



Framework for Intervention in Further Education Institutions



Consultation

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Action required: Responses by 11 April 2008

Framework for Intervention in Further Education Institutions

- Audience** Further Education Institutions; Local Education Authorities; fforwm; Estyn; Higher Education Funding Council for Wales; Unions; Professional Associations; Welsh Local Government Association; Quality Assurance Agency; Equality and Human Rights Commission; Welsh Language Board.
- Overview** This consultation paper seeks views on the proposed framework for the Welsh Assembly Government's statutory intervention policy which is required under section 57A of the Further and Higher Education Act 1992 as inserted by section 18 (5) of the Further Education and Training Act 2007.
- Action required** The deadline for submission of comments to this consultation is 11 April 2008. Responses should be made on the enclosed proforma and returned electronically to FETAct@wales.gsi.gov.uk or in hard copy to the address below.
- Further information** Further information about this consultation can be obtained from:
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This document is also available on the internet at:
<http://new.wales.gov.uk/consultations/> and can be copied from there.
- Related documents** One Wales
The Learning Country: Vision into Action
Promise and Performance

Preface

The Further Education and Training Act 2007 introduces into Further and Higher Education Act 1992 (FHEA 1992) a statutory requirement that Welsh Ministers prepare a statement of their intervention policy with respect to the exercise of their powers under section 57 of the FHEA 1992. This consultation reflects the requirement contained in the Act that the Welsh Ministers must undertake such consultation as they think appropriate when preparing the statement or a subsequent revised statement.

Further Education Institutions (FEIs) in Wales have considerable strengths and capabilities. Overall their standards of quality have risen and Estyn highlight their strengths in surpassing targets for learner achievement and for the quality of teaching. It is important that these strengths are sustained and built upon if the Welsh further education system is to play its increasingly important part in equipping learners with the appropriate high quality education and training necessary to meet the learning and skills needs of the country.

This draft Intervention Policy Statement is thus designed to reflect the importance of, and work within, the autonomy of FEIs. A further education system based on trust and autonomy requires robust intervention not only to assist in tackling issues of quality, but also to complement the activities of the sector in raising its profile and reputation. The draft Intervention Policy Statement sets out an approach for managing underperformance in FEIs under particular circumstances and it details when intervention may be required and how the intervention will be operated.

The Intervention Policy Statement is part of a number of interrelated measures designed to support education and training providers in the pursuit of continuous quality improvement. Provider Performance Review (PPR), audit and financial health monitoring form an interrelated part of this strategy.

It is appropriate and necessary, to articulate the Welsh Ministers' approach to intervention. It is intended and designed to operate only when successive measures for improvement have been agreed, attempted and have failed. Intervention will be considered only in the most serious cases of poor performance or where a serious risk to the delivery of education and training becomes apparent.

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Part 1: Introduction and background

Introduction

1. This consultation paper sets out the proposed framework for the Welsh Assembly Government's statutory intervention policy which is required under section 57A of the Further and Higher Education Act 1992 (FHEA 1992) as inserted by section 18 (5) of the Further Education and Training Act 2007 (FET Act 2007).

Background

Legislative background

2. Section 18 of the FET Act 2007 amends the Welsh Ministers' existing powers of intervention contained in Section 57 of the FHEA 1992. The FHEA 1992 empowers the Welsh Ministers to intervene in the affairs of a further education institution (FEI) in Wales if they are satisfied that:

- the institution's affairs have been or are being mismanaged by its governing body;
- the institution's governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;
- the governing body have acted or are proposing to act unreasonably;

or

- an Estyn inspection report has indicated that the institution has serious weaknesses or is failing or likely to fail to give an acceptable standard of education.

3. In such circumstances, the Welsh Ministers may remove all or any members of the institution's governing body and appoint new members in their place; and give the governing body such directions as the Welsh Ministers think expedient as to the exercise of their powers and performance of their duties.

