



Department  
for Business  
Innovation & Skills

**COLLEGE GOVERNANCE: A GUIDE**

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# Foreword from the Minister of State for Skills and Equalities



Further education colleges serve many purposes and respond to the needs of learners, employers, local communities and government. However, for too long too much priority was given to government. Colleges were incentivised to respond not to needs of learners and employers but to the funding system and to central accountability mechanism. This is not this government's vision for colleges. Rather colleges

should be seen, and see themselves, as social enterprises: enterprising in the ways that they attract funding from a wide range of sources and interact directly with business, but with social purpose and responsiveness to their communities at the heart of what they do.

Since 2010 we have given colleges the freedom and flexibility to fulfil this role. As part of this, colleges must demonstrate accountability both internally to their governing body, and externally to learners, employers and communities. At the heart of accountability lies strong governance. The governing body is responsible for the strategic oversight of the college and are guardians of public money, ensuring its effective and efficient use. As such, governing bodies should have the right mix of skills and experience to fulfil these responsibilities. They should be empowered to ask the difficult questions and to make sure they have the information and data they need to challenge and scrutinise the executive and hold the Principal to account.

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

**Nick Boles**

Minister of State for Skills and Equalities

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# Introduction

**This guide explains how and to whom Further Education (FE) colleges are accountable. It sets out the means by which they are accountable to the learners, employers and communities they serve and how current accountability mechanisms are changing to reflect the evolving delivery landscape.**

## Why we are producing this guide

1. Since 2010 the Government has reduced regulation on the FE sector through removing legislation, and increasing freedoms and flexibilities for colleges and other providers. These freedoms and flexibilities allow colleges to act as autonomous institutions, providing the education and training that individuals, employers and the nation need to succeed in the global race. With this increased freedom comes increased responsibility within a clear accountability framework.
2. The key internal accountability is to the college's governing body. Governors must hold the senior leadership to account for delivering the college's mission and for ensuring that the college serves the needs of its learners, employers and communities. This guide is designed to help governing bodies in delivering this and follows a recommendation from the Association of Colleges Governors' Council (AoCGC)'s report *Creating Excellence in College Governance* (November 2013).
3. The nature and scope of college operations means they need to be accountable to a wide range of external stakeholders:
  - As customer-facing organisation they are primarily accountable to their end-users: learners and employers
  - As social enterprises they are accountable to their local communities and wider society.
  - As exempt charities they are regulated by the Secretary of State for Business, Innovation and Skills in his role as the 'Principal Regulator', on behalf of the Charity Commission.
  - As the recipients of significant public funding they are accountable to Government and operate in a regulatory environment overseen by various

central government departments;<sup>1</sup> funding agencies;<sup>2</sup> and other regulatory bodies.<sup>3</sup>

- In addition, some of their activities are regulated by the Information Commissioner's Office, the Equality and Human Rights Commission, the Care Quality Commission and the Home Office. Like public and private companies, they are regulated by the Competition and Markets Authority, the Health and Safety Executive, HM Revenue and Customs and by various provisions of the Companies Act.
4. This guide sets out in one place how FE Colleges operate in this environment and how they should demonstrate their accountability outwards to their customers and communities, and to government, its agencies and its partners. It takes account of the comprehensive work undertaken by Baroness Sharp which looked at the role of colleges in their communities.
  5. FE Colleges are statutory corporations with powers and duties set out in the Further and Higher Education Act 1992. The Education Act 2011 removed a significant number of the duties on colleges; enabling them to operate more autonomously. The Apprenticeships, Skills, Children and Learners Act 2009 established Sixth Form Colleges Corporations, distinct from FE Corporations and regulated by DfE. This guide is concerned solely with FE Colleges regulated by BIS and does not cover Sixth Form Colleges.

## Who we are providing this guide for

6. The guide applies to all FE Colleges in England. It will be of particular interest to governing bodies, governors including Principals and those who work with them, for example clerks and senior managers. A copy of this guide has been provided to the Chair of each FE College in England.
7. Colleges and their Governing Bodies should use this guide to understand how they are accountability to their direct customers and stakeholders as well as to government and the taxpayer. They can also use it to think about how they can most effectively demonstrate this accountability to their customers, stakeholders and communities – including learners and employers.
8. Internally the college leadership is accountable to the governing body for the delivery of the college's mission and for ensuring the college serves the needs of its learners, employers and communities. This places expectations on governors to regularly monitor the performance of the college and to challenge the executive on delivery. Governors should use this guide to think about the important and often difficult questions they will need to ask, and to ensure they have the right skills and

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<sup>1</sup> Primarily the Department for Business, Innovation and Skills (BIS), and the Department for Education (DfE), but others including the Department for Work and Pensions (DWP), the Home Office and the Ministry of Justice (MoJ).

<sup>2</sup> Primarily the Skills Funding Agency, Education Funding Agency and the Higher Education Funding Council for England

<sup>3</sup> Such as Ofsted and the QAA

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experiences necessary, to confidently and effectively undertake this role. Governing bodies should use this guide as part of any induction for new members and as part of its regular training and development programme for existing members.

