1. This report draws together key dimensions of discussion during the course of four seminars to capture the consensus in our thinking. The report is structured as follows:

- the rationale and narrative for greater self-regulation;
- the nature of regulation in the public sector;
- the emerging propositions for regulation of FE; and
- areas for further exploration.

The rationale for greater self-regulation – the narrative

2. The context for discussion about regulation in the FE sector is defined by:

- The national public sector reform agenda;
- The policies of DIUS in particular;
- The current economic crisis; and
- The sector’s own ambitions.

The public sector reform agenda – from good to great

3. At the first seminar we set our debates in the context of the public service reform agenda and heard from Cabinet Office the latest expression of that journey set out in *Excellence and Fairness: Achieving world class public services*. That discussion highlighted how the increased autonomy implied by the shift towards self-regulation is necessary to achieve the next phase of public service reform – the shift from good to great.

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1 The reports of each seminar can be found through the following link

4. Whereas centralised prescription by government was arguably effective in dealing with inadequacy in public services, it won’t help us to take the step to great services. It’s now recognised that top-down targets can become counterproductive; too much centralised advice and micromanagement can stifle responsiveness to the particular needs of the community and customers. It also disregards the talent and capacity within the sector to provide its own solutions. We need a different prescription.

5. It is now generally acknowledged that in order for public services to move from good to great, there needs to be a new settlement based on:
   - empowered customers and citizens;
   - renewed professionalism; and
   - government in a strategic leadership role rather than a prescriptive or micro-managing role.

6. The progression from good to great cannot be ordained from outside, but has to be grown and owned from within; it needs self-motivated and responsible professionals across the system with the operating space and room for manoeuvre to respond to and empower their customers and citizens; we need to be proactive professionals with the discretion and headroom to act in the interest of our customers and in pursuit of public policy outcomes.

7. So the vision we saw was a re-negotiation of responsibilities and influence between sector professionals, our customers and citizens and with government. This provides a key dimension of the context for discussion about sector regulation and the shift towards self-regulation.

The current policies of DIUS

8. The commitment by DIUS to securing greater autonomy and self-regulation for the sector is clearly established. As articulated at the second seminar by Susan Pember, Director of the FE Learning and Skills Performance Group at DIUS, the department and its predecessor, has consistently introduced reforms to increase provider autonomy and has 'prioritised sector involvement in its own governance'.

9. The machinery of government reforms, which foresee the division of the LSC and the education system at 19 from 2010, will reinforce the commitment to enhancing sector autonomy and voice, and will give the sector the opportunity to assign roles and expectations to sector bodies, determine how they interact, and thus devise how self-regulation will work. Susan also stated that ‘quality management functions … should be owned by the sector’, and that ‘DIUS expects that increasing areas of the system will be managed by colleges and providers themselves’.

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3 As set out in *Excellence and Fairness*
10. More recent announcements state that colleges and providers will have much greater flexibility to deliver the education and skills required in their local communities. They will not be constrained by detailed plans nor burdened with unnecessary bureaucracy or oversight by the system and will be able to use public funding to respond to local circumstances.

11. The commitment to self-regulation is also reflected in the LSC’s recent Statement of Priorities. This states that LSC will ‘consider the appropriateness of external versus self-regulation as we develop policies and processes that have a regulatory impact’ and engage with sector-led groups like the Bureaucracy Reduction Group and the FE Communications Panel ‘to ensure that regulation is transparent, accountable, proportionate, consistent and targeted only where action is needed’. The LSC will also ‘support development of self-assessment and peer review mechanisms’ and adopt funding and commissioning mechanisms that offer providers more autonomy to meet local needs.

The financial context

12. The FE sector has a particularly vital contribution to make to support individuals, communities and the economy through the economic recession and to prepare them for the up-turn. The financial context requires the FE sector to be the best it can be at this critical time and therefore regulation needs to be as efficient, effective and enabling as possible, while commanding public confidence. Greater self-determination and freedom to operate could help the sector to respond more effectively to local needs and demands. Greater self-regulation is desirable therefore, not for its own sake, but because it could empower the sector to respond more effectively to local need and deliver greater effectiveness and efficiency.

13. At the same time we recognise the perception that the crisis in the financial sector was in part due to a failure of regulation and in particular of voluntary codes of conduct and self-regulation. Appetite for reducing regulation and tolerance of risk are therefore limited in the current climate. However, there is also less appetite for public resources to be wasted in unnecessary regulation or bureaucracy. In developing our proposals for FE self-regulation we need to be alert to these political sensitivities and the current climate.
The sector’s own ambitions

14. Most importantly, the impetus for greater self-regulation comes from and was initiated by the sector itself. As described in the Consultation Prospectus issued by the Single Voice for Self-regulation for consultation, it was initiated as a radical approach to reducing bureaucracy in the sector, and its potential recognised by the Foster Review and the National Audit Office. The sector is described as coming of age, and as having met and exceeded collective aspirations for the learners that are its heart; it is not prepared to tolerate under-performing provision; it recognises that eligibility for public funding is not a long-service medal but a privilege earned through the gritty business of performance management and the self-discipline of daily accountability. The commitment across the FE system as a whole to greater self-regulation, presumed autonomy and the enhanced strategic influence of the sector, arises from within, from its own ambitions and own assessment of the next phase of its evolution.

Regulation in the public sector

15. To clarify our discussions, at the third seminar, we stepped back to develop our shared understanding of the purposes and mechanisms of regulation and in particular regulation in the public sector. We invited Professor Cosmo Graham, as an independent expert on regulation, to act as a critical friend and resource.

16. Clearly, where public funding is dispensed, the public interest must be safeguarded. As a bare minimum, regulation must:
   - safeguard and account for public money;
   - secure quality and value for public money;
   - achieve public policy priorities; and
   - ensure behaviour that meets the accepted standards of public service.

