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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of response

Draft Tertiary Education and Research (Wales) Bill Consultation

Summary of responses to the Draft Tertiary Education and Research
(Wales) Bill Consultation

Date 25 February 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Chapter 1 – Introduction, background and overview of responses

Background/purpose

The consultation of the Draft Tertiary Education and Research (Wales) Bill allowed a further opportunity to engage with stakeholders, and ask specific questions on particular areas in order to test elements of policy. The purpose being to ensure a robust and comprehensive piece of legislation, in readiness for future introduction.

Originally, it had been the expectation that the Tertiary Education and Research (Wales) Bill would be introduced during this Senedd term. However, on 9 June 2020 a [written statement](#) was issued explaining that the challenges presented by Covid-19 had led to the decision by the First Minister and the Minister for Education to postpone the introduction of the Bill.

As this consultation has been conducted during the time of the Covid-19 pandemic, it has enabled stakeholder views to be sought on issues that had become known during the pandemic, to further test the Draft Bill's ability to respond to new, unforeseen challenges.

The Draft Bill consultation builds on previous proposals that were set out in the Welsh Government's White Paper, '[Public Good and a Prosperous Wales – Building a reformed PCET system](#)' published in June 2017. These proposed a 'made in Wales' approach to post-compulsory education and training to make it easier for people to access lifelong learning and acquire the skills needed to help them throughout their careers. It set out proposals to create a new Commission to replace the current Higher Education Funding Council for Wales (HEFCW) and assume responsibility for the funding and performance of further education, work based learning, adult learning, research and innovation in Wales and sixth form provision.

The [Technical Consultation](#) followed and built upon the White Paper responses. This was published in July 2018 and set out more detailed proposals for the reform of the post-compulsory education and training system in Wales. Stakeholders were broadly supportive of the principles it contained but with refinements proposed in a few areas. The [summary of responses](#) to the technical consultation was published in October 2018.

Engagement

The Welsh Government consultation on [the Draft Tertiary Education and Research \(Wales\) Bill was](#) published on 14 July and closed on 4 December 2020. The consultation attracted 65 responses mainly from institutions and organisations, predominantly based in Wales.

Respondents were invited to review the consultation document and supporting information online and respond to each of the questions via e-mail, postal questionnaire or an online form.

In addition, a number of technical briefings were held with stakeholders throughout October and November to provide further background and context to the Draft Bill. The briefings were held virtually due to Coronavirus restrictions. Stakeholders were represented from across the PCET sector, and the sessions allowed stakeholders to raise questions to aid their understanding of the proposals, and to assist their response to the consultation.

Structure of the consultation

The consultation contained 22 questions that covered different aspects of the Draft Bill, and an open question for stakeholders to raise any other related matters. Included was a specific question that sought stakeholder views on the Draft Bill in light of the pandemic, and a general question enabling stakeholders to propose other additional levers to support the PCET Reform agenda. Sixteen questions sought agreement, disagreement or neither. The remainder were open questions.

About the analysis

For analysis purposes, all responses were securely saved and issued a unique ID. Where agreement was indicated respondents details were logged into an Excel spreadsheet along with the details from the Consultation response.

Analysis was carried out identifying the breakdown of responses by location, how each response was submitted, response by sector, language of submission (Welsh or English) and agree, disagree or neither.

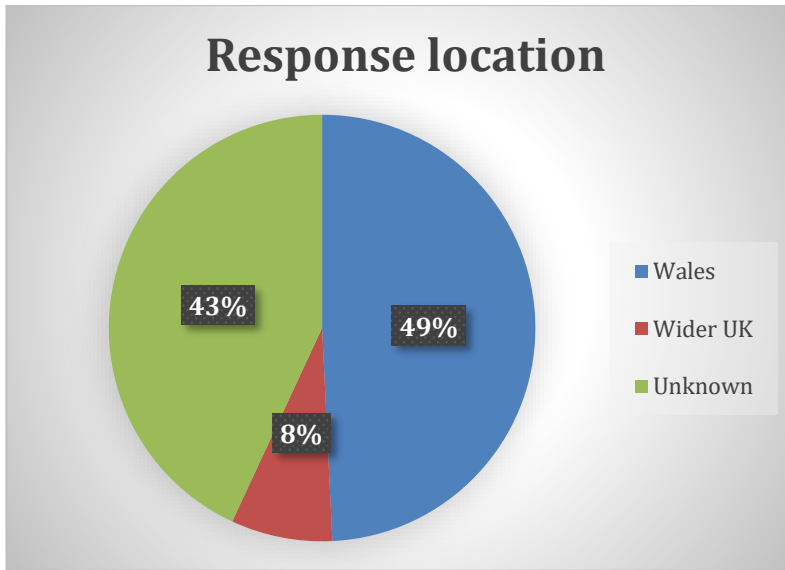
The comments received covered a range of themes, not all of which were within the scope of this Draft Bill. A number of suggestions and comments were related to implementation and the Commission's actual operating framework, which will be most useful for consideration at a later stage of the reforms.

Not all comments were direct responses to the questions posed, and therefore were treated as part of the 'additional comments' under Question 22. Similarly, a number of comments responding to Question 22, fitted within questions that the consultation had asked, and as such, were treated within those specific areas.

This document is intended to be a summary of the responses received. It does not aim to capture every point raised by respondents but highlights the key themes. A summary of the major themes and headlines from the responses is contained in this document and has helped shape the further development of the Draft Bill.

Chapter 2 – Summary of responses

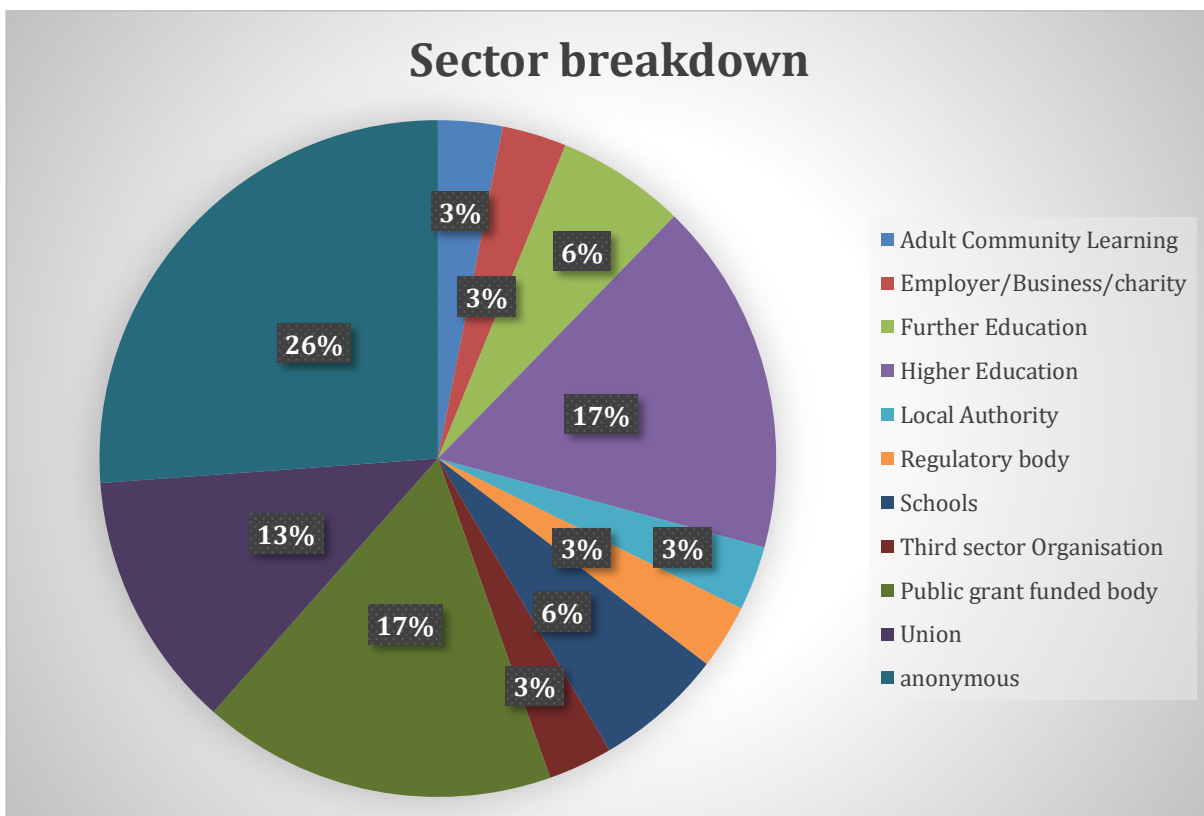
Response location



In terms of geographical location, 32 were from within Wales, 5 from the wider UK and 28 were from an unknown location. Two responses were submitted in Welsh, 58 in English and 5 were submitted bilingually. Seventeen responses were submitted anonymously and 48 submitted with contact details.

Responses by current sector

The largest proportion of responses were submitted from the higher education sector, followed by the further education sector and unions.

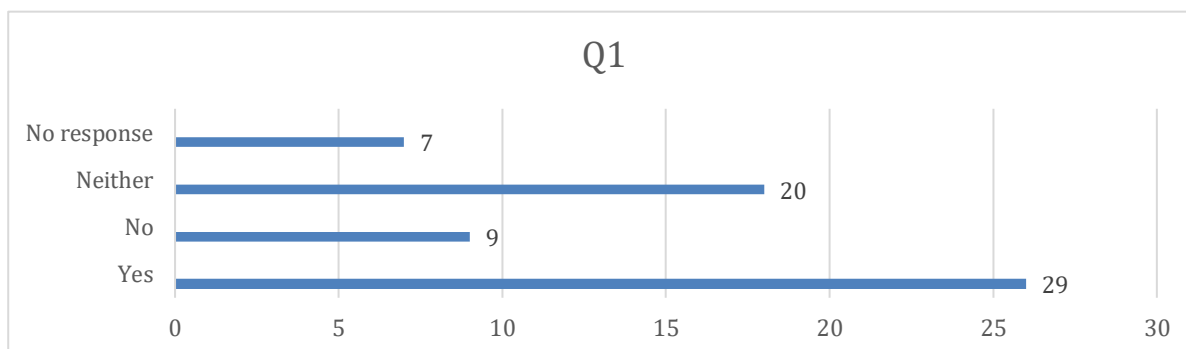


Chapter 3 – Overview of responses

Question 1: 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.”

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



The majority of respondents who expressed a view agreed that the approach taken to civic mission in the Draft Bill would be useful to the Commission in discharging its functions.

There was also a range of comments from those who neither agreed nor disagreed with the question, which have also been considered.

Some respondents felt that the definition in the draft was too broad, whilst others welcomed the flexibility and scope for difference that the definition would offer. Linking the definition to the Well-being of Future Generations (Wales) Act 2015 was generally welcomed.

