



Regulation of the higher education sector in England

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In June 2011 the government published the white paper [Higher Education: Students at the Heart of the System](#). The paper made various proposals to change the way higher education institutions were regulated. However the anticipated Higher Education Bill did not occur and since then various changes have been made to the regulation of the higher education sector without primary legislation; this use of administrative procedures to change the regulation of the higher education system has been criticised by some commentators.

On 11 July 2013 David Willetts the Minister for Universities and Science announced a package of eight reforms to HE regulation in a written statement, [Higher Education Regulatory Reforms](#).

This note outlines the current regulatory system, discusses the white paper's proposals and the ministerial statement and provides comment.

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1 Background

1.1 The higher education sector

The institutions in the higher education sector in England are diverse in origin, size and organisation. There are currently around 131 publicly funded higher education institutions (HEIs) in England and of these about 89 are 'universities' and 34 are 'university colleges'.¹

¹ Universities UK *Higher education in facts and figures Summer 2010* p 14

Higher education courses may also be taught in partnerships between higher education institutions and further education colleges or via distance learning. In 2009/10 there were nearly 2.5 million full-time and part-time higher education students studying in the UK.²

HEIs are independent, autonomous bodies and their governance and regulatory systems are varied and complex. Much of the complexity of the system is the result of the complicated legal basis of the higher education sector. There has been a good deal of academic discussion about the private/public nature of universities and their autonomy over procedures and regulation. This somewhat esoteric issue stands to become increasingly relevant as the government intends to open up the higher education sector to more private providers and decrease public funding of universities further blurring the distinction between public and private higher education. The government white paper, *Students at the Heart of the System*, proposed giving the state an increased role in the regulation of private institutions and moving the higher education regulatory system towards a more risk-based approach. These proposals would have a significant impact on the higher education regulatory system and change the role of the regulatory bodies.

2 Legal status of publically funded HEIs

The constitutional settlements, organisational structures and powers of individual HEIs reflect the origins and traditions of each institution. The legal capacity and powers of HEIs vary depending on these founding arrangements.

Although the legal form of institutions can vary they all share some important characteristics; they are all legally independent corporate institutions, they all have charitable status and they are all accountable through their governing bodies.

Very broadly, HEIs can be divided into two groups the 'old', pre-1992 universities and the 'new', post-1992 universities, each group has a different legal structure and even within each group there is much variation.

Pre-1992 universities

The pre- 1992 universities include old institutions such as Oxford and Cambridge, the civic or 'red-brick' universities such as the universities of Manchester and Liverpool and the 50s and 60s universities such as the universities of Brunel and Sussex. Most of these institutions were created by a royal charter granted by the Privy Council and they are legally known as chartered corporations. The legal capacity and powers of these institutions are set out in their charters, statutes and ordinances. However some of the older universities were established in other ways, some were established by an Act of Parliament and these institutions are known as statutory corporations, others such as Oxford and Cambridge were established neither by a Royal Charter nor an Act of Parliament but by a body of statutes and a few like the London School of Economics are companies limited by guarantee.

Post-1992 universities

The *Education Reform Act 1988* allowed specified polytechnics and advanced further education colleges to become higher education corporations, subsequently the *Further and Higher Education Act 1992* allowed polytechnics, given the approval of the Privy Council, the right to be called universities. These 'post – 1992' universities such as Oxford Brookes are still frequently referred to as the 'new' universities or 'modern' universities. This group of universities were mostly established as statutory corporations and their legal powers are

² Universities UK [Higher education in facts and figures Summer 2011](#) p 6

contained in provisions in the *Education Reform Act 1988* and in their instruments and articles of government.

Subsequently changes to the criteria for the award of the title 'university' in 1999 allowed some smaller university colleges and colleges of higher education to be granted university status and this led to a further wave of 'new' universities being created such as the University of Gloucestershire. These HEIs were also founded as corporations.

A few 'new' universities which were former polytechnics were established as companies limited by guarantee under the Companies Act.

3 Governance of HEIs

HEIs as independent, autonomous bodies are self governing and have their own internal governance procedures, these procedures vary depending on the type of university.

Governance procedures in pre-1992 HEIs

The governance of these institutions is carried out through various bodies. The governing body, or Council of the university is responsible for the institutions finances and for the management of the estate. The senate is generally responsible for regulation of academic matters and constitutionally reports to the Council. Some institutions have a court which plays a more limited role but has an important public function. Officers of the university such as the Chancellor, Vice-Chancellor and Treasurer may be appointed. Some of these roles are mainly ceremonial, but the Vice-Chancellor as head of the institution carries overall responsibility for the management of the university.

Governance procedures in post-1992 HEIs

These institutions are mostly governed under their articles of government. The articles state that the institutions should have a governing body which is responsible for determining the educational character and mission of the institution and oversight of its activities and an academic board which is responsible for academic affairs. These HEIs also have officers of the university who have similar responsibilities to the officers in pre-1992 institutions.

Comment

British universities have a high degree of autonomy and the governing bodies have discretion over the appointment of staff, the provision of courses, the selection of research activity and the overall mission and ethos of the institution.

A publication by the Higher Education Policy Institute (HEPI) [*University Governance: Questions for a New Era*](#) March 2011 discussed university governance in the light of the changes in university funding following the Browne Review. In this report Professor Malcolm Gillies, the Vice Chancellor of London Metropolitan University, suggested that the reduction in public funding of universities had changed the nature of the relationship between universities and students and 'created a new balance in governance authority'. He argued that in this 'new era' governance procedures should be reviewed so that rather than concentrating on how institutions are governed, consideration should be given to for whom they are governed and why.

4 HE regulatory framework

HEIs, as outlined above, are independent legal corporations and as such they are self-governing, however as recipients of public funds they are subject to the regulatory and

accountability requirements of other organisations. The regulatory framework for higher education is therefore rather complicated.

The main organisations with a role in the regulation of HEIs in England are: the Higher Education Funding Council for England (HEFCE), the Office for Fair Access (OFFA), the Office of the Independent Adjudicator (OIA), and the Quality Assurance Agency for Higher Education (QAA). Each of these bodies oversees a different aspect of the higher education system, although there is a degree of overlap in roles in some areas. Together these bodies control the financial regularity of HEIs, the standard of courses, access to HE and value for money and redress of student complaints.