17. Commenting on the arrangements for the sector, Professor Graham commented upon the fact that they are difficult to understand and lack transparency, contravening one of the principles of good regulation established by the Better Regulation Task Force and validating the prevailing view in the seminar discussions that simplification is needed.

18. The current arrangements and those proposed in the Consultation Prospectus issued by the Single Voice for Self-regulation in further education are set out in Annex Three (page 15) – a summary of the background paper presented at the third seminar. The seminar discussions have indicated that simplification of current arrangements is necessary but did not systematically discuss what these should be. Further work to take this forward is highlighted in the Areas for further work (see paragraph 53).

5 For the five principles see Annex two, page 13
Emerging propositions

19. Regulation is highly complex with many versions and manifestations which reflect the circumstances and history of particular sectors. There is no single approach that we can use as a template, but we need to build an approach that is fit for our current context and which has the capacity to evolve. We have therefore endeavoured to build our own understanding, establish some common language for the debate, and to capture the areas of consensus. The areas of consensus to date are presented here as emerging propositions for comment and discussion. We will aim to build on and elaborate these over the remaining seminars in the series, to extend the common ground and inform the final proposals.

Proposition 1 - the primary purposes of self-improvement and of regulation are distinct and should not be confused

20. It became clear that our discussions moved in a confusing way between activities which are about individual or organisational quality or professional development, and activities which are strictly regulatory. This has the effect of appearing to extend unnecessarily the range of activities which are part of the regulatory domain and reducing the domain of sector-owned quality improvement.

21. Thus, when asked to comment on the purposes of regulation (see paragraph 16 above), colleagues initially argued that they lacked ambition, were not sufficiently focused on empowerment or social justice. However, Professor Graham advised that it is challenging to incorporate development and self-improvement into regulation – the normal approach is to set minimum standards rather than progression in quality. We do not need to view these all as part of the same domain. Regulation is essentially about protection of public interest, whereas improvement is essentially about pride and aspiration – distinguishing between them in our thinking liberates ambition.

22. We therefore agreed to distinguish between activities whose primary function is regulation and those that are primarily about quality, self-improvement and development. We came to a view that ‘self-regulation and self-improvement should be separate’, but that we should ‘understand the interaction’ between them. The former will be primarily about achieving baseline standards and external accountability whereas the latter will be primarily for the providers’ or practitioners’ own priorities and within their own realm of control. The two activities – external regulation and self-improvement – clearly interact. For example, poor regulation can hinder or limit self-improvement, whereas good regulation can facilitate self-improvement. However, their primary functions are different.

23. The value of distinguishing between these activities is to clarify the range of activity that is primarily external and accountability-focused, while freeing up the scope for ambitious and self-motivated development and improvement activity that is sector-led. It is essential that self-improvement is not unnecessarily constrained by regulatory standards and concerns, but is set free to support the ambitions owned by the sector’s professionals and organisations.
24. Therefore peer review and support processes which are energising and empowering approaches to self-improvement are not part of the regulatory process it was argued. An organisation’s quality and accountability system will encompass this whole spectrum from self-improvement through to external regulation, but different levels of ownership and autonomy apply to their execution.

25. Professor Cosmo Graham also advised on the point: *It is also helpful to distinguish between what individual institutions, whether acting alone or collectively, wish to do, and what the regulatory system aims to do. The regulatory system aims to ensure that everyone meets minimum standards and deploys a variety of enforcement instruments to try and ensure this is the case. Institutions want to improve their performance, which might mean lifting themselves to minimum standards but, more usually, means improving beyond the minimum. The techniques used here are different from the enforcement techniques.*

26. A regulator may well wish to see the industry improve its performance, but would do this through setting more demanding targets and allowing the institutions to decide how to achieve them, rather than micro-managing how they get to them. A regulator might ask for evidence or set a requirement, that institutions conduct adequate training or have procedures for reflecting on their performance but typically would leave some leeway for them to decide how to do this.

**Proposition 2 – regulation can be carried out through approaches on a spectrum from external regulation, through co-regulation, to self-regulation**

27. Professor Graham also helped our thinking on this issue. He explained that co-regulation normally refers to schemes that involve elements of self- and statutory regulation, with public authorities and industry collectively administering a solution to an identified issue. The split of responsibilities may vary, but typically government or regulators have legal backstop powers to secure desired objectives.

28. The notion of co-regulation is attractive to the FE sector as it promises a joint and negotiated arrangement with the responsibilities shared between the regulator and the regulated. Seminar discussions have highlighted that the standards and processes by which the sector is held to account, should be negotiated and jointly agreed as far as possible between government, its regulatory agencies and the sector. The term co-regulation however implies a degree of joint administration of the regulatory mechanisms and it is as yet unclear whether this will be a short-term option. However, it captures an ambition and the potential for greater co-administration of the regulatory arrangements over time need not be dismissed.

29. While the term co-regulation is simple to deploy, *co-design and co-ownership of the regulatory system as a whole, and increasing the elements of self-regulation within the regulatory system,* may capture more effectively the immediate ambition.
Proposition 3 – the sector should co-design the standards and mechanisms for regulation

30. Sector endorsement and ownership of the standards that are regulated – expressed through accountability and performance management frameworks – has emerged as a major objective. The aspiration is for the sector to have greater influence over the arrangements for both what is regulated and how the regulation is carried out (including by whom), in order to achieve co-ownership of the regulatory system as a whole. It was argued that so long as the standards and processes are co-designed and co-owned by the sector, the matter of who enacts them is less important, and can evolve over time, shifting more towards the sector as systems mature.