9. Colleges should use this guide alongside the AoC Governors Council revised Code of Governance, currently being developed, and due to be published for 2015/16 to consider their internal governance and accountability.
10. It is also relevant to all bodies that have an interest in the FE sector including representative bodies and regulators. Section 4 sets out how new providers can enter the sector and the guide will be of interest to any organisation seeking to incorporate as an FE college.
11. It will be of interest, and provide assurance, to learners, employers, parents and others within colleges' wider communities who wish to understand more clearly how colleges ought to be responsive and accountable to their needs, and the framework in which they operate.

## **How and by whom the guide has been developed**

12. This guide has been developed by BIS, the principal regulator and sponsor department of FE Colleges, and DfE; alongside the Skills Funding Agency, the Education Funding Agency (EFA). In developing the guide, government has worked closely with the Association of Colleges (AoC), including through the Governors' Council (AoCGC) and Governance Portfolio Group, and the Education and Training Foundation. The Foundation is the sector's improvement and professionalism body and will be supporting work on accountability across the wider FE sector including with independent and other providers.

## **How and when the guide will be updated**

13. This guide is published in advance of the 2014/15 academic year. It is our intention that it will be refreshed annually in time for the beginning of each academic year. This process will be owned by BIS and undertaken in consultation with key stakeholders.

# Section 1: What FE Colleges are

1. FE Colleges are first and foremost social enterprises operating independently at the heart of their community and delivering a wide range of academic and vocational education and training to a range of learners from the age of 14 upwards. FE colleges trace their histories back over decades – in some cases to the nineteenth century – but the legal basis for the sector was transformed in 1993 when colleges were transferred from the control of local government to become self-governing statutory corporations.
2. Colleges are led by independent boards of governors. It is the role of the governing body to set the college mission and strategic direction, oversee quality and financial performance, challenge the executive on delivery and hold the Principal to account. All colleges have an Instrument and Articles of Government, setting out how the college is governed. Formerly, government set standard Instrument and Articles for all colleges, however, colleges now have greater freedom to set their own as appropriate. The AoC Governors' Council's Code of Governance is currently being developed and consulted on. Colleges should use the code alongside their Instrument and Articles, and this guide, to consider the most appropriate governance arrangements and practices for their organisation.
3. Legally, FE colleges are incorporated through the Further and Higher Education Act 1992 and recognised as part of the FE sector. The powers of FE Corporations are set out in the Further and Higher Education Act 1992.<sup>4</sup> The principal powers are that a further education corporation may:
  - provide further and higher education;
  - provide secondary education to those aged fourteen years and above;
  - participate in the provision of secondary education at a school; and
  - supply goods or services in connection with their provision of education.
4. Colleges support growth in the areas they serve by delivering a diverse range of education and training provision from 14 years upwards. Colleges deliver the national curriculum for 14-16 year olds, a high proportion of academic and vocational provision for 16-19 year olds, and a range of adult provision from adult basic skills to degrees; from traineeships and apprenticeships to community learning. As a consequence colleges receive funding from a diverse range of sources including from learners (both indirectly in the form of government-backed fee loans for further and higher education, and direct fees), from employers, and from the Education Funding Agency, the Skills Funding Agency and HEFCE as well as attracting some funding from other government departments such as DWP.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1992/13/contents>



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5. Similarities and differences exist between colleges and other providers in terms of their powers and their treatment by government, some of which are defined by legislation while others have grown up over time as a result of policy decisions. At present, colleges receive grant funding from the EFA and the Skills Funding Agency, as opposed to being funded on contract, as other providers are, but there is no legal entitlement to grant funded provision. Historically colleges have also had greater access to government capital funding, however from 2015-16 colleges and providers will access skills capital funding via Local Enterprise Partnerships.

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# Section 2: What FE colleges provide

## Context

1. Colleges provide a rich mix of academic and vocational education. This education may be at any level, from basic training to Higher National Diplomas or Foundation Degrees, and covers a range of ages from 14 upwards. As autonomous institutions incorporated by Act of Parliament, colleges have the freedom to innovate and respond flexibly, tailoring their provision to the needs of individuals, businesses and employers, and their community.
2. The Government's commitment to greater freedoms and flexibilities for colleges provides a funding system that enables colleges to provide this mix of academic and vocational education meeting the needs of employers and individuals. Since 2010 Government has signalled a shift away from centralised, top-down planning (and funding) of outputs, and an increasing focus on achieving outcomes and empowering individuals, employers and local communities to influence the nature of provision more directly, so that it most effectively meets their needs.

## Outcomes

3. This section sets out the key outcomes that the Government expects FE Colleges (receiving public funding) to focus on delivering. These outcomes will increasingly drive the way in which the government funds provision, reports performance and works with local areas to improve their influence over providers. By establishing and publishing a set of high level outcomes this framework enables those with a stake in the accountability of colleges to develop effective measures of performance and to develop their own effective and appropriate levers of influence.
4. The five key outcomes for publicly funded skills provision are:
  - i. Education and training that provides the skills that employers and higher education institutions need and value;
  - ii. Education and training that provides the knowledge and skills individuals need to: gain employment; change employment; progress in work; and progress to higher levels of education and training;
  - iii. Training that provides the strategically important skills the nation needs;
  - iv. Value for money for: businesses; individuals; the state; and
  - v. Positive community and social outcomes.

