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Welsh Assembly Government

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Welsh Assembly Government

## Consultation Document

# An independent review of the governance arrangements of further education institutions in Wales

Date of issue: **28 March 2011**

Action required: Responses by **27 June 2011**

# An independent review of the governance arrangements of further education institutions in Wales

## Overview

The Minister for Children, Education and Lifelong Learning announced in June 2010 the intention to establish an independent review of the governance arrangements of further education institutions in Wales.

The review of governance arrangements in further education institutions in Wales considered whether the current arrangements, as set out in the Further Education Corporations (Replacement of Instrument and Articles of Government) (Wales) Order 2006 (2006 No. 13), are still relevant for the challenges and expectations that face the further education (FE) sector and the wider economy to meet current and future employer, individual and community needs.

This consultation provides details of the report completed by the review and its purpose is to garner your views on whether the recommendations are appropriate and should be accepted by the Welsh Assembly Government.

## How to respond

The response form is available for completion at [www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations)

Response forms should be posted/e-mailed to the FE Governance Review Secretariat at the address below by **27 June 2011**.

## Further information and related documents

**Large print, Braille and alternate language versions of this document are available on request.**

The document is also available from the Welsh Assembly Government website at [www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations)

## Contact details

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## **Data protection**

### **How the views and information you give us will be used.**

Any response you send us will be seen in full by Welsh Assembly Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Assembly Government staff to help them plan future consultations.

The Welsh Assembly Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Assembly Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## Foreword

In June last year I announced an independent review of the governance arrangements of further education institutions (FEIs) in Wales. The establishment of the independent review panel would respond to the Deputy Minister for Skills' announcement in April 2009 of the Assembly Government's intention "...to consider proposing legislation reforming the governance arrangements of FEIs, as part of our general determination to transform the landscape of post-16 education in Wales in both FEIs and schools."

I am determined to continue to develop a responsive further education system that drives up skills levels, contributes to economic regeneration and tackles poverty and disadvantage. The independent panel was established with a remit to consider whether existing governance arrangements are still appropriate for the current and rapidly changing landscape of post-16 learning. It is crucial that governing bodies reflect the range of work FEIs now carry out.

We need to ask ourselves, does the existing governance model reflect

- the diversity of the FE sector in meeting the current broad socio-economic challenges, and those faced by learners, communities, industries and the sector itself?
- real accountability to local communities given the increased 14-19 activity?
- the significant contribution the FE sector has made to the Assembly Government's ambition to improve social justice and enhance the skills base of the Welsh workforce?
- the sector's potential to do even more for citizens?

Mr Rob Humphreys, Director of the Open University in Wales, was appointed to chair the panel which consisted of eight individuals with wide ranging expertise. In addition to the above, the review was tasked with identifying good and innovative practice in other sectors, and in particular social enterprise, to see what lessons can be learned in meeting the needs of current and future stakeholders in education. In particular, I asked the panel to consider how governance arrangements of the successful social enterprises here in Wales and beyond might enable the FE sector to continue to meet the needs of their stakeholders. A model drawing on good practice in the social enterprise sector might constitute a Welsh alternative to the current model of incorporation.

On 22 March 2011 the report and recommendations arising from the independent review was published on the Welsh Assembly Government's website at <http://new.wales.gov.uk/topics/educationandskills/publications/wagreviews/fegovreview/?lang=en>. The panel has delivered an interesting, incisive and challenging report which sets out a new vision for FE governance in Wales.

I believe it is important that before any of these recommendations are accepted by the Welsh Assembly Government, those who will be most affected by the proposals have the opportunity to consider and comment on them. Today I am publishing a consultation paper inviting comments from **all** customers, users and individuals with an interest in the FE sector on the recommendations contained in the report.

I hope you will take the opportunity to consider this paper and comment on the issues it raises. The consultation paper will be supplemented by stakeholder workshops that will be held on 9, 10 and 11 May 2011, in which the Chair of the review, Mr Humphreys, will be participating along with members of the panel.

Details of these consultation events are on the consultation website at [www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations) and diary markers have already been issued.