Some of those who agreed also expressed a view about how they believed it should work and emphasised the following points:

- Civic mission being a strategic objective of the Commission provides a valuable opportunity to promote, improve and evaluate this function.
- The Commission should work in partnership with universities to develop and co-create this work; thereby avoiding governance issues whilst also being in the spirit of civic mission.
- Knowledge and understanding produced by learning providers should be shared accessibly and widely with individuals and communities, involving forms of adult education, and the innovative deployment of digital technologies.
- A strong community identity will help providers engage with the wider UK place strategy, and will develop the confidence to be outward looking and develop partnerships within and beyond Wales.

- There was support for the legislation giving the Commission the 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.
- Some consideration needs to be given as to how the gains from civic mission can be assessed and measured.

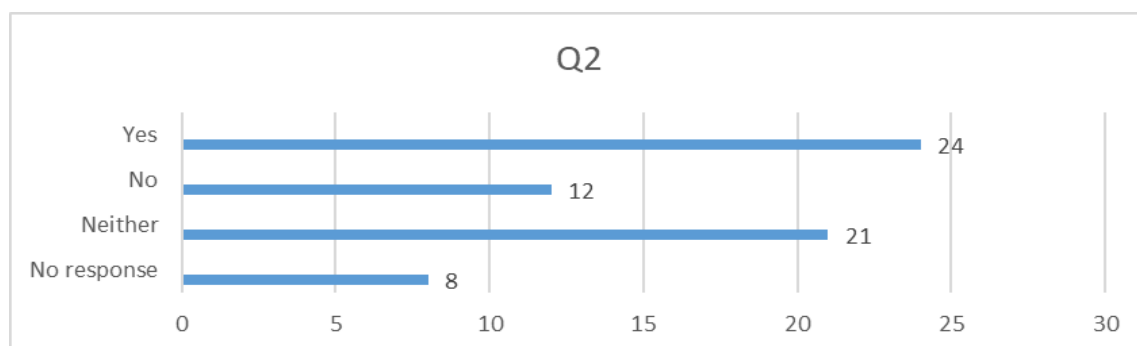
Some of those who did not agree, and some who neither agreed nor disagreed with the question still supported the notion in principle but felt that there were not enough checks and balances within the Bill as drafted to safeguard some of their concerns.

The reservations expressed focussed on several themes:

- The need to ensure this duty did not present any conflict with or undermine their institutions' charitable status or objectives.
- The desire to ensure that their civic mission be allowed to extend outside of Wales into some of the international communities they interacted with.
- Any definition of this within the bill should allow scope for an institution to interpret its meaning in line with its own vision and strategy.
- The need for a partnership approach, although there was no explanation of how the duty might prevent this.
- The need to accept that language around civic mission is constantly evolving and there needs to be enough flexibility for this to happen in the future.

Question 2: Learner protection

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?



Overall responses to this question were mixed. Those respondents who agreed with the approach proposed in the Draft Bill highlighted the following:

Consistency

A consistent approach is important to the format and method of communication of the plans. The requirement in the Draft Bill for the Commission to issue guidance on the preparation and revision of learner protection plans would help to achieve this.

Learner protection arrangements should align with a common set of principles to ensure consistency for learners across the PCET sector. It is important that school sixth forms have equitable, even if not identical, protections to other learners under the Commission's remit.

Learner protection plans should build on existing arrangements that are in place within HE providers to comply with HEFCW's Quality Assessment Framework, the UK Quality Code for Higher Education quality standards, the Office of the Independent Adjudicator for Higher Education's good practice framework and the Consumer Rights Act 2015.

If partnership arrangements are to be covered by the legislation, it will be important to clarify how Learner Protection Plans are expected to operate in practical terms, particularly in the case of Transnational Education, in the context of complexities arising across different jurisdictions.

Learner Awareness

Learners should know in advance of starting programmes what arrangements are in place to protect them in the event of a course or campus closure, a provider failure or their choosing to transfer to another course or provider.

- The Commission should ensure that students have access to clear and relevant information including the educational provision, participation rates, and student outcomes at different courses and institutions to enable them to make informed decisions.
- Learner protection plans should include support provided by validating universities to students studying at alternative providers.

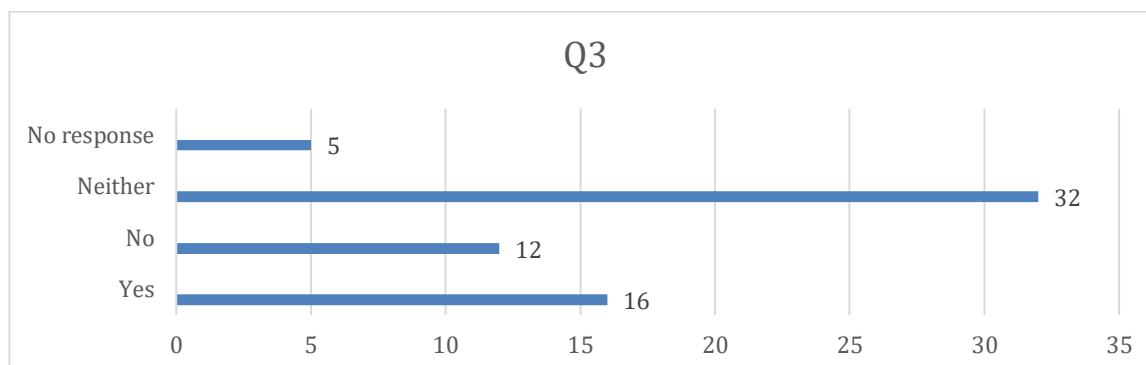
The degree of flexibility proposed alongside the less rigid system of regulation would reflect the diversity of the post compulsory sector.

Respondents that did not agree with the approach proposed in the Bill expressed the following reservations:

- Robust arrangements should not introduce additional administrative burdens.
- Plans could be adapted over time.
- Learner protection plans appear to mirror plans in England where they have received criticism.
- Learner protection plans should include learners in school sixth forms.
- The Commission should not be able to impose its own modifications to the learner protection plans.

Question 3: Learner Engagement Code

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?



Overview

The majority of respondents gave a neither yes or no answer to question 3. Some of these views were very similar in those respondents who reported a yes or no response to the question.

Student Charters

Many felt that institutions had student charters and student unions in place that were working well, and noted the need for the Learner Engagement Code to support rather than duplicate. A few respondents highlighted the need for a consistent language across the sector, advocating the use of student rather than learner.

Consistency and Flexibility

Many saw the Code as a positive step towards an inclusive sector, and advised that all underrepresented groups were consulted and involved in its development and delivery. Respondents highlighted the importance in applying the Code to all learners, regardless of mode of learning. A few felt the Bill was unclear on adult learning and faith school students, others noted current gaps within the PCET Sector, which undermined representation in decision making and student experience. Consistency was therefore key to ensure fairness across the sector, advocating guiding principles and practical steps, whilst allowing flexibility to ensure a non-prescriptive Code that would allow proportionality. With this in mind, several felt the Commission's powers within the Bill should be limited to ensure the sector retained flexibility in how it engaged with learners, concentrating on objectives and principles only.

Consultation and Development

Proper consultation on the Code, with engagement across the sector and importantly learners themselves was thought necessary before imposing any legal requirements. Some felt the legislation needed to be stronger and more detailed to ensure inclusive student representation and engagement, with one suggestion that this should be legally constituted and funded via student unions. However, some responses alternatively considered this

could impose requirements not appropriate to their institution and create further resourcing and workload implications.

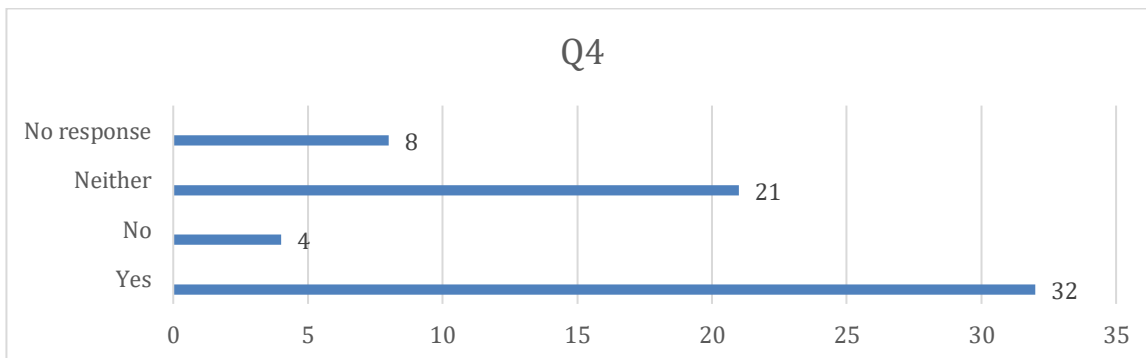
Positive responses saw the Code as an opportunity for institutions to develop their learner engagement. Geographical and linguistic differences should also be given full consideration in the Code's development. Once developed, operational delivery in terms of reporting, monitoring and fairness would be essential. There was a concern over the voluntary nature of student engagement in the Code and the need to evaluate data to understand the inclusiveness of the Code and adapt accordingly.

Sixth Forms

Several respondents were concerned that sixth form schools and learners were not obliged to adhere to the Code, although others were pleased to see recognition of the importance of sharing good practice with all institutions. A few respondents thought the exclusion of sixth forms was contrary to Hazelkorn's original recommendation of creating one coherent body for the whole of the PCET sector. There was also some caution highlighted in the need to account for differences in communication and the independence of pre and post 18 learners.

Question 4: Information, Advice and Guidance

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?



Overview

The majority of respondents answered positively to the question and offered comments similar to those who answered either yes or no. Some negative views were concerned with the Commission's powers in relation to data. These responses are summarised separately under question 22.

In general, the responses were very positive, with the exception of the provision relating to the Ministers' power to fund external providers directly. Many thought that the power to fund directly for information, advice and guidance (IAG), should be placed with the Commission rather than Ministers. Most however, welcomed the priority given to supporting students through the provision of IAG via educational pathways. The further considerations mentioned fitted broadly into the following themes.

Communication of information

The importance of the communication and flow of information at various levels was highlighted within several responses. This could be at a local, regional or national level between individuals, institutions and authorities, along with advice available being dependent on individual need, such as course/provision type. Some questioned whether there should be a move to a centrally funded impartial careers service. Some thought provision should be more locally considered and targeted, illustrating the importance of the balance of information.

Range and Quality of information

There was emphasis placed on the need to ensure pupils receive IAG on all possible transitional areas, and not just one path. There was a call for a balance to be struck between wide ranging guidance and the need to provide expertise in more specialist areas, such as healthcare.

A few respondents wanted the Commission to consider designating a quality body to support and enhance the learner progression and transition. There were suggested mechanisms as to what could be included in respect to learner pathways, with a view suggesting a provision could be built into outcome agreements. There was some concern relating to the perceived absence of training within the Bill, which was thought should be included as an integral part of the learning process.

Inclusivity

Overall respondents emphasised the need to offer accessible, wide-ranging IAG to meet the needs of learners. This included distance and adult learning with consideration for community funding provision, particularly surrounding sixth form schools within communities.

