

**FE Sector Self Regulation Implementation  
Group**

**Phase 1 Proposition to the Secretary of State for  
Education and Skills**

**February 2007**

## LETTER TO THE SECRETARY OF STATE FROM SIR GEORGE SWEENEY

Dear Secretary of State,

In your speech to the AoC Annual Conference on 21 November 2006, you said:

*'There could be no more exciting time to be involved with Further Education than right now. . . . .*

*. . . . . I am challenging you today to develop a proposal for self regulation by Spring 2007. The AoC, the 157 Group and others have made a good start. And the Improvement Strategy, which the Quality Improvement Agency will publish around Christmas, will support the drive towards self regulation. But the responsibility for improvement must rest primarily with FE institutions themselves . . . . .'*

I brought together a coalition of the internal and external interests that form the further education sector to respond to your challenge because you offered the opportunity for us to:

- achieve enduring excellence in the quality of further education and significantly improve the life-chances of our learners
- enrich and extend our relationships with employers, communities and other partners
- strengthen leadership and governance in the sector
- forge a new partnership with government and external agencies
- reduce bureaucracy and respond to the public service reform agenda
- take collective responsibility for the leadership of the further education sector
- transform our reputation and status
- accelerate the full realisation of our potential as the engine of national prosperity and social justice.

Phase 1 of the proposition that we now present to you sets out what self regulation needs to achieve, maps the current landscape, puts forward a preferred organisational option, identifies some implications for the strategic and regulatory landscape in which the further education sector now operates and proposes a way forward. The proposition has been developed with the support of an enormous number of people, both in the group and elsewhere. We believe that it has widespread support. This will be tested in a consultation exercise during March. We will of course let you know the outcome at the end of the process.

We still have some way to go in drawing up a detailed proposition. We know we need to specify more precisely some current regulatory activity for immediate pruning, work out a detailed plan and timetable and suggest some pilot work to start in the new academic year. In particular, we must all work together to integrate the development of self regulation and the introduction of the Framework for Excellence.

It is just over three months since you issued your inspirational challenge. In those three months of intense activity, colleagues throughout the sector have become even more convinced that *'There could be no more exciting time to be involved with Further Education than right now.'* We hope that this phase 1 proposition will provide the evidence to convince you: first, that self regulation is the right course to pursue; second, that the returns on investment in self regulation would be immense; and third, that the sector is really up for it. We hope you will feel able to support further stages of the journey.

In conclusion, I would like to express my particular appreciation to the authors of the proposition, the members of the Self Regulation Implementation Group, all those who have given so willingly and generously of their time and your officials for their huge contribution and commitment in supporting us.

With best wishes,

A handwritten signature in black ink, appearing to read 'G Sweeney', written in a cursive style.

Sir George Sweeney BA MA

Chair of the Self Regulation Implementation Group

---

# Contents

- 1 The Proposition ..... 5
- 2 The Objectives of Self Regulation ..... 7
- 3 The Current Landscape ..... 9
- 4 A Self Regulating Model and Its Implementation ..... 12
- 5 Implications of Self Regulation ..... 17
- 6 The Proposed Way Forward ..... 21
- Appendix A: Glossary of Terms and Contacts ..... 22
- Appendix B: Definition of the FE Sector ..... 25
- Appendix C: The Public Sector Reform Agenda ..... 27
- Appendix D: Case Studies - Other Regulators ..... 30
- Appendix E: How Core Functions Would Work ..... 41

---

# 1 The Proposition

## Scope and Purpose

- 1.1 This proposition to the Secretary of State for Education and Skills sets out a plan which will achieve the progressive implementation of rigorous and effective self regulation for the FE sector. The proposition identifies the objectives of self regulation; maps the current FE sector landscape; shows how the proposed arrangements for self regulation would work; analyses the implications of the proposals; and suggests a way forward.
- 1.2 The proposition specifically seeks the Secretary of State's endorsement of the Self Regulation Implementation Group (the group)'s approach and emerging thinking in responding to his challenge of 21 November 2006 and his support for the following steps:

Step	Output	How/by When
1	Endorsement and continued support from the Secretary of State	<ul style="list-style-type: none"><li>• By early March 2007</li></ul>
2	Outcomes of further consultation with the sector and stakeholders	<ul style="list-style-type: none"><li>• Four national consultation events in March; and</li><li>• Website consultation based upon the proposition</li><li>• Consultation outcomes report in early April 2007</li></ul>
3	Outline implementation plan	<ul style="list-style-type: none"><li>• Spring 2007</li></ul>
4	Design of regulatory and other functions	<ul style="list-style-type: none"><li>• Detailed description of how regulatory and other functions should operate</li><li>• By July 2007</li></ul>
5	Full and detailed first phase implementation plan	<ul style="list-style-type: none"><li>• Based on the design work in step 4 above</li><li>• By the end of the academic year 2006/2007</li></ul>

- 1.3 The proposition recognises that a number of government policies, particularly those arising from the White Paper *Raising Skills, Improving Life Chances* (March 2006) and the Leitch Report *Prosperity for all in the global economy – world class skills* (December 2005) will be developed and implemented at the same time as self regulation. The detailed proposals for self regulation will take account of these reforms and seek to complement, support and strengthen them.

## Background

- 1.4 *Extending Trust* (May 2004), the final report of the Learning and Skills Council (LSC) Bureaucracy Task Force, chaired by Sir George Sweeney, strongly supported the exploration of options for self regulation for further education. The Task Force recognised that self regulation could not be imposed or gifted, but the accountability for it must be fully embraced by the sector itself and its drive must be to "remove large tranches of bureaucracy". The then Secretary of State welcomed the proposal and in June 2004 said

---

“We want to see . . . a high quality, responsive and demand-led sector, responsible for its own future and its own self improvement”.

- 1.5 The 2006 White Paper included the following statement in Chapter 7, *A new relationship with colleges and providers*: “We want to create a modern more self regulating form of college autonomy where colleges work together to set, review and raise standards and achieve continuous improvement in the interests of learners, employers and the local community. We will work with colleges, the AoC and other representative organisations to develop proposals for greater self regulation which make a reality of this vision”.
- 1.6 In a speech to the AoC Annual Conference in November 2006, the Secretary of State issued a challenge to the further education sector progressively to take collective responsibility for its own future destiny and reputation and thus forge a new relationship with government. Sir George Sweeney immediately responded to this challenge by drawing together a coalition of key interests to develop an initial proposition for self regulation.

## **Self Regulation – A Definition**

- 1.7 Self regulation for the FE sector means that the rules which govern behaviour and the activities which enforce them in the sector (the objectives of which are outlined in Section 2) which are currently undertaken outside the sector, will be administered more effectively and to a far greater extent within the sector where appropriate, by or for the learning providers or organisations which represent them. However, self regulation is not deemed to be accountable for setting prices, nor demand planning which is the prerogative of Government and following Leitch will be increasingly in the hands of learners and employers.
- 1.8 In preparing this paper, we have reviewed other regulatory regimes and sought help, support and guidance from key players in the sector to gain commitment and an agreed way forward. These include: DfES; AoC; Ofsted; ALP; QIA; the 157 Group; NUS; SSDA; LANDEX; UCU; national, regional and area LSC; NIACE; LLUK; CEL; QCA; Jobcentre Plus; HEFCE; NAO; FSA; BCC; the CBI and many individuals including college principals and chairs of governors.
- 1.9 The NAO in particular has been fully involved in our work and has offered its support for further stages of development.<sup>1</sup>
- 1.10 Further details of those involved in the work are provided at Appendix A which also incorporates a glossary of abbreviations and terms.

---

<sup>1</sup> See the letter of 23 February 2007 from Angela Hands to Sir George Sweeney enclosed with the proposition.

- 
- 1.11 For the purposes of this paper, the FE sector is defined at Appendix B. The definition is intended to draw specific attention to the importance of the governance dimension of self regulation and the group's understanding that self regulation needs to develop in accordance with modern concepts of college and provider autonomy.

## Structure of the Paper

- 1.12 This paper represents the output from intensive activity during a short period between December 2006 and February 2007, and presents a proposition for self regulation in the FE sector to the Secretary of State for Education and Skills. The document covers:
- Section 2 – the objectives of self regulation;
  - Section 3 – the regulation that is required and how it is currently done;
  - Section 4 – how the proposed self regulatory arrangements would operate;
  - Section 5 – the implications for the current FE sector landscape; and
  - Section 6 – the proposed way forward.

## 2 The Objectives of Self Regulation

- 2.1 The concept of self regulation in the FE sector has been debated for several years. Many aspirations for the future of the sector have become embodied in the concept, for example raising the game of a sector which, although improving, has pockets of inadequate and underperforming provision which need to be addressed; better employer engagement; better governance and leadership; less bureaucracy; and a wholly improved reputation. Whilst a number of these aspirations are also being addressed by other important government reforms, we consider that there are a number of objectives which will be fundamental to informing the design of the proposed self regulatory arrangements which take into account the sector's history and characteristics.
- 2.2 There are also generic objectives of regulation *per se* which embody the principles of good regulation, and which are applicable to the FE sector in the same way as they would be to any other regulatory system, these include:
- To be thorough, fair and efficient;
  - To protect the interests of the users of the regulated services;
  - To provide clear and agreed standards of provision, leadership, professionalism, probity, and propriety; and then to monitor and enforce them;
  - To be proportional, accountable, consistent, transparent and targeted; and

- 
- To promote confidence, better awareness and understanding.