5. We are keen that employers, including as represented through local bodies such as LEPs, and others, take greater ownership of the skills system. In doing so it is important that they develop measures of the outcomes they expect provision to deliver. However, we also recognise that government has an important role in producing data: both to allow customers of college to make informed decisions about their investment in training; and to allow government itself to hold providers to account for their delivery of publicly funded provision.
6. For 16-19 provision, DfE will be producing more data on outcomes as part of their 16-19 accountability reforms. The 2016 performance tables will report on five headline measures at institution level: progress; attainment, English and maths progress, retention and destinations.<sup>5</sup>
7. For adult provision we are publishing experimental data at provider level which shows learner destinations; progression; and earnings. These are key measures of how far providers and colleges are delivering the outcomes above, and will help drive informed learner and employer choices.

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<sup>5</sup> [16 to 19 accountability consultation - Consultations - GOV.UK](#)

# Section 3: How FE colleges are held to account

1. Colleges are accountable in different ways to a number of different stakeholders: to learners for the quality of the education they provide; to employers for the relevance of their offer; to government and taxpayers for the effective use of the public money that they receive to deliver public services. Colleges are also accountable to their local communities and LEPs. This section sets out how accountability to these various stakeholders is exercised. In addition, colleges, like other bodies, are subject to various specific regulation – both as charities and as education providers – and this is also covered in this section.

## Choice and diversity

2. Colleges are accountable to their customers – learners and employers, as well as the wider community that they serve. Increasingly money and influence over provision lies in the hands of these customers. Learners and employers choose which colleges will best meet their particular needs and thus where funding will flow. So too do others who commission or refer to provision including Jobcentre Plus, local authorities and organisations that supervise offenders in the community.
3. In order to exercise this effectively learners, employers and others need clear, easy to access, and robust information about the performance of colleges and whether they deliver the outcomes that they require.

## Contributory funding from learners and employers

4. Learners and employers hold colleges to account by choosing where to invest their time and money. This means that colleges that are able to deliver provision which is responsive to the needs of learners and employers can grow, and those that do not will see their share of the market diminish.
5. Government is therefore clear that where informed individuals and employers jointly fund learning there can be a step change in the quality, responsiveness and impact of the training undertaken. If informed individuals and employers jointly fund learning, then this will strengthen the incentives for them to demand relevant, high-quality learning and to strive to achieve a positive outcome – in order to make their investment pay. Similarly, colleges and awarding organisations will have strong incentives to respond directly to their customers' needs. This underpins a number of recent reforms: the introduction of 24+ Advanced Learning Loans and the reforms of Apprenticeships which seek to put individuals and the employer at the heart of design and delivery of training are a strong indication of the Government's direction of travel.

## Informed customers

6. In order for learners and employers to hold colleges to account effectively in this way they need access to high quality, timely information about the quality of provision and the likely outcomes for learners including their destinations (into employment or further learning), progression and future earnings.
7. Colleges produce this information themselves through their own information management systems or by, for example, tracking learner outcomes through surveys. Government also presents data that it holds on college performance in a clear, comparable format to allow learners, parents and employers to compare performance and make informed decisions. In addition learners and employers use the published reports of Ofsted inspections to get an understanding of provider quality and inform their decisions.
8. Performance tables which show the performance of 16-19 providers nationally allow learners and parents to see results for a specific institution or to compare providers by local authority, postcode or nationally are published annually. Performance tables can be found [here](#).
9. The [FE Choices comparison site](#) is the official site for comparing performance information about all FE colleges and other organisations that receive Government funds to offer education and training to people over the age of 19 and all age apprenticeships. FE Choices works with about 1,000 colleges and training organisations and gathers information from over 500,000 learners and nearly 60,000 employers. The site helps learners and employers search for, and compare, performance information (Qualification Success Rates, Learner Destinations, Learner Satisfaction and Employer Satisfaction, as well as Ofsted data and provider address and website details) about different colleges and training organisations.<sup>6</sup>
10. FE Choices supports the Open Public Services agenda; and the site ensures that people across civil society have access to robust and statistically reliable data, which can then be reused and presented by other partners (such as the National Careers Service, and a National Apprenticeships Service online webtool) to provide information at the point it is required to these specific audiences and provide consistency.
11. Information on learner outcomes is particularly important in comparing different providers. Previously this has relied on learner destinations surveys which are time consuming and expensive to complete and understandably do not have complete coverage. Government is now moving to use matched administrative data (for example matching data collected by colleges with data collected by DWP and HMRC to show the percentage of learners who move into employment following their learning) to provide a more complete picture. For 16-19 provision

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<sup>6</sup> The Unistats website covers Higher Education statistics and DfE directly publishes information on School Sixth forms.) The FE Choices site does not include higher education offered by universities or information about school sixth forms.

experimental data has been published on Level 3 destinations and other outcomes which is available [here](#) and will inform performance tables from 2016. For post-19 provision experimental data [has been published](#) on learner destinations; progression and earnings. Alongside this publication we are consulting on how the measures might be used and where they will be published. At both 16-19 and post-19 we are proposing that colleges will publish the measures using a widget on their website, this is similar to the approach adopted in higher education.