31. We noted the difference between being consulted about as distinct from co-authoring standards and mechanisms. The greater the co-ownership of the regulatory framework, the greater the understanding of the framework will be and therefore, the stronger the commitment by all parties, to comply with the framework and secure high standards. It is essential that meaningful measures are used to assess the sector; that the sector feels significant ownership of the FfE and the Common Inspection Framework; and that the regulatory instruments generate the right incentives.

32. We have also noted that for co-design and co-ownership of the regulatory system to be realised, the sector will need the capacity and mechanisms to agree a collective view on a range of areas of policy. The Single Voice for Self-regulation is the body with the remit from provider associations for developing such a collective view on regulatory matters. In addition, clear arrangements will need to be in place to enable the sector to engage with government and its agencies in effective dialogue about dimensions of the regulatory system. In a co-designed system, capacity to co-adjust measures would also be needed, and should recognise the importance of getting a balance between evolution of standards to ensure they reflect current priorities and the benefits of stability and the ability to track progress over time.

Proposition 4 – regulatory mechanisms should be as efficient and stream-lined as possible

33. There are efficiencies that might be achieved by the sector working with government and external regulators to review the detailed mechanisms and where efficiencies can be achieved. Examples suggested included reduction of prescriptions around Financial Memoranda and the possibility of Ofsted inspections moving to verifying providers own internal systems. Sector representatives it was suggested need to sit down with the government departments and key bodies with regulatory functions to reach agreement on how systems can be evolved.
Proposition 5 – regulatory mechanisms should support self-improvement as far as is possible without compromising their regulatory function

34. All the tools and methods should be as enabling and empowering of self-improvement as possible. So for example, inspection should major on informative feedback so that it maximises the use-value for the provider’s self improvement strategy; performance assessment mechanisms such as the Framework for Excellence (FfE) should deepen a provider’s understanding of its own performance and how to focus the next phase of it self-improvement strategy. If sector providers are only required to ‘tick boxes’, they can evade real improvement. But if they are required to meet certain outcomes and report back on how, they will be more inclined to take responsibility themselves for improvement.

Proposition 6 – while regulatory standards should be common across the sector the mechanisms and degree of self-regulation, co-regulation or external regulation will vary depending on the capacity and performance of different providers

35. We discussed the extent to which all providers would be subject to a single approach and on balance agreed that while the standards of regulation may be the same, the mechanisms may need to differ for different parts of the sector – public, third sector and private sector. As recipients of public money all sector bodies must adhere to largely the same standards – but regulatory mechanisms and degrees of self-, co- or external regulation may differ. We also need to consider whether public institutions have a distinctive role to private or independent providers which requires differential regulatory mechanisms.

36. There are important differences between the systems that apply to providers currently. Not all providers are externally audited: in the independent (non-college) sector small providers do not have to be externally audited, unless they have a turnover of £5.5m. The majority of independent providers contracting with LSC will be below this threshold. Different contracting arrangements aim to ensure they are regulated to the same standards. In addition, many are new into the system – some 600 new providers have entered the Train to Gain market in recent years. They are all at various stages in the improvement journey.

37. This strand of the debate suggested that regulation had to be ‘differential’ – in other words, it had to be implemented in different ways for different providers. There is a risk that regulation may impose heavier burdens on some providers than others, and this needs to be taken into account. Furthermore, although the sector as a whole is quite good, there are individual providers which are below standard, and their improvement will need to be addressed in a different way. Therefore whatever mechanisms are used, they are likely to need to be tailored to adapt to the different types of providers in the sector.

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6 We discussed definitions of the FE sector and of the FE system a number of times. The outcomes of these discussions are set out in Annex one, page 13
Proposition 7 – the performance management system should be capable of recognising the different missions and ambitions within the sector

38. Regulation it was suggested may need to be sensitive to different missions and purposes. The purposes of institutions in the sector differ – some see themselves as strategic partners with a strong community role; others have a narrower focus. For example, it was argued that there is an expectation that colleges carry out a community leadership role and make an economic contribution which is poorly described by the term ‘provider’. Their strategic role needs to be recognised. The sector should not be constrained in describing its public contribution by the lowest common denominator. It should be possible for providers to select from a range of indicators those that most appropriately describe their mission and purposes.

39. Some felt that the FE regulatory system should evolve along lines similar to the Local Area Agreements (LAAs). The LAA allows local partners to select up to 35 of the 198 local government measurements as special goals for the locality, and thus tailors the targets to the policy agenda for each area.

40. Local Area Agreements (LAAs) enable joined up action at local level to tackle difficult and long-term problems. They were identified as a helpful model for a system in which leaders from across public services in the locality can select, through negotiation and collaborative mechanisms, the indicators they wish to focus on. Thus the indicator set from which priorities are selected, provides a means to craft a local agenda - one owned and accepted by the major players in the community. However we concluded that there should be a common core of indicators, ensuring a strong shared commonality at the heart of the sector, but with flexibility to choose others to reflect specific priorities. It was suggested that this commonality could help to bridge the gap that might be created by the machinery of government changes between 16-19 and post-19 provision.

41. It was suggested that the FfE could evolve to become the equivalent of a flexible national indicator set for learning and skills. Beyond the core, providers could select additional indicators that are most appropriate to their local context and devise meaningful strategies to achieve them. Such an approach would still provide a means of explaining and accounting for what the sector will deliver for government. Data could be aggregated at national level.