4. Section 18 of the FET Act 2007 amends section 57 of the FHEA 1992 by replacing the current trigger for intervention of a report from Estyn, with a trigger enabling the Welsh Ministers to intervene if they are satisfied that an FEI is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an acceptable standard of education or training. There will thus be no statutory requirement for an Estyn report before the Welsh Ministers can intervene. However, in practice, intervention may still be triggered by concerns identified following Estyn inspection.

5. Further amendments to section 57 of the FHEA 1992 made by section 18 of the FET Act 2007 clarify and expand on the Welsh Ministers' power to give directions to an FEI's governing body. Section 57 as amended explicitly states that the Welsh Ministers cannot direct a governing body to dismiss a member of staff. The Welsh Ministers' powers of direction will include: (a) a power to direct a governing

body to give effect to procedures for consideration of the case for dismissal in relation to a senior post holder; and (b) power to direct a governing body to enter into collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006).

6. Section 18 (5) introduces as a new section 57A to FHEA 1992, a statutory requirement that the Welsh Ministers must prepare a statement of their policy with respect to the exercise of their powers under section 57, keep it under review, and, if they consider it appropriate as a consequence of a review, prepare a revised statement of policy. When preparing the statement or revised statement, the Welsh Ministers must undertake such consultation as they think appropriate. The Welsh Ministers must lay the statement or revised statement before the National Assembly for Wales.

Policy Background

7. The independent review of Further Education in Wales chaired by Sir Adrian Webb: *Promise and Performance: The Independent Review of Further Education in the context of the Learning Country-Vision Into Action* sets out an ambitious programme of proposals. These proposals are designed to equip learners with high quality skills for productive, sustainable employment and personal fulfilment; and they are also intended to ensure that employers have the right skills for their business to succeed in a competitive global economy. Integral to the recommendations contained in *Promise and Performance* is the emphasis upon continuous quality improvement and particularly the importance of effective leadership and management at institutional and partnership level. Within this context, *Promise and Performance* highlights the critically important role governors play in the effectiveness of institutions¹.

8. The policies of the Welsh Assembly Government have consistently emphasised the importance of continuous quality improvement and particularly highlighted the importance of effective leadership and management at institutional and partnership level. This draft statement is designed to support this.

9. The Intervention Policy Statement is part of a number of interrelated measures designed to support education and training providers in the pursuit of continuous quality improvement. Provider Performance Review (PPR), audit and financial health monitoring currently form an interrelated part of this strategy.

10. The Intervention Policy Statement sets out an approach for managing underperformance in further education institutions under particular circumstances and details when intervention may be required and how the intervention will be operate. The Policy is designed to reflect the importance of, and work within, the autonomy of FEIs. An FE system based on trust and autonomy requires robust intervention not only to tackle poor quality, but to complement the activities of the sector in raising its profile and reputation. It is appropriate and necessary, to articulate the Welsh Ministers' approach to intervention. It is intended and designed to operate only when successive measures for improvement have been agreed,

¹ Promise and Performance: The Report of the Independent Review of Further Education in Wales in the context of the Learning Country: Vision into Action (2007)

attempted and have failed. Intervention will be considered only in the most serious cases of poor performance or where a serious risk to the delivery of education and training becomes apparent.

Scope of the Proposed Intervention Powers

11. These proposed powers only apply to an institution in Wales within the further education sector. Section 91 of the FHEA 1992 sets out the definition of "an institution within the further education sector", namely:

- institutions conducted by further education corporations; and
- designated institutions for the purposes of Part I of the Act (defined in section 28(4) of the Act).

Consultation

12. The statutory requirement for the Welsh Ministers to consult on the intervention policy only applies to the exercise of their powers under section 57 of the FHEA 1992 as amended by the FET Act 2007.

13. The Welsh Assembly Government will consider the responses arising out of the consultation exercise. The final draft of the intervention policy statement will be sent for approval to the Minister for Children, Education, Lifelong Learning and Skills. Once the policy statement has been approved it will be laid before the National Assembly for Wales and the Welsh Assembly Government will publish the statement.