12. Additionally, colleges are required under the Education Act 1997 to 'provide persons attending the college with access to both guidance materials and reference materials relating to careers education and career opportunities'. Additionally there is now a contractual responsibility placed on all FE colleges which mirrors the statutory duty placed on schools for 13-18 year olds, to secure access to independent, impartial careers advice for their learners. There is also an expectation that FE colleges will work closely with the National Careers Service. The AoC has produced [guidance](#) which sets out good practice in developing and maintaining effective partnership arrangements.

### Customer feedback/satisfaction

13. Colleges do their own research and surveys to monitor customer feedback and satisfaction. However, student involvement goes further than this as all colleges are required to have a student governor on their board. Colleges are also expected by Ofsted and others to have effective methods for learner engagement.
14. FE Choices provides information on learner and employer satisfaction with their provider. The Learner Satisfaction Survey covers all 16-18-funded learners (Skills Funding Agency/EFA) and all 19+ learners that are funded through the Skills Funding Agency. The Employer Satisfaction Survey asks employers to rate their satisfaction with different aspects of training delivered by individual college and training organisations. The results of the surveys produce a provider-level score, between 0 and 10, for learner and employer satisfaction.
15. Ofsted also produce information on learner and employer satisfaction with providers through their [Learner View](#) and [Employer View](#) tools. Learner View allows learners to provide feedback on ten aspects including whether they are well taught, whether they receive helpful feedback on work, and whether they would recommend the college to a friend. Employer View allows employers to provide feedback on five aspects including whether the college's provision meets their needs and whether they would recommend the college to another employer.
16. Colleges need to abide by the same fair trading and consumer protection rules that apply to any organisation that provides a service for a fee. Additionally some colleges take out a consumer credit licence to cover activities that involve providing credit for payments.

### Handling complaints

17. Colleges are required to have published procedures for handling complaints. These procedures should contain a process by which a learner or other organisation can make a complaint, have it investigated, reviewed and resolved. The procedure should also outline the process, timescales and named individuals.

Colleges should ensure that learners understand all details of the complaints procedure and make complaints information available in other formats (for example, Braille, large print, other languages). Colleges should have an appeals process to deal with any challenges to the decision.

18. Colleges should ensure that learners or other organisations receive relevant information about their complaints procedures and that they supply relevant contact details for the Skills Funding Agency when they cannot resolve complaints themselves.
19. The Skills Funding Agency will not usually investigate complaints until the college's procedure, including the appeal, has been exhausted. If the Skills Funding Agency believes that the college is not dealing with a complaint appropriately or effectively, it may decide to intervene before the college's procedure has been exhausted.
20. The Skills Funding Agency's approach to handling complaints about providers can be found [here](#).

### **Responsiveness to local employers, LEPs and local authorities**

21. Most colleges were created by local government and although they were transferred out of council control in 1993, they continue to work closely with them on issues ranging from the education of young people and those with high needs to the development of local economic capacity.
22. Local areas have a role in making sure that the skills system is working, often supporting collaboration across employers to work with colleges and training providers, providing local incentives to employers to recruit apprentices or the young unemployed and coordinating and brokering the national and local offers available. Colleges serve various economic communities and have relationships both with individual employers and employer groups, for example chambers of commerce. Colleges deepen this relationship by involving employers in their governance, via advisory groups and in a range of other activities
23. The Government is committed to exploring ways in which local areas can set local priorities and then incentivise providers to deliver against them, including through Local Enterprise Partnerships (LEPs). Over the Academic Years 2014/15 and 2015/16 we are piloting an approach with the North East, Stoke & Staffordshire and the West of England LEPs which gives a significant lever of influence over college allocations and provider contracts.
24. In addition, in 2015/16 and 2016/17 the Government has contributed £330m pa of skills capital funding to the Local Growth Fund. This will be allocated to LEPs based upon their local skills priorities. LEPs have prepared Strategic Economic Plans which set out, with input from local partners, their skills priorities for the areas they serve, this includes how skills capital funding will be invested to meet local skills and economic needs. Colleges are important local partners and will need to work closely with LEPs to help shape local arrangements so that this process works effectively.



## Responsiveness to local communities

25. As set out in Baroness Sharp's report *A dynamic nucleus: Colleges at the heart of local communities* it is expected that colleges sit at the heart of a system of local relationships with employers, local authorities and other parts of the public and private sector from schools to the police; LEPs to voluntary groups.
26. Although there is no statutory duty for college governing bodies to consult communities or address their needs, funding bodies are required to satisfy themselves that a college's public funding meets the needs of local learners and employers and Ofsted inspectors make judgements on how well a college's provision meets local learning and skills needs. In practice a college's mission will almost invariably contain a reference to meeting the needs of its communities.
27. AoC's guidance note for college governors, *Meeting Community Needs*,<sup>7</sup> provides helpful advice on:
  - defining local communities;
  - engaging with communities;
  - identifying the respective roles of the governing body and the executive team; and
  - being accountable to communities.

The guidance includes references, examples of effective practice and advice on the recruitment and development of college governors.