A number of specific consultation questions are set out in the paper. If you wish to comment on these or on any of the issues raised in the consultation paper you may write to:

FE Governance Review Secretariat  
Department for Children, Education, Lifelong Learning and Skills  
Welsh Assembly Government  
Ffynnon Las  
Ty Glas Avenue  
Llanishen  
Cardiff  
CF14 5EZ

or

email: [FEGovernanceReview@Wales.gsi.gov.uk](mailto:FEGovernanceReview@Wales.gsi.gov.uk)

**Leighton Andrews AM**  
Minister for Children, Education and Lifelong Learning

March 2011

## **Introduction**

In June 2010, the Minister for Children, Education and Lifelong Learning announced the establishment of an independent review of the governance arrangements of Further Education Institutions in Wales. This paper invites comment on the recommendations within the report.

## Background

1. There are now 20 FEIs in Wales, delivering around sixty per cent of the post-16 learning that is funded by the Welsh Assembly Government. In 2009/10 the FEIs in Wales received over £343 million of investment from the Welsh Assembly Government to deliver learning, constituting almost eighty per cent of their total income.
2. These institutions make a crucial contribution to a number of strategies set by the Welsh Assembly Government including One Wales, Transformation, 14-19 Learning Pathways, Skills That Work for Wales and 'For our Future'. The contribution is achieved through the delivery of academic and vocational learning, community learning and ensuring progression to higher education.
3. As a key deliverer of learning and skills, with an overall reputation for delivering good quality with steady improvements being made year on year, FEIs have earned a critical role in the Welsh economy. In response to Transformation, larger more strategic organisations have, and are emerging, covering wider geographical areas and providing a more diverse range of learning and services than FEIs have done since incorporation.
4. In summer 2010, Leighton Andrews AM, the Minister for Children, Education and Lifelong Learning, announced an independent review of governance arrangements in the further education sector in Wales. In establishing the terms of reference for the review, he stressed the key role played by FEIs in the national economy and in delivering Welsh Assembly Government policies. In view of this, it is crucial to ensure that appropriate governance arrangements are in place to ensure the right level of scrutiny, challenge and accountability for a public good that has significant financial investment from the public sector.
5. The Review Panel was established in July 2010 and was chaired by Rob Humphreys, the Open University's Director for Wales. It delivered its report to the Minister in February 2011. Key elements of the report are outlined below; the recommendations appear in full at **Annex A**.

## Overview of the proposals

6. The Review Panel's proposals centre on a new and unique system of governance for FEIs in Wales, comprising two strands:
  - A new, 'leaner' **Board**, comprising Non-Executive and Executive Directors, appointed on the basis of skills and expertise, rather than category. This Board would be the governing body and would inherit all its existing responsibilities. Directors would be appointed on the basis of skills and expertise necessary for governance, rather than 'categories' of governance. All appointments to the Board must be according to Nolan principles.
  - Complementing the Board, will be a new **Membership Body** to ensure that the FEI has full engagement with its community including learners, customers, employers, other strategic partners and staff. Membership will carry with it obligations and responsibilities. The Membership Body will scrutinise the Board and act as a sounding board to ensure that the direction and strategy of the FEI are promoting the best needs of learners, the local economy and the community. The Board will be required to be open and transparent, engage in dialogue with the Membership Body and ensure all relevant information is shared with them. Members would have no role in approving policy, which ensures their ability to fully challenge and scrutinise the performance and achievements of the Board. The Membership Body would have no responsibility for the overall control of the FEI or its assets. This would be the responsibility of the Board of Directors.
7. These proposals for the Board and Membership Body are based around four key 'pillars' of governance which are outlined below.

## Clarity and purpose of further education

8. The report considered the purpose of further education in a modern society, and within Wales in particular. It recognises that further education is essential in any modern society, and pivotal in securing both economic prosperity and greater social justice in Wales. The group firmly believed that FEIs are autonomous organisations, but the public investment they receive means that further education is a public good.
9. The ten purposes of further education identified by the panel are set out in the Humphreys report, and recognise that FEIs are increasingly complex delivery organisations in an environment with an increasing emphasis on network and multi-agency working, with a wider range of learners and service users.
10. Based on this, the review identified three dimensions they believe are crucial to good governance, and which provide the framework for the recommendations.

## Scrutiny and accountability

11. It is proposed that the Board would be responsible for setting the institution's overall strategic direction, and for scrutinising and challenging its management. It would comprise of Non-Executive Directors and Executive

Directors (including the Principal) at a ratio of not fewer than 2:1. The report makes proposals on the number of Directors, the duration of their appointment, and the frequency of meetings.