2.3 All of the above are applicable to the FE sector.

## **FE Sector Objectives of Self Regulation**

2.4 At the same time as the movement towards self regulation is being considered, there are many other changes underway for FE. Key government reforms are already targeting simplification of the strategic and regulatory landscape and reductions in the burden of bureaucracy. In this context, the objectives of moving to a self regulatory regime in the FE sector, in particular are that:

- To complement, support and strengthen government reforms. In particular, self regulation can provide a key strategy to achieve simplification, by the sector taking accountability for regulatory and other functions which currently lie outside it;
- To ensure the regulatory framework as a whole is rigorous. A self regulating sector will work in partnership with relevant statutory bodies with a remit to achieve the same objectives. The synergy between intelligent self regulation aligned with an even lighter touch Ofsted and a more strategic LSC will ensure that public accountability of the sector is thorough and effective;
- New policy requirements will be more quickly, innovatively and creatively implemented as the sector itself will own, communicate and effect change;
- Government's policy objectives, learners', employers', and UK Plc's economic needs are met continuously over time;
- Self regulation adds value to the move towards less and eventually minimal bureaucracy. This will improve value for money and some early wins will be desirable (see below);
- The sector assumes direct accountability for performance, quality and continuous improvement and its own reputation;
- Standards of further education and learning continuously improve to become consistent, trusted and world class;
- The sector is fully aligned with Public Sector Reform, see Appendix C;
- Poor and declining performance is tackled quickly and effectively and either eliminated or improved, thereby developing real trust in the sector's capacity and capability to take ownership of and resolve these issues; and

- 
- The sector develops an enviable reputation as a mature, accountable skills powerhouse of a successful competitive economy.

## The Key Consequent Design Criterion and First Phase Proposition

- 2.5 Taking all these objectives together, if the self regulatory regime is to meet the expectations of stakeholders, then it is critical that it does not add to the burden of current, complex regulatory and other activity on the sector. Rather, it must replace, where appropriate, the current mechanisms with a more streamlined, efficient, clear, uncomplicated and straightforward approach – **this will reduce the bureaucracy experienced by the Sector, and this is the prize of self regulation.** Phase 2 of our work will look specifically at what activity can be stopped and how functions can be undertaken much more efficiently and effectively by taking them out of the hands of many and putting them in the hands of the Sector to ‘thin’ the regulatory landscape.
- 2.6 For instance, it is clear that a significant level of activity on intervention would be involved if the sector took ownership services which are all intended to support the sector, but are designed and contracted outside it. We believe the desired outcomes could be achieved in a very much more streamlined way if they were the direct responsibility of the sector and if the current resources deployed in targeting those outcomes were transferred both to the front line and to a single quality authority within the sector. Indeed, the recently published QIA Improvement Strategy recognised that the sector was best placed to lead on quality improvement.
- 2.7 However, Phase 2 of our work will need to validate this belief and where validated, this could form the early gains from moving towards self regulation in 2007.

## 3 The Current Landscape

### A Vital, Complex and Changing Sector

- 3.1 The white paper *Further Education: Raising Skills, Improving Life Chances* builds on the 14-19 Education and Skills White Paper and Skills Strategy and sets out a programme of reform to raise skills and qualification levels for young people and adults to world standards. The Leitch Report *Prosperity for all in the global economy – world class skills* states “Without increased skills, we would condemn ourselves to a lingering decline in competitiveness, diminishing economic growth and a bleaker future for all”. Leitch supports the White Paper proposals in which the government set out its vision for the reform of the FE system, including streamlined ways of working. In particular in relation to adults Leitch proposes the

---

system should become progressively demand led with learners and employers increasingly in control of the learning market.

- 3.2 In the light of the White Paper the FE system has entered a period of particularly rapid and significant change, designed to make a reality of the government's vision. For example external inspection from a single inspectorate and the recent Ofsted consultation on inspection proportionate to risk will reduce bureaucracy and empower the sector, which is central to increasing skills. Colleges and others will become increasingly directly accountable to adult learners and employers in a demand led system. Self regulation, we believe, will redouble this effort to reduce bureaucracy and improve performance and responsiveness.

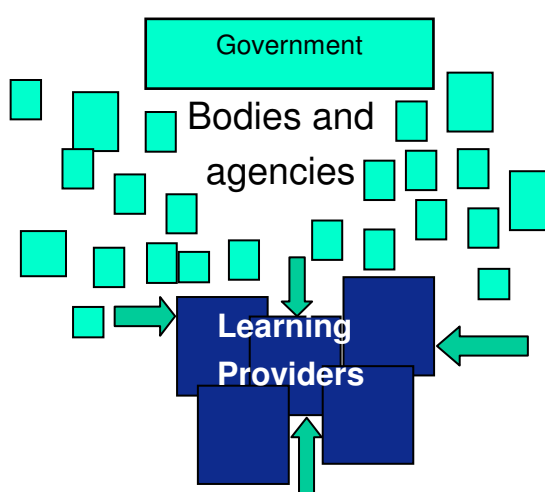
## **The FE Sector**

- 3.3 The sector consumes over £10 billion of public money each year to achieve the goal of improving the skills of young people and adults to develop a world class workforce and a competitive economy. The supply side of the sector includes FE institutions, private, independent and voluntary sector providers, local authorities and representative bodies. The demand side of the sector, at its highest level UK Plc, comprises learners, public and private employers of all shapes and sizes, and communities.
- 3.4 The strategic and regulatory landscape for the sector currently comprises a highly complex array of organisations, which have evolved through successive iterations. New organisations have been conceived, established, modified or abolished to address specific requirements, disparate objectives and market failure over time. Each organisation has its own specific role(s), but inevitably in a crowded space, there are conflicting aims, confusion, bureaucracy, inefficiency and ineffectiveness. Both the Foster Report *Realising the Potential* and Leitch provided the evidence to support the government's strategy for simplification to which self regulation will contribute significantly.
- 3.5 Many of the organisations that have been involved in the intensive work required to produce this proposition, represent the numerous bodies, agencies, councils and authorities comprising the extensive network which currently sets the standards, assesses, inspects and monitors the performance, investigates and intervenes in, reports and broadly, if tacitly, is responsible for determining the reputation of the sector. Appendix A lists the stakeholders who have been involved in the exploratory work.
- 3.6 The impact of the current landscape is that learning providers are approached from all sides by an array of legitimate but not perfectly aligned bodies, each with a valid interest in the Sector, each seeking to fulfil its own specific brief by requiring the learning providers to respond to multi-various requirements. Activities and interests are wide and varied and may be undertaken by more than one of the existing "galaxy of oversight, inspection and accreditation bodies" (Sir Andrew Foster). Not all activities are regulatory and they include

---

external scrutiny, setting standards, codes and definitions, policy advisory, funding allocation and distribution, monitoring, enforcement, inspection, assessment, intervention, leadership, professionalism, values and ethics, governance, accreditation, strategy, demand planning, regional, local and sectoral strategic and operational planning, delivery and provision, consultation, learner engagement, employer engagement, research and evidence, market making, financial assurance, performance management, peer review, quality assurance, continuous improvement, risk management, qualifications and awards, communication, data production, collection and disclosure. This is illustrated below.

### The Current Landscape

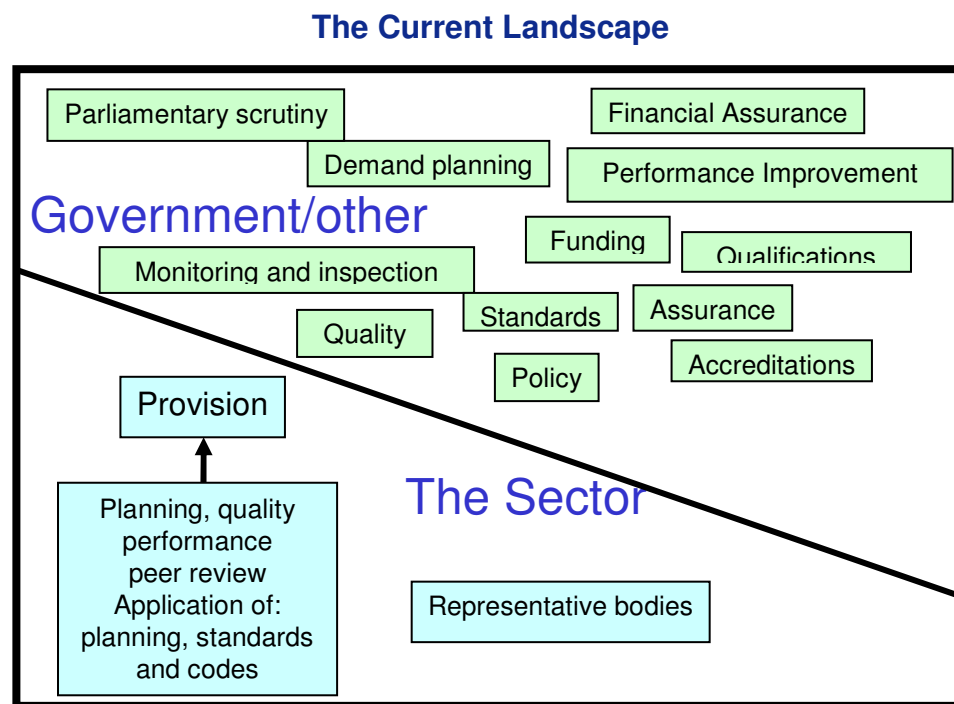


- 3.7 Many of the activities and interests are however regulatory in nature and are undertaken by several organisations, at best through liaison, which is expensive and at worst in conflict which is even more expensive. It follows that if all those regulatory activities which can properly be undertaken by the sector were undertaken in a single place, then at best much nugatory and ineffective activity could be stopped altogether, and at worst, useful activity could be done much more efficiently and economically. A single place would also guard against fragmentation of functions over time as has been the case historically.
- 3.8 Notwithstanding the need for a number of organisations and the variety of current activities, there is also a need for the sector to take collective ownership and responsibility for appropriately designed systematic central processes for allowing formal entry of new providers, sanctioning poor practice/delivery, ceasing unacceptable provision, complaints handling and redress.
- 3.9 We also recognise that there will always be a need for the Secretary of State to retain or vest powers of, or a duty to intervene, where this is deemed necessary.