28. Any college that receives funding from the Skills Funding Agency's Community Learning budget must plan and deliver learning in line with national community learning objectives. The objectives require providers to consult with their local communities and work in partnership with local authorities, Local Enterprise Partnerships and other community stakeholders.

## Government quality assurance

29. As well as being accountable to their customers for delivering the education and skills that employers and learners need, colleges are also accountable to government, to ensure that government investment is directed towards training which meets the objectives set out in section two. Government holds colleges to account for the quality, rigour and relevance of their provision through inspection and data on achievement of qualifications, and, in future, outcomes for learners. Government also holds colleges to account for their financial health and control. If quality of provision (as assessed by Ofsted inspection and Minimum Standards), or financial health/control (as assessed by Skills Funding Agency audit) is found to be inadequate government will intervene swiftly and rapidly.

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<sup>7</sup> <http://www.aoc.co.uk/sites/default/files/Meeting%20community%20needs.pdf>



## Inspection

30. Ofsted is the independent inspectorate of early years and childcare services, children and families services, schools, and FE and skills providers. In relation to FE, Ofsted inspects the quality of post-16 learning and skills provision that is publicly funded by the Skills Funding Agency, EFA and Local Authorities.
31. Inspections are undertaken by HM Inspectorate in order to: evaluate how efficiently and effectively the education and training meets the needs of learners and employers; provide users with information on the quality of provision; and help bring about improvement by identifying strengths and areas for improvement. The quality of provision is evaluated against '*The Common Inspection Framework for further education and skills*'.
32. The Common Inspection Framework sets out the judgements that inspectors will make during inspection and the principles that apply to FE and skills inspections in order to evaluate the overall effectiveness of the quality of provision. From September 2014, this includes a written judgement in the inspection report on whether the provider's safeguarding is outstanding, good, requires improvement or inadequate. A copy of the Common Inspection Framework can be downloaded [here](#).

## Formal performance management measures

33. The Government also uses data to monitor the performance of colleges and hold them to account for their delivery. Different measures are used for 16-19 provision and post-19 provision to reflect the different types of provision and different intended outcomes. At present, interim minimum standards of performance are set for 16-19 year old provision at level 3 based on an attainment threshold. The 16-19 minimum standards will change in 2016 to a measure based on learner progression. For post-19 provision and apprenticeships performance is measured through Qualification Success Rates (QSRs), which measure whether learners complete and achieve qualifications. A minimum standard is also set within QSR. Details on the methodology for QSRs and Minimum Standards can be found [here](#). If provision in an FE college falls below either the 16-19 or post-19 minimum standard the provider is in scope of the formal government intervention process set out below.
34. However, there are some limitations to existing measures. They do not show, for example, whether a qualification helped a learner make progress against their starting point. More importantly they do not show whether achievement of a qualification helped a learner to enter employment, progress in employment or enter further learning. So in future government intends to use data on learner outcomes to hold providers to account. We are also exploring how, for certain elements of provision, funding can be linked to individual learner outcomes. The consultation on Traineeship funding (available [here](#)) provides further information.
35. For 16-19 year old learners the government has recently consulted on a new suite of performance measures for all providers including school sixth-forms, sixth-form colleges and FE colleges. Government will publish a set of clear, headline measures to give a snapshot of the performance of schools and colleges. It is our

ambition to introduce these measures in 2016 performance tables (published in January 2017). They include:

- Progress (and a combined attainment / completion measure)
- Attainment
- English and maths GCSE (for students a Grade C or above at age 16)
- Retention
- Destinations

36. Government aims to include information on qualifications below level 3 in performance tables, starting with English and maths in 2016.

37. For each of the three categories of 16-19 qualifications – Applied General qualifications, Tech Levels and substantial level 2 vocational qualifications – the headline attainment measure will show the average point score attained across all entries, expressed as a vocational grade. Further information can be found [here](#).

38. For adult learners we have published experimental data at provider level on destinations; progression; and earnings and are consulting on how these will be used. The link to the consultation can be found [here](#).

## Finance

### Financial regulation and audit

39. The Skills Funding Agency and the Education Funding Agency provide funding to FE Corporations under funding agreements which set out the terms and conditions under which that funding is provided.

40. The funding agreements set out conditions relating to financial regulation and audit and assurance requirements for FE Corporations including:

- Requirements on the information to be contained in financial statements – set out in an Accounts Direction jointly issued by the Skills Funding Agency and the Education Funding Agency which can be found [here](#).
- A requirement for each FE Corporation to appoint an audit committee and arrange to provide for audits to be carried out in accordance with the Joint Audit Code of Practice which can be found [here](#).
- A requirement for the FE Corporation to provide the relevant funding body with copies of its audited financial statements within 5 months of the year end. As a charity, the FE Corporation is expected to make its financial statements available to members of the public on request.

41. The Joint Audit Code of Practice sets out:

- The requirement for an audit to be carried out on the financial statements to provide assurance to users of those financial statements that they have been properly prepared and show a true and fair view of the financial position of the FE Corporation.