14. The policy will be reviewed every four years. Where, following review, the Welsh Ministers wish to make changes to the policy, a consultation on the revised statement of policy will take place.

Part 2: Draft Intervention Policy

This document sets out, in the context of the Welsh Assembly Government's overall approach to managing underperformance in further education institutions, when intervention may be required and how that intervention will operate in principle.

Introduction

1. The Welsh Assembly Government's aims are: (a) to support the work of institutions to improve their provision; and (b) to develop a more robust and speedier intervention procedure to combat poor performance.
2. This proposed intervention policy sets out the Welsh Assembly Government's approach for managing underperformance in further education institutions in Wales. The policy will focus specifically on when intervention may be required and how that intervention will operate in principle. Normally, intervention will be considered only in the most serious cases of poor performance, where a lack of capacity to improve is evident, and failure in those institutions where a serious risk to the delivery of education and training becomes apparent.
3. The intervention policy statement only relates to the exercise of the Welsh Ministers' powers under section 57 of the Further and Higher Education Act 1992 (FHEA 1992) (as amended by Further Education and Training Act 2007). The policy applies to institutions in Wales within the further education sector as defined by the FHEA 1992. It does not apply to any other Welsh Assembly Government funded providers.

Intervention Policy Purpose and Principles

4. The purpose of the intervention policy is to provide a public and transparent accountability framework in which the Welsh Ministers will operate. The operation of the intervention policy will be underpinned by the following principles:
 - direct intervention will only occur when necessary;
 - the level of intervention will be proportionate to the risk to learners and public funding;
 - actions, as far as possible, will be agreed between the governing body, the Principal of the institution concerned and the Welsh Assembly Government; and
 - the Welsh Ministers will exercise their powers of intervention as a last resort.
5. The intervention policy has been developed as a process framework, rather than as a series of procedures. This is because it is necessary to retain an element of discretion in managing intervention. Each circumstance must be considered on a case-by-case basis.

The Route to Intervention

6. A staged approach to intervention underpins the operation of the policy. It is, therefore, important to have a clear understanding how decisions to intervene are arrived at. Intervention will normally only take place following a lengthy process of support and dialogue. As such, there is a series of stages leading to intervention. These stages are:

- dialogue and Identification of underperformance;
- support and change; and
- intervention.

7. An overview of this process is set out in the diagram at Annex 1 and is explained in paragraphs 8-28. Annex 2 provides a more detailed description of the process as it relates specifically to invoke intervention powers. On each diagram, the boxes are numbered for ease of reference and do not demonstrate an order of occurrence.

Stage A: Dialogue and Identification of underperformance

8. A further education institution is, through its senior management team, responsible for the quality of education and training it offers to learners. This is realised through rigorous self-assessment and quality assurance, which in turn leads to continuous improvement. Ongoing dialogue between institutions and the Welsh Assembly Government exercised through such activities as Provider Performance Review, audit and financial health monitoring as well as health and safety monitoring is fundamental. This dialogue allows the Welsh Assembly Government to discuss any concerns with the institution as they emerge, and the institution to show evidence of improvement and demonstrate that any issues are being actively managed and are under control.

9. Underperformance or serious concerns will normally be identified by:

- the Welsh Assembly Government through the Provider Performance Review (PPR) process or other monitoring of quality;
- Estyn through the inspection process;
- the Welsh Assembly Government in relation to financial health and control (which includes audit findings); and
- the Welsh Assembly Government in relation to its health and safety monitoring of institutions.

10. Where underperformance is identified, the Welsh Assembly Government will expect the governing body and/or senior management of the institution in question to act to address the situation. **Conditions for Improvement** will be drawn up and agreed with the Welsh Assembly Government, which the institution will be required to fulfil within a set timescale, usually 12 months. In many instances this process will form part of the PPR process and the **Conditions for Improvement** incorporated in

the Quality Development Plan (QDP) agreed by the Welsh Assembly Government and the institution.

