategically a highly skilled

workforce and secure “productivity gains or otherwise address social challenges across Wales” (Reid, 2018, p.30).

We agree that the success of any broadening of the scope of research and innovation funding to beyond specified registered tertiary education providers will depend on clarity of purpose, definition of success and efficient execution and policy stability (Reid, 2018). With regard to success and quality, a broadening of scope of research funding may require differentiated success and value-for-money criteria suited to the organisational capabilities of the funding applicant and their chosen partners. In doing so, there is potential for the work of the Research and Innovation Wales committee to strike the right balance between making flexible and agile funding decisions, meeting strategic priorities and ensuring appropriate value for money of the use of public funds.

Consideration may need to be given to how the Research and Innovation Wales committee will work with other Welsh Government-funded research activities and bodies to reduce the risk of overlapping funding streams and ensure a whole system approach for the post-16 profession.

To support this, the composition of the Research and Innovation Wales committee will need to be carefully considered, to ensure that it is able to fully understand and represent the interests of the full range of funding applicants.

The current proposals may concentrate funding to a small number of providers and regions. This may limit the range of businesses, staff and learners who could benefit from this. Engagement in research is an important component of professional development. This poses the question as to whether the Commission can truly “strengthen the link between research and education” (Welsh Government, Integrated Impact Assessment) across the whole of the PCET sector under current proposals.

Currently, initiatives such as the proposed National Strategy for Educational Research and Enquiry (NSERE) will give school teachers the opportunity to develop as research-informed and research-engaged education professionals. Tying funding applications to specific registrants risks a further missed opportunity to engage the wider PCET workforce who are not employed by eligible registrants or in schools in benefiting from the proposed work of the NSERE. It may therefore be helpful for the Research and Innovation Wales committee to consider how it will work with other Welsh Government funded research/enquiry activities related to knowledge transfer and professional development, such as the NSERE to ensure that there is equal access to such opportunities for engagement in educational research across the whole of the education and training sector in Wales.

## **Apprenticeships**

14. The Commission will be responsible for apprenticeship frameworks (Sections 104-107) and the Welsh Ministers will be responsible for the preparation and issuing of core requirements in the Welsh Apprenticeship

Specification (WAS) (Sections 101-103). Do you agree with this balance of powers?

✓ **Neither Yes or No**

Estyn broadly agrees with the balance of powers between the Commission and Welsh Ministers. Apprenticeship frameworks should build upon and develop further the apprenticeships brand that has generally been successful across Wales and is highly valued among learners, employers and education and training providers. A lot of development and success has been achieved with apprenticeships in Wales from a low starting point. Developments should build on these foundations and we must not lose aspects that have been successful.

It is essential that the Commission is represented by members who have the right skills to make informed decisions and sufficient awareness across the full range of post-16 sectors. If representation is not correct, the balance will be skewed and the culture not right from the start. Estyn also thinks that there should be representation on the apprenticeship boards (WAAB and WESB) to consider the quality aspect of the provision and standards for the delivery of the frameworks by training providers. Estyn's work to monitor the quality of apprenticeship delivery could provide helpful feedback.

It would be helpful if the Explanatory Memorandum showed more clearly how the Commission would engage with Qualifications Wales to discharge its duty in being responsible for the quality, integrity and robustness of apprenticeship frameworks. Estyn has knowledge across the post-16 sectors that could be used to advise the Commission and any sub-groups in their work to assure the quality of the training provision for apprentices and outcomes achieved. The Commission must take the opportunity and have high aspiration for its apprenticeship programmes, including a clear understanding of current and future training needs, and new technologies. The Commission needs to have a clear understanding of how it will look to the future and make sure that the number of available frameworks is proportionate to demand and not restricted to a low number for ease of management.

15. Does the Draft Bill (Part 4) provide adequate strategic drivers to develop and maintain the integrity of apprenticeships in Wales, ensuring they meet industry requirements?