The HE white paper *Students at the Heart of the System* proposed making changes to the way HEIs were regulated to create a new 'fit-for-purpose' regulatory framework. Some of these changes were deemed necessary as a result of earlier changes to tuition fees and higher education funding which reduced the role of HEFCE in funding HEIs and increased the work of the other bodies with regard to widening participation and quality control.

The government is also encouraging more private providers into the HE sector and this could potentially have a significant impact on the work of the higher education regulatory bodies.

On 11 July 2013 David Willetts the Minister for Universities and Science announced a package of eight reforms to HE regulation in a written statement, *Higher Education Regulatory Reforms*:

Flowing from the White Paper 'Students at the Heart of the System' and the funding reforms, there are a number of new or reformed elements. These reforms are:

- Placing the funding council in an oversight and coordination role;
- Establishing a Register of Higher Education Provision;
- Introducing a Statement of Higher Education Institutions (HEI) Designation Conditions;
- Updating the Financial Memorandum;
- Reforming Student Number Controls;
- A new Designation System for Alternative Providers;
- A Student Number Control system for Alternative Providers; and,
- A Designation Resolution Process.

4.1 The Higher Education Funding Council for England

HEFCE and the other regional funding bodies were established by the *Further and Higher Education Act 1992*. An overview of the role of HEFCE is set out on in the *Annual Report and Accounts 2011-12*:

The Higher Education Funding Council for England (HEFCE) is a public sector body which distributes money to universities and colleges in England. We invest on behalf of students and the public to promote opportunity, choice and excellence in teaching, research and knowledge exchange. Our role is to invest for successful futures whether for students, the economy or society.

What we do

- We fund universities and colleges (including further education colleges) for higher education teaching, research, knowledge exchange, and related activities.
- We ensure that the quality of teaching in higher education provision we fund is assessed.
- We monitor the financial health of HEFCE-funded universities and colleges, and undertake regular governance reviews of these institutions.
- We support the development of higher education by funding specific initiatives and providing best practice guidance.
- We provide information on higher education to students, potential students, Government, other funders of research and all those with an interest in it.
- As principal regulator for higher education institutions as charities, we have a statutory responsibility to promote compliance by institutions' trustees with their obligations under charity law.
- We provide the Secretary of State for Business, Innovation and Skills with information and advice on higher education.

Under the old funding system whereby HEFCE allocated block grant teaching funding to HEIs, the funding council could regulate the higher education system in several ways: by attaching terms and conditions to grants contained in Financial Memoranda between HEIs and HEFCE, imposing fines on universities recruiting too many students, requiring sound systems of financial management and by placing limits on the disposal of assets and on borrowing. HEFCE's role in regulation was outlined in the HE white paper:

The current approach to regulation is underpinned by:

- The Secretary of State's powers to give general directions to HEFCE and place conditions on grant, and limits to those powers (for example, the Secretary of State cannot tell HEFCE which providers or subjects to fund).
- HEFCE's powers, through its Financial Memoranda with institutions, to administer funds; impose terms and conditions on grant; require information; and promote efficiency.
- The Secretary of State's powers to designate courses for student support at providers who do not receive public funding
- HEFCE's statutory duties for quality assessment of the provision it funds.³

4.2 Proposed new role for HEFCE as lead regulator

As the balance of investment in HE moves from public funding to student loan based finance the role of HEFCE will change. HEFCE's current influence over the sector through conditions attached to the teaching grant will reduce over time as more and more funding will go directly to HEIs via tuition fee loans. This being the case the government will need to find alternative ways to regulate the sector and maintain its financial stability. The white paper

³ *Students at the Heart of the System* p67

therefore proposed changing the role of HEFCE turning HEFCE from being primarily a funding body to being an independent lead regulator for the sector:

- a. Government must **maintain control of its financial exposure**. At present HEFCE has powers to set conditions, such as limits on the number of publicly-supported students, on the teaching grant it allocates. As more money flows through graduate contributions, this requires amendment so that similar conditions can be set on institutions that access the student support system.
- b. There will remain a role overseeing the financial health and sustainability of all higher education providers in receipt of public support, whether through direct public funding or publicly-supported loans. Currently, HEFCE can take action in the public interest where an institution is **at risk of getting into financial difficulties**. Providers that perform poorly under the new funding arrangements will primarily be those that fail to recruit enough students. Like its predecessors, the Government does not guarantee to underwrite universities and colleges. They are independent, and it is not Government's role to protect an unviable institution. However, we see a continuing role for a public body to work with institutions at risk of financial difficulties. The focus for HEFCE and BIS in the event of an institution actually becoming unviable would be to facilitate an orderly wind-down of activity and to protect the interests of students, to ensure they can, at a minimum, complete their studies.
- c. There remains a need for an independent body to **allocate funding to achieve particular objectives** that the Government has agreed are in the public interest, such as the protection of strategically important and vulnerable subjects.
- d. An independent body is needed to scrutinise applications from **organisations for designation for student support and grants**. This is to ensure that students and Government can have confidence that their graduate contributions are going to reputable institutions. We would expect it to take advice on issues of access from the Director of Fair Access, and from the QAA on quality assurance.

In August 2011 BIS launched a consultation on these proposals and published a document [A new fit-for-purpose regulatory framework for the higher education sector-technical consultation](#), the consultation ran until 27 October 2011. The technical consultation document gave further details of the government's proposed new role for HEFCE, outlining HEFCE's new responsibilities as lead regulator:

- A transfer of some existing functions from the Student Loans Company and the Department for Business, Innovation and Skills (BIS) to HEFCE around the process of designation for student support purposes, and the ability to attach conditions to that designation, (see Chapters 2 and 3)
- A role based on current functions transferring to HEFCE from BIS, in maintaining registers of providers eligible under the three broad categories of the new regulatory framework – bodies holding taught degree awarding powers, providers designated for student support, and providers in receipt of teaching grants, (see Chapter 3)
- A duty to ensure not only the proper use of HEFCE's own funding but also that of publicly-backed student loans as an essential part of the system to help manage overall government expenditure on higher education (see section 2.2)

- A new explicit remit for HEFCE to promote the interests of students, including as consumers, with a duty to take competition implications into account when making decisions on funding, (see section 1.3)
- A requirement for HEFCE to have due regard to guidance from the Secretary of State on good practice in regulatory approaches.⁴

Under the white paper proposals HEFCE's role would therefore expand and its powers increase in significant ways including: new powers to impose fines on institutions if conditions on designation for student support are not met, a new role as promoter of student interests including a role in student complaints and a new role to maintain registers of eligible HE providers under three categories – bodies holding degree awarding powers, providers designated for student support and providers in receipt of teaching grants. Extending HEFCE's role in relation to the granting of designation for student support, would give HEFCE an important new role in relation to the regulation of private providers of HE.