Many called for IAG to support underrepresented groups, breaking down barriers to transition and progression, whilst noting that tailored provision is needed not only for specialist professions but those with additional needs. Additionally, IAG should be available in the most accessible format for the learner.

Similarly, the availability of IAG in relation to the provision of the Welsh language and Welsh medium tertiary education, as well as that provided by church schools, colleges and sixth forms was required to ensure advice was available in respect of clear learner progression routes.

Collaboration / Consultation

Many saw the provision of IAG as a good opportunity to strengthen collaboration, cooperation and communication across the sector to achieve a fully inclusive IAG service. For example, some pointed out the opportunity for training opportunities in relation to professional learning and learning connected to the labour market, alongside employers.

There were further detailed suggestions as to the mechanisms that could be in place to operate an efficient IAG service connected with the opportunity for the Commission to work with stakeholders to look at standards in this area. Collaboration in respect to IAG was needed to ensure there was little or no duplication with other careers services, with an opportunity to refer learners to other expertise to ensure the most appropriate advice was accessed, including the need to support wellbeing.

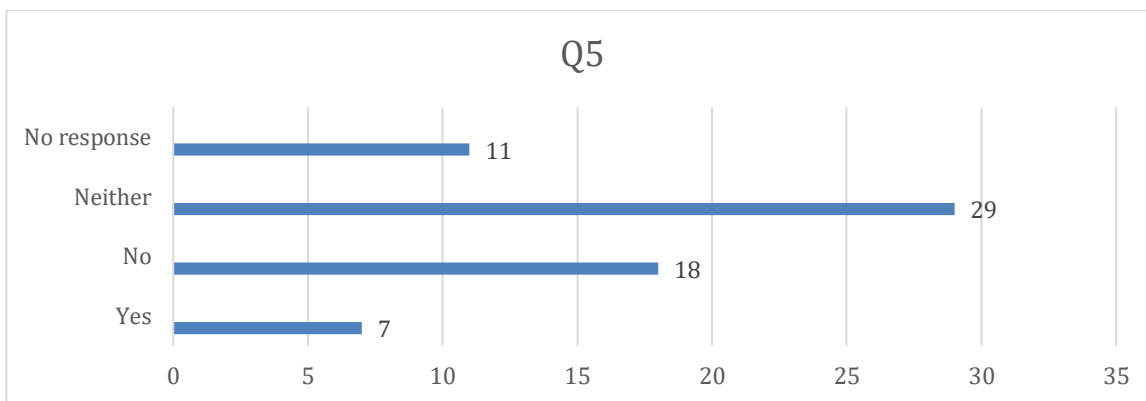
Funding

Most respondents advocated a centrally funded system in relation to IAG, with a clear and fair budget allocation. The need to recognise the competition that currently exists between providers was also highlighted. Several thought funding itself should be primarily focussed on learner interests with links to a responsive labour market and employers, rather than institutions.

Question 5: School 6th 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.

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?



Overall, responses to this question were mixed. Less than half of the total responses received in response to this question contained comments indicating the reason for their response. Some of the comments related to the implementation of the arrangements and although not fully covered here, will be taken into account when developing detailed proposals.

School Organisation Code

Specifically, there was a range of views about whether or not the School Standards and Organisation code would be the most appropriate vehicle for setting out the systems and processes. The whole spectrum was covered by those respondents who commented.

There was a view that school reorganisation would be an important role of the Commission and from that perspective agreed that a clear School Organisation Code would be necessary for it to work within agreed parameters. Conversely, another view was that it seemed contradictory for the School Standards and Organisation Code to be used for setting out systems and processes, when under the current proposals the Commission would not be able to develop that Code. This could potentially be addressed by enabling the Commission to develop the appropriate vehicle for setting out the systems and processes, but taking account of the Code, to ensure that Welsh Government safeguards were

incorporated. Further views were that it was difficult to say at this point in time whether the School Standards and Organisation code would be the most appropriate vehicle with another suggesting that it should be subject to an independent review.

Triggers

There was agreement that the triggers for instigating sixth form reorganisation by the Commission itself should be clearly defined and subject to full consultation with all appropriate parties before introduction. They should be based on the improvements that the school reorganisation proposals would achieve and not purely on economic factors or funding reasons. Other aspects such as the Welsh Government's objectives around fair work, future generations, place-based development and principle of no-detriment in terms of pay and conditions needed to be taken into account. A number of respondents suggested potential criteria to be considered. These included whether proposals would:

- Significantly improve the wellbeing of learners, staff members or the wider community.
- Allow a more financially sustainable provision of tertiary education in the area.
- Address an increased demand.
- Offer value for money and efficient use of resources.
- Improve standards, the breadth of the curriculum offer, Welsh medium provision or offer additional benefits for learners.
- Address sustained under-performance as evidenced in the reviews of planned Outcome Agreements.

Several respondents indicated that full consultation with all appropriate parties must remain an essential part of any school reorganisation proposals and proposed amendments to the School Organisation Code.

Several respondents commented on the need for arrangements to be introduced to safeguard and promote the current Welsh medium provision in Welsh medium schools.

Other views

The Commission's role

One respondent was of the view that by enabling the Commission to direct a local authority or governing body to bring forward reorganisation proposals, it would be unable to secure proposals that are produced at a local level. Other respondents indicated that where the Commission directed local authorities it would need to do so based on robust evidence, demonstrating an understanding and awareness of the differences within Wales.

A few respondents indicated that decisions on schools sixth form reorganisation proposals should ultimately be the decision for democratically elected members who are best placed to make decisions based on the needs of the learners in their local authority and that the proposals were contrary to this. One respondent suggested that Welsh Ministers should retain a role, as they are directly accountable to their constituents for the impact of any changes. There was also a concern that the Bill as drafted lacked a requirement for school

reorganisation proposals to be subject to Ministerial decision where objections have been raised, unless requested to do so by the Commission.

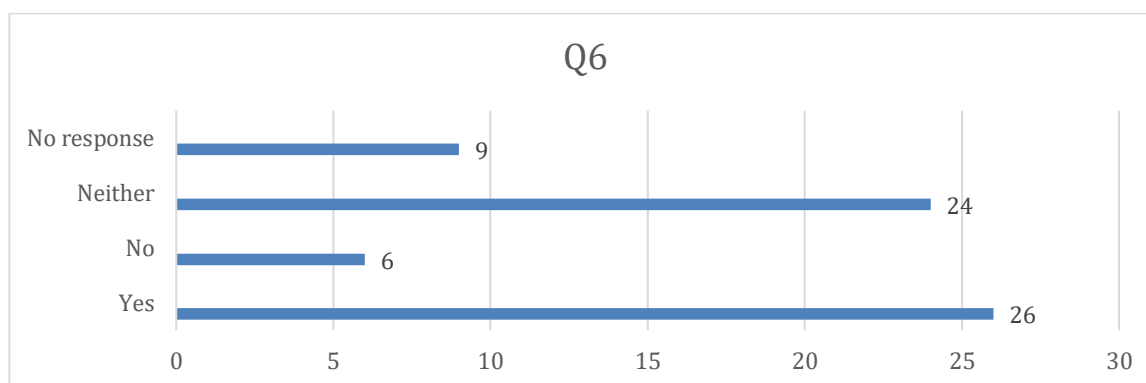
The importance of Local Authorities and the Commission carefully considering the impact upon specialist provision for learners with Additional Learning Needs in any reorganisation of sixth form provision was mentioned.

Schools

Several respondents commented on the position of school sixth forms highlighting that they are unique in that whilst they will be within the scope of the Commission, they are also part of a wider education institution that comes under separate funding, evaluation and accountability arrangements. One response felt there was a perceived lack of recognition in the Bill of the place of voluntary schools and the role of the churches as partners with the state in the provision of religion, values and ethics (formally religious education) education.

Question 6: Strengthening collaboration

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?



Those respondents who expressed a view indicated that the Commission could go further in strengthening collaboration in the PCET sector to enhance the learner offer, develop shared goals and improve pedagogic practice, and that there were various mechanisms available to contribute to this process:

- Active encouragement and facilitation of collaboration could help and be achieved, not via regulations but by encouraging a culture of joint working throughout the PCET sector.
- There could be local agreement at institutional level by providers regarding course provision, to avoid the requirement for involvement by the Commission.
- Long term collaboration would not be achieved if collaboration was project-based. Genuine collaboration should be based on long-term goals and strategic agreements.

- Social partnership is a collaborative model and will in itself help set the tone for tertiary education in Wales.
- Consideration should be given to how Outcome Agreements could promote collaboration e.g. by incorporating requirements or incentives for collaborative approaches to strategic planning of provision.

Funding

- There should be funding incentives to facilitate collaboration between sixth forms and FE Colleges using the opportunity to increase student choice and reduce duplication.
- There should be a requirement for level 3 providers to engage and cooperate with higher education providers to facilitate clear pathways and functions for learner progression through the tertiary sector.
- The funding allocations should be separated between the various elements of the PCET sector to provide clarity and reassurance that funding would not be cut against certain aspects. If no further research funding was made available when the Commission was established then there was concern that this could be to the detriment of the HE sector.
- It was vital that sufficient funding be provided to allow collaboration to work well. Respondents cited the examples of the Learning and Skills (Wales) Measure 2009 or the Learning Pathways 14-19 which was reported as providing positive experiences for stakeholders and learners. When funding to facilitate this work ended, schools had been unable to afford the costs of joint working between themselves and colleges meaning that as a result there is very little collaboration.
- A specific fund for resourcing virtual education was suggested as a way of aiding collaboration across all institutions, which would open up a collaborative approach regardless of institutions' location.

Size of Providers

A need to move towards a smaller number of larger providers was suggested to provide more resilience and efficiency in the sector and create centres of expertise with enhanced specialisation. This could be achieved whilst maintaining broad universal access to high quality education and training for students including those with special educational needs and disabilities.

Careers

The career pathways for learners should be integral to students' decision-making and a willingness for Careers Wales to be more involved with the sector and provide the necessary links for training, between employers and learners. One view was that there was a need to ensure that the career aspirations of young people are given adequate consideration in any planning for the sector. One respondent suggested that the

establishment of the Careers Wales intelligence hub from 2021 could facilitate an improved collaboration with the sector.

Students with Special Needs

The new Additional Learning Needs reforms will provide ALN learners with a one plan system through to further education, but not beyond further education and into university/the world of work. There is an opportunity within the development of the Commission to encourage and help facilitate greater collaboration and information sharing between tertiary education sectors in order to ensure a smoother transition for those with learning difficulties and disabilities in Wales at these critical points.

Welsh Medium Provision

There was a concern about how Welsh medium provision would be allocated funding and that education would lose some Welsh medium provision because of the changes. In addition that Welsh medium needs a prominent focus when collaborations are being agreed to ensure provision is widespread and of a high quality.

Lack of Detail in the Bill

A lack of detail in the Bill regarding the methods for encouraging collaboration meant that it was difficult to comment at this stage on how successful collaboration would be under the new Commission.