✓ **Neither Yes or No**

The key strategic drivers are wide ranging and generally appropriate. The Commission will need to have staff with a strong understanding of the strategic and operational aspects of apprenticeship programmes. Apprenticeships must generally be completed in Wales, where learners are employed from their start of their training and follow an approved framework. When specifying occupational sectors, the information presented must be clear and supported by other

appropriate information. For example, it is important to maintain progression routes from level 2 through to degree apprenticeships. If the number of level 2 entrants were restricted, it would prevent a large number of learners entering training and become an issue of inequality. It would be prudent to be mindful of labour market information and restrict training to the number of jobs deemed available. Apprenticeships must be maintained in as wide a range of occupational areas as possible to make sure the needs of learners and employers are fully met. The needs of the large number of micro-businesses and small and medium enterprises (SMEs) that contribute so much to the Welsh economy should be considered.

Apprenticeships standards should be reviewed and updated at appropriate intervals to ensure they are up-to-date and reflect industry practice. The content of frameworks should be clear, with well-defined progression routes to higher levels of training. Estyn believes that it is necessary to publicise and share the benefits of apprenticeships more widely, especially with schools and parents. There is a need through the work of Welsh Ministers and the Commission to establish apprenticeships as an equal and viable option to studying A levels and attending university full-time. The Commission also has an opportunity to promote diversity and equality with a focus on promoting apprenticeships to women and minority ethnic groups.

When preparing, developing and publishing frameworks, the Commission must make sure that those developing the frameworks have current and clear understanding regarding the needs of learners and employers. They must ensure the content of the framework meets the needs of the industry and is fit for purpose for the duration of time it will be valid. Although the current range of frameworks is substantial and a number are rarely used, it is important that the number is not reduced to such a low level that employers' and learners' training needs are not met. These developments give the opportunity to 'align' frameworks to ensure that they are as equal as they can be in the amount of work required to complete them and prevent the view that some routes may be thought of as easier than others. Although we support the view that learners where possible should complete training above level 2 it is important that apprenticeships continue at level 2. This would allow learners on traineeship type programmes to have clear progression routes without moving straight to level 3 and the demands of completing work at this level. It would also mean that those learners and employers who want training at level 2 will have their needs met. In many cases learners quickly become trusted members of their employer's staff and therefore level 2 training is valued and respected by those involved. The register of apprenticeships must reflect the 'traditional' and core programmes but also be flexible enough to develop frameworks in 'new' industries when a clear demand is identified. Historically, the design and launch of any new framework has had a long lead time, resulting in a lack of engagement with learners or employers and missed opportunities for training and employment. The Welsh apprenticeship must be portable, of high quality and at least equitable with the rest of the United Kingdom. Therefore the Welsh apprenticeship must be the best available, comparable with those that are seen as world leading and not just another apprenticeship model.

The relationship between the Commission, the Welsh Government and the Department of Work and Pensions also needs to be considered to ensure that different strategic levers to promote employment and economic growth work in synergy.

Another important consideration will be the outcomes from the Welsh Government's evaluation of the pilot degree apprenticeship programme and how to ensure that any future developments of such programmes involve a co-ordinated review of their quality. As we noted in question 12, secondary legislation could clarify the remit of the Chief Inspector to include responsibility for a more joined up and integrated approach to the quality review of degree apprenticeships, alongside the designated quality body for higher education.

The current pandemic has changed education and training, and has impacted on the number of apprenticeships being funded and the ability of employers and training providers to carry out planned new apprenticeships in some industries. By thinking innovatively and looking to the future, the Commission has the opportunity to refresh the provision offer and develop ways of working that equip learners for the world of work more effectively.

## **The needs of the economy and employers**

16. The Commission has a duty to have regard to “the reasonable requirements of industry, commerce, finance, the professions and other employers regarding tertiary education and research and innovation” (Section 2(1)(b)). In your opinion, does this duty go far enough and do you think it will have a meaningful impact based on its current formulation?