---

## 4 A Self Regulating Model and Its Implementation

- 4.1 In Section 3 above, we described a complex, inefficient means by which the FE sector is regulated and monitored, mainly by agencies and bodies set up by government. In short, the burden of compliance weighs heavily upon the Sector, as illustrated below:

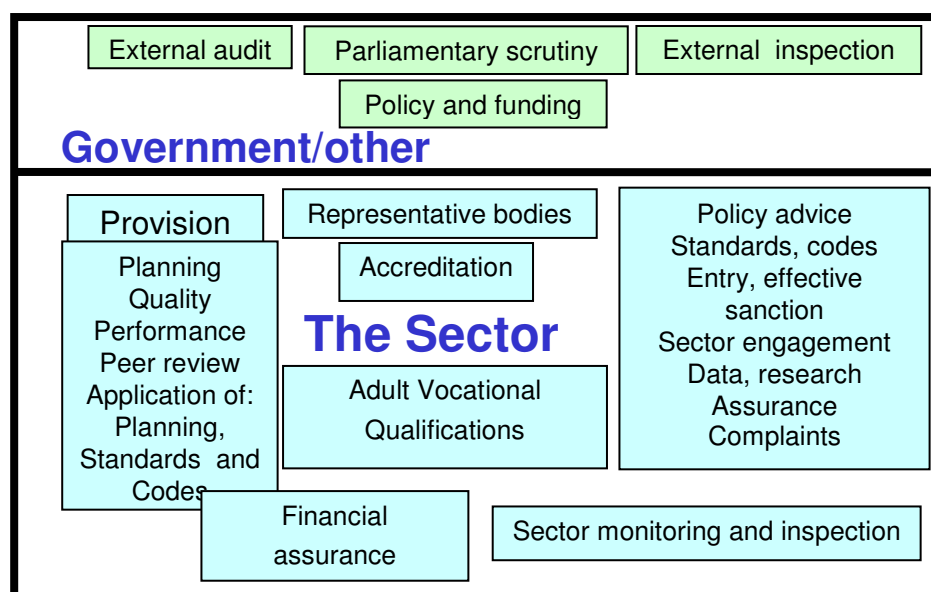


- 4.2 A self regulatory model would by definition transfer many regulatory functions and other accountabilities from outside of the sector, into the sector itself, to be undertaken by the sector for the benefit of users and stakeholders, not by governmental bodies. Other activities could be significantly reduced and some will not be needed at all in their current form.
- 4.3 A self regulatory model would take accountability for assuring the quality, reputation and success of the sector and regulate the means by which the sector delivers the objectives set for it through a mature relationship with government and by recognising the legitimacy of government's role as the strategic authority to set the vision, address market failure, and intervene on behalf of the disadvantaged in the labour market.
- 4.4 However it is important to acknowledge that self regulation is not being proposed in the context of a static sector or a stable landscape. Turbulence is currently being experienced for example as a result of the funding changes proposed through demand led provision and new buying power in the marketplace for employers and learners through learner accounts and "Train to Gain". Thus our proposition must be validated in Phase 2 to ensure it aligns with other initiatives and both enables them and is enabled by them.

## A Far Reaching Proposition

- 4.5 We have analysed other self regulatory and statutory models to establish common themes and indicators of minimum requirements and best practice (a sample of which are summarised at Appendix D). The models show a variety of regulatory landscapes, most complex and all quite different solutions to the regulation of the various sectors, all having evolved over time. However, we have found that no single model can simply be imported and copied into the FE sector, none of these models provides a ready made solution. However, two common threads are key, firstly the interests that regulation serves – the consumer’s; and secondly the regulatory activities that are undertaken.
- 4.6 In order to make progress towards self regulation in the FE sector, we are advocating a model which represents the most far reaching self regulatory regime - a new paradigm - so that decisions can be made as to how far towards the ultimate proposition it is practical, affordable, feasible and acceptable to go in the early implementation phases. This is important as we do not see a “big bang”, but rather a phased approach to implementation (see paragraph 4.25 below).
- 4.7 We have illustrated below the far reaching self regulatory model that we advocate, to demonstrate how our approach can assist the decision making process. Our starting point therefore is that all regulatory and associated activities transfer into sector ownership on a staged basis:

### A Future Landscape



---

4.8 The model above shows that in other regulatory regimes, even in self-regulatory models, it is accepted practice for government to retain external inspection capability to fulfil its constitutional and democratic role.

4.9 In addition, the far reaching future landscape illustrated above shows a simplified 'qualifications' landscape. However, we recognise that the work to achieve this, is neither dependent upon self regulation nor is likely to be wholly delivered as part of the movement towards self regulation. We believe the qualifications arena needs to be addressed in its own right and indeed reviews are ongoing.

4.10 In summary, the model above shows the functions retained above the line and deals with the transfer of regulatory and other functions into the sector, but it does not deal with the crucial question of which organisation(s) should be accountable for each of them, and by when.

### **Which Functions Should Stop, Transfer, To Whom, By When?**

4.11 The functions above the line are straightforward to allocate, as they would continue broadly as now:

#### **Above the Line Functions**

<b>Functions</b>	<b>Accountability</b>
Parliamentary scrutiny	PAC, Select Committee etc. DfES Accounting Officer role
Policy and regulator of last resort	Department for Education and Skills or its agent (see 4.12 below)
Allocation of public funds	See 4.12 below
External inspection	Ofsted
External audit	NAO

4.12 There may be a case for additional functions above the line within or for the Department. For example, it would not be unusual to see an independent Ombudsman function, or a regulator of last resort to settle appeals, or a small dedicated body to develop government policy, consider UK Plc's needs and define the overarching needs from and appropriate investment in the FE sector (including the allocation of funding).

#### ***Below the Line Functions***

4.13 Over the years, government has introduced organisations with overlapping terms of reference and functions. This has had the effect of removing accountability and ownership from the sector and stifling the options and choices as to how things are done. A number of those activities will not be required in a self regulatory regime from the publicly funded organisations outside the sector. This accountability could fall to the sector and may be discharged in a wholly new way.

4.14 This same principle would apply to functions which are currently duplicated in a number of places. In a self regulatory regime, specific roles would need to be tightly defined and duplication would be stripped out, the picture would be thoroughly streamlined with the accountability for much of the regulation falling to the Sector.

4.15 Once the external scrutiny and policy development functions are accounted for, the legitimate regulatory and other functions would be transferred into the sector over time, whilst activities which will not be needed at all would be engineered out of the system during implementation of the new regime. But where functions are legitimately transferred into the sector, to which organisation(s) will they go? It is crucial that there is absolute clarity about where accountability lies and for what. In all regulated markets, the regulation is of the suppliers in the market, and therefore it follows that in the FE sector, self regulation must lie with FE Institutions, private, independent and voluntary sector learning providers; driven by the objectives set out in Section 2 of this paper.

4.16 There are three options for allocating the functions which will transfer below the line:

- **Option 1- Divided Accountability:** Allocate specific functions respectively to existing organisations within the Sector which currently represent the interests of the providers (AoC, ALP, LANDEX, 157 Group etc.) to work in liaison, and who between them would account for all regulation (either functionally or by type of provider); or
- **Option 2 – Single Accountability:** Allocate all regulatory functions to a new body, set up within the Sector; or
- **Option 3 – Combined Accountability:** Follow a hybrid model, where AoC, ALP, LANDEX and 157 Group work together to create a new jointly ‘owned’ resource to regulate the sector.

4.17 All three options above have their advantages and disadvantages, for instance:

Advantages	Disadvantages and Risks
<b>Divided Accountability:</b>	
Reduces the burden on one organisation Keeps regulatory function close to providers No new body is required	Lack of independence from providers Divides accountability Creates duplication May lead to confusion and may lead to a lack of consistency Harder to manage requiring liaison between competing providers
<b>Single Accountability:</b>	
Separates regulation from representation Can be fully reflective of the Sector Clarity of purpose Consistency across the whole Sector Simple solution Prevents fragmentation	A new body would be required and this will add perceived complexity May make regulation more remote than in option 1 Will appear to add a burden to the Sector rather than take one away, which is the objective of self regulation This will not gain buy-in from the Sector or stakeholders as it will require new organisational infrastructure, including premises, IT, support services

Advantages	Disadvantages and Risks
	etc. Will not place accountability directly with governing bodies, representative bodies and providers
<b>Combined Accountability:</b>	
Shared accountability Greater clarity of purpose than option1 Consistency between provider types More independent than option 1 Sector wide	A new regulatory arrangement would be required,. More complex than option 2 Representative bodies would need new protocols to work together in this way Representative bodies may not have the capacity or capability to assume these responsibilities Representative bodies may not have the credibility or reputation at this stage to assume these responsibilities

4.18 To be successful, whichever option is pursued, it must be absolutely clear where regulatory accountability lies. The decision as to which option to pursue could be resolved by an analysis of the cost implications, and/or by the willingness of relevant parties to accept any one option and/or by the confidence on the part of the demand side and external stakeholders in one particular solution.