42. It was also argued that FE exists to ‘make a difference’. Self-regulation should devise ‘new metrics’ to measure that difference, because merely accounting for money does not tell us what impact we are having on the lives of learners and communities. It could be within the gift of the sector itself to determine its own additional metrics.
Proposition 8 – professional bodies can promote good practice across the spectrum of quality and accountability frameworks – self-improvement, self-regulation, co-regulation and external regulation

43. The role of professional bodies, including their codes of professional practice or conduct, can provide a powerful underpinning to the reform journey from good to great services. The sector takes real pride in its professionals, and to date we have not sung our own praises enough about the range of professionals working across the further education sector. In particular, our teachers, trainers and assessors across further education are professionals and already 182,000 are members of their own professional body, the Institute for Learning (IfL). In addition, there are other professionals such as finance directors who are likely to be qualified accountants and belong to and be active in their own professional bodies, marketing and communications staff are likely to be members of relevant professional associations and so on. There is a strong professional base for the sector which can be celebrated and built upon.

44. We need to ensure that the spectrum of activities associated with regulation and self-improvement do not duplicate what professional bodies are doing already. For example professional bodies usually have a strong focus on individual’s continuing professional development and this is a real driver for improvement, and they also usually have codes of professional practice or conduct. We should build on these as a real long-term and sustainable strength of the sector and as a way of strengthening the reputation of the sector beyond its borders.

45. At the same time, FE has to develop its own professional code and identity, separate from any other profession. This professionalism would enshrine a set of permanent, abiding values within a framework than can shift and change to meet the changing environments that the sector faces. Professional and membership bodies can contribute to the formation of this FE-based professionalism, which would not exclude membership in or collaboration with other professional bodies represented among the sector workforce.

46. In addition to professional bodies with individuals in membership, there are also representative membership bodies for colleges and providers, especially the AoC, ALP, NIACE, HOLEX, Landex, 157, MEG, NATSPEC and so on. Like professional bodies, these membership bodies are a crucial and lasting part of the further education eco-system, and they form the basis of the Single Voice, as a voice on regulatory matters.

47. It was agreed that the role of membership and professional bodies is under developed in our thinking so far about self-regulation and self-improvement. There was strong support for advancing our understanding and locating membership and professional bodies more centrally in this debate, clarifying their potential contribution to both regulatory and improvement activities.
Proposition 9 – the FE sector needs to consider how to manage accountability to its local community and locality alongside the national regulatory requirements

48. Our discussions need to take account of increasing localism in public policy and the evolving approach to public service delivery in the locality. The evolving structures and partnership mechanisms (such as Local- and Multi-Area Agreements) that are being co-ordinated by local authorities, working with the NHS, police, education and other services in the locality, are now steering policy agendas and can be a powerful force for change. It was suggested that a self- or co-regulation proposal that focuses on the learning and skills sector in isolation does not accommodate the reality of collaborative working for composite outcomes at the local level.

49. The Ofsted consultation - *A focus on improvement: proposals for further education and skills system inspections from September 2009*\(^7\) - cites one of the drivers for change as ‘the rising importance of locality leadership for many providers in the FE and skills system – especially colleges – where they are key players in the delivery of local priorities expressed in local and multi area agreements; this will require inspection outcomes that will relate to a provider’s contribution to the priorities of local areas’. The new Comprehensive Area Assessment (area-based inspection) already points towards integrated assessment of performance in the locality. Should a common framework be developed that facilitates collaborative delivery by local players, rather than a discrete system for learning and skills, we wondered?

50. The future it was argued is local and consideration should be given to how this might be reflected in measures that evaluate providers’ contributions to priorities in their local communities. It was also noted that the transfer of the 16-19 budget to local authorities added a further imperative for new arrangements to take account of the requirements of local authorities.

Proposition 10 – regulation should not be relied upon to achieve key priorities for the sector

51. A danger of focussing too closely on regulation is to believe that it deals with all that is most important. We noted that on issues of equality and diversity this is not the case for example. The FE workforce is growing older and whiter, while the demographic profile of learners is moving in the opposite direction. Other self-regulating professions have traditionally made little progress on this equality and diversity within their membership it was argued. However, it is within the gift of the sector and especially the employers who recruit staff, as well as through its professional bodies and the impetus of self-improvement, to address this issue.

52. This highlighted again, the importance of the sector itself taking the initiative and not believing that regulation necessarily addresses all that matters.

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\(^7\) See: [http://www.ofsted.gov.uk/content/download/7861/79493/file/A%20focus%20on%20improvement%20proposals%20for%20further%20education%20and%20skills%20system%20inspections.pdf](http://www.ofsted.gov.uk/content/download/7861/79493/file/A%20focus%20on%20improvement%20proposals%20for%20further%20education%20and%20skills%20system%20inspections.pdf)
Areas for further work

Streamlining existing arrangements

53. Annex two provides an analysis of existing mechanisms alongside the purposes of regulation that need to be addressed to maintain the public interest. It also highlights the proposals set out in the Consultation Prospectus issued by the Single Voice and has been updated to include the sector’s responses to the consultation. A process will be needed to consider the current mechanisms in the light of the sector’s views, with a view to simplifying these wherever possible and applying the propositions described earlier.

Increasing sector ownership of the standards and mechanisms

54. A pre-requisite for a smooth and effective regulatory framework is a high degree of buy-in among all those involved to the standards and mechanisms used. This is particularly critical where the intention is to move towards greater self- or co-regulation. Our discussions highlighted the need for greater co-ownership of the system among all the players involved, and in line with the approach outlined in Excellence and Fairness, this should also take account increasingly of the views of learners and other customers.

55. Currently there is no established process or mechanisms for the sector, government and its agencies to consider together design of the regulatory system. Clear arrangements will need to be in place to enable effective dialogue about dimensions of the regulatory system.

Exploring the potential role of professional bodies

56. The professionalism and professional empowerment of individuals is intrinsic to self-regulation and self-improvement. The culture of compliance engendered by New Public Management theory has sapped the agency and self-determination of the workforce so that we must now consider how to renew that sense of professionalism. ‘We can only make a reality of self-regulation through the action and agency of individuals’, it was argued. We need professionals who take responsibility for engaging in professional dialogue to influence and shape policy and practice. It was argued that ‘we need to reconstruct professional dialogue’ and that ‘dynamic resistance and contestation must be part of it’.