Other Views

- There are already institutions and collaborations that span the sector boundaries, and current structures are sufficient to enable collaboration and there could be benefit in developing these further, rather than adding further statutory functions for the Commission.
- The Draft Bill would provide sufficient collaborative opportunities for the sector, for example, in specific areas using outcome agreements, and the funding of Research & Innovation through partnerships.

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

The majority of respondents that answered this question thought that the establishment of the Commission would potentially have a positive impact on the Welsh language and opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. It was noted that the establishment of the Commission could:

- Increase opportunities for the use of Welsh by creating robust pathways and links across tertiary education.

- Provide 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.
- Foster closer collaborations between school sixth forms, FE and HE in support of Welsh-medium provision, working alongside the Coleg Cymraeg Cenedlaethol and the National Centre for Learning Welsh.

A number of respondents made suggestions on how the positive effects of establishing the Commission could be increased.

- Providers should be allocated additional funding to support the development of Welsh medium teaching and to ensure other aspects of the student experience, such as pastoral support, are available in both languages.
- There should be greater focus on developing bilingual practitioners. It was argued that one of the greatest challenges facing the education sector in relation to providing equal access to education through the medium of Welsh is in recruitment, where it is common to struggle to recruit teachers, tutors, lecturers and work based learning staff who either speak Welsh and/or are confident in using Welsh. This is even more problematic in technical or specialist subject areas.
- There must be far more encouragement of co-operation between schools, further and higher education on Welsh-medium. This will ensure that the education continuum is recognised and 16–19-year olds benefit from the expertise and contribution of those in higher education. Future development should build on current good practice such as the Welsh Government's Esgol project.
- The Welsh Government should provide more information on how the Commission would work with the Coleg Cymraeg Cenedlaethol. The Commission should build upon the positive relationship between HEFCW and the Coleg to work collaboratively to achieve the shared aims of increasing the number of individuals studying higher education through the medium of Welsh.
- The benefits of using the Welsh language in the work place would need to be clearly articulated by the Commission in order to engage with employers, especially those in the private sector and engaged in supporting apprenticeships that are not covered by Welsh Language legislation.
- There is a need to ensure significant progress in the use of the Welsh language in apprenticeship programmes in general. A key part of this will be ensuring that there are opportunities for learners to follow an apprenticeship through the medium of Welsh or bilingually and ensuring that an apprentice is aware of the advantages of having Welsh language skills.
- Clinical education sessions should be commissioned to allow individuals to gain confidence speaking Welsh in a clinical setting and research should be encouraged to be produced in Welsh.

- The Commission to give due regard to the access needs of young Welsh speakers or learners who are blind or partially sighted in relation to Welsh Braille or other alternative formats for the Welsh language.

Question 8: Opportunities for people to use the Welsh language

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

A wide range of comments and suggestions were received in response to this question. Where proposals were felt to be sufficient:

- The existing provisions would enable the Commission to make a significant contribution to the achievement of the Cymraeg 2050 ambition, particularly the achievement of specific goals related to post-compulsory education.
- The proposed provisions align 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 wellbeing of Wales.'
- As the Commission would be subject to Welsh language standards, as outlined in the Welsh Language (Wales) Measure 2011 and would have a duty to encourage the provision of and participation in tertiary education via the medium of Welsh, this was likely to have a positive impact on the opportunities for people to use the Welsh language.
- Given that the Commission would have a duty to adhere to the Welsh language standards, it would have to discharge its functions to promote the Welsh language consistently to providers and across all policy areas. It seems superfluous, therefore, to include additional expectations in any other legislation.

Suggestions for change included:

- To create a bilingual workforce there was a need to ensure more students and graduates who have been educated in Welsh stay in Wales. This should be better reflected in the Bill and in wider policy areas.
- Ensure that those facing barriers to using the language are placed within a framework that works to mitigate those barriers. Typically, these barriers are manifest in communities where Welsh is not widely spoken and where deprivation related to equality, diversity and inclusion is prevalent. Recognition was sought for how Welsh language and widening participation intersect, and increased use of the Welsh language may complement and improve outcomes for those suffering disadvantage.
- The Commission should be required to work closely with other bodies, for example the Coleg Cymraeg Cenedlaethol, the National Welsh Language Learning Centre, the Education Workforce Council, and Education and Healthcare Wales. If it is not appropriate or possible to mention specific bodies in

the legislation, it should be communicated very clearly to what kind of national strategic bodies the legislation refers to.

- A committee should be established with a statutory responsibility, which includes a remit to deliver life-long and adult learning, with widening participation and Welsh Language being a function of that committee.

Question 9: The Commission's duties in relation to Welsh medium Tertiary education

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

Views

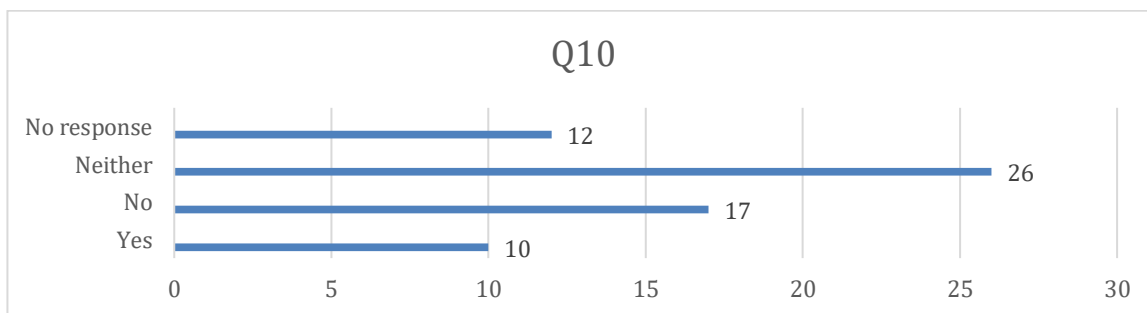
There was broad support for the proposed duties to be placed on the Commission in relation to Welsh-medium tertiary education. However, a number of respondents suggested amendments to the duties.

- The duties should be extended to support individuals who have not previously had the opportunity to take advantage of Welsh-language education.
- 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.
- A number of respondents suggested that the use of the term 'reasonable' in section 8 (b) of the Draft Bill was problematic, as it is difficult to define and is open to interpretation. A more precise definition of 'reasonable demand' is required in order to give institutions a clear understanding of expectations.
- 'Demand' should not be based solely on learner demand; it needs to cover employer demand for employees who are qualified to do their job bilingually to meet the needs of their communities, users and customers. It should encourage learners to undertake Welsh-medium provision to improve their skills in a holistic way, and plan for growth rather than expand based on 'demand'.
- The Draft Bill describes how the Commission must "encourage" Welsh medium education. This could be couched in stronger terms.
- A number of respondents suggested that a duty should be placed on Welsh Ministers to provide resources that match the Commission's duty to ensure that sufficient Welsh-medium education is provided.
- Some respondents expressed concerns that the Bill would allow Welsh Ministers to set terms and conditions that relate to specific courses or parts of a course of study, without having any duty to allocate sufficient funding. This undermines the principle of academic and institutional autonomy, which are essential for the reputation, and international attractiveness of the higher education system in Wales.

- 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 addition of a formal requirement for the collection and publication of data about Welsh-medium tertiary education provision would help to encourage public awareness of opportunities to pursue study in Welsh.
- There is need for specific accountability within the Commission and a willingness to ensure accountability from others, including through the outcome agreements with individual organisations.
- 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.
- Any guidance for monitoring provision developed by the Commission needs to be unambiguous. Targets for strategic linguistic planning should be agreed between providers and the Commission and reviewed annually.

Question 10: Registration (access & opportunity plans)

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?



Some responses that agreed that Access and Opportunity Plans could drive transformative change included the following qualifications to their agreement:

- The plans, in conjunction with Outcome Agreements across the tertiary education sector, would enable the Commission to develop a strong strategic steer for the benefit of learners in disadvantaged communities.
- The Commission should have flexibility to determine the most appropriate means to promote widening access and be enabled to work with providers and other stakeholders to drive transformational change.
- The Commission, through the development and implementation of its strategic plan, and through evaluation and research could provide assurance that it is

achieving transformative outcomes rather than prescribing requirements in legislation.

Suggestions for improvements to the plans included:

- Institutions' plans should take account of and prioritise the demographic, geographic and technical needs of industries relevant to their individual circumstances.
- Plans should include measures to monitor and report on the level of careers support made available to learners.
- Increase the duration of Access and Opportunity Plans in comparison to current arrangements for Fee and Access Plans.
- The scope of the Plans should be extended to include part-time study.
- Over the longer term elements of the Access and Opportunity Plans approach could be applied to post-16 provision in schools and colleges and this represented an opportunity for plans to be developed that apply to learners at a younger age.
- That the Commission should be enabled to apply conditions of registration or funding equally to all tertiary education providers who should have the same responsibilities in respect of promoting participation rather than the Commission being responsible for encouraging participation in further education and training and providers in respect of higher education. The Commission's role would be to regulate the discharge of such responsibilities.
- The Draft Bill refers to "equality of opportunity" and using the term "equality of outcome" would strengthen the focus on outcomes.
- A request for student voice to be represented and for provision be made in the Bill for student representative organisations to be consulted on Access and Opportunity Plans.

Issues raised regarding Access and Opportunity Plans included:

Administrative Burden

- Continuing an approach similar to Fee and Access Plans, and introducing Outcome Agreements, could place additional administrative burdens on institutions with the possibility of duplication of effort as well as increasing complexity.
- There was a view that Fee and Access Plans under the HE (Wales) Act 2015 have imposed significant administrative burdens, resulting in a diversion of resources and are not delivering their intended outcomes and that the proposals for Access and Opportunity plans do not address these issues.

Lack of Flexibility

- The extent of prescription of the content of Access and Opportunity Plans could limit the future flexibility, the responsiveness of the Commission and hinder development of a strategic approach.
- A range of options will be required to widen access and opportunity with systems put in place to enable flexibility and to support the movement of learners between vocational and academic education.

Impact of the Pandemic

- The Covid-19 pandemic and the potential impacts on student recruitment and retention in the short term could mean that Access and Opportunity Plans alone would be insufficient to achieve transformative change in widening access and opportunity in higher education.

Lack of Clarity

- There is a lack of clarity about whether alternative providers would be subject to a requirement to have an Access and Opportunity Plan and possible consequences for such providers in the provision of financial support and / or reduced fees for students from under-represented groups.
- The Bill does not adequately define under-represented groups.

Engagement

- The details of Access and Opportunity Plans should be developed following consultation and engagement with the higher education sector.

Sector-wide Coherence

- The proposal for Access and Opportunity Plans to apply only to higher education does not support the intention of creating coherence across the PCET sector and that input from all sectors will be needed. The Commission should be enabled to apply conditions of registration or funding equally to all tertiary education providers who should have the same responsibilities in respect of promoting participation.