4.19 An important prior question is whether one regulatory regime should be applied equally and consistently to all providers, or whether the FE Institutions are regulated differently and separately from other providers. If the former, the allocations of responsibilities would be better transferred to an independent body, or through the hybrid model to a combined resource, as the first option is more likely to lead to unequal regimes. Our working assumption therefore is that the first option is least attractive.

4.20 In option 2, a new, separate, independent body is required, which has the disadvantage of finding a solution in the establishment of a new body, a solution which in the past has led to the overly-bureaucratic landscape we currently see.

4.21 For this reason and the reasons set out in the table above, we recommend a combined accountabilities approach – option 3.

### ***Key Decisions***

4.22 We believe that the degree of transfer of functions or the precise definition of what will no longer be required need not be decided now, as the implementation plan and its timing could assist greatly in enabling a more pragmatic transfer of accountability of functions into the sector. Thus the most important questions of principle and policy are:

- Which are the key functions which should be transferred into the sector first?
- What can stop, and when? and
- What needs to be achieved by when?

---

4.23 Subsequent legal, financial and operational questions include:

- How to ensure that the transfer of accountability into the sector is at least balanced, and preferably outweighed by the divesting of roles, accountabilities and activities by current players outside of the sector;
- Where are the early savings from the changed environment;
- What is the cost of establishing the self regulatory regime;
- Who pays for ongoing regulation (in most circumstances the regulated suppliers pay the costs of regulation, either reflecting scale of operation, or risk. This has a key advantage of applying consistent pressure to minimise costs, maximise effectiveness and value for money, but will require statutory powers)? and
- Review of whether there is a need to legislate.

### ***Timing***

4.24 Once the findings of this paper and key decisions are considered by the Secretary of State and supported by the sector, the subsequent questions can be resolved through a robust, logical and detailed implementation planning exercise, showing what will be done, by whom, by when, at what cost, the governance of the plan and how success will be measured and monitored over time. This will need to be outlined in the spring and fully developed by the end of the academic year in order to proceed to test the proposition from the summer of 2007 so that a phased implementation can proceed from March 2008 through to 2012.

### **Strategic Approach to Implementation**

4.25 There is no technical reason why all relevant activities could not transfer into the sector, with the control over the success of the shift in accountability being managed through timing and milestone management. In other words, implementation would be taken one step at a time as the previous step had proven to be a success and achieved its stated aims. We commend this approach which will mean a phased implementation reflective of change already underway and progressing as each of the agreed changes in regulatory accountabilities are fully embedded.

## **5 Implications of Self Regulation**

5.1 The combined accountability approach to self-regulation that we recommend, will mean that the sector itself will be accountable for implementing self regulation effectively. Key responsibilities will fall to the sector through governors and governance structures taking collective accountability for the sector's reputation.

- 
- 5.2 In adopting the model and approach described in Section 4, it will be important to analyse carefully exactly what is being done now, by which organisations; to what extent it would continue to be required and how it should be done in future; what activity could be stopped altogether and which objectives could be achieved in new, innovative and more effective ways by redesigning the functions as they transfer from above to below the line. In addition, current regulatory gaps could be filled. These are issues and questions which need to be addressed during detailed implementation planning (see next steps in Section 6).

## How Core Functions Would Work in Future

- 5.3 The next phase of work will need to analyse carefully the implications of the policy decisions outlined in Section 4 above, made as a result of this paper, and ensure that implementation takes into account not only which functions transfer to whom, but from whom, how, what costs are incurred as a result and which are saved.
- 5.4 Appendix E includes a sample of descriptions as to how a number of functions could operate in a future self regulatory regime, although they do not necessarily represent the first candidates for transfer of functions.
- 5.5 The third function described - ensuring continuous quality improvement, although not strictly a regulatory function *per se*, is of critical importance to the sector, and is one where external bodies intervene, contract external support and deploy that support into the sector. We believe that in the early stages of implementing the self regulatory arrangements, this function could be led and delivered from within the sector. This would have a number of important benefits which would ensure that the aims of self regulation would be achieved, they are:
- Costs would be consolidated into the sector and thereby reduced, providing for early wins in efficiency and effectiveness;
  - By taking the responsibility for support and intervention to secure improvement out of the hands of the many and placing it in the hands of the sector, there would be greater efficiency and reduced bureaucracy associated with the contracting function;
  - By taking support and intervention to secure improvement out of the hands of the many and placing it in the hands of the sector closer to providers, the effectiveness of the interventions would improve, less and better focused activity would ensue and key resources could thereby be transferred to the front line;
  - The sector would assume direct accountability for performance, quality and continuous improvement and its own reputation, a core objective of self regulation;

- 
- Standards of further education and learning continuously improve to become consistent, trusted and world class by means of the sector taking direct accountability for its own outcomes; and
  - Poor and declining performance would be tackled quickly and effectively and either eliminated or rectified as the support and intervention regime would be closer to the provider than is the case now, thereby developing real trust in the sector's capacity and capability to take ownership of these issues.

5.6 We believe that Phase 2 of our work should validate the benefits listed above and if proven, present implementation proposals for enabling the sector to have authority for support and intervention to secure improvement to replace wholly those which currently reside outside the sector (other than those ultimate sanctions in relation to principals and governors which should remain the responsibility of government).

## Benefits

5.7 Assuming an FE Sector of some £10bn, costs conservatively estimated at £265m amount to some 2.6%. Broadly compared to the other regulatory regimes above, we believe there is ample resource in the system to fund the move to self regulation and to spend significantly more of the overall sums on the front line. The outcome would be greater efficiency through taking functions out of the hands of the many and placing them into a sector based, single focused resource; greater effectiveness through moving functions into the sector, much closer to the providers; greater economy by reducing the bureaucracy and overheads associated with dispersed functions; fewer organisations, as roles of external bodies would change some would disappear; investment transferred from regulatory and intervention functions to front line provision.

5.8 Phase one of implementation, comprising the transfer of some intervention functions to the sector would go some way to achieving these benefits quickly.

5.9 The broad benefits of self regulation are best articulated as the means to meet the objectives set for it in Section 2. In addition, the benefits fall into many categories and may be specific to each stakeholder community, they include:

- Society/UK Plc/Government:
  - Active response of the FE sector to policy (e.g. Leitch) and accelerated change;
  - Drives the Public Sector Reform agenda and 'step change' in the FE sector;
  - Consistent with the Local Government White Paper, more community and social cohesion;

- 
- Increased learner and employer engagement;
  - Increased economic prosperity;
  - Improved economic performance;
  - Pride and confidence in the FE sector, with effective assurance to Parliament;
  - Demand led FE provision;
  - Cost effective, high quality provision; and
  - Cost effective regulation, reduced bureaucracy and therefore better VFM .
- Employers:
    - Increased confidence in sector;
    - Better outcomes from training;
    - More influence on the type of provision delivered, demand led and more choice;
    - Better outcomes for Sector Skills Councils;
    - Training demands better met; and
    - Route to redress
- Learners:
    - More successful training outcomes;
    - More influence on the nature of provision, more choice;
    - Widely recognised qualifications; and
    - Route to redress.
- FE Sector:
    - Improved reputation;
    - Self confidence/self-critical/self improving;
    - Effective governance and leadership;
    - Fit for purpose regulation;
    - Improving reputation; and

- Better able to concentrate on quality provision through streamlined and rationalised structure.

## 6 The Proposed Way Forward

### Key Decisions

6.1 In order to proceed towards self regulation, we must now decide:

- Which option for establishing the capability to undertake self regulation within the sector we will pursue? We recommend the combined accountability model, option 3.
- Which functions should transfer into the sector first? We recommend performance improvement intervention functions.
- When the nominated functions should be redesigned and transferred? We recommend implementation commencing in the late summer of 2007.
- How those functions which transfer will be removed from the remits of the organisations which currently undertake them, and consequently how those organisations will need to modify, reduce in scope or cease to exist altogether? We recommend this is answered by the detailed implementation planning exercise; and
- Whether any current organisations can therefore be abolished and by when? We recommend this is answered by the detailed implementation planning exercise.