✓ **Neither Yes or No**

Estyn recognises the need for the Commission to have regard to the reasonable requirements of industry, commerce, finance, the professions and other employers.

The Explanatory Memorandum notes the need for apprenticeships to be more responsive, but we also believe that further and higher education need to be more agile to adapt their provision to meet the needs of the economy and employers. This may be where the Commission can play a role in its relationship with the regional skills partnerships. While most further education colleges mainly operate and deliver in a regional context, the pattern of delivery for many work-based learning providers is more dispersed and this limits the extent to which these providers are able to fully engage with all relevant regional skills partnerships. In terms of work-based learning provision, a very few training providers feel that it would be more appropriate for the key higher level objectives, to be set nationally with regional skills partnerships incorporating recruitment targets. This would

mean that the regional skills partnerships and training providers could play a role in monitoring delivery against these.

One area that is not articulated clearly enough in the Explanatory Memorandum is the need for professional learning and development of staff in tertiary education providers to be strongly linked to the reasonable requirements of industry, commerce and employers.

## **Funding**

### **A focus on outcomes:**

17. The Draft Bill (section 79) provides for an approach to funding based on Outcome Agreements. This will allow the Commission, through its funding decisions and negotiations with funded bodies, to contribute to the achievement of the Welsh Ministers' strategic priorities for tertiary education and research. Please see the Explanatory Memorandum for details of the policy intention underpinning outcome agreements (paragraphs 3.56 -3.58 and 3.145 – 3.147 refer). Does this approach strike the right balance between strategic funding priorities and the needs of individual learning providers?

✓ **Yes**

Estyn welcomes confirmation that outcome agreements will be the product of co-production through negotiation between the Commission and funded bodies. Careful consideration should be given to specification of 'performance commitments' to make sure that these are reasonable, realistic and not unduly restrictive. Instruments such as outcome agreements and associated performance criteria are likely to drive behaviours within funding bodies and it is important to consider and avoid any potential unintended consequences of such arrangements. In order to encourage and support collaboration between providers within and across post-16 sectors, consideration should be given to incorporating requirements or incentives to use collaborative approaches to strategic planning of provision in outcome agreements

We also welcome recognition that there is no 'one size fits all' solution when planning and funding post-16 providers, as well as the intention to continue to operate flexible planning and funding systems across the tertiary sector. Greater clarity is needed on the focus and scope of outcome agreements. For example, it would be useful to clarify whether there would be one outcome agreement to each organisation or whether multiple outcome agreements may be issued to an organisation with each focusing on a different type of provision such as further education, work-based learning etc. Also, would there be a single outcome agreement for each local authority in relation to their sixth form provision? It would



be useful to clarify for local authority funding for sixth forms and for the community-based adult learning funding, what is needed to comply with learner protection plans and the learner engagement code. We refer back to our response in Question 2 and Question 3 about the importance of the Commission giving due regard to a wide range of stakeholders when consulting on learner protection plans and the learner engagement code, including the perspective of learners in school sixth forms and adult learners in community-based education. Outcome agreements would seem a sensible way forward but lessons should be learned from past arrangements. There is the potential that a system of 'payment by results' could hamper the wider educational mission of providers.

Providers tend to be innately competitive in their thinking and are understandably driven by funding needs. However, providers face significant local and regional differences in their potential intake of learners, which means they are not equal in terms of their funding prospects. Outcome agreements therefore need to ensure that learning and progression pathways are supported appropriately and protected in circumstances where providers' narrow self-interests would be likely to restrict provision despite their being a clear local, regional or national need for such provision.

Is there scope in the Draft Bill to outline the right to lifelong learning as the First Minister has noted? Does the funding of further education for reasonable facilities from age 19 onwards provide enough scope to support the ambition for citizens in Wales having access to education or training funded to a level 3 equivalent?

Outcome agreements must reflect the future needs of Wales and citizens but be flexible enough to encourage flexibility and responsiveness in providers. It is hard for providers to shift from 'traditional' curriculum offers because of the need to train and 'refresh' teachers and trainers for future needs. The need to do this must be recognised, planned for and reflected in the outcome agreement targets.