12. Each Board should develop measures to assess the FEI's impact and effectiveness, which should be reviewed on an annual basis. The Board's assessment of its performance should include engagement with, and challenge by, the Membership Body. Each Board should be required by the Welsh Assembly Government to publish an annual report showing how it has performed against the measures. This report will need to be shared with the Membership Body.
13. Boards will be required also to consider the national and regional roles and strategies of the FE sector. This duty to consider will include consideration of the roles and potential roles of other educational providers alongside their own.
14. To reflect the commitment and contribution of Non-Executive Directors the panel suggests that consideration be given to enabling institutions to remunerate these if they so wish.

### **Ownership**

15. In this sense we mean ownership of FE in the ideological sense linked to FE being a public good, rather than in the legal sense of owning assets or having control of the FEI.
16. The size and makeup of each Membership Body should be sufficiently flexible to meet the needs of individual institutions. It is anticipated, however, that in every case this will include individuals from the education, business and third sectors, as well as learners, parents/carers and staff of the institution. Importantly, members would have an equal voice on the body, and would **not** be mandated to represent or speak on behalf of other groups or individuals.
17. Membership will carry with it obligations and responsibilities and the anticipated role of the membership body is set out in more detail in the Humphreys report. Open and transparent dialogue between the board and membership body will be crucial for the model to work well; the membership body would provide the board with feedback and information about relevant issues and opportunities, but would also challenge it and hold it to account for its performance.
18. As mentioned the role of the Membership Body is to inform rather than approve policy, but one of the responsibilities of the Body will be to ratify the appointment of the Non-Executive Directors and approve their re-appointment when their terms of office come to an end. It is through this mechanism that the community served by the institutions will be able to express their 'voice' on FE performance in meeting identified needs and responding to national strategies.

## **Capacity and effectiveness**

19. To further strengthen the FE sector's responsiveness to employers, and to ensure that the needs of a wide range of organisations including SMEs are considered, it is proposed that regional observatories are set up. These are not intended to supplant the good practice and systems that are already in place, but to bring together labour market intelligence in a more coherent way.
20. It is envisaged that FEIs will work together collaboratively to respond to economic needs, building on the good progress that has already been made in delivering the Welsh Assembly Government's Transformation agenda. The panel recommends that the Assembly Government should also support FEIs to develop innovative partnerships with other bodies to provide shared services.
21. To ensure that the new model of governance is delivered consistently and effectively across Wales, it is proposed that a code of governance and a training programme for governors are developed for all of those working in the FE governance system, on boards or membership bodies.

## **Independent review of the governance arrangements of further education institutions in Wales – Recommendations**

*We recommend the Welsh Assembly Government should:*

- R1. Revise the regulatory framework within which a further education corporation operates, The Further Corporations (Replacement of Instrument and Articles of Government) 2006, to enable a new system of governance involving a Board and Membership Body.
- R2 Give consideration to enabling Boards to introduce remuneration for the Chair and other Non-Executive Directors if they so wish, subject to discussions between the Charity Commission and appropriate bodies. If implemented by the Welsh Assembly Government, Boards wishing to do so should be able to demonstrate clear, robust and evidence-based cases for remuneration.
- R3 Remove categories of membership from the Instrument and Articles, allowing for Directors of the Board to be chosen on the basis of the skills, qualities and experience that are useful to the FEI.
- R4 Place a duty on Boards to consider national and regional roles and strategies of the FE sector and the needs of those served by the sector at regional and national levels. This duty to consider should include a requirement to consider the roles and potential roles of other educational providers alongside their own in meeting those needs.
- R5 Establish clear annual and longer-term performance indicators for Boards to report on and publish, including: • learner outcomes • financial health • community and employer engagement • collaboration with other deliverers of 14+ learning • measures to alleviate social disadvantage • measures to progress the skills and employment agenda.

*We recommend the new Boards should:*

- R6 Comprise Non-Executive and Executive Directors at a ratio of not fewer than 2:1 with a Non-Executive Chair who would have a casting vote.
- R7 Have no fewer than six and no more than 12 Directors, with an optimum of nine, to be appointed by the Board, following a Search Committee, operating under Nolan Principles.
- R8 Appoint Directors on the basis of a matrix encompassing skills and knowledge in fields including education, business and enterprise, finance, leadership, management, law and human resources.
- R9 Be able to evidence that in the search and appointment process appropriate and meaningful steps have been taken to identify Non-Executive Directors that reflect the diversity of the different communities they serve including language, gender,

age, ethnicity and socio-economic profile (to be informed by the equality strands set out in the Equality Act 2010).