In June 2012 the government published its [response to the white paper consultations](#);⁵ the document also contained an overview of the consultation responses and the government's view of these responses; most respondents welcomed HEFCE's role as lead regulator:

Many respondents welcomed HEFCE's proposed role as lead regulator and positive comments were made about HEFCE's efforts in working closely and considerately with the higher education sector. However, many respondents were concerned that HEFCE will need to be sufficiently resourced in future and that a dual role for HEFCE as both a funder and a regulator of English higher education could lead to conflicts of interest unless handled carefully, with some stating that this dual role is inherently conflicted.

Concerns over the lead regulator role were raised in relation to partner organisations, particularly that HEFCE should not have overlapping responsibilities with the Office of the Independent Adjudicator and that duplication should be avoided more generally. There were also concerns that the level of regulation may increase, with some suggesting that this could be avoided with streamlined and better coordinated data requests and a reduction in non-higher education specific regulation, such as the application of the Freedom of Information Act.⁶

It has been suggested that in the absence of a Higher Education Bill some of these regulatory changes could be made by developing replacement Financial Memoranda between HEIs and HEFCE. A consultation on new memoranda is expected to take place in the summer of 2013 with recommendations implemented in the 2014/15 academic year.⁷

4.3 July 2013 ministerial statement on the role of HEFCE

Various changes to the role of HEFCE were announced in the written statement, [Higher Education Regulatory Reforms](#).⁸

The first reform is placing the funding council in an oversight and co-ordination role. This is a complex, but highly necessary function that will ensure proportionate regulation across all higher education providers and co-ordinate the regulatory activity

⁴ A new fit-for-purpose regulatory framework for the higher education sector-technical consultation was published in August 2011 p9 para 1.1.3

⁵ Department for Business, Innovation and Skills, [Government Response Consultations on: 1. Students at the Heart of the System, 2. A new fit for purpose regulatory framework for the higher education sector](#) June 2012

⁶ *Ibid* p38

⁷ "Hefce treads warily amid dated legal framework", *THE* 25 March 2013

⁸ [HC Deb 11 July 2013 c23WS](#)

of a number of bodies that are variously constituted as Government agencies and independent bodies. It will involve the funding council:

- Acting as registrar;
- Working with higher education providers, agencies, representative bodies and the NUS, to monitor systematically observance of the conditions associated with operating in the system, with a focus on protecting the collective student interest;
- Taking a lead in working with partners to identify and address issues within higher education providers and take appropriate remedial action; and,
- Monitoring the ongoing appropriateness of the regulatory system, changes in the broader context, and new risks as they emerge.

Next, I have asked the funding council to establish a register of higher education provision. Good, high-quality, timely, and reliable information is key to enabling students to make the right decisions on their education. It is also important that those institutions that fulfil requirements that provide confidence to students and the public are appropriately recognised.

The register of higher education provision will therefore act as a consumer safeguard. The register will give information on:

- The constitutional/organisational status of each higher education provider;
- How the higher education provider is funded; and,
- What the provider is committed to do—this might include, but not be limited to, provision of information, quality requirements, financial management, governance, complaints handling, and fair access.

The third reform is introducing a statement of HEI designation conditions. Regulatory requirements on higher education institutions are currently primarily applied through the funding council's financial memorandum which applies conditions to grant funding and establishes clear accountability for such funding. This arrangement will continue. From academic year 2014-15 onwards it is my intention that similar conditions will also apply to HEI automatic course designation for student support. This ensures that the rebalancing of funding from grants to tuition fees does not diminish the effectiveness of the current regulatory regime and the confidence this provides to students and the public. It also means the regulatory burden is minimised as no further requirements are placed on institutions than currently exist.

To make this change I will be updating the education (student support) regulations. BIS will discuss the details of the amendment and its implementation in practice with representatives of the higher education sector. Importantly, once the regulations have been made, BIS intends to delegate to the funding council the function of designation of courses at higher education institutions for student support purposes. This continues the existing protections that institutions enjoy through the funding council being at arm's length from Government.

Over the next academic year the funding council will be consulting on an updated version of the financial memorandum, informed by extensive discussions the council has already held with higher education representatives and other interested bodies. I understand that the proposed changes are limited, with the most significant issue for consultation being new arrangements to manage the risks around financial

commitments. These arrangements are important for sustaining confidence in universities in the capital markets.

The funding council is already consulting on reforming the student number control system for HEI. While continuing to exercise prudent control of the overall higher education budget, student choice is being increased through our tariff policy and the consultation on a flexibility margin for 2014-15. The tariff threshold has been reduced to ABB or equivalent from 2013-14 which frees around one third of places from number controls. These policies will allow more students to study at their first choice institution.

HEFCE circular letter 20/2013 [Higher education regulatory reforms](#), gives further detail of the changes and a timetable for their implementation.

These changes will be brought in using secondary legislation to amend the *Education (Student Support) Regulations*; the use of administrative powers to bring in these changes was discussed by David Willetts in an article in the *Times Higher Education*⁹:

Speaking to *Times Higher Education*, Mr Willetts said that the work of Hefce and other sector bodies on how to regulate the system without legislation had "taken us a lot further than I would have dared hope a couple of years back".

The government can "achieve a lot with existing powers", he added. However, he said that in the long run legislation would still be needed to "detach Hefce ever further from dependence on its grant-giving powers and be more explicit on its regulatory function".