57. Professionalism and professional bodies therefore have a key role in self-regulation and self-improvement in the sector. Evidence from research and mapping of the level of engagement staff in the sector have in the Institute for Learning (IfL) and over 100 other professional bodies, suggests that the potential role of professional bodies is greatly under-exploited and that this needs to be rectified.
That having been said, there was a recognition that the FE and skills sector will really benefit from developing a common understanding of what 'professionalism' means. We concluded that the sector should establish a 'common professionalism' throughout the sector workforce, including among those who belong to professional bodies that lie primarily outside FE. This concept of professionalism should enshrine abiding, unchanging values, but also be able to shift with the changing environments in which the sector operates.

Self-regulation and the locality

We need to ensure that approaches to self- and co-regulation work within the context of the emerging local authority mechanisms and the role of FE providers as strategic partners in place-shaping. How does self- or co-regulation need to be re-interpreted for this new context? The systems are clearly evolving in the local context and the sector needs to help shape them to maximise its own potential to contribute to the achievement of local priorities.

Addressing under-performance

An expectation of a more self- or co-regulating sector is that the sector itself will take a stronger role in addressing under-performance, in advance of failure. The mechanisms to enable this need to be developed and tested. As LSIS develops its new operating approaches and as the new National Improvement Strategy takes shape, roles and mechanisms to address under-performance should be developed to maximise sector-led and sector-delivered solutions.

Within this system, appropriate arrangements should be developed to secure the standards of the large number of new private and independent providers entering the system. Concern was expressed about their effect on the sector's overall reputation should they perform to a lower standard than their more established counterparts.

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Annex one

Definitions - the *FE sector* and the *FE system*

62. We discussed what we mean by the *FE sector* a number of times, and agreed an inclusive and ‘broad definition’, accepting that questions of implementation and of tailoring implementation can be handled at a later stage of the discussion. Ofsted’s current consultation on FE inspection offers a definition of the sector as ‘colleges, work-based learning providers, adult and community learning provision, offender learning and skills, nextstep and Department for Work and Pensions-funded provision, including employability programmes’. This provides a very helpful working definition.

63. Participants also agreed that the term *FE system* be used to refer to all those involved in delivering, supporting or regulating the sector - the providers, government departments, agencies, professional bodies and associations - as well as the individual, communities and employers learning in the FE sector.

Annex two

Principles of Good Regulation

As defined by the Government’s Better Regulation Task Force, these are that regulation be:

- **Proportionate**: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountable**: Regulators must be able to justify decisions, and be subject to public scrutiny.
- **Consistent**: Government rules and standards must be joined up and implemented fairly.
- **Transparent**: Regulators should be open, and keep regulations simple and user friendly.
- **Targeted**: Regulation should be focused on the problem, and minimise side effects.
The purposes and mechanisms of regulation

1. Safeguarding and accounting for public money

64. The public sector is subject to long standing mechanisms designed to safeguard public interest. For bodies funded by national taxation these mechanisms provide ultimate accountability to Parliament and for local government these mechanisms provide ultimate accountability to the inhabitants of the local authority. Local authorities are subject to independent external audit by the Audit Commission and as part of this process the inhabitants of the local authority can demand the production of any voucher supporting the financial statements. Bodies funded by national taxation have to appoint an accounting officer (or an equivalent post) who can be held responsible for any expenditure.

65. There is a chain of accountability established by financial memoranda which leads back to the Permanent Secretary of the sponsoring department of government and ultimately to Parliament itself. Financial memoranda, remit letters, *dear accounting officer* letters, ministerial directives and other guidance govern the behaviour of national public bodies. The national public bodies produce a wide range of financial, statistical and audit information to their sponsors. All national public bodies are required to have systems of internal audit and are subject to external audit by the National Audit Office and scrutiny by the Select Committee on Public Accounts.

66. The further education sector is subject to this regime with the LSC being directly accountable to the permanent secretary at the Department of Innovation, Universities and Skills. Colleges and other providers are in turn accountable to the LSC. The LSC can penalise colleges and other providers who misuse public funds and in extreme circumstances, such as fraud, misuse of public funds may be subject to criminal proceedings.

In the self-regulation Consultation Prospectus

67. The Consultation Prospectus proposes the FE providers be responsible for *appointing their own auditors and acting as a single source of audit information for all public accountability purposes*. It also proposes the creation of a sector-owned Further Education Authority (FEA) which will use auditors’ reports as a way of evaluating provider performance. The Consultation Prospectus also highlights the importance of effective governance.

68. The Consultation Prospectus also sees self-regulation as a means to safeguard public funds: ‘*Our self-regulating system ensures that only those providers which achieve specified standards and undertake specified responsibilities are licensed to be eligible for public funds*’.
Responses to the Consultation Prospectus

69. In their responses to the consultation, FE providers, sector bodies and other participants expressed doubts about the value of such an authority, arguing that it was only acceptable if it replaced other existing bodies. It would not be acceptable if it simply added to the existing bureaucracy.

2. Securing quality and best value for public money

70. Regulation also ensures that an industry or profession delivers goods and services at a certain level of quality. Quality regulators may also work to encourage improvement in the sectors they regulate. Ofsted for example collects and disseminates examples of effective practice to encourage improvement.