Outcome agreements should also reflect the need for general education as well as specific training targets. For example, outcome agreements could include the delivery of an element of social, financial and 'citizenship' education or could require an element of cross-over between practical training and wider education and the arts.

Consideration should be given to including specific provisions within outcomes agreements which make sure that arrangements for sub-contracting and franchised provision are based on sound medium and long-term needs rather than being driven by short term funding performance issues. For example, it should be specified within outcome agreements that full due diligence checks and approval by the appropriate governing body along with notification to the Commission must be completed prior to the commencement of any third party delivery with any new partner organisations. Outcome agreements should also preclude onward or secondary sub-contracting arrangements by approved partner organisations. These requirements will help prevent inappropriate use of franchising and sub-contracting arrangements and protect against misuse of public funds.

Flexibility to accommodate a limited degree of under or over-delivery with appropriate roll-over or bring forward arrangements may help avoid short-term thinking. It may also be beneficial for consideration to be given to allowing approved virements of funding between certain aspects of provision where it can be demonstrated that this would meet local, regional or national needs. This may help encourage providers to direct learners towards routes that meet their needs rather than direct them mainly to routes where funding is currently available. It would also avoid situations where providers may be penalised for under recruitment on one programme while not being funding for any over recruitment on another programme even if in the same area of provision.

## Regulatory Impact Assessment

18. The financial implications of the Draft Bill are set out in Part 2 of the Draft Explanatory Memorandum. Please consider whether you think our costings need to take account of anything else?

In the absence of detailed information on the specific details relating to individual costs and benefits, we feel it would be inappropriate to comment on the specific cost and benefit items detailed within Part 2 of the Draft Explanatory Memorandum. However, we would like to offer some general comments and observations regarding the costings contained within the document.

- We note that the costs set out in the Regulatory Impact Assessment (sections 6, 8 and Annex 6) of the Explanatory Memorandum were developed to accompany the introduction of the Tertiary Education and Research (Wales) Bill in 2020. As the document points out, as a result of COVID-19 the introduction of the Bill has been delayed and a draft Bill has been published for consultation. The document reflects the anticipated costs as they were estimated for introduction from 2020 onwards. Much has changed since these original estimates were compiled, including the unprecedented and ongoing disruption of essential activities due to the COVID-19 pandemic and the changing context of Brexit arrangements, including the consequential loss of European funding. A rigorous and robust updated estimate of all costs and benefits will therefore be essential as part of any final evaluation of strategic options.
- The financial implications as set out in the Draft Bill and Explanatory Memorandum do not seek to address the long standing issue of the perceived unfairness of differential per capita funding levels at individual provider level between individual school sixth forms (via their local authority funding route) and further education colleges. Colleges receive their funding directly from the Welsh Government according to their annual grant awards, per academic year; funding for schools is allocated initially to local authorities each financial year, and they then delegate it to schools. In particular, there is often substantial variability in the amount of funding per capita for sixth form learners that different local authorities include in individual school budgets as part of their school budget allocation

processes. Consideration should be given to reviewing funding mechanisms periodically to ensure that they are equitable and sustainable.

- As a result of the COVID-19 pandemic, most organisations have made significant changes to their operations and working practices. Although some of these changes are likely to be temporary, it is becoming increasingly clear that many organisations are reconsidering the way they intend to operate beyond the period of the pandemic. For example, many organisations are moving towards greater use of home working arrangements and online and blended delivery models for the services they provide. This is likely to have an impact on labour costs and on capital expenditure and premises-related expenditure requirements. The changing environment and resultant impact on the economy have also impacted on the rate of inflation and it is therefore likely that some of the important assumptions on which these initial costs and benefits were based will also need careful updating.
- The impact of the changing context outlined above is also likely to make financial forecasting and estimation of costs and benefits even more challenging than normal. It would therefore appear prudent to undertake additional financial sensitivity analysis work to underpin evaluation and decision-making processes. Even in more stable and predictable times there is a general tendency for costs and timescales to overshoot original estimates and for expected benefits not to be realised in full when implementation takes place. For example, several service areas within the public sector have experienced very substantial delays and large increases in costs linked to large scale IT developments which have impacted significantly on overall costs and performance. Given the scale of the changes being considered as a result of this Draft Bill, it is essential that updated estimates and options appraisals are undertaken as robustly as possible and that implementation only takes place when these are evaluated fully.