4.4 HEFCE's new oversight and coordination role

One of the first regulatory reforms to be implemented will be HEFCE's new oversight and coordination role. In July 2013 HEFCE and the Regulatory Partnership Group published a document called the [Operating Framework for Higher Education in England](#), this document sets out the regulatory requirements for organisations already in the HE system and those wishing to enter the system and explains HEFCE's role in overseeing the development of the framework.

Comment

An article in the *Times Higher Education* on 5 January 2011,¹⁰ commented that the proposed changes would significantly alter HEFCE's relationship between the government and universities:

The fear is that external quality assurance and standards will become more subject to governmental influence than before. Yet in regulatory governance more generally - in the UK and elsewhere - it is usually recognised that agencies require quite high levels of independence from the state in order to function satisfactorily.

Problems could also arise from the fact that Hefce will be required to act as a competition authority, promoting higher education "marketisation" primarily on behalf of the "student consumer". As an economic regulator, Hefce will be expected to sort out potential "market imperfections", such as information asymmetries, barriers to system entrance and exit by providers, and the formation of any price-setting cabals.

[...]

⁹ "NUS and Hefce team up for regulation without legislation", *Times Higher Education* 11 July 2013

¹⁰ "Freedom to succeed", *THE* 5 January 2011

The social cohesion of the sector at a time of increased diversity is vital. As the regulator, Hefce should carry out important mediating and consensus-building functions on behalf of the academy to prevent the radically new competitive system from causing deep, systemic fractures.

Sustaining the system overall is about more than exercising the function of an economic regulator; it makes the promotion of cooperation, as much as competition, an important regulatory goal. Rather than focusing mainly on regulating "risky" institutions, Hefce should engage in balancing various sector interests through processes of deliberation and engagement. In this way, it would act more as an independent representative of and champion for the sector.

Hefce's recent proposal that it become accountable to Parliament and not simply to the government is a hopeful move in this direction. Its independence needs to be strengthened - a necessary move as it takes on major responsibility as a lead regulator, not least for "leading" the QAA and on issues of quality assurance.

Hefce would then become more of a legitimate intermediary body working between the government and the sector, and there would be less chance of its being perceived simply as an agent of the government.

In other sectors, governments of all persuasions have long proclaimed the autonomy of regulators. Higher education should be no exception.

A recent article in *THE* in April 2013 which discussed plans to introduce a new funding contract for HEIs, commented on the way the new regulatory system was being created:

The requirement to develop a new regulatory system...by administrative means rather than through legislation means that the provisions of existing legislation are being pushed to the limits.¹¹

5 Standards and Quality Assurance

The primary responsibility for academic standards and quality assurance in UK higher education rests with individual universities and colleges themselves; each higher education institution is responsible for ensuring that appropriate standards are being achieved and a good quality education is being offered. HEFCE is also legally responsible for the quality of education in the institutions that it funds; HEFCE discharges this duty through the work of the Quality Assurance Agency for Higher Education (QAA). QAA is an independent body funded by subscriptions from universities and colleges of higher education, and through contracts with the main higher education funding bodies. An overview of the [quality assurance system](#) is set out on the HEFCE website:

Quality assurance system

The Quality Assurance Agency, on our behalf, assesses the quality of education in English higher education (HE) through a number of processes. These processes comprise the quality assurance system.

Overall the system is designed to secure the quality of teaching and the standard of awards in higher education institutions (HEIs).

Current processes

From 2011-12 the system includes:

¹¹ "[Hefce plans new funding contract](#)", *Times Higher Education*, 25 April 2013

- Institutions own internal quality assurance systems and processes
- [The UK Quality Code for HE](#)
- [Institutional review](#)
All institutions take part in this review carried out by the QAA approximately once every six years. [The review](#) follows a process of peer review and aims to safeguard quality and standards, help improve the student experience and address any public concerns about the issue of quality in HE. Please see the QAA web-site for further information.
- [Collaborative provision review](#)
This review is designed to assess large and complex collaborative forms of teaching. This is also carried out by the QAA. [The review](#) covers examples of provision shared between UK institutions or with overseas providers. Please see QAA web-site for further information.
- [Publication of information about higher education](#)
This covers a wide range of information, such as the Unistats web-site, which includes the National Student Survey (NSS) and the Destinations of Leavers from Higher Education survey.
- [Integrated quality enhancement review \(IQER\)](#)
The IQER is a quality-assurance review method designed specifically for further education colleges (FECs). It looks at how FECs manage their portfolio of HE, whether directly or indirectly funded, through an evidence-based process of peer review. With the QAA we are now finalising the review method to be used for HE in FECs after 2011-12.
- [External examining](#)
- [QAA procedure for investigating concerns about standards and quality](#)
- [HEFCE policy on unsatisfactory quality](#)

The BIS Technical Consultation document in August 2011 stated that under the new proposed regulatory framework all designated providers of HE would have to subscribe to QAA and be subject to English HE quality assurance arrangements as a condition of designation for student support or HEFCE teaching grant. This would extend quality assurance procedures to independent providers of HE.

5.1 Proposed changes to institutional reviews

Under the white paper proposals a 'risk based approach' will be adopted towards quality assurance and standards and QAA will focus its attention on where it will have most impact. The frequency of institutional audits would therefore vary depending on an objective assessment of number of factors and institutions that can demonstrate 'low risk' would have less frequent inspections. HEFCE would be given a new role in quality assurance by setting the criteria against which risk is assessed and the frequency of reviews, it would also set a series of ad hoc triggers which would prompt a QAA review.