71. Quality and value for money in the FE sector are regulated by:

- Ofsted, the independent inspectorate\(^8\), assesses the quality of service delivery. The Education and Training Act 2007 requires its inspections to focus on a provider’s capacity to improve, to be user-focused, and to ‘be efficient and effective’. Ofsted is consulting on revisions to the inspection framework for FE, to take effect from September 2009, which will introduce ‘a common set of principles’ for inspections across the sector. This will bring added emphasis on learner and user experience, ‘assessing particular groups of learners’, and value for money targets. Ofsted will also pay more attention to a provider’s capacity to improve, in light of the FE proposal for self-regulation;

- Framework for Excellence (FfE) is a performance-assessment framework that sets clear and unambiguous standards of excellence that all providers will want to achieve; ‘making clear a universally accepted definition of excellence’. Dimensions covered include success rates and Ofsted inspection judgements (relevant to this purpose - quality of service); responsiveness to learners and employers (relevant to this purpose and to 3 – public policy priorities), and financial health (relevant to purpose 1 – safeguarding and accounting for public money).

- Ofqual\(^9\), the new regulator of qualifications, exams and tests in England … will regulate both awarding bodies and standards in qualifications. It will for example have the power to confer

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\(^8\) Regulatory agencies are often kept at arm’s length from control by the executive branch of government. For example, to quote Ofsted’s website: ‘We do not report to government ministers but directly to Parliament (and to the Lord Chancellor about children and family courts administration). This independence means you can rely on us for impartial information’.

\(^9\) The Qualifications and Curriculum Authority (QCA) is in the process of splitting into two bodies: the Qualifications and Curriculum Development Authority (QCDA), which develops qualifications, and Ofqual, which regulates them. The two new bodies are now operational, but because the Act of Parliament formally splitting the QCA has not yet been passed, the two new bodies currently operate as divisions of the existing QCA.
Seminars one to five – the emerging consensus

awarding body status on colleges and other bodies (City College Norwich was the first FE college to obtain this status)\textsuperscript{10};

- The power to award degrees is conferred by the Privy Council\textsuperscript{11}. Recent legal reforms have made it possible for the Privy Council to award FE colleges the right to confer Foundation Degrees (FDs). However, the majority of FDs are in fact awarded by universities.

- The Learning and Skills Council has the power to intervene in the operation of colleges or providers who are deemed ‘inadequate’. This power will pass to the Skills Funding Agency (SFA) from 2010 for providers of post-19 education.

- The National Audit Office (NAO) has two roles. The first is to ensure that the LSC submits a correct account of its use of public funds. The second role is more wide-ranging. The NAO can follow public funds wherever they go to find out whether the taxpayer is receiving value for money. The NAO conducts ‘value for money studies’ on particular themes (eg student retention) and publishes its results. The published reports will lead to a hearing by the Select Committee of Public Accounts and the relevant department of government has to produce and publish its response to these hearings.

In the self-regulation Consultation Prospectus

72. The FEA would enforce an ‘FE Code’, which ‘sets out what an individual provider agrees to do as a member of the self-regulation system including the values, standards and behaviours, as described in the FE Code, which a provider commits to and recognises as its responsibility’.

73. Provider responsibilities for performance review and development at professional and organisational levels would be at the heart of the Code. Providers would also work collaboratively to regulate and improve their performance through processes such as peer review and development. A systematic approach to tackling underperformance and managing performance risk would be critical features of provider responsibilities and those of the FEA.

74. The FEA would also issue, and have the power to revoke, a Licence to Practice, which would be based on adherence to the FE Code. Since it would control the Licence to Practice, and have the power to revoke it, the FEA would naturally have intervention powers. These powers would not supersede the statutory powers of the LSC or SFA; instead, the Consultation Prospectus proposes a ‘Strategic Accord’ between the sector and the government that would determine the division of regulatory responsibilities.

75. Ofsted would continue to perform the role of an inspectorate. As the capacity for self regulation develops, the role of Ofsted would increasingly focus on ‘sector-wide performance management rather than inspection of individual providers’. The Government would conduct ‘last resort’ intervention when the sector’s own activities have not succeeded in tackling under-performance.

\textsuperscript{10} Ofqual has recently announced that it is undertaking an efficiency study on the qualifications system, ‘in order to develop a better understanding of how the system operates and to focus on how we might look to improve its efficiency in future.’

\textsuperscript{11} The monarch’s formally constituted body of advisors. The Cabinet is a committee of the Privy Council. The Council has a variety of executive and judicial functions.
76. The Consultation Prospectus advocates the development of a single performance assessment framework that will satisfy the accountability requirements of government, the inspectorate, and funding bodies and be sufficiently responsive to diverse missions of providers working in the FE system. For this purpose it is proposed that the framework should be based on a relatively small number of Key Performance Indicators (KPIs) that are primarily output-based and used for setting minimum levels of performance. Beyond these KPI’s, providers will set performance goals that are responsive to their own organisational and collaborative missions.

Responses to the Consultation Prospectus

77. The sector broadly backed the FE Code, though some respondents said it should be voluntary and others mandatory. However, ‘the majority of respondents wanted the Framework as a whole to be reframed in the light of MOG changes and new organisations’ roles, whilst keeping some of the elements’.

78. The Common Performance Assessment and Key Performance Indicators were also endorsed by the consultation. Some felt they should include measures around employer and learner experience, and also around equality and diversity.

3. Achieving public policy priorities

79. It is for the government to determine broad public policy outcomes – the government possesses democratic legitimacy, and thus is the only actor in society that has the authority to make decisions for the nation as a whole. The state usually enforces its desires directly. Sometimes, this is done through ‘command and control’ regulation, which attaches criminal or civil penalties to disobedience.

80. The government increasingly aims to build public consensus for policy directions. As a result, managing public policy debate, creating a climate for change, and winning hearts and minds to particular courses of action is a high priority.

81. The primary mechanism for achieving public policy in FE is through funding. For example the government determines what qualifications it is prepared to fund and which classes of student it will support. Ministerial grant and guidance letters provide more detailed direction to government agencies such as LSC, and indeed LSIS; Grant Advice notes and guidance from LSC and relevant departments are also used to expand on and provide more detailed interpretation of policy intentions.