19. We would like you to consider the possible costs and benefits to specific bodies, institutions, organisations or individuals as a result of the Draft Bill. Please provide any comments or evidence here:

As stated in the response to Q18, in the absence of detailed information on the specific details relating to individual costs and benefits we feel it would be inappropriate to comment on the specific cost and benefit items detailed within Part 2 of the Draft Explanatory Memorandum. However, we would like to offer some general comments and observations regarding the costings contained within the document.

- All specific bodies, institutions, organisations and individuals affected by the Draft Bill will have been affected by the recent and ongoing pandemic and its impact on their operations. Any major change to the legislative and operating environment affecting these stakeholders is likely to add to the

challenges they are facing as well as having impacts on possible specific costs and benefits. It would therefore be useful to also reconsider in full the wider personal, social and environmental impacts of the proposed changes alongside any financial costs and benefits as part of any updated options appraisal exercise.

- Please see also the response to Q18 above for additional general factors to be considered.
- The overall rationale for the proposed creation of the Commission highlights the creation of a single integrated post-16 sector as a key outcome. This overall structural change for the sector represents a significant change to the operating environment affecting many organisations. It is therefore reasonable to expect that many organisations will consider their own strategic options linked to these changes in their external environment. For example, this may trigger new collaborative arrangements, mergers or acquisitions. This in turn may require consideration of requests for additional support to these organisations to undertake feasibility studies and options appraisals as well as leading to additional one-off transitional costs for organisations proceeding with any reconfiguration.

In terms of the impact of the Draft Bill on the possible costs and benefits to Estyn, we wish to reiterate our concerns about the proposal for funding post-16 activities of the inspectorate through the Commission rather than through the Welsh Government as under current arrangements. We would suggest that our core budget continue to come from the Welsh Government as per the Government of Wales Act 1998 in order to enable us to deliver our full range of statutory responsibilities. We do not support this proposal as it undermines our position as an independent Crown body, established under the Education Act 1992, as it would considerably and unnecessarily duplicate and complicate Estyn's accounting and reporting responsibilities. We are independent of government and will be of the Commission, which is vital so that we can inspect and report on the state of education and training in Wales without fear or favour. It will be important to recognise in any quality framework the value of independent inspection and advice to support the Commission in its quality monitoring role.

We would welcome a mechanism also being in place to allow the Commission to fund us directly in addition to our core budget for additional work they may require from us in relation to their remit. In practice, planning and management of resources and accounting are much easier when our core budget comes from one source (Welsh Government). Our inspectors work across compulsory and post-compulsory education, which makes it more difficult to assign budget precisely across different funding streams. For example, inspection arrangements for secondary schools include scrutiny of sixth form provision where this is provided by these schools, and many of Her Majesty's Inspectors who inspect post-16 provision also inspect pre-16 activities in other education settings. It is therefore difficult and unhelpful to distinguish pre- and post-16 resource and activities for funding purposes when such activities and resources are inextricably linked.

However, we would welcome a mechanism also being in place to allow the Commission to directly fund us for specific additional in-year work it may identify in relation to its remit.

## New Normal

20. Do you think the pandemic causes particular issues for anything we propose in the Draft Bill?

✓ Yes

The pandemic does not affect the substance of the Draft Bill. However, depending on how long restrictions associated with the pandemic last, it may influence the way in which the Commission consults on its various activities. In particular, groups with limited access to internet may have difficulty in engaging with consultations or in meeting in representative groups.