Accountability

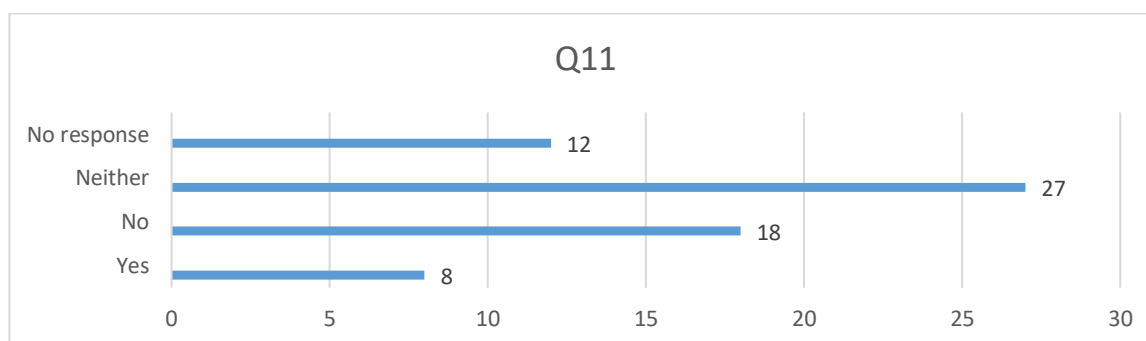
- Concerns about specific provision for students with learning difficulties and disabilities, the diverse needs of these learners as well as the accessibility of services for this group and a suggestion that regulation of the content of plans, coupled with enforcement sanctions by the Commission, could assist with ensuring the accountability of providers delivering their plans.

Other potential mechanisms

- Outcome Agreements might offer an alternative mechanism to address equality of access and opportunity.
- The Commission, through the development and implementation of its strategic plan, and through evaluation and research could provide assurance that it is achieving transformative outcomes rather than prescribing requirements in legislation.

Question 11: Commission to monitor, review, and ensure compliance of registration

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?



Respondents who agreed that the proposed Commission's powers would provide sufficient flexibility for it to regulate proportionately provided some additional comments, which included:

- The proposed approach appears measured, proportionate and appropriate.
- Clarity is sought about which providers would be registered or "unregistered", with particular reference to independent training providers delivering apprenticeships.
- Monitoring, reviewing and ensuring compliance should be robust and sensitive to the needs of learners and institutions.
- Current regulations should be maintained particularly with respect to private providers.

Respondents who disagreed or had concerns with the proposed approach gave a range of reasons in support of their responses, which included:

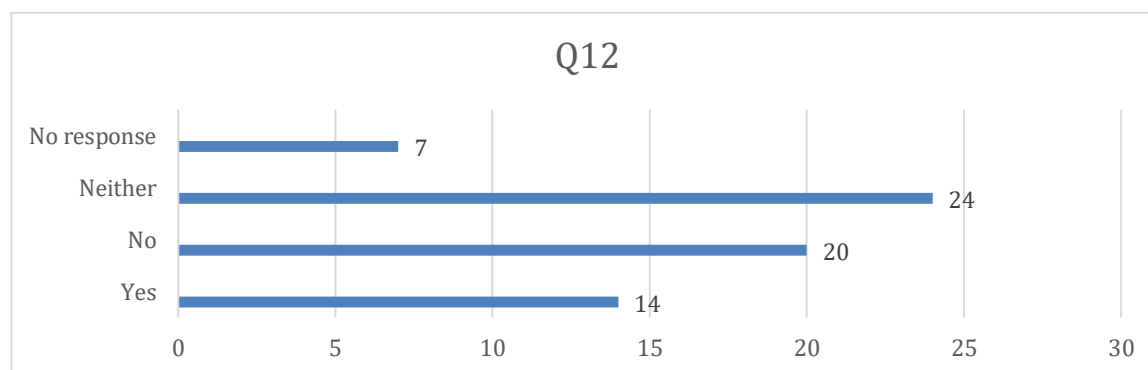
- A registration process for higher education providers is unnecessary in light of the regulatory tools and funding levers currently available to HEFCW.

- The proposed regulatory system (comprising registration, Access and Opportunity Plans and outcome agreements) would be more complex; compliance would require more administrative effort and could result in greater costs to institutions than current arrangements.
- The powers proposed for the Commission to impose registration conditions on providers are excessive. Despite the duty to be placed on the Commission to ensure that registration conditions are proportionate to its assessment of the risks involved, there is no indication of what the relevant risks may be and a concern that providers would not be able to challenge their imposition.
- The proposed approach may result in the unequal treatment of providers; the Commission could become involved in the day-to-day management of individual institutions, with particular concern about its ability to impose mandatory requirements in relation to governance and management.
- Although the powers proposed in respect of registration are proportionate, at an appropriate level of detail to allow the Commission to monitor, review, and ensure providers' compliance, they may not enable the Commission to secure a coherent tertiary education system by using the register as the basis for engaging with all providers. In general, the feedback called for more detail in a number of areas, relating to the proposals, and in particular, how they would work in practice and details about the transition process.

A range of comments were more concerned with operational impact and the outworking of these powers in the work of the Commission. These factors will be considered further and taken into account during the implementation of the reforms.

Question 12: Quality and inspection

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?



Stakeholders broadly welcomed moves towards a coherent approach to quality oversight across further and higher education, grounded in common principles, and building on existing assessment and inspection arrangements. They highlighted the following points:

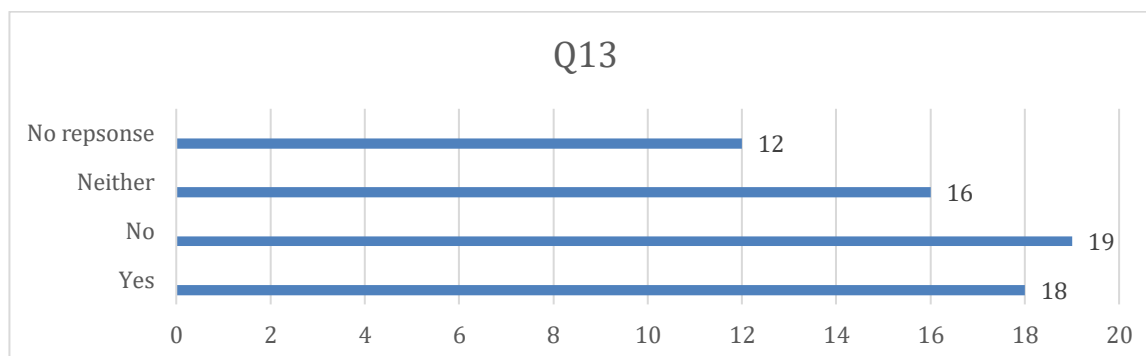
- The importance of any quality assurance frameworks being published by the Commission not overreaching to become burdensome or deterministic regarding approaches to quality assurance and improvement.
- The requirement for the designation of a quality body by ministers was queried. Respondents noted the importance of safeguards, consultation and a strong role for the Commission in determining the designated body. Respondents also emphasised the importance of higher education quality and standards remaining aligned to existing UK- and European-wide frameworks.
- Further clarifications are required regarding the duties of Estyn in respect of further education provided in universities, and ‘non-prescribed’ higher education delivered in further education and work-based learning settings, including professional qualifications and higher apprenticeships.
- Respondents emphasised the importance of continued professional development, reflective pedagogical practice, and research-led approaches to quality improvement across the tertiary sector.
- Additional funding would help facilitate greater collaboration between further and higher education in terms of quality assurance and enhancement, leading to opportunities for more consistent high-quality education across the tertiary sector, and an improved student experience.

Other views

- Reforms should go further towards unifying the approach to quality assessment and improvement under a single framework or agency.
- Additional details regarding the designation, re-designation, and fee-charging procedures covered in Schedule 3 were requested.
- The reforms provide the opportunity to require more specific Estyn reporting regarding subsections of provision in some providers, such as sixth forms within schools, or Independent Living Skills courses within colleges.
- There is a need for further consideration of the Commission’s oversight of higher education quality in overseas validation arrangements.

Question 13: Research & Innovation

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



Respondents who provided comments generally took the view that the research and innovation responsibilities of the Commission should remain restricted to research activity conducted in education institutions or regarding education and training. Concerns were raised regarding the following:

- 'Mission creep' for the Commission, as well as regarding creating an overly complex and unwieldy new organisation.
- There was a call for the Bill to include specific protections for un-hypothecated 'quality related' (QR) research funding. Some respondents argued that were the research functions of the Commission to be broadened, it would be important for Welsh Government to commit to additional resource, in order to protect expenditure on QR.
- Concerns were raised at the Welsh Ministers' powers to specify areas of research in the conditions of funding granted to the Commission ('hypothecated funding').
- Respondents questioned whether the Commission's research and innovation committee should be appointed by Welsh Ministers, suggesting that such appointments should instead be reserved for the Commission.
- Respondents noted that the research and innovation functions in the Draft Bill are relatively limited compared to the Commission's other responsibilities. A number of respondents called for Welsh Government to take a clearer strategic approach to research and innovation in Wales, and to situate the role of the Commission within that context.
- Respondents called on Welsh Government to commit to the funding and other policy recommendations of two recent reviews conducted by Professor Graeme Reid.

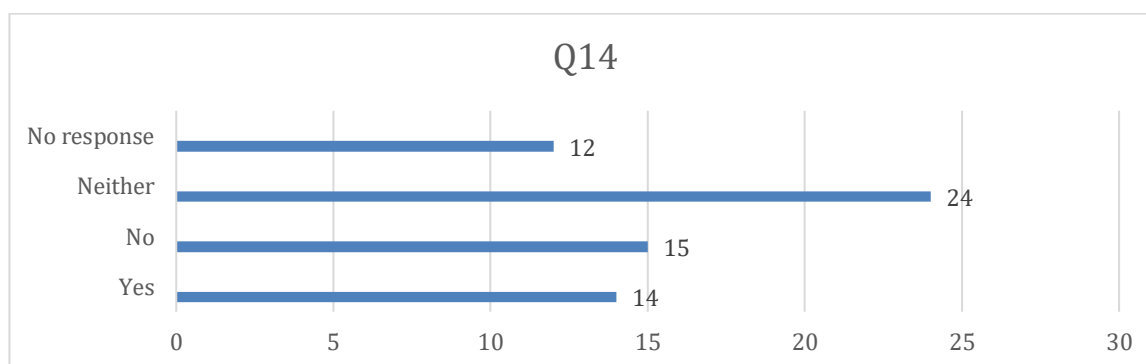
- It was noted that there was considerable uncertainty in the research and innovation landscape because of European exit and the UK Government's emerging policy priorities in respect of research and regional development.

Some respondents highlighted the importance of the Commission being able to fund a wider range of bodies for the purposes of research into education, training and related matters. This is enabled under section 124 of the Bill.

A small minority of responses called for ensuring that the Commission's research and innovation powers are 'future proofed' by enabling a wider range of funding recipients, including private industry, enterprise, and bodies involved in regional economic development.