82. In addition there are a range of other softer devices such as ministerial letters and speeches about policy priorities which often provide signals in advance of hard legal requirements. Ministers also consult increasingly with groups of sector representatives to test out policy at a formative stage. Indeed, part of the debate about the next phase of public service reform does acknowledge the need for the experience of the front-line professionals and of customers themselves to be more fully utilised in determining public policy priorities.
83. The Leitch and machinery of government reforms will change this regulatory framework to some
degree. Funding for 14-19 education will be controlled by local authorities, who will control the
funding and commissioning mechanisms that in turn determine provision. Post-19 education will
be regulated by the market – that is, consumers will decide what is offered, at least in theory.
However, consumers’ choices will be influenced by government policies on funding
qualifications – for example, consumers will be more likely to opt for full Level 2s if they know
Government will pay for them.

In the self-regulation Consultation Prospectus

84. The Consultation Prospectus proposes that a Further Education Strategic Accord should be
agreed with government setting out the rights and responsibilities of the sector with respect self-
regulation, including public service objectives and targets.

85. The Consultation Prospectus is advanced as a model of self-regulation that can support the
national agenda for community and social cohesion, the Leitch priorities, personalised learning
and other key strands of government policy. In doing so it advocates not only greater autonomy
and flexibility for providers, but a strengthening of the collective voice of professionals and
citizens in shaping services within the sector. Under self-regulation front-line professionals
would be given the status and opportunities to lead the development of innovation and change
necessary to establish high quality, responsive services. Learners, employers and communities
would also have a greater say in the design and delivery of services that meets their needs, with
better powers of representation for doing so.

Responses to the Consultation Prospectus

86. The sector supported the concept of an FE Strategic Accord, saying it ‘was considered to be
essential to the efficient running of a self-regulatory sector’. Many who submitted replies to the
consultation also stressed that the self-regulation model should integrate with current
Government structures and policies.

87. The responses also expressed a strong desire for sector professionals to obtain a strong
position of autonomy, to better shape services and put the sector’s case before Government.

4. Ensuring behaviour that meets the accepted standards of public service

88. Acting within the law and observation of relevant legislation such as health and safety and equal
opportunities, would of course be an assumed baseline for behaviour. These may, but do not
always, enshrine the highest standards of ethical ad professional conduct that should
characterise the public sector. To this end, professions are governed by codes of conduct to
ensure and police appropriate behaviour.

89. These codes also provide a way for the public to evaluate the behaviour of professionals, and
usually allow consumers to make complaints should a member of the profession breach the
code. Regulators may also maintain lists of professionals who are in good standing; members
who breach the codes of conduct may be struck off these lists.
90. In the public sector, the Committee on Standards in Public Life is an independent public body which advises government on ethical standards across the whole of public life in the UK. The Committee identified seven principles of public office: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. (These were established in the Nolan Report which was named after the committee’s first chairman). Its terms of reference are ‘to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life’.

91. The committee consists of a chair and nine other members – three appointed by the prime minister on the advice of each of the three major parties, and politically non-aligned persons appointed by the prime minister. The committee publishes statements and commission reports or inquiries on ethical and standards issues in public service. It holds informal meetings with practitioners and public hearings, and takes both oral and written testimony, which is publicly available through the committee’s website.

92. Although the committee is not a statutory body, and cannot directly enact standards for any sector of the public service, its reports and opinions are still hugely influential. The Nolan Report’s seven principles have been incorporated into the Codes of Practice of many public bodies, and some parts of the Seven Principles are contained in the new Civil Service Code, which is part of the Civil Service Bill pending before Parliament. Thus, the committee’s work serves as a standard for all public service conduct.

93. For FE providers that are funded by the LSC, the Institute for Learning (IfL), a membership body, sets the code of professional conduct. The ‘IfL Council has agreed and adopted a code of professional practice, in consultation with members, and has established arrangements for upholding the code’. The institute is ‘the professional body for teachers, trainers, tutors and trainee teachers in the further education and skills sector, including adult and community learning, emergency and public services, further education colleges, Ministry of Defence and the armed services, the voluntary sector and work-based learning’. All teachers working for LSC-funded bodies ‘are required to register as members of IfL, undertake CPD each year and abide by the IfL Code of Professional Practice’.

94. In addition, Lifelong Learning UK, the Sector Skills Council, develops professional standards for various parts of the FE workforce. ‘Lifelong Learning UK (LLUK) is the independent employer-led sector skills council responsible for the professional development of all those working in community learning and development, further education, higher education, libraries, archives and information services, and work based learning across the UK. We represent the interests of the 1 million+ individuals working in lifelong learning in England, Northern Ireland, Scotland and Wales and are the voice of employers in this sector on skills issues.’

95. The standards set by LLUK provide the basis for designing professional qualifications such as Qualified Teacher Learning and Skills (QTLS) and the Principals Qualifying Programme (PQP).

96. The mechanisms described to safeguard public money described above (paragraph 65) are also typically used to require colleges and providers to observe best public sector practice.
In the self-regulation Consultation Prospectus

97. The published self-regulation Consultation Prospectus devotes a great deal of attention to professional conduct, and suggests responsibilities for individual practitioners that are both regulatory and non-regulatory (ie professional development/self-improvement). The responsibilities are described as follows:

- acting within a Code of Professional Conduct and Practice in keeping with the requirements of the Institute for Learning and other relevant professional organisations;
- assessing their own practice, individually and with colleagues;
- identifying their own development needs, and taking steps to meet them;
- acting with others to tackle under-performance including satisfactory but not improving performance;
- taking part in collaborative activities with staff in other providers to improve what they do by sharing and learning from each other;
- engaging in their organisation’s review and development activities, including self-assessment;
- contributing to a culture of self-improvement;
- listening and responding to what learners, employers and community representatives say about their education and training.