- R10 Include the Principal/Chief Executive as an Executive Director.
- R11 Meet not less than six times a year in addition to an Annual General Meeting that would be attended by all Directors with the Membership Body invited, and open to the public.
- R12 Inherit the existing responsibilities and committee structure for FE corporations as set out under the Replacement of Instrument and Articles of Government (Wales) Order 2006.
- R13 Establish effective arrangements to ensure that the views and considerations of stakeholders, including learners and staff, are fed into the Board. Such arrangements may involve individuals from the Membership Body, but should also include wider sets of consultees.
- R14 Be required to publish an annual statement reporting its progress in achieving performance indicators set by the Welsh Assembly Government.
- R15 Directors must participate in a national training programme developed by the Welsh Assembly Government in conjunction with the FE sector, to ensure the effectiveness of the Board and governance more widely.
- R16 Undertake an annual self-assessment that is fully informed by feedback from the Membership Body.
- R17 Ensure that a Governance Officer is in place who is accountable to the Board and responsible for ensuring the effective operation of the Board and the Membership Body. This post would have a similar role and responsibilities to that of the present Clerk to the Governors.
- R18 In conjunction with stakeholders develop guidance to assist FEIs in establishing Membership Bodies.

*We recommend the new Membership Body should:*

- R19 Be established for every FEI in Wales.
- R20 Reflect the diversity of the different communities they serve, including language use, informed by the equality strands as set out in the Equality Act 2010.
- R21 Be engaged with and endorse the strategic direction of the FEI.
- R22 Act as a sounding board on the impact of the FEI in meeting the needs of the communities it serves.
- R23 Scrutinise and challenge the Board on the performance and achievements of the FEI to ensure the needs of the learner and the interests of the community and stakeholders are at the heart of decision making.

- R24 Meet no fewer than three times a year and participate in an Annual General Meeting (which will be open to members of the public).
- R25 Be governed by a framework developed by the Welsh Assembly Government and which is informed by the Nolan Principles.
- R26 Consist of not fewer than 25 and not more than 50 members.
- R27 Elect a Chair to facilitate meetings (supported by the Governance Officer), who will attend meetings of the Board as an observer with speaking rights.
- R28 Be responsible for ratifying the appointment of the Non-Executive Directors and approving their re-appointment, including the Chair of the Board, when their terms of office come to an end.

*We recommend members should:*

- R29 Include individuals with knowledge or expertise in: • business, industry and enterprise • the public sector as employer • skills and labour market issues • regeneration and economic development • the third sector • the delivery of education at a local or regional level (that can range from primary to higher education).
- R30 Include learners.
- R31 Include staff of the FEI.
- R32 Participate in a national training programme developed by the Welsh Assembly Government.
- R33 Be identified on the basis of written application following a recruitment process that is managed by an independent panel.
- R34 Have their appointment approved by the Board for three years and for a maximum of three terms.
- R35 Not be mandated to represent or speak on behalf of other groups or individuals.

*We recommend FEIs should work together to:*

- R36 Ensure that for each region, a single collaborative group is in place to provide oversight, leadership and encouragement in supporting partnership arrangements with other providers. It is important that development on the ground can move forward rapidly and coherently and therefore representation should be at the right level, e.g. Principal and Director of the Board.
- R37 Establish Business/Employer/Industry Observatories – on a regional basis in partnership with other FEIs as appropriate – building on FEIs' existing employer networks and other bodies that represent the interests of businesses.

*We recommend ColegauCymru/CollegesWales should:*

- R38 Develop principles and a code of governance, working in conjunction with the Welsh Assembly Government for approval by the Minister for Children, Education and Lifelong Learning, incorporating the Seven Principles of Public Life.

*We recommend the Welsh Assembly Government should:*

- R39 Support FEIs to develop innovative and mutually beneficial partnerships with other bodies, including clusters of FEIs and other public bodies for the provision of shared services, that do not disadvantage the FEIs in either a financial or legal capacity. Consideration should be given to the utilisation of models and governance arrangements for such partnerships and collaborations that are drawn from the co-operative and mutual sectors.
- R40 In conjunction with the FE sector, develop an all-Wales training programme for all those involved in governance of FEIs, whether members of Boards or Membership Bodies.

*We recommend that Estyn should:*

- R41 Ensure that formal inspections of FEIs include an evaluation of governance arrangements and effectiveness, taking into account the distinct roles of – and relationship between – the Board and Membership Body, the regional dimension of FE and an assessment of the responsiveness to the needs of the communities and sectors served by the institution