Question 14: Apprenticeship frameworks

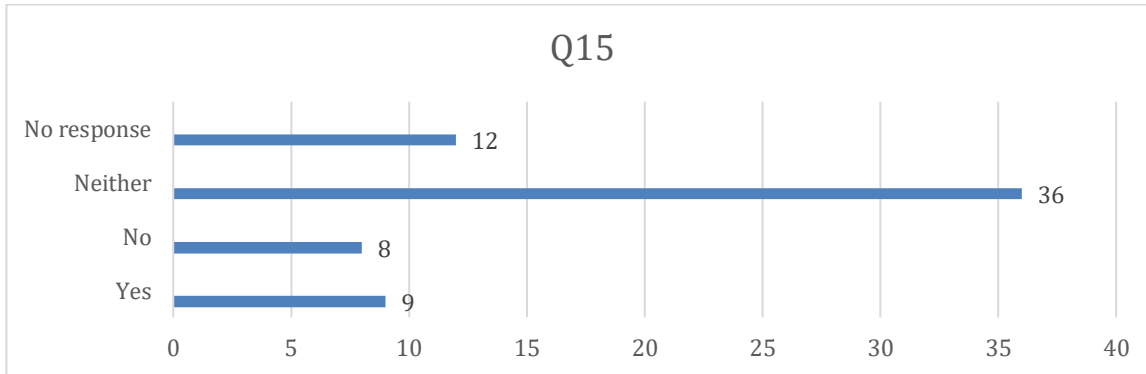
The Commission will be responsible for apprenticeship frameworks (Sections 104-107) and the Welsh Ministers will be responsible for the preparation and issuing of core requirements in the Welsh Apprenticeship Specification (WAS) (Sections 101-103). Do you agree with this balance of powers?



- A number of respondents commented on the Welsh Ministers' powers to state what qualifications may be in a framework, believing that this should lie with the Commission. They asked that more consideration be given to the split between Welsh Government and the Commission regarding their respective functions.
- A number of respondents asked for greater clarification on the operation of apprenticeships, to ensure providers were treated equitably. They noted that degree apprenticeships were funded via a grant to HEFCW and all other apprenticeships via a fully procured tender exercise. Respondents were unclear as to why different arrangements were in place, and whether the provisions in the Draft Bill would continue this approach.
- A couple of respondents believed that 102 (4) (relating to Apprentice Certification and their requirements), should be part of the role of the Commission not Welsh Ministers to enable this function to be standardised and ensure coherence at every level.

Question 15: Apprenticeship and industry requirements

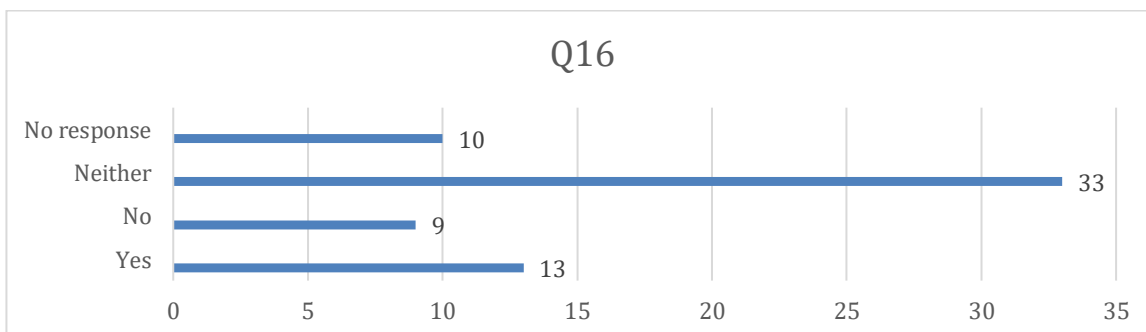
Does the Draft Bill (Part 4) provide adequate strategic drivers to develop and maintain the integrity of apprenticeships in Wales, ensuring they meet industry requirements?



- A number of respondents stated that while the Draft Bill sets out the mechanisms of apprenticeship development and maintenance, it does not take account of strategic drivers for framework development. This would include the identification of skills needs and collaboration as an aid to employer focussed progression pathways through the levels. There is limited evidence to suggest that the mechanisms set out in legislation are the appropriate ones.
- A number of respondents could not see any evidence of “strategic drivers” in Part 4 of the Bill. It was proposed that Welsh Government decides occupations to include in the frameworks based on strategic/economic priorities, but also draw up specifications (i.e. content and attainment standards). The Commission’s role would be publishing, reviewing and allocating. It was not clear to respondents why the Commission would not continue from the point where Welsh Government had determined occupations to be funded for apprenticeships, nor why Welsh Ministers would retain such powers.

Question 16: The needs of the economy and employers

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?



The majority of respondents who expressed a view agreed that the duty on the Commission to have regard to the needs of the economy and employers does go far enough and could have a meaningful impact as drafted in the Bill. There was also broad agreement that the needs of the economy and employers should be seen as a significant factor informing decision-making.

The largest number of respondents neither agreed nor disagreed with the question as posed, but many of them included a range of associated comments, which have been taken into account. A range of these comments were concerned with operational impact and the outworking of this duty in the work of the Commission. These factors will be considered further and where appropriate taken into account during the implementation of the reforms.

Many respondents (despite their various answers to the question) argued that whilst the needs of the economy and employers is an important and potentially vital factor, this should not totally override the wider needs and aspirations of the learners. They highlighted the risk that if this were allowed to happen many benefits to the learner and the wider population could be lost, including building resilience and adaptability as the needs of our economy change, and meeting social, linguistic and cultural needs.

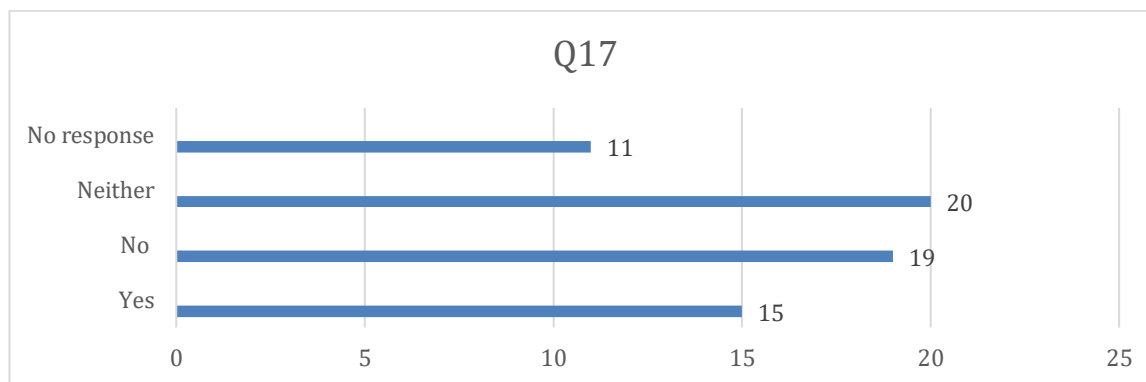
Many of those respondents who expressed a view agreed on the need for balance between these different factors when steering investment, and that in order to be effective the Commission would need to weigh the needs of skills partnership with the needs of individual citizens. This balance was argued to be instrumental in aiding recovery from the pandemic. However, mention was also made of the need to recognise the particular Welsh context where a small number of large employers might skew the sector's priorities, potentially reducing opportunities for diversification in the region. The broader global perspective also needs taking into account.

The point was also made regarding the role of the other strategic direction setting mechanisms for the Commission within the Bill providing a framework, which, if working effectively could render this duty superfluous. It was also mentioned that this duty could be particularly relevant in view of the Commission taking ownership of the apprenticeship programme. This illustrates the diversity of respondents' reactions to the operating context of the Commission.

Significantly, several stakeholders highlighted the recommendations of the Reid Review and the importance of its implementation. These respondents argued that if delivered fully, this would also make a positive contribution to the aim expressed in the Draft Bill.

Question 17: Funding, a focus on outcomes

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?



Those respondents who agreed with the approach taken in the Draft Bill cited some reasons for their agreement, which included the following:

Alignment of funding and Ministerial priorities

- It is reasonable for outcomes to be agreed for receipt of funding.
- Alignment with high level ministerial priorities coupled with the intention that Outcome Agreements will be negotiated and discussed on an ongoing basis by both providers and the Commission, would allow a balance to be struck between strategic funding priorities and the needs of individual learning providers.
- Welcomed a focus on outcomes across tertiary education.

Operational Autonomy and Flexibility

- It would be appropriate for the proposed Commission to have operational autonomy over the delivery of Outcome Agreements and to determine the manner in which they should be designed, agreed and evaluated.
- Operational autonomy would provide flexibility for the Commission to respond to changing needs.
- Flexibility in the approach taken in the Draft Bill, which provides that Outcome Agreements “may” be required, would allow opportunity for the interests of learners to be protected and be prominent in considerations of the Commission and the Welsh Government.

Engagement with the sector

- The proposal for co-production of Outcome Agreements through negotiation between the Commission and funded bodies was welcomed.

Reservations were noted on the following matters:

Industry requirements

- Outcome Agreements should be realistic and flexible.
- To ensure Outcome Agreements are not unduly restrictive the outcomes specified will need to be reasonable, proportionate and realistic and consideration given to the specification of any “performance commitments” included in them.
- Flexibility of approach by the Commission in its implementation of Outcome Agreements should allow for experimentation and innovation e.g. in the types and character of qualification delivered and that funding allocated should reflect learners’ needs.
- Outcome Agreements should not constrain individual institutions’ initiatives, or hamper their ability to develop strengths, progress their ambitions and deliver on their educational missions.
- A “one size fits all” approach could obscure the individual strengths and variety of delivery approaches across the range of institutions in the PCET sector, but also concerns about the variability of approach that the Commission may take to different categories of providers.

Bureaucratic Burden

- Should be proportionality in terms of the bureaucratic burden placed on funded bodies arising from the introduction of Outcome Agreements.
- Could be a risk that such burdens detract from achieving a strategic approach.
- Misgivings about over-specifying requirements in legislation, coupled with a preference for the Commission to be empowered to work with stakeholders to develop its own approach to delivering outcomes.

Lack of Clarity

- Greater clarity needed about the focus and scope of Outcome Agreements e.g. whether there would be a single agreement per funded body or different agreements for different types of provision.
- Plans for Outcome Agreements, with particular reference to healthcare provision in higher education.

- Doubts about the value of the proposed approach in the absence of assurance about how Outcome Agreements would be implemented.
- Queries regarding the evidence base that Outcome Agreements would deliver transformative outcomes.
- The balance between strategic funding priorities and the needs of individual learning providers.

Strategy and Strategic Priorities

- Risk the Draft Bill does not deliver the intention to move to a more strategic approach based on outcomes. When taken together, the proposals for a registration system, Access and Opportunity Plans and Outcome Agreements could result in the Commission focussing on detail at the expense of strategic outcomes.
- Approach to defining Outcome Agreements in the Draft Bill (as activities that funded bodies agree to undertake) may not achieve the desired focus on outcomes or a strategic approach by the Commission.
- Objections that Outcome Agreements would be set against the context of the Welsh Ministers being able to change the strategic priorities for the Commission.
- Uncertainty about how Outcome Agreements, as currently proposed might address core issues, for example attainment gaps; meeting the needs of vulnerable learners including those with complex additional learning needs and disabilities.
- Need to consider outcomes relating to Welsh-medium provision and the development of Welsh-medium and bilingual skills.
- Observations that success will be dependent on, amongst other matters: the content and nature of outcome agreements; the Commission's ability to measure performance effectively, ensure robust accountability arrangements and achieve a shared understanding with funded bodies about the objectives in its strategic plan; and the availability of good data to secure a common factual basis for that planning.