### Next Steps

6.2 To make progress towards self regulation in the FE Sector, the following steps now need to be taken by the FE Self Regulation Implementation Group and others:

Step	Output	How/by When
1	Endorsement and continued support from the Secretary of State	<ul style="list-style-type: none"> <li>• By early March 2007</li> </ul>
2	Outcomes of further consultation with the sector and with stakeholders	<ul style="list-style-type: none"> <li>• Four national consultation events in March</li> <li>• Website consultation based upon the proposition</li> <li>• Consultation outcomes report in early April 2007</li> </ul>
3	Outline implementation plan	<ul style="list-style-type: none"> <li>• Spring 2007</li> </ul>
4	Design of regulatory and other functions	<ul style="list-style-type: none"> <li>• Detailed description of how regulatory and other functions should operate</li> <li>• By July 2007</li> </ul>
5	Full and detailed first phase implementation plan	<ul style="list-style-type: none"> <li>• Based on the analysis and design work in step 4 above</li> <li>• By the end of the academic year 2006/2007</li> </ul>

---

# Appendix A: Glossary of Terms and Contacts

---

<b>Glossary</b>	
<b>Acronym</b>	<b>Meaning</b>
157 Group	College representative group
ALP	Association of Learning Providers
AoC	Association of Colleges
BCC	British Chambers of Commerce
CBI	Confederation of British Industry
CEL	Centre for Excellence in Leadership
DfES	Department for Education and Skills
FEI	Further Education Institution
FSA	Financial Services Authority
HEFCE	Higher Education Funding Council
Jobcentre Plus	Agency of the DWP
LANDEX	Land Based Colleges Aspiring to Excellence
LLUK	Life Long learning UK
LP	Learning Provider
LSC	Learning and Skills Council
NAO	National Audit Office
NIACE	National Institute of Adult Continuing Education
NUS	National Union of Students
Ofsted	Office of Standards in Education
QAA	Quality Assurance Agency
QCA	Qualifications and Curriculum Authority
QIA	Quality Improvement Agency
SoS	Secretary of State
SR	Self Regulation
SSDA	Sector Skills Development Agency
UCU	University and College Union

List of Contacts (SRIG members shown in red)	
Organisation	Contact
157 Group	Mary Heslop
ALP	Graham Hoyle
AoC	Sue Dutton
BCC	David Frost
CBI	Sir Digby Jones, Susan Anderson
CEL	Ivor Jones, Caroline Mager
DfES	Stephen Marston, Jane Williams, Sue Pember, Millar MacDoanld
FSA	Lyndon Nelson
HEFCE	Toby West-Taylor
Jobcentre Plus	Anthony Killbride
LANDEX	Meredydd David
LLUK	David Hunter
LSC	Rob Wye, Melanie Hunt, Peter Newson, H.Ball, D.Ansell
NAO	Angela Hands
NIACE	Alan Tuckett
NUS	Ellie Russell
Ofsted	John Landeryou
QAA	Stephen Jackson
QCA	Isobel Nesbitt
QIA	Kate Anderson
SSDA	Gareth Cadwallader
UCU	Dan Taubman
LSC Council	Clare Ighodaro
New College Durham	John Widdowson
Leicester College	Maggie Galliers
City & Islington College	Frank McGloughlin
Cornwall College	John Latham
Castle College	Nick Lewis
Sheffield College	John Taylor
Telford College	Douglas Boynton
Northampton College	Len Closs
Bishop Burton College	Jeanette Dawson
City of Bristol College	Keith Elliott
W. Notts College	Asha Khemka
Priestley College	Mike Southworth
Hull College	Elaine McMahon
BHS 6 <sup>th</sup> Form College	Chris Thompson
Chair of G's Warrington CI	Colin Daniels
Chair of G's Barking College	Elaine James
Chair of G's Barnet College	Tony Alderman
Chair of G's Tamworth&L College	Ray Faulkner
Chair of G's City College Norwich	Bryony Falkus
Chair of G's Chesterfield College	Frank Smith
Manchester Solutions	Heather Green
Construction Industry Training Board	Max Hamps
Y&H Training Services	Frank McMahon
Self Regulation Implementation Group	Sir George Sweeney – Chair Emily Thrane – Secretary

---

# **Appendix B: Definition of the FE Sector**

---

## Definition of the FE Sector

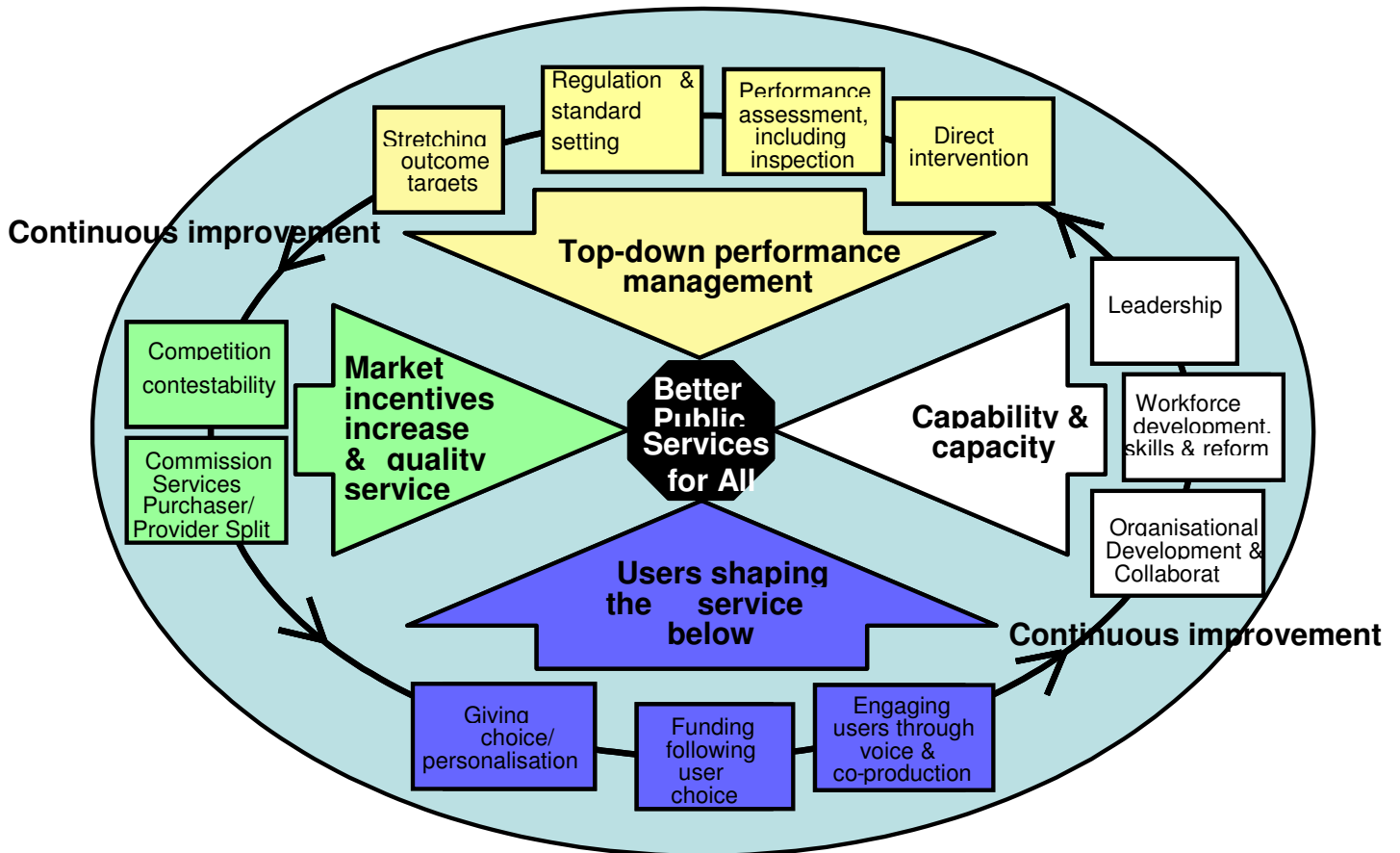
For the purpose of this paper, the FE Sector is defined as follows:

**“All publicly funded post 16 learning provision in England professionals and Boards, including all institutions covered by the 1992 Act, including all FE Colleges, 6th Form Colleges, WBL (including JCP procured) and Personal and Community Development Learning. Excluding Schools 6th Forms, HE, Trusts and Academies”**

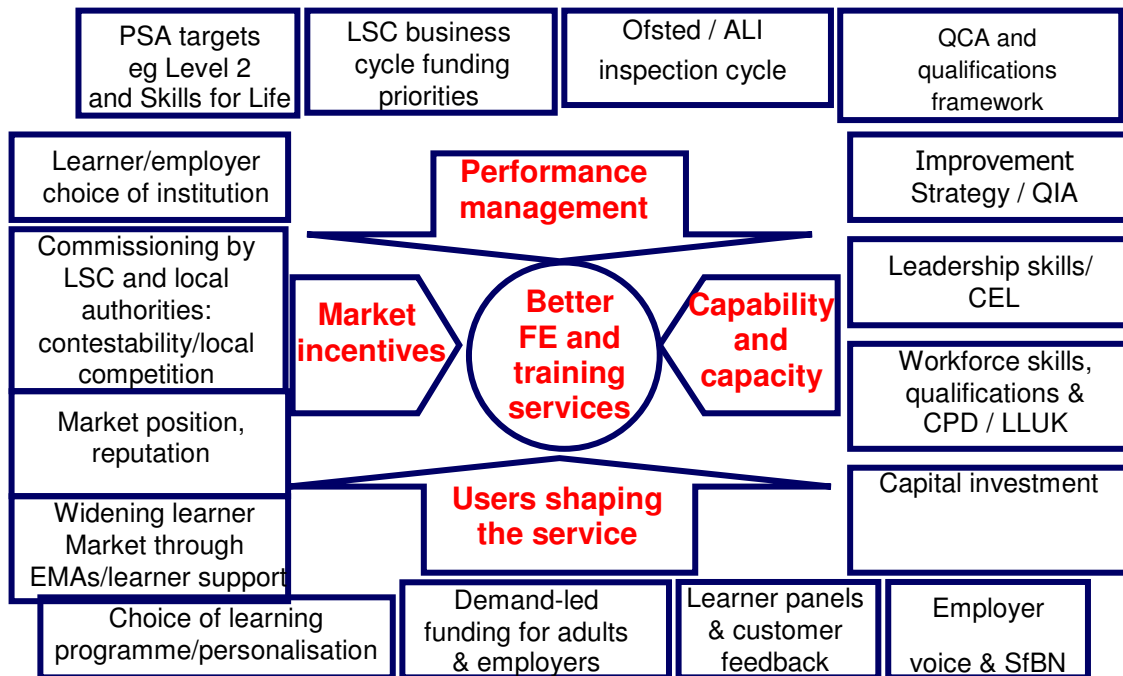
---

## **Appendix C: The Public Sector Reform Agenda**

# Public Sector Reform Model:



# Public sector reform: a self-improving further education system



---

## **Appendix D: Case Studies - Other Regulators**

---

## Other Regulatory Regimes

### Summary

All regulatory regimes exist due to market failure to some degree and therefore involve some form of Government involvement. The key objective of all regimes is to ensure that the market operates in consumers' interests.