11. In addition, where Health and Safety Executive (HSE) inspectors or their representatives, identify concerns with an institution and issue improvement or prohibition notices, issue formal cautions etc., the Welsh Assembly Government will support the HSE or enforcing authority to ensure learner health and safety is not compromised.

Stage B: Support and change

12. Where underperformance is identified the appropriate support will be put in place to help the institution make the necessary improvements. The support may include the allocation of a support package that, under certain circumstances, could include quality improvement support or consultancy or draw on other services and facilities as agreed between the institution and the Welsh Assembly Government. Where there are financial concerns, the Welsh Assembly Government may also provide improvement support. Where appropriate, the Welsh Assembly Government and the institution will engage closely with Estyn in the operation and evaluation of the improvement support.

13. This improvement period offers the institution's senior management, with the appropriate level of support, the opportunity to identify and resolve problems, within a reasonable period of time as agreed with the governing body, without the need for the Welsh Ministers to intervene. The institution is in control of its future, and the institution's governing body retain its responsibility for the institution's affairs, meeting their statutory responsibilities and improving the institution's performance.

14. The Welsh Ministers may, as part of a package of additional strategic support for the institution, exercise its power to appoint up to two additional members as observers on the governing body to ensure that sufficient progress is being made against the **Conditions for Improvement**. The aim of this action would be to avoid escalation to Stage C, as described below in paragraphs 17 -25.

15. It is the expectation that, at the conclusion of the period allowed for fulfilling **Conditions for Improvement**, the majority of institutions will have addressed the underperformance identified. Exceptionally, however, an institution may fail to demonstrate that sufficient progress is being made or that it has the capacity and capability to bring about improvement. The **Conditions for Improvement** will not have been met. This would demonstrate a significant risk to learners and to public funding.

16. Where the institution has not met the **Conditions for Improvement**, the governing body and the Welsh Assembly Government will agree an appropriate course of action. The outcome, for example, may include formal collaboration or merger with another institution. The transitional period will be managed by the institution through a short-term post-Conditions for Improvement notice agreed with the Welsh Assembly Government. This period and related actions will be led by the governing body, working closely with the Welsh Assembly Government.

Stage C: Intervention

17. In rare and exceptional cases, however, there may be occasion where an institution has not met the **Conditions for Improvement** and the Welsh Assembly Government cannot agree an appropriate course of action with the governing body. This could result from the governing body not providing the necessary leadership to take action. Where this occurs and it is considered that all the possible alternative approaches to instigating change are exhausted, the Welsh Ministers may exercise their statutory powers of intervention.

18. These institutions are likely to demonstrate one or more of the following characteristics:

- poor financial health or breach of Financial Memorandum requirements and little or no evidence that its governing body and/or senior management team are able to secure improvement within a reasonable period of time;
- failures in management which result in serious and immediate risk to learner health and safety;
- serious and systemic failures in governance resulting in flawed decision making and/or breaches of the instrument and articles of governance;
- failure to address audit recommendations; and
- significant failure to deliver adequate quality of provision and little or no evidence that the its governing body and/or senior management team are able to secure sufficient improvement within a reasonable period of time.

19. Before invoking their powers to intervene, the Welsh Ministers will formally write to the governing body notifying them of their concerns and stating that they are minded to exercise their statutory powers under section 57. The notification will set out:

- details of the action they are minded to take with timescales;
- the rationale for being minded to exercise their statutory powers under section 57, including the reasons why any previous plans or responses by the institution are not considered to be sufficient; and
- relevant evidence.

20. If the Welsh Ministers are minded to exercise their statutory powers under section 57 to direct the governing body to give effect to procedures applicable to the consideration of the case for dismissal of a member of staff, it will also name the individual or individuals concerned and provide the grounds for such a direction.