Outcomes focussed on funding

- Approach could result in: institutions focussing on meeting outcomes instead of the best offer for learners; learning opportunities and choice being adversely impacted and that a needs-based approach, rather than one focussing on payment by results would better meet learners' needs.
- Commission's freedom to determine the operational detail of Outcome Agreements could have implications for its relationship with institutions. The approach it adopts (e.g. use of metrics) could be detrimental to encouraging collaboration between institutions.

- Whether there is sufficient evidence to support the inclusion of Outcome Agreements as a statutory strategic tool.

Question 18: Regulatory Impact Assessments

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?

Only 37% of responses provided comments on this question.

Some respondents considered the estimated costs for the project were underestimated and the funding, which has been provided, will be insufficient. Respondents commented the regulatory impact assessment is deficient in the following ways:

- Cross-sector responsibilities not being modelled explicitly and only HEFCW and WG reorganisation costs have been accounted for.
- Impact of Covid-19 and the loss of EU funding needs to be accounted for.
- Resource implications, for both staff and financial, for external engagement activity have not been fully explored.
- Cost of establishing the new body should be set out separately.
- Funding for national agreements between the sector, such as Trade Unions and pensions.
- Further longer-term consequences of Bill implementation, for example, the financial impact of increasing collaboration between providers and the consequences of students moving elsewhere.
- Redundancy costs for HEFCW staff who may not be able to relocate.
- Targeted funding to the quality body to support enhancement activity for the sector.
- Indirect transition costs for other bodies.
- Much has changed since the costs were originally calculated, an updated estimate of all costs and benefits will therefore be essential

Other Views

Some respondents felt that there was nothing further that needed to be taken into account at this stage.

Question 19: Regulatory Impact Assessments cost and benefits

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:

Only 38% of responses provided comments on this question. Some respondents felt there was not enough information on what has been considered in the RIA to provide a view on the possible costs and benefits to specific bodies, organisations or individuals.

Sixth forms

There was a view that funding for sixth form provision could be adversely affected and sixth forms may close as a consequence. The closure of sixth forms could result in redundancies and loss of income for schools, and a wider cost to the community that the school serves.

Alternative Providers

Comments that current costs and administrative burden on alternative providers to meet current regulations are not proportional to the size of the institution.

Covid -19

Reconsideration of the costs of the proposed changes alongside any financial costs and benefits as part of any updated options appraisal exercise carried out post-Covid-19.

Funding arrangements

Many of the current regulatory and funding arrangements will be hard-wired into the new legislation preventing benefits arising from greater consistency and coherence from being achieved.

Benefits

- There was an absence of detailed information on the specific details relating to individual costs and benefits.
- There was no clear vision presented for the Commission within the RIA. Therefore, it is difficult to assess the benefits.
- The RIA does not contain sufficient explanation about how the Bill will achieve the benefits.

Higher Education Wales Act 2015

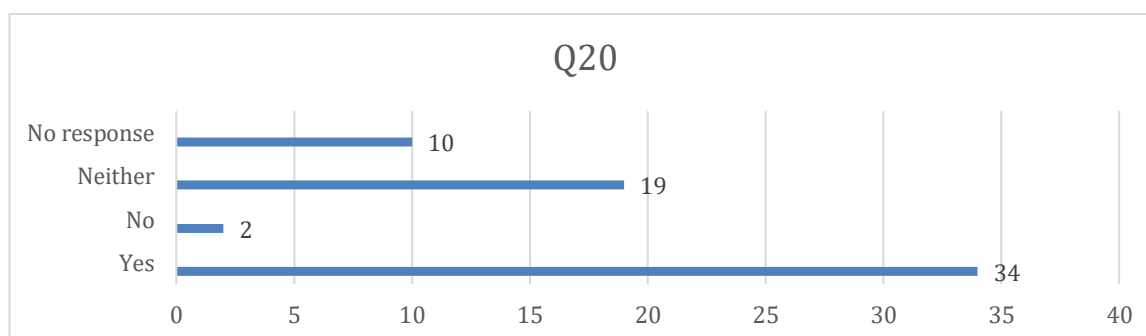
- Respondents thought it likely that the costs of the Draft Bill were more significant than those of the Higher Education (Wales) Act 2015. There was a view that the cost of these changes may have been underestimated, and a need to ensure that costs on stakeholders were fully taken into account this time.

Other views

- Stakeholders will continue to incur costs in reviewing existing and future versions of the Draft Bill and in responding to the proposed changes once the new legislation is passed.
- Small amount of additional work is likely to arise from the setting up of the new body and related transfers, but this would not be significant unless those processes are problematic.
- Regulation must be proportionate to reduce costs.
- Consideration of requests for additional support to affected organisations to undertake feasibility studies and options appraisals as well as additional one-off transitional costs for organisations proceeding with any reconfiguration.
- Increasing administrative burden thereby stretching limited resources as a result needs to be avoided.

Question 20: New Normal

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



Those stakeholders that considered the pandemic does cause issues for the Draft Bill proposals commented on the following:

- Concern about the timing of the Draft Bill consultation and insufficient time for the PCET sector to consider fully. The operational impact of the crisis meant they had not been able to engage to the extent they would have expected for a large and significant piece of legislation.
- Respondents felt it was the wrong time to introduce a structural change.
- The upheaval caused by the Bill created more uncertainty for the sector and existing arrangements provided stability for institutions and students, and help the recovery from the pandemic.
- Money could be spent more productively and made available to the sector to help with the recovery from the pandemic.

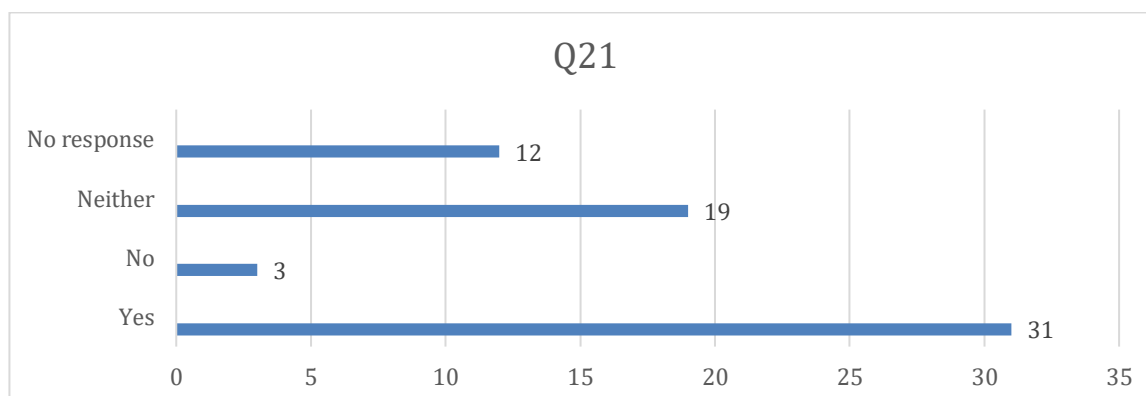
- Too much has changed since the Hazelkorn review and that Welsh Government should undertake a further review and/ or consultation following the 2021 Senedd election.
- Covid-19 has forced providers to deliver their programmes online, and assuming that there remains a requirement for this method of learning in the future, there was an appetite for the Commission to consider virtual education as a separate strand to ensure quality of virtual provision.
- Some suggested it was too early to predict any longer term impacts of the pandemic, other than the move to online learning.
- The pandemic has illustrated the need for flexibility in the funding model to allow the system to respond to the crisis.
- Profound changes seen in the tertiary sector suggested that the Draft Bill should be responsive to those significant changes and be transformative.
- Unprecedented challenges on the sector have created financial pressures and there was concern that the Bill, which creates more fluidity between sector funding, could result in a reduction in resources for some sectors and competition between institutions as a result.

Other Views

- Consultation period provided the sector with time to reflect on the changes being impacted by the pandemic and allowed time for the Welsh Government to engage with the sector.
- Allows a new Government time to scrutinise the legislation and engage with the sector more meaningfully.
- By the time the Commission is commenced, the education system would not be under this pressure, and establishing the Commission post-pandemic allowed the Commission to respond to the crisis and to contribute to the post-pandemic financial recovery.

Question 21: PCET reform and cultural change

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?



Stakeholders from across the sectors felt that voluntary collaboration and true partnership working would be an important lever to establish the cultural change needed in order to deliver the aims of the PCET reform.

A number of stakeholders stressed the importance of having a clear purpose and shared long-term vision for PCET and of ensuring a truly diverse Board that represented learners and sector staff. Additionally, a number of stakeholders felt that the Commission's plans needed to account for the full diversity of learners and providers across the sector.

Other views

There were a wide range of additional comments, which have been grouped under 4 key themes: the PCET sector; the Commission, including its relationships; the PCET workforce; and PCET learners.

The comments in relation to the PCET sector included:

- Clearer communication on aspirations and opportunities, with greater engagement with schools and the general public.
- Instead of legislation, use of existing powers and a shared long-term vision, with one stakeholder wanting to see within the vision, quality enhancement, pedagogy and social partnership at the heart of monitoring and evaluation.
- A common framework that ensured quality of curriculum content across levels and providers that also enabled easy comparisons for users.
- Improved governance across PCET that ensured inclusive representation across post-16 sector, with guaranteed staff representation at institutional level. There was also a suggestion that lay governors from local communities should form part of governing bodies.

- Greater promotion of the benefits of higher education, research, development and innovation.

The comments in relation to the Commission, and its relationships included:

- Importance of the Commission's leadership – needing to be facilitative and value driven.
- Need for strong relationships with the Commission.
- Full consideration of outcomes (e.g. those relating to Welsh medium).
- Collaboration on a range of enhancement led activities and events to help sustain cultural change.
- More direct engagement between the Commission, Schools and Local Authorities.
- Careful consideration, particularly in relation to outcome agreement specifications, to avoid unintended consequences.
- Clarity on the role and function of the PCET sector to inform the Commission's development of its strategic planning and operational structures.
- The Wellbeing of Future Generations Act as a good basis for additional levers to encourage collaborative working across post-16 sector, the Commission and Welsh Government.
- Enabling flexibility for the Commission to influence, by not over specifying details within the legislation of how to deliver its functions.
- Sponsorship of the Commission, as a trusted arms-length body of the Welsh Government, should sit with multiple Ministers to ensure the Commission is empowered to deliver a joined up tertiary education system.
- Commission needs to be trusted to work at a distance from the Welsh Government without some of the legislative constraints contained within the Draft Bill. There should be sufficient safeguards within existing legislation to provide for this relationship.
- Commission should utilise and influence levers arising following systemic changes at pre-16 level, enabling more opportunities for better engagement with learners, better understanding of a more joined up system across all education disciplines and consistency through pre and post 16 learning, to ensure future prosperity. Of note was assessment transition between pre and post 16, ensuring an effective gateway to post-16 learning.