Within industries such as water, communications, energy, post, rail, the Government has established a regulator that is accountable to Parliament. In these cases the regulator sets the standards with which the industry is expected to comply.

In regulatory environments associated with professions, who have set the existing standards, for example the accounting, medical and legal professions, the sector regulates the behaviour of members through bodies that both represent and regulate the sector. Clearly there is a conflict of interest here, and steps are taken to separate those roles.

The HE model does not fit neatly into either of the two models above, in that 'professional' standards are not central to the regime, and the regulator sits within the sector. However, the key characteristic of HE is that it is partly publicly funded. Consequently although providers are autonomous entities, the funding body is able to influence the way in which the sector operates.

All sectors issue licenses and operate registers of those that meet the required standards, although some markets allow unregulated elements of the sector to exist for example in the Water industry. Complaints are typically handled by providers/suppliers and escalated to an Ombudsman or complaints commission where complaints are appealed.

There appears to be a trend towards consolidation of regulators as the regulator demonstrates it is operating effectively. All regulators are funded by fees from the industry they regulate.

### Case Studies

There follows a selection of the case studies we have compiled:

- Accountancy;
- Higher Education;
- Health/Medical; and
- Financial Services.

## Case Study: Accountancy Sector

<b>Boundary:</b>		
CCAB bodies		
<b>Bodies Involved</b>	<b>Status</b>	<b>Role</b>
Financial Reporting Council	Funded by: <ul style="list-style-type: none"> <li>● professional bodies,</li> <li>● Secretary of State and</li> <li>● the business sector.</li> </ul>	<p>The FRC is the UK's independent regulator for corporate reporting and governance. It</p> <ul style="list-style-type: none"> <li>● Monitors the Combined Code on Corporate Governance and approves any changes to the Code and related guidance</li> <li>● Provides advice on strategy and priorities.</li> <li>● Gives advice on budget and funding.</li> <li>● Gives advice on structural and any other relevant issues.</li> <li>● Monitors and gives advice on activities on the basis of regular reports from all parts of the FRC.</li> </ul> <p>A number of operating bodies (identified separately) make regulatory decisions with regard to the FRC's Regulatory Strategy and Plan and Budget, review risks which could affect the confidence of corporate reporting and governance, make appointments and undertake annual evaluations.</p>
Accountancy Investigations and Discipline Board	FRC Body	<p>AIDB contributes to the achievement of the FRCS own fundamental aim of supporting investor, market and public confidence in the financial and governance stewardship of listed and other entities by:</p> <ul style="list-style-type: none"> <li>● Maintaining and enhancing the standards of conduct of members and member firms of the accountancy profession as represented by CCAB members;</li> <li>● Providing an independent system for investigating and hearing cases; and</li> <li>● Applying sanctions to those found guilty of misconduct and deterring future acts of misconduct through its work.</li> </ul>
Accounting Standards Board	FRC Body	<p>ASB develops principles to guide it in establishing standards and to provide a framework within which others can exercise judgement in resolving accounting issues, issue/amend accounting standards, address urgent issues promptly and work with International bodies in the setting of standards.</p>
Auditing Practices Board	Part of the FRC	<p>APB establishes audit standards within which auditors are expected to apply. It issues and establishes standards, establishes ethical standards, takes an appropriate role in the development of statutes, regulations and accounting standards and contributes to efforts to advance public understanding.</p>
Board for Actuarial Standards	Part of the FRC	<p>Establishes and improves actuarial standards, primarily of a technical nature, to ensure that they are coherent, consistent and comprehensive. and</p>

		thereby to help promote high quality actuarial practice.
Financial Reporting Review Panel	Part of the FRC	<p>The Panel:</p> <ul style="list-style-type: none"> <li>● Carries out responsibilities on behalf of the Secretary of State in relation to annual accounts and other documents falling within its remit;</li> <li>● Maintains a Panel body that includes a wide and balanced representation;</li> <li>● Develops and operates a programme of review of annual accounts based on risk assessment;</li> <li>● Enquires into accounts falling within its remit which come to its attention;</li> <li>● Ensures that any published findings of the Panel are brought to the attention of other authorities;</li> <li>● Liaises to foster the consistent application of accounting requirements and to improve compliance; and</li> <li>● Contributes to and seeks to sustain a European Union approach to enforcement and seeks an appropriate level of recognition within the financial reporting community.</li> </ul>
Professional Oversight Board	FRC Body	<p>POSB undertakes:</p> <ul style="list-style-type: none"> <li>● Independent oversight of the regulation of the auditing, accounting and actuarial professions by the recognised supervisory and qualifying bodies; and</li> <li>● Monitoring the quality of the auditing function in relation to economically significant entities.</li> </ul>
Consultative Committee of Accountancy Bodies (CCAB)	Company limited by shares. Funded by institute subscription.	<p>Promotes qualified accountant brand by:</p> <ul style="list-style-type: none"> <li>● Identifying and keeping a watching brief on emerging and current issues;</li> <li>● Providing a forum for considering issues and making joint approaches to governments and international standard setters and regulators</li> <li>● Recommending and , where appropriate, making appointments to international organisations and reviewing systematically the performance of those appointed; and</li> <li>● Facilitating joint technical work.</li> </ul>
Accountancy Bodies ICAEW CIMA CIPFA ACCA ICAS ICAI	Established by Royal Charter	<p>Professional bodies undertake a wide range of activities for the benefit of its members including:</p> <ul style="list-style-type: none"> <li>● Learning &amp; Professional Development</li> <li>● Standard Setting</li> <li>● Ethics</li> <li>● Regulation</li> <li>● Representations &amp; Policy</li> <li>● Regional and International Activities</li> <li>● Services for members</li> </ul> <p>For ICAEW a Joint Disciplinary Scheme (JDS) conducts independent investigations into the work and conduct of chartered accountants in cases of</p>

		public concern. Other bodies have their own complaints procedures.
International Federation of Accountants	Body funded by members	Global representative body for the accountancy profession. IFAC protects the public by encouraging and promoting best practice in accountancy throughout the world issuing guidance in auditing, education, ethics as well as finance and management, IT and public sector accounting. For example, the International Auditing and Assurance Standards Board (IAASB) is a committee of IFAC responsible for devising global auditing standards.
Department of Trade and Industry	Government	Responsible for maintaining the legislative framework for audit regulation. Powers under this function have been delegated to the Professional Oversight Board of the FRC.

#### Key Features

In January 2004 a new structure of non statutory independent regulation was put into place to replace the role of UK Accountancy Foundation. Under agreement with the Government, regulatory responsibility for the accounting profession was transferred from the Accountancy Foundation and the Review Board to the FRC which is now the UK's independent regulator for corporate reporting and governance. The FRC is the **single independent regulator** of the accounting and auditing profession as well as being responsible for issuing accounting standards and dealing with their enforcement. Appointments to the Board of the FRC are made by the Secretary of State for Trade and Industry.

Within the FRC there are a number of bodies that have been created for specific purposes including bodies to **set and review standards** for accounting, audit and actuarial activity, a body to review reporting requirements members and member firms, a body to undertake **investigations and take disciplinary** actions and an independent body to take oversight of developments within the sector. The FRC's role is supported by both statutory powers and statutory obligations placed on other bodies.

Each of the Accountancy bodies has procedures for the **education and qualification** of its members. On meeting **entry criteria**, fees are paid and those qualified are generally subject to **continuous professional development** on which **audits** are undertaken. Individual **complaints** can be referred to the Institution or the Accountancy Investigation and Discipline Board if the individual accountancy bodies considers it to be appropriate.

#### Size of Sector

£8.2bn (reference Thomson Business Intelligence Market Overview)

## Case Study: Higher Education Sector

<b>Boundary:</b>		
All universities, higher education colleges and higher education courses undertaken in further education colleges in England		
<b>Bodies Involved</b>	<b>Status</b>	<b>Role</b>
Privy Council	Government	Responsibilities under the Royal prerogative and by statute. The Privy Council is responsible for advising Her Majesty on universities' proposals to amend their Charter, amendments to the statutes and amendments to the Instrument of Government and Articles of Government. The Privy Council is also responsible, under the Further and Higher Education Act 1992, for approving the use of the word 'university' (including 'university college') in the title of a higher education institution, and may also approve an institution as competent to grant degrees.
HEFCE	Non- Departmental Public Body (established under the Further and Higher Education Act 1992)	HEFCE's key role is to: <ul style="list-style-type: none"> <li>● Distribute money to universities and colleges for higher education teaching, research and related activities;</li> <li>● Fund programmes to support the development of higher education;</li> <li>● Monitor the financial and managerial health of universities and colleges;</li> <li>● Ensure the quality of teaching is assessed ;</li> <li>● Provide money to further education colleges for their higher education programmes;</li> <li>● Provide guidance on good practice.</li> </ul> The Secretary of State is accountable to Parliament for the activities and performance of HEFCE
QAA	Company limited by guarantee. Independent body funded by subscriptions from HEIs and contracts with the main UK higher education funding bodies.	To safeguard public interest in the standard of HE qualifications and to inform and encourage continuous improvement.
UUK	Company limited by guarantee with charitable status. Funded by subscription.	UUK acts as a representative body of UK HEIs. Principal activities consist of three main groups: <ul style="list-style-type: none"> <li>● Policy development;</li> <li>● External relations; and</li> <li>● Communications and resources.</li> </ul>
Office of the Independent Adjudicator for Higher Education ("OIA")	Independent body established by the Higher Education Act. Company limited by guarantee. Funded by DfES and HEI subscriptions.	Independent student complaints scheme pursuant to the Higher Education Act 2004.