In May 2012 HEFCE launched a consultation on the proposals for a new risk based quality assurance system,¹² the responses to the consultation were set out in October 2012 in a document [A risk based approach to quality assurance: Outcomes of the consultation and next](#)

¹² HEFCE May 2012/11 [A risk based approach to quality assurance](#)

steps.¹³ The respondents showed general support for the proposal to use the QAA's existing method of Institutional Review as the basis for building a risk-based approach. The report set out the implementation process for the new system:

Summary of outcomes and next steps

18. The agreed outcomes of the consultation take full account of the arguments put forward at the consultation events and the overall thrust of the written responses. Of course, some conflicting views emerged from the consultation process and we have done all that we can to balance the weight of the arguments presented. The agreed outcomes interlink one with another and need to be considered as a coherent, integrated package. The key components of the move to a risk-based approach to quality assurance are as follows:

a. We will continue to meet our statutory duty to ensure the regular assessment of quality and standards in all the institutions we fund, through the existing but strengthened method of Quality Assurance review known as Institutional Review.

b. Greater transparency will be achieved by asking the QAA to publish a rolling programme of reviews on its web-site, which clearly indicates when a provider's next review is due to take place; institutions will not be assigned to particular categories.

c. We are asking the QAA to focus its efforts where they will have the most impact, by tailoring external review to suit the circumstances of individual providers (for instance, by adjusting the frequency, nature and intensity of reviews depending on the provider).

d. Rather than asking the QAA to refine its review methods through the establishment of a core and module approach (with modules for particular types of provision which carry greater risks), we will ask the QAA to no longer undertake separate reviews of collaborative provision, and to work towards an integrated review method for all providers of HE. Such a review method should take sufficient account of the circumstances of individual providers, including whether or not a provider has degree awarding powers, and the nature of its partnership arrangements.

e. We are asking the QAA to discontinue any form of mid-cycle review, given that there are already safeguards, including the QAA's concerns scheme, which allow it to initiate work with institutions that have issues to address between reviews (see paragraph h. below).

f. We will ensure that for those institutions with a longer track record of successfully assuring quality and standards, the actual period between reviews is set at six years (that is to say reviews will take place in a six-year 'cycle'). Specifically, we will ask the QAA to ensure that it does not schedule any reviews in a shorter cycle during the transition period to the new approach.

g. We will ask the QAA to review those providers with a shorter track record of assuring quality and standards at a more frequent interval of four years (that is to say a four year 'cycle').

h. We will seek to ensure that failures in standards and quality between scheduled reviews are addressed through continued application and promotion of the QAA's concerns scheme.

i. Rather than implement the proposed annual review of data, we will ask the QAA to take greater account of publicly available data and information in its review methods,

¹³ HEFCE 2012/27

for example, through the institutional self evaluation document, the student written submission, and its own concerns scheme. HEFCE will continue to use established processes for monitoring the risk profile of institutions, which draw on the accountability information that we routinely collect.

j. We will ensure a strong approach to enhancement by retaining the new judgement on the enhancement of student learning opportunities and the thematic element of the Institutional Review.

k. We will ensure that students continue to be at the heart of the process, in part by keeping the review cycle to a maximum of six years, enabling their input to be considered at least as frequently as it is in the current six year cycle. We will also ask the QAA to continue to encourage providers to engage with students as partners, as part of a continuous process of enhancement, and ensuring that safeguards are in place as appropriate, through the QAA and the Office of the Independent Adjudicator.

l. The QAA will consult on a revised handbook for this more risk-based review method, with the aim of implementing it in academic year 2013-14.

a. We plan to undertake an independent evaluation of the revised approach in 2015-16, once it has been in operation for two years.

In January 2013 QAA launched a consultation on a new HE Review handbook for providers.

5.2 The UK Quality Code for Higher Education

From 2012 a set of guidelines and comparators for UK qualifications known as the [Academic Infrastructure](#) will be replaced by the [Quality Code](#); the Quality Code sets out the expectations that all providers of UK higher education are required to meet; the Code will apply to all provision across the UK. It has been developed by the QAA and the UK higher education sector and is used by HEIs in designing and delivering programmes of study and by QAA reviewers as the main reference point for their review work. Further information on the Quality Code is set out in a QAA publication [The UK Quality Code for Higher Education: A brief guide](#).

5.3 National Student Survey (NSS)

The NSS has been conducted by Ipsos Mori since 2005, it is an independent survey which asks final year undergraduate students to rate the quality of their higher education experience. The main purpose of the NSS is to help prospective students make informed choices about where to study and the NSS results form a part of the Key Information Sets (KIS) and Unistats, the official resource for comparing UK Higher Education courses

The [NSS website](#) states that the survey has led to changes in practices in some HEIs

A powerful resource for change

Since its inception, the NSS has highlighted where institutions do well and not so well. For example, in 2005, at a national level 'assessment and feedback' scores were relatively low. As a direct result of what students have said in the NSS, action has been taken at institutional and faculty level to address this and scores in this area have improved significantly over time.

The results of the NSS often drive improvements across Higher Education Institutions in relation to the quality of teaching and the overall student learning experience.

Comment

Under the new risk based system HEFCE will exert a greater influence over the work of the QAA than it currently does, although it is intended that the overall effect on HE institutions of this system will be deregulatory. A report by the Higher Education Policy Institute (HEPI) *The risks of risk-based regulation: the regulatory challenges of the higher education White Paper for England* in November 2011; was sceptical about moving to a risk- based regulatory system, and the changing roles of HEFCE and QAA:

Why risk-based regulation is a risky business for HEFCE and QAA

12. HEFCE and QAA face critical challenges in becoming risk-based regulators for higher education. There is no doubt that risk-based regulation has several advantages: potentially reducing compliance costs for most of those being regulated; providing clearer and explicit focus on important risk activities; educating government and the public that all risks cannot be eliminated and some should be tolerated; and is broadly welcomed by most stakeholders for reducing burdens. Yet the experience of introducing risk-based regulation in other government sectors reveals major difficulties, too. For example, deciding which institutions fall into categories ranging from high to low risk, and then justifying such decisions openly and evidentially to both the institutions and the wider public, is not easy and may easily mire a regulator in prolonged controversy.

13. Moreover, dealing with the majority of institutions that fall within the 'trusted' and 'light-touch' category (and most should) poses the risk that regulators become disconnected from these organizations over time, especially if circumstances, or senior managers and their attitudes, change, resulting in danger signals (risk incubation) not being spotted until too late. Methods of overcoming such a disconnect, such as random, albeit light, inspections are never popular and run the risk of a withdrawal of sector cooperation which risk-based regulation aims to secure as a major objective. More thematic audits, or increased education and guidance programmes, are never fully trustworthy channels for gaining risk-based intelligence on particular institutions because of their cross-organizational focus.

14. There are other reasons why initial support for risk-based regulation from the majority of institutions may be short-lived. Experience elsewhere in government shows that the introduction of risk-based regulation generally results, at least initially, in more rather than less paperwork and data collection being required, either because existing data are unsuitable for risk-based regulation purposes, or are inadequate. Some regulators also seek more data than is initially justified, in part to allow for developing information needs as their risk models are modified as their regimes develop.