- The requirement for a regularity audit to be carried out to provide assurance to the Skills Funding Agency and the EFA that the public funds paid as grant have been used with regularity and propriety.
  - Requirements on the operation of the audit committee.
  - A requirement to submit a copy of the financial statements auditors' management letter and the audit committee's annual report to the relevant funding body to assure them on the adequacy of financial control arrangements.
  - Requirements on reporting fraud and irregularity.
42. 'Regularity' is defined by HM Treasury as "the requirement for all items of expenditure and receipts to be dealt with in accordance with the legislation authorising them, and any applicable delegated authority and the rules of Government Accounting." This encompasses both primary and secondary legislation (for example, the Further and Higher Education Act 1992, subsequent Education Acts and the Charities Acts), as well as conditions imposed by the funding bodies through the Financial Memorandum and the recurrent funding and other guidance that the funding bodies issue.
43. 'Propriety' is defined by HM Treasury as "the requirement that expenditure and receipts be dealt with in accordance with Parliament's intentions and the principles of Parliamentary control, including the conventions agreed with Parliament (and in particular the Committee of Public Accounts (PAC))." Whilst a college is a private body, the basic test remains whether it would be able to defend to the general public that the relevant expenditure was appropriate to the running of the institution and a proper use of public funds.
44. The Skills Funding Agency and the Education Funding Agency carry out funding audits and reviews to assure themselves that funding has been properly claimed in accordance with the relevant funding rules and that an appropriate control environment is in place. They also require FE Corporations to provide information to enable them to monitor the financial health and understand the risk to delivery of learning should FE Corporations not have the financial resources to continue operating. Where the funding agencies judge a college's financial health or financial control to be inadequate that college is in scope of the formal intervention process set out below.
45. Colleges with HEFCE-funded higher education provision have a separate funding agreement with HEFCE; joint assurance and data collection arrangements reduce duplication between the various funders.

## Intervention

46. When an FE and skills provider triggers intervention rapid and rigorous action will be taken to secure the necessary improvement. The three triggers for intervention are:
- An inadequate Ofsted inspection grading; and / or

- Failure to meet national minimum standards of performance set by BIS or DfE; and / or
- An inadequate assessment for financial health and / or financial management and control by the funding agencies

47. When an FE college, local authority maintained FE institution, or specialist designated institution triggers intervention, the FE Commissioner will review the position of the college or institution and advise ministers and the Chief Executives of the funding agencies on the action necessary to secure improvement. These actions might include:

- changes to governance and/or leadership;
- conditions or restrictions on funding;
- the appointment of funding agency observers on the Board;
- new (or revisions to existing) recovery plans, curriculum reviews and quality improvement plans;
- a college/institution or FE Commissioner led Structure and Prospects Appraisal;
- use of the Secretary of State's intervention powers; or
- Administered College status.

48. Through the FE Commissioner led intervention process, and the sharing of his summary reports and his key findings in open letters, governing bodies and executive teams are learning lessons about what they need to do in order to deliver improvement. More information on the FE Commissioner led intervention process is available [here](#).

## Regulation

49. Much of the regulation by which previous governments have sought to control the FE college sector has been repealed in recent years. However, colleges remain subject to a range of specific regulation:

- as providers of education they are subject to the laws that protect the interests of young people and ensure the quality of teaching via external inspection;
- as exempt charities they are subject to charity law as overseen by the Secretary of State for Business, Innovation and Skills (as their Principal Regulator); and
- they are covered by many other regulations (for example relating to freedom of information, equality and public procurement) because of their corporate status and because of their designation as public interest bodies in laws.

## Education law

50. Colleges are classed as education establishments in various Acts of Parliament and, in addition, have responsibility for the education of thousands of young people and vulnerable adults. There are specific provision for the publication of

performance data and external inspection by Her Majesty's Chief Inspector of Education, Children's Services and Skills. Colleges have specific responsibilities for the education of young people in the Children and Families Act 2014.

## Charity law

51. All FE corporations are exempt charities and the members of the corporation are the charity trustees. Exempt charities are institutions that are established as charities but which are exempt from registration with, and direct oversight by, the Charity Commission. The trustees of an exempt charity have the same general duties and responsibilities as trustees of other charities and, as such, are expected to comply with charity law. Most types of exempt charity (including FE corporations) are listed in Schedule 3 to the Charities Act 2011.
52. Exempt charities are required to have a Principal Regulator and for FE Corporations in England and charitable companies wholly owned by FE Corporations this is the Secretary of State for Business, Innovation and Skills. The Principal Regulator has a 'compliance objective' to do all they reasonably can to promote compliance by trustees of the charities for which they are responsible with their legal obligations in exercising control and management of the administration of their charity.
53. BIS will continue to apply its usual processes for monitoring FE corporations, as set out in other parts of this guide. Working closely with DfE and the Skills Funding Agency, it will monitor FE corporations wherever possible using existing returns of information. If either the Charity Commission or the Secretary of State for BIS identifies potentially serious concerns about the administration of a relevant charity, it will notify the other in writing as soon as possible, setting out any charity law issues identified. Where the Principal Regulator identifies a concern about a charity, they may invite the Commission to use its powers of investigation and intervention under the Charities Act 2011. Corporations are further required to notify the Principal Regulator immediately if any serious breach of charity law is identified.
54. Further details can be found [here](#).