The comments in relation to the PCET workforce included:

- A more collaborative approach to professional learning for the PCET workforce, building understanding and parity of esteem.

The comments in relation to PCET learners included:

- The ability for learners to have access to tertiary education to reach their full potential, regardless of where they lived or their financial circumstances.

Question 22: Additional comments

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.

Summary of responses:

34 stakeholders provided a range of further comments in response to this question.

A summary of the themes and comments follows.

Comments on the Reforms

A number of comments linked to the planned reforms and future relationships. These included:

- Whether legislation and the new system was able to deliver the outcomes wanted, and provide value for money and tangible benefits.
- Whether the Draft Bill was too constrained by current legislative arrangements, and if it had gone far enough to harmonise regulatory, funding and quality arrangements.
- Need for engagement and co-ownership of reforms by local leaders (schools/college level mentioned).
- Provision should be organised based on the principle of subsidiarity.
- What relationship would the Commission have with organisations such as: Education Workforce Council; Coleg Cymraeg Cenedlaethol; Qualifications Wales.

Academic Freedom/institutional autonomy

A number of responses wanted to see the Bill specifying that the Commission should have due regard to the autonomy of higher education institutions rather than the current definition of academic freedom. Changes were sought to Section 2(3).

Some respondents also wanted to see what they would regard as a more independent, arms-length Commission, with Welsh Government having fewer opportunities to prescribe priorities.

Interventions

A small number wanted more clarity on Section 61 'Grounds for intervention' - why the Commission was not empowered to intervene in all tertiary education providers, and clearer definitions.

Commission Governance

A number of comments were received on the Commission's governance, in terms of its committee and board membership, as well as its reporting requirements. These included:

- Requests to remove the powers of Welsh Ministers to appoint Research Innovation Wales members.
- Ensuring the diversity and representation of protected characteristics, and consideration of Welsh language requirements of the Commission's members and senior officers.
- The role of advisory members – suggestions that advisory members may not have sufficient voice; preference for full membership; and whether membership numbers were sufficient to reflect the sectors' workforce.
- Concerns that universities do not have a reserved place on the Board and HE expertise may be missed.
- Request to amend the Draft Bill to enable the Auditor General for Wales some flexibility on timescales, following good practice set out in the Health and Social Care (Quality and Engagement) (Wales) Act 2020.
- Setting out within the legislation, requirements for an Audit Committee.

Commission Strategy

There was support for the move towards longer-term planning and funding. Calls for an increase in the role of City Growth Deals and Regional Skills Partnerships. Several comments that strategic plans for tertiary education and research should explicitly incorporate the education and training needs of young people with learning difficulties and disabilities.

A number of comments were received in relation to the Commission and its strategy. These included general concerns on the amount of powers retained or extended by Welsh Ministers. Several respondents sought the removal of Welsh Ministers' powers specifically in relation to modifying the Commission's strategic plan. There was a suggestion that some form of time limit should be placed on the modification provision, to relax or remove these powers as the Commission matured as an organisation. There was also the suggestion that any change to the strategy must be subject to sector consultation.

Funding

Comments in relation to funding powers spanned across issues relating to lifelong learning and Welsh Ministers' powers.

Some respondents wanted to see a 'right to lifelong learning' captured within legislation. Others wanted clarity on adult learning, clearer definition and intention of the approach and an overhaul of the powers and duties to fund both 16-19 and 19+ education. One respondent asked whether funding of further education for reasonable facilities from the age of 19 onwards, provided sufficient scope to support Wales' ambitions.

A number of respondents wanted to see the removal of some powers enabling Welsh Ministers to provide direct funding. Concerns focussed on the possibility of the Commission being undermined. One respondent was keen to see safeguards built in to the legislation to ensure a strategic approach to funding of the sector.

Further Education

There was a lack of focus on further education within the Draft Bill with a primary focus on higher education.

Apprenticeships/traineeships

A small number of respondents asked how 'standards' for any "*alternative Welsh apprenticeship*" would be established. A comment was also received on the lack of specific reference to Traineeships.

Consideration should be given as to whether Qualifications Wales have a role in this to help ensure a coherent qualifications system with quality of esteem given to vocational and academic qualifications.

Registration system

In relation to the proposed registration system and the categories of registration, respondents wanted to see the power for determining categories sit with the Commission instead of within secondary legislation (i.e. regulations).

There was also specific mention of the need to recognise the unique position of the Open University, as a UK wide provider.

Social mobility and skills

Some respondents commented on social mobility and skills and a concern was voiced that wider employability and skills programmes, whose learners would benefit from the Commission's quality frameworks and oversight, were not within the remit. Another respondent suggested the establishment of a Social Mobility and Skills Commission (or Committee) to work with educational partners and Regional Skills Partnerships to further clarify the skills needs and social mobility targets for Wales.

Student interests and protections

There were a range of comments on different aspects affecting students and learners, covered within the responses to questions 3, 4 and 5 asked earlier in the consultation. The following additional comments were also received in relation to student interests:

- The Commission having a role in ensuring appropriate access to tertiary education for British sign language users.
- That there were too few indications as to how the Commission would engage with the implications of the Additional Learning Needs Education Tribunal (Wales) Act 2018 on responsibilities for FE and local authorities in supporting learners with complex needs.

Schools

There were a range of comments on different aspects affecting schools, many of which were covered within the responses to Question 5 asked earlier in the consultation. We also received the following additional comments:

- One respondent wanted to see the Draft Bill provide greater clarity in relation to school sixth forms within definitions (and provisions in s.130 were noted), also noting it wasn't easy to discern how provisions applied to school sixth forms due to the distinct position of schools within tertiary education.
- There was also a comment that regard needed to be given to the nature and governance of schools, to determine if requirements were reasonable, to ensure that school governors had sufficient capacity.

HE Governance

Comments were received from stakeholders in the HE sector in respect of the HE governance provisions in the Bill. These included:

- Calls for the Bill to be amended to remove the Welsh Ministers' power to dissolve a higher education corporation (HEC) in Wales without a request being made by the institution itself.
- Concerns in respect of the Welsh Ministers extended powers to amend or repeal the statutory requirements placed on the governing documents of a HEC in Wales. Some stakeholders questioned whether these provisions achieved the intended policy of creating greater parity across all types of higher education institution in Wales.
- A lack of clarity in respect of the rationale to explain why changes to a HEC, as well as powers relating to issuing degree awarding powers and university title have not been brought into scope of the Bill.

Data/Information

Whilst there were no specific questions on Part 6 of the Draft Bill within the consultation, there were some comments on these provisions. These included:

- A suggestion regarding including specific information duties in connection with the Commission's powers to monitor, review and ensure compliance, with a caveat that consideration should be given to arrangements for sharing sensitive data with the Welsh Ministers and the impact sharing data with the Welsh Government would have on effective functioning.

- Proposals for the use of Data Sharing Agreements instead of listing organisations on the Bill.
- The lack of detail on the Draft Bill, for example in relation to the policy intent to the requisition, collation and the use of data, in particular that a designated data body for higher education was not specified.
- The need for the Commission to provide the right level of detail for post-16 education for stakeholders for example on outcomes for deaf, visually impaired and disabled young people, employer outcomes for apprenticeships, demand for Welsh Language skills and the training needs of employers, and to organisations as students move around the PCET sector.

Chapter 3 – Conclusion

The consultation sought views on the Draft Tertiary Education and Research (Wales) Bill and received a broad range of views. Whilst this summary cannot contain every view expressed, they have all been subject to analysis and will be taken into account, either as part of the Bill development, its implementation, and/or when considering more operational aspects of the Commission at a later date. The implementation of the Act, should this Bill be passed, will necessarily require a range of subordinate legislation, which will also be subject to consultation, allowing further opportunities for refinement of the details.

The evidence provided in response to the consultation suggests that stakeholders are largely content with the proposal to establish the new Commission for Tertiary Education and Research in Wales. There has been some understandable concern expressed about the timing of the reforms in light of the pandemic and these concerns are being mitigated as far as possible. The Welsh Government is of the view that we should proceed with our intentions to refine and prepare the Tertiary Education and Research (Wales) Bill for Introduction. The reforms offer an opportunity for the Welsh post-compulsory education and training sector to continue its critical role in improving lives and well-being. This is essential to individual and national prosperity. Alongside quality research, this will be needed more than ever, as we come through and emerge from these challenging times.

Using the underpinning provided by the PCET Vision, and continued engagement with all stakeholders involved, the reforms offer an opportunity for the Welsh post-compulsory education and training sector to consider the proposals taking into account the future context in which the sector will need to operate because of Covid-19. The reforms are vital to a successful and sustainable future for learners of all ages, our economy, colleges and universities and all those who value an educated and engaged democracy.

Chapter 4 – Next steps

We will continue to engage with all partners on the issues raised in the consultation and work continues to prepare for the introduction of the Bill. A written statement is due to be issued in February.

Chapter 5 – Annex of responses

1. Anonymous
2. Anonymous
3. Future Generations Commissioners Office
4. Older Peoples Commissioner for Wales
5. Royal College of Nursing Wales
6. Cardiff University
7. Engineering Construction Industry Training Board (ECITB)
8. Office of the Industry Adjudicator for HE (OIA)
9. Anonymous
10. Education Workforce Council
11. Glyndwr University
12. Anonymous
13. Anonymous
14. Anonymous
15. Anonymous
16. Anonymous
17. Anonymous
18. Anonymous
19. Anonymous
20. GMB Wales and South West Union
21. Anonymous
22. Anonymous
23. Anonymous
24. Anonymous
25. Anonymous
26. Swansea Council
27. Ceredigion County Council
28. Colegau Cymru
29. Anonymous
30. The Welsh Alternative Providers
31. Council of Deans
32. Catholic Education Service
33. St Padarn's Institute
34. University of South Wales
35. University and College Union
36. Audit Wales
37. Open University
38. National Union of Students (Wales) - NUS
39. Association of school and college leaders (Cymru -) ASCL
40. Learned Society Wales
41. University of Wales Trinity St David's
42. Career's Wales
43. Coleg Cymru Cenedlaethol
44. National Specialist Colleges - Natspec
45. Open University Student's Association
46. Quality Assurance Agency – QAA
47. Cardiff Metropolitan University
48. Public Service Ombudsman
49. National Deaf Children's society Wales
50. Learning and work Society
51. Estyn
52. Centre for Alternate Technology

53. Universities Wales
54. Chairs of Universities Wales
55. UNISON
56. Welsh Language Commissioner
57. Undeb Cenedlaethol Athrawon Cymru - UCAC
58. HE Statistics Agency - HESA
59. South East Wales Consortia - SEWC
60. HEFCW
61. Anonymous
62. National Education Union
63. NASUWT
64. RNIB
65. WLGA