21. The notification triggers a period of up to, but not exceeding 30 working days for the governing body to make representations regarding the Welsh Ministers' intent to exercise their powers under section 57. If the Welsh Ministers' concerns relate to an identified post holder or post holders, the governing body would be expected, in

turn, to raise the issue with the post holder/post holders, and respond to the Welsh Ministers with its view within the time period of 30 working days.

22. If, after considering the governing body's response, the Welsh Ministers decide to proceed with intervention they will set out its reasons in writing and allow the governing body a further opportunity to respond. This exchange may go through at least two iterations during the allotted time period (i.e. 30 working days in total from the notification).

23. Within 10 working days of the conclusion of the period of representations, the Welsh Ministers will consider the evidence presented to them and duly inform the governing body of their decision in relation to the exercise their powers of intervention.

24. Where a direction for collaboration is made, the appropriate arrangements will begin. If a direction is to give effect to procedures applicable to the consideration of the case for dismissal of a member of staff, the governing body will do so. The outcome of those procedures will not be pre-determined, nor will the Welsh Assembly Government control, participate (unless as a requested witness) or interfere in the procedures. The governing body will be responsible for both the process and the final decision.

25. The Welsh Ministers' preferred option will be not to exercise their powers unless absolutely necessary, and where it has not been possible to resolve issues by working in partnership with the institution. However, the more serious the risk, the more robust the intervention is likely to be.

Immediate Intervention

26. In exceptional circumstances, where there is immediate, serious and exceptional risk to learners and to public funding, and urgent action is required, the Welsh Ministers may wish to intervene more immediately than a staged approach allows. These circumstances may include:

- evidence of serious misuse of public funds, fraud or deception;
- failures in management which result in immediate serious risk to learner health and safety;
- serious breaches of the Financial Memorandum; or
- serious breaches in the Articles and Instrument of Government.

27. Under these circumstances there will be an urgent and direct dialogue with the governing body and senior managers of the institution to determine the scope and nature of any necessary action. This will be confirmed in a formal notification of the immediate action to be taken.

28. The Welsh Ministers may exercise their statutory powers of intervention following the process outlined in paragraphs 19-24 or the Welsh Ministers may remove all or any members of the institution's governing body and appoint new

members in their place; and give the governing body such directions as the Welsh Ministers think expedient as to the exercise of their powers and performance of their duties.