## Other regulation

55. In addition to the regulation described above, FE colleges must meet the extensive non-FE regulatory requirements that apply to organisations in all sectors nationally. These requirements include the full range of employment, planning, health and safety, freedom of information, data protection, public interest disclosure, and environmental rules and regulations.

# Section 4: Incorporation, changing structure and dissolution

1. The government would like to see a dynamic market of FE provision, where high quality providers which respond to a particular demand and can demonstrably meet the needs of learners, employers and those of their local economic environment are able to enter the market, and grow within it. Once in the sector colleges have the freedom to change their structure or delivery model to better meet the needs of learners or employers. In certain circumstances they may even wish to dissolve. Any college undertaking significant structural change should undertake a Structure and Prospects Appraisal to ensure that they consider all the options and consult fully and openly with key stakeholders.

## Applying to become an FE Corporation

2. Any organisation considering applying to become an FE college should consider the impact that incorporation will have on their business. All organisations must recognise the need to operate in an open market which allows for new entrants, and that they are entering a diverse sector with an aim of bringing greater choice to learners and employers. The FE sector should encourage high quality provision as standard and new entrants to the market are explicitly taking on that responsibility. Where an organisation is already in receipt of public funding and therefore subject to Ofsted inspection BIS will only consider applications for incorporation where the organisation's current Ofsted grade is Good or Outstanding. New entrants to the college sector and existing providers alike will need to be responding to a specific unmet need from potential learners or employers in a particular locality or sector. FE institutions are not public bodies and therefore must have a self-sustaining business model with clear income streams independent of government funding. Both these issues will need to be clearly articulated in the application process.
3. The Skills Funding Agency and the Education Funding Agency have criteria for funding new market entry so if the organisation is intending to use government funding as one of its income streams, it will need to discuss this with the relevant funding agency prior to application. The Skills Funding Agency will also carry out robust due diligence on the organisation and must be assured that the organisation is financially viable for any application to be considered.
4. The Secretary of State for Business, Innovation and Skills has the legal power to establish FE Colleges through the Further and Higher Education Act 1992. The Secretary of State may by order establish a body corporate under;
  - Section 16 (1)(a) of the Further and Higher Education Act 1992 for the purpose of establishing and conducting an educational institution, and
  - Section 16 (1)(b) for the purposes of conducting an existing educational institution



5. To do this, the Secretary of State will review an application from the body proposing to become a college and publish a draft order as prescribed by *The Further Education Corporations (publication of proposals) Regulations 2012. SI no. 1157*. Further detail on the application process including indicative timescales and the criteria that need to be covered in an application can be found at Annex 1 of this guide.
6. Any organisation considering applying to become an FE Corporation is advised to engage with BIS and the funding agencies at the earliest possible stage. We will shortly be publishing more detailed guidance reflecting the lessons learned from recent incorporations.

## Structural change

7. Colleges regularly review their mission and vision to ensure that it is still relevant and responsive to the needs of learners, employers and communities. Such review will sometimes lead a college to the conclusion that their current structure or delivery model is no longer optimally set up to meet the needs of its customers. In such a case the college will undertake a Structure and Prospects Appraisal, considering all the options
8. The process for undertaking a Structure and Prospects Appraisal was set out in *New Challenges, New Chances*. BIS has subsequently produced more detailed guidance on the process and this can be found [here](#).

## Transfer to the Higher Education sector

9. Section 122A of the Education Reform Act 1988 provides for the Secretary of State, by Order, to transfer an FE college to the HE sector. The only legislative criterion is that an institution's full-time equivalent enrolment number for HE courses must exceed 55 per cent of its total full-time numbers. Institutions that meet this criterion must then demonstrate that they meet the principles and tests set out in HEFCE's guidance, which is available [here](#).

## Dissolution

10. Whilst the Secretary of State for Business, Innovation and Skills has the power to incorporate FE colleges, the corporation of the individual college is the only body with the power to dissolve the corporation.<sup>8</sup> A college would only reach the decision that dissolution is the appropriate change having undertaken a Structure and Prospects Appraisal as set out above. A college seeking to dissolve must observe the process set out in regulation which includes consultation with key stakeholders and disposal of assets and liabilities in accordance with charity and FE legislation.

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<sup>8</sup> In extreme circumstances (for example cases of serious mismanagement) the Secretary of State can direct a corporation to dissolve

11. A college seeking to dissolve must follow the process set out in *The Further Education Corporations (Publication of Proposals) (England) Regulations 2012*. As such it must publish a proposal at least four months before the date of dissolution in at least one national and one local newspaper, and consult with stakeholders as defined in the regulations. The college should consult for at least one month following publication of the proposal; take account of responses and publish a consultation summary. The Corporation can then make a resolution to dissolve.
12. These regulations include a requirement that the FE Corporation publish the proposed arrangements for the transfer of the property, rights and liabilities of the FE Corporation. *The Dissolution of Further Education Corporations and Sixth Form College Corporations (Prescribed Bodies) Regulations 2012* lists the bodies to which an FE Corporation can transfer its property, rights and liabilities upon its dissolution. It is expected that all transfers should be made to charitable bodies, and for the purposes of education. Where the bodies are not charities then it must be transferred in accordance with the charitable purposes of the trust.