Responses to the Consultation Prospectus

98. As stated above, there was general support for a code of practice for the sector. Most replies also support the idea of collaborative self-improvement. However, there was some concern that the partnerships involved in this process would be time-consuming, or come to be dominated by large providers. Some respondents expressed a belief that proposals in this area need to be further fleshed out. There was also disagreement over whether these activities should be mandatory or voluntary.
In February 2009, the Single Voice published a summary of the 66 responses it had received to the self-regulation prospectus. These responses emphasised several points.

There was a strong belief that self-regulation should act to reduce bureaucracy in the sector, and ‘a strong view that the Single Voice should make reduction of bureaucracy a key priority in its next stage of work. They also said that the full benefits of self-regulation would not be enjoyed until bureaucracy was in fact reduced.

There is ‘overwhelming agreement’ that the sector has the capacity to be self-regulating, and that the sector should indeed act as if it is already autonomous – it should practice ‘assumed autonomy’, rather than assuming it had to be ‘earned’. The sector continues to support the self-regulation project and ‘shares the Single Voice’s vision of a sector of ‘respected, autonomous, responsive organisations acting individually and collectively within a self-regulating system to deliver high quality provision for the benefit of learners, employers, communities, and the nation – a respected partner of government’.

Respondents felt that the values underpinning the prospectus’s vision of self-regulation were reflective of the sector, though some wanted more emphasis on equality and diversity, and on the role of professionals.

There was a consensus that the self-regulation proposals should be re-worked in light of the machinery of government reforms. These reforms created new bodies which perform some of the functions of the bodies proposed in the prospectus. For example, the licensing function proposed under the FE Code will now be the responsibility of the Skills Funding Agency (SFA). The prospectus should therefore be re-shaped. They also felt that the proposals should take more account of the role of Ofsted.

Possible benefits of self-regulation include ‘more effective influencing of government policy, stronger stimulus for systematic collaborative working, greater transparency about provision so that learners and employers could make better informed choices, and greater empowerment of professionals’.
105. Respondents urged the Single Voice to ‘give extra thought to the diversity of the sector, intensifying its efforts through provider representative organisations to bring all the parts of the sector ‘up to speed’’. They expressed the opinion that sixth forms, adult and community learning providers, land-based colleges and other components of the system would have to take different paths towards participating in a self-regulating system. Sixth forms especially felt ‘they were not yet located clearly enough within the self-regulation framework; the new relationship between sixth form colleges and local authorities was still emerging’ Smaller providers, including small land-based and specialist colleges, ‘pointed out that the costs to smaller colleges of self-regulation, changing existing processes and procedures, and of collaborative self-improvement were disproportionate to them in comparison with the costs to larger providers’.

106. The consultation also found that respondents wanted more attention paid to the role of governors and board members, and ‘how governors/board members might best develop the knowledge, skills and understanding they needed to undertake their new roles’. Some proposed that governors or board members might be paid.

107. Respondents also believed that the proposal should pay more heed to the new agenda in the locality, including ‘the commissioning roles of local authorities, local area agreements, Children’s Trusts, safeguarding responsibilities, school/college/training provider partnerships and other 14-19 initiatives’.

108. Regarding the specific structures proposed in the report:

- **The Framework for Performance Management and Improvement**: This was felt to be ‘a ‘sound, simple, sensible’ outline of provider responsibilities under self-regulation, which built on current best practice’. Respondents said it should focus more on teaching and learning, and asked how it would mesh with Ofsted requirements. They also had ‘some reservations about the sector-wide responsibilities especially in relation to the support governors/board members would need to undertake these’.

- **Collaborative self-improvement**: This was welcomed by most respondents, though there was disagreement among them over whether it should be a voluntary or a mandatory activity. Some expressed concern about how improvement partnerships would work, worrying that they would be dominated by large providers or be too time-consuming. Some felt the proposals in this area were not systematic enough.

- **The Framework for Accountability**: Also referred to as the FE Code, this was also broadly supported as a ‘sensible’ measure, though there was again disagreement over whether it should be mandatory or voluntary. However, some of the functions, such as licensing, that the code would entail now rest with new Government bodies, and ‘the majority of respondents wanted the Framework as a whole to be reframed in the light of MOG changes and new organisations’ roles, whilst keeping some of the elements’.

- **FE Strategic Accord**: This would delineate the division of responsibilities between the self-regulating FE sector and the Government. Respondents said it ‘was considered to be essential to the efficient running of a self-regulatory sector’.

- **The FE Authority**: ‘The most contentious’ of the proposals, it was seen as a new accretion of bureaucracy, duplicating some of the functions of other bodies. It was only considered
acceptable if it replaced other bureaucracies, and not if it added to the sum total of bureaucratic organisations.

- **Common Performance Assessment Framework and Key Performance Indicator:** ‘The pursuit of a single assessment framework and new KPIs was welcomed by most respondents; simplification and appropriateness were the main concerns’. Many argued that employer and learner experience should be included in the indicators, as should equality and diversity concerns.

**Conclusion**

109. The consultation responses reflect, to a great extent, the consensus that has emerged in the seminars. Both sets of opinions call for a reduction in bureaucracy and a pro-active approach to gaining more autonomy for the sector. Both recognise importance of the sector in the local environment, and acknowledge the diversity of the sector, and the need for certain flexibilities to be built into the self-regulation regime to take account of this diversity. Both consider how the self-regulation regime must mesh with the reformed delivery model. The consultation responses add more specific inputs about the proposed mechanisms in the prospectus, and also contribute some new proposals around the role of governors.