Checks and Balances

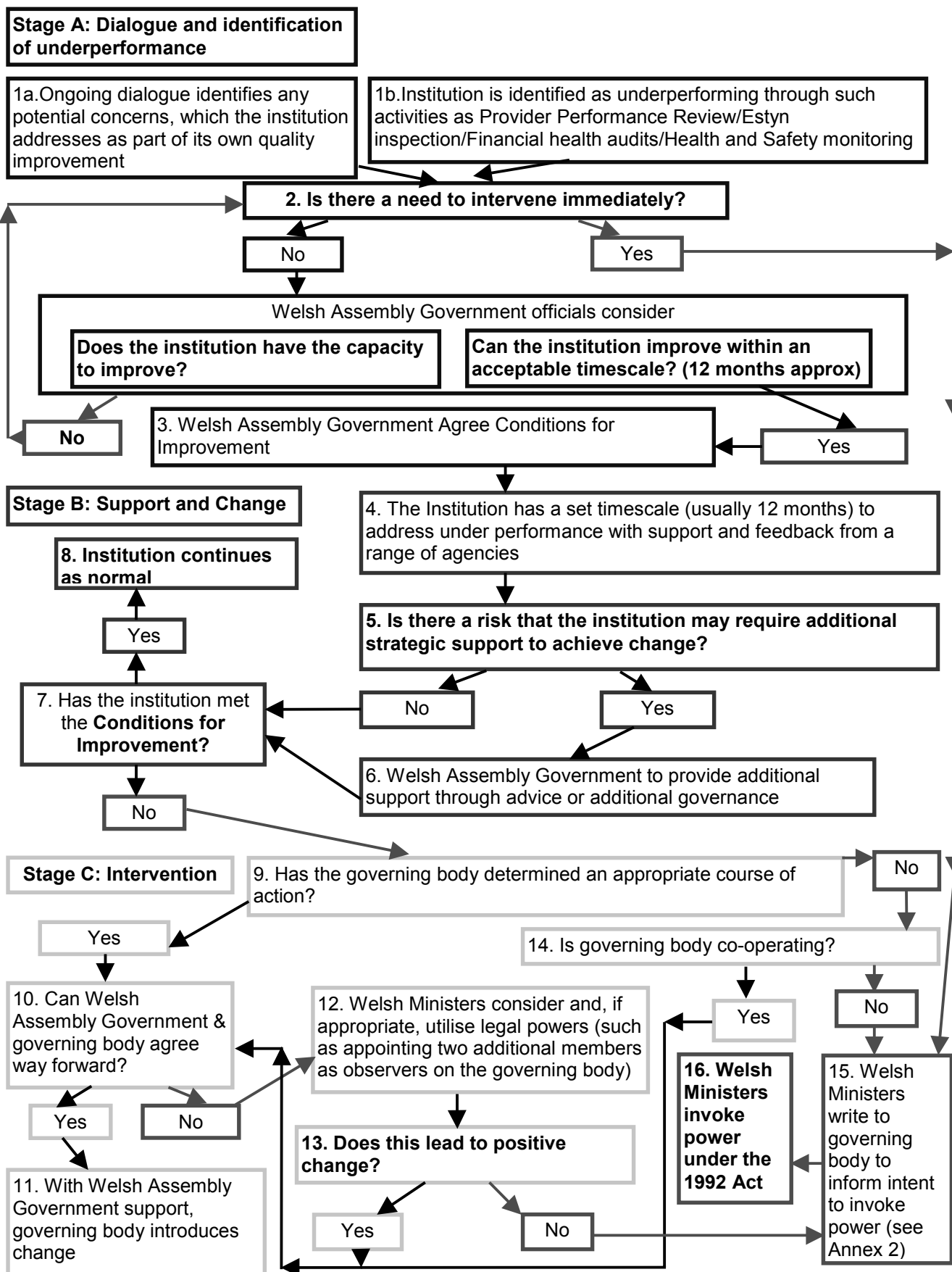
29. There are a range of safeguards already in place to prevent the arbitrary use of any intervention powers by the Welsh Ministers. These include:

- the Welsh Ministers must act within their powers;
- the Welsh Ministers will consult the sector in the development of the intervention policy to ensure that stakeholders' concerns are addressed and that appropriate processes which have the support of the sector are put in place;
- the use of powers will be reasonable and proportionate and will take account of the relevant circumstances in each case;
- the right of the governing body to make representations to the Welsh Ministers having received detailed information as to why it proposed to intervene; and
- the corporation is the employer of staff in an FE institution, and the Welsh Assembly Government should have regard to the corporation's obligations under employment and equal opportunities legislation in the exercise of the power to give direction to the governing body to give effect to procedures for the consideration of the case for dismissal of members of staff.

30. The Welsh Ministers will make an annual statement summarising their use of their intervention powers. This will take the form of a written statement which will be laid before the National Assembly for Wales.