Office for Fair Access	Independent, non departmental public body	OFFA role is to promote and safeguard fair access to higher education for under-represented groups in light of the introduction of variable tuition fees in 2006-07.
------------------------	-------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Key Features

HEFCE operate within a **framework** agreed with the DFES so as to provide funding to all higher education institutions and further education institutions providing higher education courses. HEFCE's activity is overseen by a Sponsor Team within DfES who advises the Secretary of State on the discharge of functions. HEFCE is subject to external audit by the C&AG.

**Funding** is allocated by HEFCE based on a formula adjusted for inflation and student numbers taking into account tuition fees (based on data collected through an annual return). HEFCE do not undertake **planning** but rather funding is considered to be demand led. HEFCE agree financial memorandums with each institution it funds for the purposes of regulating its relationship on financial and related matters, setting out the terms and conditions on which grant will be made by the Council to the institution

Having allocated funding, HEFCE undertake **assurance** through:

- Requiring all institutions to provide it with audited financial statements;
- Undertaking Institutional reviews to assess each HEI's risk management, control and governance arrangement
- Data audits to assess that funding returns have been populated appropriately;
- Desk based audits to assess the degree to which institutions are discharging their responsibilities under the Financial Memorandum, the Audit Code of Practice and the Accounts Direction; and
- Annual accountability assessments, financial monitoring and risk assessment and risk notification.

HEFCE is legally responsible for ensuring the **quality** of education that is funded. This role is contracted to the QAA who provide an integrated quality assurance service for higher education institutions in the UK. QAA undertake this role by working with HEIs to define academic **standards** and quality, and undertake peer reviews against these standards. As HEIs are autonomous, self-governing institutions each being responsible for the standards and quality of its academic awards and programmes, **quality assessment** is undertaken through both internal monitoring of programmes and external peer review/audit typically every five years.

A student **complaints** service is operated by OIA to which all higher education institutions in England and Wales are required to comply (a free service to students). OIA handles individual complaints against higher education institutions and publishes recommendations about how they deal with complaints and what constitutes **good practice**. HEFCE, QAA and UUK also provide good practice in the light of their respective responsibilities within the sector. UUK has no specific regulatory role.

In 2004 a Group, established by the Minister for Lifelong Learning, Further and Higher Education to provide an independent regulation review for higher education in England (termed HERRG). The aim of this Group is to review policies for their regulatory impact on higher education in England regardless of origin, explore existing areas of bureaucratic demand and recommend ways of doing things better.

### Size of Sector

£6.7 bn (HEFCE funding)

£10.05 bn (research councils, other public sources, fees and other private income)

**£16.75\*bn Total**

Note\*: source HEFCE funding 2006-07 adjusted for UUK statistic that 40% of funding is received from funding council grants

## Case Study: Health/Medical Sector

<b>Boundary:</b>		
<b>Bodies Involved</b>	<b>Status</b>	<b>Role</b>
Privy Council	Government	Concerned with the affairs of Chartered Bodies, institutions, charities and companies incorporated by Royal Charter as well as certain UK statutory regulatory and statutory bodies covering a number of professions. Appointment of lay members to bodies and the approval of rules.
Department of Health	Government	National standards and shaping the NHS, social care services, and promoting healthier living.
British Medical Association	Limited company, funded largely by members.	Represents doctors from all branches of medicine in the UK. Voluntary association of doctors, speaks for doctors at home and abroad, provides services for its members, is an independent trade union, a scientific and educational body and a publisher
General Medical Council	Established under the Medical Act of 1858. A registered charity funded by retention fee from registrants also governed by the Privy Council.	Registers and disciplines Doctors. Law provides for four main functions: <ul style="list-style-type: none"> <li>● Keeping up-to-date registers of qualified doctors;</li> <li>● Fostering good medical practice</li> <li>● Promoting high standards of medical education</li> <li>● Dealing firmly and fairly with doctors whose fitness to practice is in doubt</li> </ul>
Council for the Healthcare Regulatory Excellence	Statutory body independent of Government. Funded by the Department of Health	Promotes best practice and consistency in the regulation of healthcare professionals. Key functions include: <ul style="list-style-type: none"> <li>● Promoting the interests of the public and patients in the field of the regulation of health professionals;</li> <li>● Promoting best practice in professionally-led regulation;</li> <li>● Reporting annually to Parliament with discretion to report on the performance of individual regulatory bodies;</li> <li>● Promoting co-operation and consistency across the regulation of all the healthcare professions;</li> <li>● Developing principles of good regulation; and</li> <li>● Advising Ministers on professional regulation issues in healthcare</li> </ul>
Health Professions Council	Body Corporate. Independent from Government funded by fees.	Sets standards of professional training, performance and conduct for professions (scientists, therapists etc). It: <ul style="list-style-type: none"> <li>● Maintains and publishes a public register of properly qualified members of the professions;</li> <li>● Approves and upholds standards of education and training, and continuing</li> </ul>

		<p>good practice;</p> <ul style="list-style-type: none"> <li>● Investigates complaints and takes action;</li> <li>● Works in partnership with the public, and other groups <a href="http://www.hpc-uk.org/mediaandevents/links/index.asp?catid=4">http://www.hpc-uk.org/mediaandevents/links/index.asp?catid=4</a>; and</li> <li>● Promoting awareness and understanding.</li> </ul>
Health Service Ombudsman	Statutory body. Funded by Department of Health	Undertakes independent investigations into complaints against government departments, public bodies and the NHS where they have not acted properly or fairly or have provided a poor service.
The General Dental Council	Funding by annual retention fees and established by the rules of the Privy Council.	Regulates the dental profession in England, to protect patients, promote confidence and be at the forefront of health care regulation. GDC maintains a register, sets standards, provides education to ensure professionals are up to date. Takes action in light of complaints.
The General Osteopathic Council;	Funding by annual retention fees and established by the rules of the Privy Council. (Osteopaths Act 1993)	<p>Provides for the regulation of the profession of osteopathy with the key aims being:</p> <ul style="list-style-type: none"> <li>● To protect patients</li> <li>● To develop the osteopathic profession; and</li> <li>● To promote an understanding of osteopathic care.</li> </ul> <p>Activities include:</p> <ul style="list-style-type: none"> <li>● Maintaining a register of qualified professionals</li> <li>● Setting standards of osteopathic practice and conduct;</li> <li>● Assuring the quality of osteopathic education;</li> <li>● Ensuring Continuing Professional Development; and</li> <li>● Helps patients with complaints about an osteopath.</li> </ul>
The General Optical Council	Funding by annual retention fees and established by the rules of the Privy Council.	<p>Regulator for the optical professions in the UK. Four core functions:</p> <ul style="list-style-type: none"> <li>● Setting standards for optical education and training, performance and conduct;</li> <li>● Approving qualifications leading to registration;</li> <li>● Maintaining a register of individuals;</li> <li>● Investigating and acting where a registrant's fitness to practise, train, or carry on business is impaired.</li> </ul>
The General Chiropractic Council	Funding by annual retention fees and established by the rules of the Privy Council.	<p>Sets standards and maintains a register of chiropractors. Aims include:</p> <ul style="list-style-type: none"> <li>● Protecting the public through operating a scheme of statutory regulation;</li> <li>● Set standards and promote continuous improvement; and</li> <li>● Promotion of the profession.</li> </ul> <p>Investigates complaints and takes action.</p>

The Royal College of Veterinary Surgeons	Funding by annual retention fees and established by the rules of the Privy Council	Regulatory body for veterinary surgeons in the UK. Role is: <ul style="list-style-type: none"> <li>To safeguard the health and welfare of animals through the regulation of educational, ethical and clinical standards</li> <li>To act as an impartial source of informed opinion on animal health and welfare issues and their interaction with human health.</li> </ul>
The Royal Pharmaceutical Society of Great Britain	Funding by annual retention fees and established by the rules of the Privy Council	Professional and regulatory body for pharmacists. Also regulates pharmacy technicians on a voluntary basis. Primary objectives are to lead, regulate, develop and represent the profession of pharmacy. Responsibility for a wide range of functions that combine to assure competence and fitness to practise. These include controlled entry into the profession, education, registration, setting and enforcing professional standards, promoting good practice, providing support for improvement, dealing with poor performance, dealing with misconduct and removal from the register.
The Nursing and Midwifery Council	Funding: annual fees established by the rules of the Privy Council	Regulatory body: nursing and midwifery.