The Commission will also need to adapt to the new patterns of delivery, learning, social interaction, accommodation and working practices that will develop as a consequence of the pandemic. The Commission will need to consider the impact of reduced options for travel on the choice of provider that may be available to learners, and how collaboration between providers may be able to mitigate this.

There is no mention in the Draft Bill of the Commission's potential role in contingency and emergency planning in the event of a future scenario like the Coronavirus pandemic. It might be helpful if the Commission's role was clarified in relation to:

- how the relationship between the Commission and the Welsh Government and Welsh Ministers is constituted so that it is clear who has what role in the event of future crises
- emergency planning, co-ordination and funding
- infrastructure development
- mutual information sharing across the post-16 sectors
- logistical support
- effective practice sharing

## PCET Reform

21. The Bill is a legislative vehicle to create a new body; the Commission for Tertiary Education and Research. Are there any additional levers that can be used to establish the cultural change needed to deliver the aims of the PCET reform agenda?

✓ Yes

The creation of the new body, the Commission for Tertiary Education and Research, will not in itself establish the cultural change needed to deliver the aims of the PCET reform agenda. The intended aims of the PCET reform agenda as set out in the Welsh Government's response to the 'Public Good and a Prosperous Wales – Building a reformed PCET system' in 2017 emphasise the importance and value of developing a unified post-16 education and training sector in Wales. The existing arrangements for the planning, delivery and oversight of the post-16 sectors are currently very fragmented and developing a single unified sector will require major cultural change at all levels over a substantial period of time.

In order to deliver the aims of the PCET reform agenda a variety of additional levers will be required including:

- Further policy changes to reform existing arrangements in the various elements of the post-16 sector, including further and higher education.
- Careful consideration being given when developing proposed commissioning arrangements, and in particular when drawing up specifications for outcome agreements, to encouraging desired actions and behaviours and avoiding unintended consequences of such arrangements.
- Governance arrangements for institutions should be revised where appropriate to ensure inclusive representation from across the post-16 sector and discourage the pursuit of narrow institutional self-interest.
- It will be particularly important to extend the reach and prevalence of collaborative working wherever possible if the required cultural changes are to be achieved and sustained.
- Commissioning 16-19 area inspections would help provide a clear focus on requiring and evaluating the effectiveness of joint planning and collaboration across post-16 provision. For example, these inspections would help identify areas in Wales where providers are working well together in the interests of learners and where improvements are required
- Opportunities for direct engagement between the Commission and schools as well as with local authorities should also be considered as a way of encouraging cultural change through open professional dialogue and achieving greater mutual understanding of policy direction and the impact on learners and providers.
- More collaborative approaches to professional learning across the PCET workforce could help to bring about greater mutual understanding, parity of esteem and collaboration.

22. 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.

**16-19 policy direction**

We welcome the focus in the vision document on developing a longer-term strategic oversight and alignment with local, regional and national education and training needs and enhancing collaboration between providers. Overall though, the draft Bill and accompanying documents lack sufficient focus on the policy direction for the 16-19 curriculum. It is also unclear what the roles of Welsh Ministers and the Commission are in setting this policy. There has been no updated policy direction for the 16-19 curriculum since the work on Learning Pathways 14-19. Our recent pieces of thematic work relating to collaboration between schools and FE colleges (not yet published) and our reports on A-levels find a continued lack of collaboration between providers to ensure the best possible range of post-16 options for learners. It is not clear at this point how the work of the Commission will enhance this collaboration and ensure a set of coherent learning pathways which ensures a smooth interface between compulsory and post-compulsory education and training.

**ALNET Act**

There are very few references to how the Commission will engage with the implications of this act on the responsibilities for further education and local authorities in supporting learners with complex needs.

**Research**

The proposed NSERE is to be funded through the Welsh Government to provide a coherent strategy for research and enquiry linked to 'national priorities' within the National Mission 2, but what will be the relationship between this funded work and the Commission? And would this be funded through the Commission in the future?

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