[...]

20. Risk assessments are never simply technical and involve levels of qualitative judgement and even bias. Tacit knowledge and expertise remain important in assessing risk, despite increased formalization, and this is especially true when it comes to analyzing softer risks such as reputation or amenability to compliance requirements. Often judgements may be made in a context of uncertainty where some degree of flexibility is required concerning the notion of risk, and where different methodologies need to be employed to assess it. Such vagueness may enable long-established equally applied bureaucratic practices to continue but disguised under the

new rubric of risk, further adding to confusion and threatening failure in meeting communicated risk objectives.¹⁴

In April 2013 HEPI published a report *New Arrangements for Quality Assurance in Higher Education*; this report contains an overview of recent developments in the quality assurance system by Anthony McClaran the Chief Executive of QAA and a critical analysis by Professor Roger Brown who comments on the new role of HEFCE in the new system:

Given that neither the Government nor HEFCE yet has any powers over institutions' academic standards it seems extraordinary that the sector appears to have accepted this major assertion of Government power with so little objection.¹⁵

6 Student complaints procedures

Currently the mechanism for settling disputes between students and HEIs involves two different processes, firstly any dispute should go through the institutions own internal procedures and then secondly the dispute may be referred to [the Office of the Independent Adjudicator for Higher Education](#) (OIA).

6.1 Office of the Independent Adjudicator for Higher Education (OIA)

The OIA was set up under the *Higher Education Act 2004* to administer an independent student complaints scheme, in part replacing the earlier Visitor system; the work of the OIA is outlined on the organisation's website. The adjudicator will look into certain types of acts or omissions by institutions – only qualifying complaints will be assessed and the adjudicator will not look into issues that involve academic judgement such as the awarding of individual degree classifications. The OIA has no regulatory powers and cannot fine institutions, but where it finds a complaint to be justified, or partly justified, the OIA sends recommendations to the university.

The OIA 2011 annual report showed that complaints against HEIs have risen every year since the establishment of the OIA:

The OIA received 1,605 complaints against universities in England and Wales. This represents a 20 per cent increase on the previous, record, year. This is the sixth successive year of increase and is a significant rise, but still constitutes a very small proportion of the number of eligible enrolled students (approximately 0.07 per cent).

- During the year, the OIA reviewed and closed more cases than at any time in its history (1,443), a 75 per cent increase on 2010 (825) and a reduction in unit costs of 35 per cent.
- 16 per cent of Formal Decisions were either Justified (5 per cent) or Partly Justified (11 per cent) compared with 20 per cent in 2010. 56 per cent were found to be Not Justified (compared with 53 per cent in 2010). The number of cases settled or resolved other than by Formal Decision rose from 9 per cent to 11 per cent reflecting the OIA's new emphasis on resolving complaints other than by Formal Decision.¹⁶

In December 2012 the OIA and QAA signed a *Memorandum of Understanding* which recognised and clarified the complementary and distinctive roles of these two organisations,

¹⁴ HEPI Report *The risks of risk-based regulation: the regulatory challenges of the higher education White Paper for England*, November 2011 p4

¹⁵ HEPI Occasional Report 6 *New Arrangements for Quality Assurance in Higher Education* April 2013 para 57

¹⁶ OIA PN924 *Press Notice: OIA Annual Report 2011* 14 June 2012

and committed both organisations to sharing information relevant to developing a risk-based approach to regulation in higher education.

Currently HEFCE does not have a role in dispute resolution however the white paper proposes placing HEFCE under a duty to monitor the compliance of all designated HE providers with dispute resolution procedures.

7 Access to higher education

Higher education is considered as an important vehicle for increasing social mobility and for this reason widening access to higher education for students from disadvantaged and underrepresented groups has been seen as a priority by successive governments. The oversight of access to higher education is carried out by HEFCE and the Office for Fair Access (OFFA).

7.1 HEFCE's role in widening access to HE

Widening participation in HE is one of HEFCE's key priorities. HEFCE carries out this role by providing institutions with widening participation funding to help them meet the extra costs associated with supporting disadvantaged students and through funding the [National Scholarship Programme](#) (NSP). The NSP provides institutions with funding for bursaries for individual students from disadvantaged backgrounds; the effectiveness of this programme is currently being evaluated by HEFCE.

7.2 The Office for Fair Access

The *Higher Education Act 2004* which brought in the system of variable deferred tuition fees also established the [Office for Fair Access](#) (OFFA) amid fears that trebling fees would deter student from entering HE. OFFA is an independent non-departmental body with a remit to oversee widening participation in HE by promoting and safeguarding fair access to HE for students from lower income groups and other under-represented groups. One of the ways OFFA carries out this role is by overseeing university access agreements. All HEIs wishing to charge the higher rate of tuition fees must have an access agreement in place which has been approved by OFFA.

Access agreements set out the fees that an institution wishes to charge and the access measures that they will put in place to sustain or improve access and student retention. Access measures include activities such as outreach work (ie summer schools, mentoring schemes, links with schools etc) and student support arrangements such as bursaries or scholarships. OFFA document, [How to produce an access agreement for 2014-15](#)¹⁷ contains guidance for HEIs on compiling access agreements.

If an HEI wilfully breaches its access agreement, OFFA has the power to fine an institution up to £500,000¹⁸ or it can refuse to renew the access agreement in which case the institution will only be allowed to charge the basic rate of tuition fees.

Access targets and performance indicators

In 1998, the government asked the four UK funding bodies to develop benchmarks of performance for HEIs in areas such as: widening participation, non-continuation rates, research output and employment of graduates. These [performance indicators](#) have been

¹⁷ OFFA January 2013/01 Guidance, [How to produce an access agreement for 2014-15](#)

¹⁸ *Ibid* para 14

published annually since 1999 and allow comparisons between the performance of HEIs in widening participation areas.

Access agreements should include targets and milestones on access and student success and these targets may be based on the HEIs performance indicator data. OFFA expects HEIs to set challenging targets and monitors their progress towards meeting these targets.