#### Key Features

Each of the medical professions has a Council (13 in total), established under Privy Council direction designed to regulate the activities of members, through **applied standards**, a **register**, **investigation powers** and **sanctions** for those that have been found to have breached rules.

All Doctors are required to register with the GMC before practicing, who maintains a register of all doctors with the key role of protecting patients. The register ensures confidence that doctors are competent in their field and abide by high ethical standards.

Registration confers many privileges and legislation restricts activities for example, the right to prescribe prescription only medicines to registered persons. In future, the GMC propose to issue doctors with a licence to practise upon registration and doctors wishing to retain their licence to practise revalidate periodically to prove on a regular basis that they are up to date and fit to practise; and have been practising in line with our core ethical guidelines

**Complaints** are made to relevant authority (hospital, GP etc). If the complainant is unhappy, he can still put his complaint to the Health Service Ombudsman. More serious complaints are made to the GMC depending on a range of circumstances which then undertakes an **investigation** and can:

- 'Strike off' the Doctor
- Have the Doctor suspended,
- Have conditions attached to registration or
- Admonish the Doctor.

**Appeals** can be made to the High Court. The Council for the Regulation of Healthcare Professionals may also refer decisions to the GMC

#### Size of Sector

£101bn (based on ONS national accounts 2005)

## Case Study: Financial Services Sector

<b>Boundary:</b>		
Most financial services markets, exchanges and firms (as covered by the Financial Services and Markets Act 2000).		
<b>Bodies Involved</b>	<b>Status</b>	<b>Role</b>
<b>Financial Services Authority</b>	Independent non-governmental body with statutory powers. Company limited by guarantee and financed by the financial services industry.	Sets the standards that firms must meet and takes action against firms that fail to meet the required standards Key role is to: <ul style="list-style-type: none"> <li>● Maintain market confidence;</li> <li>● Promote public understanding of the financial system;</li> <li>● Secure appropriate protection for consumers; and</li> <li>● Fight financial crime.</li> </ul>
<b>Financial Ombudsman Service</b>	Company limited by guarantee. Budget approved by FSA and funded by both levy and fees.	Key role includes: <ul style="list-style-type: none"> <li>● Settling disputes</li> <li>● Consider complaints about a wide range of financial matters</li> </ul> FOS is not a regulator ("watchdog") or a trade body or a consumer champion. The role is to impartially settle disputes, as an alternative to the courts.
<b>Financial Services and Markets Tribunal</b>	Administered by the Department for Constitutional Affairs (Courts Service).	Hears appeals against all regulatory and disciplinary decisions of the FSA.
<b>Key Features</b>		
<p>Under Section 19 of FSMA, any person who carries on a regulated activity in the UK must be <b>authorised</b> by the FSA or exempt (an appointed representative or some other exemption). <b>Breach</b> of section 19 may be a criminal offence and punishable on indictment by a maximum term of two years imprisonment and/or a fine. must apply to us for authorisation</p> <p>The FSA <b>supervise</b> firms according to the risks they present to statutory objectives. For those firms that are considered to be medium and high-impact firms, activity is coordinated through relationship managers whom carry out regular risk assessments and determine risk mitigation programmes proportionate to the risks identified. For high impact firms a closer monitoring regime is applied involving analysis of a firm's financial and other returns, <b>checking compliance</b> with notification requirements and a planned schedule of visits. If a firm is assessed as low impact it is monitored by a combination of baseline monitoring, action in response to risks identified by this information, thematic exercises to monitor compliance standards in a sector and work as part of sector-wide reviews. An FSA case team will perform any follow-up needed suggesting an pro-active role in regulating the sector.</p> <p>In addition to its regulatory activity the FSA holds a <b>register</b> of financial services firms, individuals and other bodies which fall or have come under our regulatory jurisdiction as defined by the Act. Appointments to the FSA Board consist of three Managing Directors and eleven Executive Directors (NEDs). NEDs are appointed by the Chancellor of the Exchequer. The <b>accountability</b> of the FSA is ensured by requiring the FSA to report annually to the Chancellor, an annual open meeting and attendance at Treasury Select Committees.</p> <p>The FOS, a company limited by guarantee but whose appointments and budgets are set by the FSA, acts as the arbitrator hearing <b>disputes</b> between parties in relation to financial matters (although the Pensions Ombudsman covers pensions). In addition, the Financial Services and Markets Tribunal has been set up to provide an <b>independent review</b> of all regulatory and disciplinary decisions of the FSA. This regime replaced the previous disparate regulatory arrangements for financial services so as to provide a single regulator operating under a single body of law with any disputes being resolved by a single tribunal. The Tribunal consists of a chairman and two lay members based on their credibility in the industry whom will consider anew the evidence on which the original decision was based and any further relevant evidence. It will then give directions to the Authority on what action, if any, should be taken</p>		
<b>Size of Sector</b>		
£100bn (approx)		

---

## **Appendix E: How Core Functions Would Work**

---

## Sample of Functions in a Self Regulatory Regime

As a key part of the implementation of self regulation, the powers and activity of the regulatory regime would need to be designed and there would be a duty to consult widely, as they would be key to success, and would need to be widely accepted, agreed and recognised if self regulation was to be a success.

The case studies at Appendix D provide an overview of a range of other regimes, providing indicators as to how the FE self regulatory regime may work in practice. The Sector would need to proceed with a duty to consult widely to design the most appropriate regime to meet the objectives for self regulation set out in Section 2 of this document.

Four functions in a self regulated FE Sector will be:

- Setting standards and rules as to how business should be conducted and quality will be judged;
- Monitoring and enforcing those rules;
- Ensuring continuous quality improvement; and
- A well publicised complaints procedure and redress.

The following paragraphs outline how these functions might operate in a self regulatory regime.

### ***Setting Standards and Rules***

Under the self regulatory regime, whichever organisation(s) has accountability within the Sector for regulatory functions (see Section 4), it will need to take accountability for any current standards, rules, codes etc. that exist and which apply to any part of FE Sector operations. At present there are many sets of standards applying to many elements of providers' operations, these would need to be marshalled, possibly combined and definitely clearly communicated so that all providers were aware of the standards the regulatory regime was applying to the Sector.

There would be a duty to consult widely, but if as is widely anticipated, Framework for Excellence became the underpinning quality and performance framework which alongside inspection would provide the necessary underpinning guarantee to government of a sector in pursuit of excellence, the regulatory regime would be accountable for ensuring that it was appropriate and regularly reviewed using wide consultation mechanisms. It would then be against this standard that other regulatory functions would be undertaken including monitoring and enforcement.

However, although the regulatory regime would be accountable for the standard, as in other self regulatory environments, the standard could be owned by the Sector providers, but the regime would be responsible for ensuring that the standard was appropriate and that all providers in the Sector were fully aware of the standard and that they were operating according to its requirements.

### ***Monitoring and Enforcement***

Having set the standards and appropriately communicated them to the provider community, the regulatory regime would be responsible for ensuring that all providers were operating according to its requirements. In the first instance this might involve the regulatory regime requiring a process of self assessment and peer review which reported how well each provider was performing.

Where providers fell below the standards required, the regulatory regime would need to analyse where the deficiencies lay and make appropriate arrangements and requirements for the provider to take action to meet the standard, over a defined period. The analysis may call into question the robustness of the self assessment or peer review process, or indeed of the standards of operation and provision itself.

---

Where providers failed to take the action or the action taken was inadequate or failed, the regulatory regime would need to have the authority to take further action, and *in extremis* to ensure that provider was prevented from continuing to operate; this power would need to be applied in the most practical and effective way and over realistic timescales. This may not necessarily mean closing a provider down, but it might mean agreeing to alter the business model or range of provision in the failing areas of operation.

The regulatory regime should have sufficient resource to procure, where necessary, the skills, support and expertise to assist the failing provider to rectify its failures, from other providers (say high performers in the relevant cluster) or from other suppliers of business services to the Sector.

## ***Ensuring Continuous Quality Improvement***

Along with reducing and then minimising bureaucracy, one of the most important expectations of any new self regulatory regime in the FE Sector is continuous improvement. Therefore, it would fall to the regulatory regime to ensure that processes to achieve continuous improvement were in place in provider organisations and were robust and effective.

The current role of the QIA is designed to provide services to providers to effect continuous improvement. However, in a sector led model, providers may be required to demonstrate how continuous improvement was engineered into their own operations. Where this was failing, it could be that the regulatory regime procured specific support, or made support available and required providers to engage with it, or demonstrate how otherwise they would meet the required standards of continuous improvement.

The regulatory regime might require clustering, peer working and or clustered benchmarking with declared and agreed improvement plans as part of the regulatory regime.

## ***Complaints and Redress***

There appears to be no effective centralised complaints procedures for the FE Sector at present. This is typically a core function of a regulatory body. Procedures would need to be designed which outlined when it would appropriate for the regulatory regime to become involved. However, this would need to be proportionate to the scale of the problem. The issue of cost needs to be considered in putting this in place which should also be proportionate to the risk. Typically a regulator only becomes involved where consumers (in this case employers and learners) had pursued the provider directly, with unsatisfactory results.

The regulatory regime would therefore require as part of the required standards, every provider to have effective complaints procedures. The escalation of complaints and the outcome of investigations would be an effective measure providers' efficacy. The regulatory regime would need to establish the process for proportionate complaints handling and the scale of redress or compensation it was able to award. These would be a matter of policy for the Sector to agree through consultation.

## ***Next Steps***

We recommend that a more detailed description of how all the above and all other relevant functions should operate is produced as part of the construction of a detailed implementation plan.