## Merger

13. Dissolution is also required should colleges wish to merge. As noted above corporations which dissolve should arrange for the transfer of their assets and liabilities to certain organisations. In many cases this will be achieved through merging with another FE College.
14. In some cases, two colleges will both dissolve and become one new Corporation. Having followed the publication of proposal requirements the Corporations must apply to the Secretary of State for a new incorporation. If this is agreed, he must publish a draft order at least two months before the incorporation date and the Final Incorporation Order must be signed and laid in the House for four weeks. When the new Corporation is established a quorum must meet and agree to accept the property, rights and liabilities of the dissolving Corporations, and only when this is completed can the original Corporations transfer and then make a resolution to dissolve.
15. In other cases one college will dissolve and transfer its property, rights and liabilities to another college. In this case the accepting Corporation must meet and agree to accept the property, rights and liabilities of the dissolving Corporation before the transfer can take place and the resolution to dissolve be made.



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# Annex 1: Applying to become a further education corporation

1. An organisation considering applying to become an FE college should consider the impact that incorporation will have on their existing delivery and learners (if any), their relationships with employers and other stakeholders, and the existing market of provision. New entrants to the college sector will generally be responding to a specific unmet need from learners or employers in a particular locality or sector and this should be clearly articulated.
2. We are clear that any organisation wishing to enter the FE college sector should be able to offer high quality provision. If the organisation is in receipt of public funding and therefore subject to Ofsted inspection BIS will only consider applications for incorporation where the organisation's current Ofsted grade is Good or Outstanding.
3. Before submitting an application, the organisation should consult widely on the proposal with a range of stakeholders including students, employers, funders and staff. An adequate period of time must be allowed for this (two-three months, including at least one month's formal, public consultation period).
4. The Skills Funding Agency and the EFA have criteria for funding new market entry so the organisation will need to discuss these with them. The Skills Funding Agency will also carry out robust due diligence on the organisation and must be assured that the organisation is financially viable for any application to be considered.

## Application criteria

5. A body seeking incorporation should formally submit an application to the Secretary of State for Business, Innovation and Skills. This should contain as a minimum the information listed below.

## Timescale

6. Applicants must ensure that the Secretary of State receives the application at least six months before the proposed date of incorporation of the new statutory body. This includes a statutory four month period between publication of the draft order establishing the Corporation and the incorporation date.

7. Indicative timetable:

<b>Month</b>	<b>Activity</b>
<i>Pre-application consultation</i>	
<b>[Minimum 2-3 months ]</b>	Consultation on the incorporation proposal, review of responses, and development of Application
<i>BIS timetable for assessment of application and completion of statutory processes</i>	
<b>Months 1, 2</b>	Weeks 1- 3 Secretary of State assesses the Application and decides whether to incorporate
	Weeks 4 – 6 Order, statement and regulations drafted
	Weeks 7 – 8 Order published in press and posted to prescribed list
<b>Months 3, 4</b>	Weeks 9 – 16 Draft order published
<b>Months 5, 6</b>	Weeks 17 – 24 Final order signed and laid in house
<b>Incorporation date</b>	Initial Corporation members appointed [Estimated total of 8-9 months from beginning of the institution's consultation]

8. Any application to the Secretary of State for Business, Innovation and Skills by a body seeking incorporation as an FE corporation should include as a minimum the following criteria:
  - i. Address of the institution
  - ii. Name of Principal/CEO
  - iii. A general description of the education to be provided including levels, sector subject areas and age range of learners
  - iv. Numbers of full and part time learners
  - v. Whether the Corporation is to establish a new institution or conduct an existing one
  - vi. Description of the consultation process undertaken including consultees, and overall results and findings including any significant support/opposition
  - vii. The reasons for proposing, and the expected impact of, the incorporation, addressing the factors below (where appropriate including responses to specific issues raised in the consultation):
    - a. the strategic drivers for change with evidence of the current and future needs of learners, employers and the wider community including an assessment of impact on these groups;
    - b. an assessment of how the incorporated institution will deliver value for money;
    - c. the impact on the curriculum offer;
    - d. plans to secure continuity for existing learners, to engage new learners and to improve progression plans to improve provision for under-represented / under-achieving groups;
    - e. current employer engagement and proposals for developing this further;
    - f. the impact on the development of focused, specialised employer led provision and how this will better meet local and regional skills needs.
    - g. impact of the incorporated institution's contributions to: skills; services; economic growth; social cohesion and well being within the community.
    - h. assessment of current quality and the expected impact of incorporation;
    - i. how account will be taken of learner and employer feedback to inform the continuing development of the incorporation
    - j. an assessment of the implications for staff and appropriate consultations with staff and representative bodies;
    - k. how the corporation will ensure effective governance and management structures with clear accountability lines and effective long term strategic planning;
    - l. how the corporation will ensure an orderly and effective transition to new arrangements (including timetables, key milestones and risk analysis)
    - m. how senior management and governors will ensure effective engagement with the communities the college serves, forming appropriate strategic partnerships and securing regular feedback.
  - viii. Proposed governance arrangements
  - ix. Nominations for the initial members of the Corporation

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