7.3 National Strategy for Widening Access to HE

In May 2012 Vince Cable and David Willetts sent a [letter to Sir Martin Harris](#)¹⁹ the director of OFFA asking his office to work with HEFCE to develop a national strategy for widening access to higher education. The aim of the strategy is to create an evidence based approach to promoting access to higher education and maximising the impact of spending by the government, HEFCE and institutions on widening participation in higher education.

Since 2009 HEIs have been required to submit widening participation strategic statements (WPSS)²⁰ to HEFCE. These statements set out the institutions' approach to widening participation and there is significant overlap between these statements and institutions' access agreements. As part of the national strategy therefore WPSSs and access agreements will be combined into one integrated document by 2014:

Part of the work to develop the national strategy for access and student success is to align better the HEFCE and OFFA processes. We believe it also presents an opportunity to provide other benefits to institutions. HEFCE and OFFA are therefore developing guidance for an integrated document which aims to not only integrate WPSSs and access agreements into one submission that meets the requirements of both organisations (thereby reducing burden for institutions), but that is also useful to institutions in other ways.²¹

On 18 January 2013 HEFCE and OFFA published an interim report on the development of the national strategy, [National Strategy for Access and Student Success](#).

8 Designation of courses for student support purposes

Courses of higher education at publicly-funded HEIs are automatically designated for student support purposes if they meet the eligibility requirements set out in the annual *Education (Student Support) Regulations*; if a course meets these requirements then eligible students at these HEIs can apply for student support.

Also under provisions in the *Teaching and Higher Education Act 1998* the Secretary of State may designate specific individual higher education courses for student support purposes on a case by case basis; this specific designation is at the Secretary of State's discretion. Generally, specific designation is used by alternative providers who wish some of their courses to be eligible for student support. Currently if a provider wishes a course to be designated they must apply to the Student Loans Company, which then sends a recommendation to BIS. Information on the process for designation was given in answers to Parliamentary Questions on 5 March 2012:²²

¹⁹ Letter to Sir Martin Harris, [A Shared Strategy for Widening Access to Higher Education](#) 22 May 2012

²⁰ These were originally called widening participation strategic assessments.

²¹ HEFCE Circular letter 01/2013 [Widening participation strategic statements: changes for 2013-14 and longer-term plans for integration with OFFA access agreements](#).

²² HC Deb 5 March 2012 c611

Higher Education

Shabana Mahmood: To ask the Secretary of State for Business, Innovation and Skills what criteria must be met by a higher education provider in order for a course to be designated. [97726]

Mr Willetts: Eligible full- and part-time higher education courses provided by publicly funded institutions in the UK are automatically designated under the Education (Student Support) Regulations 2009, as amended. Full-time distance learning courses and eligible courses delivered at privately funded institutions may be specifically designated on a course by course basis for the purposes of student support at the discretion of the Secretary of State for Business, Innovation and Skills, the right hon. Member for Twickenham (Vince Cable).

Institutions that wish to have a course specifically designated apply to the Student Loans Company (SLC). Applications are assessed by the SLC against the course designation criteria in the Education (Student Support) Regulations which include course type, duration and mode of study. In addition all courses must be validated by a recognised UK awarding body such as a university. This provides quality assurance.

BIS undertakes further checks on organisations that are applying for specific designation for the first time. These include consideration of management and governance, financial stability and longevity of an organisation. If the Department is satisfied that the course meets the course eligibility criteria; and that the provider does not pose a risk to the use of public funds; the course is specifically designated.

Further information on the process of designation was given in answer to Parliamentary Questions on 3 September 2012. A list of all courses that have been specifically designated is published on the SLC website at [Full list of designated courses](#).

The HE white paper proposed changing the system for designation of courses and giving HEFCE a new role in assessing, awarding and reviewing designation of HE providers for student support purposes. The BIS *Technical Consultation* document explained the proposed new system:

All providers that want to become designated for student support purposes or HEFCE funding will be required to enter into a legally binding agreement with HEFCE. This will cover all the requirements that need to be met by providers in order to continue to be designated (see section 2.2). It will be for HEFCE, in consultation with providers, to determine the requirements of the agreement in each case and what the differential arrangements are for satisfying the requirements for providers accepted on to different points of the register. This agreement will replace the current 'financial memorandum' that HEFCE holds with higher education institutions. If a provider fails to comply with the requirements in the agreement then they will be subject to an intensified engagement with HEFCE and an escalating set of steps will be taken until compliance is achieved. Ultimately, continuing failure may require HEFCE to apply its ability to fine and/or de-designate a provider

The new system would give HEFCE a regulatory role with regard to alternative providers of HE.

In April 2013 BIS released information on the details of the new system in a consultation document, [Alternative Providers: Specific Course Designation: Draft Guidance for Applicant Criteria and Conditions](#):

Summary of Key Principles, Changes and Requirements

- The new arrangements will apply to all new specific course designation applications for 2013/14. For new courses starting during the 2013/14 academic year there will be a single application window open from June 2013 until the end of August 2013.
- From 2014/15 onwards there will be two application windows, in August and February, and the process will take up to four months to complete (subject to the provider submitting the necessary information). Each application window will be open for six weeks.
- Those wishing to have courses specifically designated for September/October 2014 need to submit their application in either August 2013 or February 2014. Further information will be available by the end of May.
- The new arrangements will apply to all existing specifically designated courses following the transition process which will begin in June 2013.
- A QAA review is a pre-requisite for a successful specific course designation under the new process and will be a requirement for existing providers as part of the transition; only providers with a successful and recent review will be eligible to apply for new courses to be specifically designated. Providers will be required to meet the cost of this review, details of which can be found on the QAA website.
- All providers will be expected to provide copies of the last three years' externally audited accounts as part of the Financial Sustainability, Management and Governance (FSMG) checks when seeking specific course designation.
- Providers will be required to sign up to a set of terms and conditions of Specific Course Designation including complying with annual monitoring and data collection requirements.
- The Student Number Control (SNC) will be introduced in 2014/15 for full-time undergraduate courses and will be set on an annual basis. A specific SNC will be set for each provider; it will be for providers to manage their specifically designated courses within the SNC limit. Some providers will be required to pay a subscription to the Higher Education Statistical Agency (HESA) as part of this process.
- Providers are responsible for ensuring that their application is complete and that all requested information is provided. Incomplete applications will not be assessed. 5
- If a provider fails to comply with the terms and conditions and/or there are concerns raised during monitoring the Department will consider whether the course(s) should continue to be specifically designated. Possible action could include the issuing of an improvement notice, a freeze or cut in student numbers and possible withdrawal of designation for the course or courses in question.