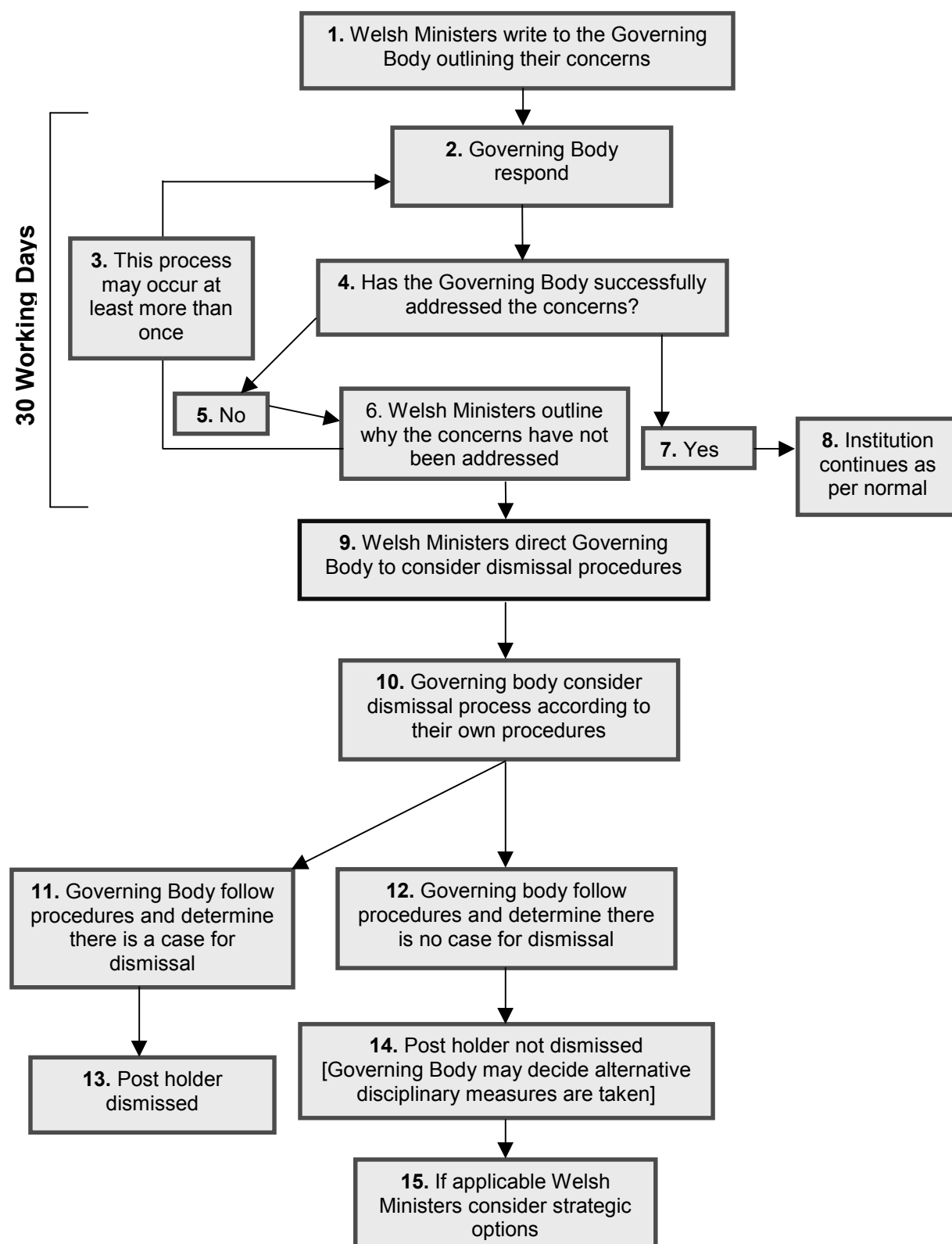
31. Governing bodies can complain through the Welsh Assembly Government's published complaints procedure about the decisions. If complainants are not satisfied with the outcome they have recourse to write to the Parliamentary Ombudsman or seek a Judicial Review of the decision.