The consultation on the guidance closed on 10 May 2013; this guidance was discussed in an article in *THE* on 2 May 2013.²³

Private providers in England wanting their students to access publicly funded loans will for the first time be required to undergo checks on quality.

However, unlike universities, these providers will not have to undergo full institutional review by the Quality Assurance Agency or subscribe to the Office of the Independent Adjudicator, which reviews student complaints.

The Department for Business, Innovation and Skills last week published draft guidance on its proposed new rules for private providers seeking “designation” for their courses - making their students eligible for Student Loans Company funding to cover fees and maintenance.

The new process will be administered by the Higher Education Funding Council for England, bringing it into contact with private providers for the first time.

The coalition has already used the designation system established by the Labour government to boost the private sector, where student numbers will not be capped until 2014-15. SLC funding for students at private providers rose to £100.3 million in 2011-12, up from £42.2 million the previous year.

[...]

The rules, which will apply from 2013-14, state that to proceed with an application for designation, private providers must have undergone a “recent, successful QAA review” and pay a subscription or annual maintenance fee to the QAA.

Providers will be eligible for designation if they have successfully undergone institutional review or educational oversight. If they have not, they will be required to go through a new type of QAA scrutiny, called review for specific course designation, to be undertaken every four years.

On finance, BIS says the system will establish that providers seeking designation have a “low risk of failure...over the medium term”, check that they are owned and run by “fit and proper persons” and look at accounts and forecasts.

Private providers will still be limited to £6,000 fees via the SLC in 2013-14 and 2014-15, meaning that they will not come under the remit of the Office for Fair Access.

Carl Lygo, principal of for-profit-owned BPP University College, said the “much tougher regime” would “squeeze out the unscrupulous who are more interested in their bottom lines rather than delivering high-quality education”.

Sally Hunt, general secretary of the University and College Union, welcomed news that the government had “finally taken action to regulate the shadow higher education sector, ending the scandal of unregulated subsidies to the for-profit sector”.

But she argued that in key areas for-profit providers would “still be subject to less regulation than our established universities”.

8.1 July 2013 ministerial statement on the system for designating courses

Under the HE regulatory reforms announced in the July 2013 ministerial statement HEFCE will become responsible for approving the designation of courses:

²³ “For-profits will have to try harder to become eligible for SLC cash”, *THE* 2 May 2013

The Government intends to delegate to HEFCE responsibility for the process of approving designation of HEFCE-funded universities and colleges, and for providing assurance that the agreed terms and conditions are met. Eligible courses at these institutions are and will continue to be designated automatically, allowing students on them to access student support. Institutions will not be required to undergo a separate designation process. This means that in practice there will be little change for existing HEFCE-funded institutions, and no additional administrative burden.

9. Under the present system, HEFCE-funded institutions receive automatic designation of their eligible courses on the basis that there is sufficient regulation and oversight through the HEFCE Financial Memorandum and grant arrangements. However, as the balance of funding shifts from grants to tuition fees, the effectiveness of regulation through the HEFCE Financial Memorandum diminishes for those institutions with limited HEFCE funding. As a result, the Government has identified a potential risk to the proper stewardship of student support funding. Placing conditions on automatic designation for student support is seen as an important step towards mitigating this risk, and maintaining safeguards for students.

10. The scope of the Further and Higher Education Act 1992, which gives HEFCE its existing powers, does not extend to the student finance system. The Teaching and Higher Education Act 1998 sets out the legal basis for designated courses and, as a result, the terms and conditions of course designation will need to be set out separately from those in the HEFCE Financial Memorandum³. However, the Government has made clear its expectation that conditions of designation for HEFCE-funded providers will align with those in the current HEFCE Financial Memorandum.

11. The terms and conditions of this designation will also apply to further education colleges offering higher education. The Skills Funding Agency will continue to be the lead accountable organisation with oversight of the further education sector. HEFCE will ensure that the requirements for further education colleges align with their Funding Agreements with the Agency.

12. The principles of this designation, and its delegation to HEFCE, will be determined by Ministers. However, we intend to consult the sector on its detailed terms and conditions. We will do this in spring 2014, when the relevant changes to the student support regulations have been made and responsibility for designation has been formally delegated to HEFCE by the Secretary of State. We will take full account of the views of the sector, including responses to the Financial Memorandum consultation.

13. We will implement the terms and conditions of designation consistently and fairly, as we do with the Financial Memorandum. This means that we will be able to demonstrate to Parliament, the public and students that when, exceptionally, something goes wrong, there is a clear mechanism to put it right. In line with the Minister's letter, we will be considering options for developing the Designation Resolution Process. In doing this, we will respect the autonomy of institutions, seeking only to intervene where necessary and ensuring that our involvement is proportionate to the risks.

14. These changes only affect HEFCE-funded institutions. Higher education providers that are not funded by HEFCE will still need to go through the specific course designation process.²⁴

²⁴ [HEFCE Circular 20/2013](#)

Comment

In October 2011 HEFCE, in its response to the BIS technical consultation on regulatory reform, expressed concern about the timetable for implementing their new role as regulators of designation of private providers for student purposes:

Funding chiefs in England have told the government they have “concerns” about the timetable for implementing a new regulatory framework for higher education, warning the challenge of bringing in some reforms by 2013 should “not be underestimated”.

In its response to the Department for Business, Innovation and Skills technical consultation on regulatory reform, which closed on 27 October, the Higher Education Funding Council for England points in particular to “significant challenges” in handling private providers.

One worry is over a plan to move responsibility for which private colleges access student loan funding from BIS to Hefce, which the latter says cannot be implemented until it has properly assessed the finances of independent institutions.

“Given that there are a large number of providers currently outside our remit but eligible for student support, this would take time to complete,” Hefce says, suggesting the transfer of some colleges on to Hefce’s books might have to be delayed by a year.²⁵

²⁵ “Overhaul of regulatory framework poses 'major challenges'”, *Times Higher Education* 31 October 2011'