The Route to Intervention



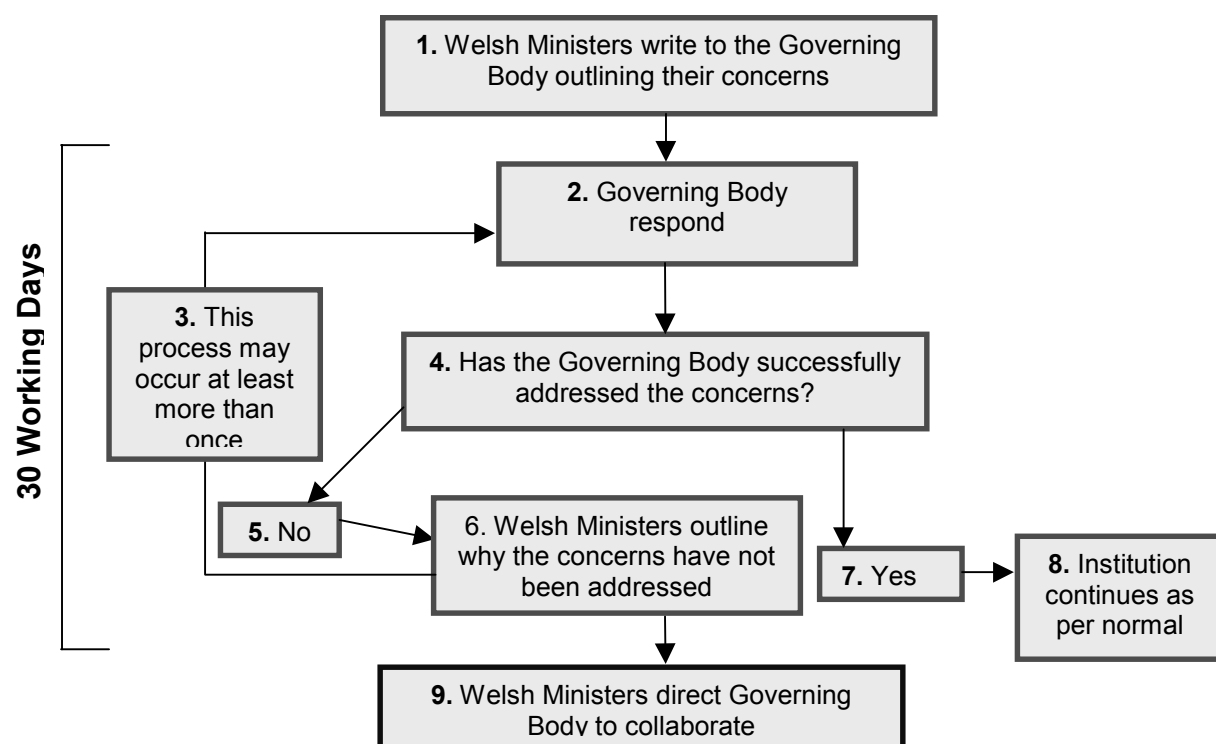
Annex 2

The process for declaring intent to invoke power under section 57 (begins at Step 15, Annex 1): instigate procedures regarding dismissal



Annex 3

The process for declaring intent to invoke power under section 57 (begins at Step 15, Annex 1): collaboration



Consultation Response Form

Framework for Intervention in Further Education Institutions

It would be very helpful if you could use this form to respond to the consultation. Thank you for your time, effort and co-operation which is much appreciated.

Unless marked confidential, all responses will be published by placing them in our library and/or on our website. Respondents may request that their response be kept confidential. We will respect this request, subject to our obligations to disclose information, for example under the Freedom of Information Act 2000.

Respondents who wish their responses to remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. We ask respondents who wish to submit a part-public, part-confidential response to put confidential material in appendices.

The closing date for this consultation is **Friday 11 April 2008**.

Name: _____

Organisation: _____

Address: _____

Postcode: _____

Telephone number: _____

Email address: _____

If you have a query relating to this consultation please forward your query to **FETAct@wales.gsi.gov.uk**

Please provide any comments on the intervention policy, its approach and principles.

Thank you for taking time to respond to this consultation. Please note we do not intend to acknowledge individual responses.

Completed questionnaires and other responses should be sent to the address shown below by **11 April 2008**.

Send by post to:

FET Act Team
Department for Children, Education, Lifelong Learning and Skills
Welsh Assembly Government
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St Asaph
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Send by e-mail to:

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