

December 2009/45

Policy development

Consultation

Responses should be made online by
midday on 12 March 2010

This document sets out proposals on how higher education institutions (HEIs) are to provide information to HEFCE to enable us to fulfil our new statutory role as principal regulator of HEIs as charities.

Regulating higher education institutions as charities

Consultation on HEFCE's information requirements as principal regulator

Alternative formats

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Regulating higher education institutions as charities

Consultation on HEFCE's information requirements as principal regulator

To	Heads of HEFCE-funded higher education institutions Chairs of governing bodies of HEFCE-funded higher education institutions
Of interest to those responsible for	Administration, Governance, Finance, Audit, Web-site development
Reference	2009/45
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Enquiries to	Andrew Malin tel 0117 931 7332 e-mail charityreg@hefce.ac.uk

Executive summary

Purpose

1. This consultation seeks views on our proposals about what information will be necessary to enable HEFCE to fulfil our new statutory role as principal regulator of higher education institutions (HEIs) as charities.
2. The consultation also includes proposals about:
 - how HEIs publish certain information about themselves as charities, including how they deliver their charitable purposes for the public benefit
 - the accountable officer's responsibility for providing information on behalf of all of the HEI's trustees (see paragraph 3).

We would welcome views from all HEIs, including the 18 that are registered charities.

3. This consultation is being carried out in parallel with our consultation on revisions to the Financial Memorandum ('Revisions to Financial Memorandum: consultation on changes to the funding agreement between HEFCE and institutions', HEFCE 2009/46). Those revisions include the introduction of the term 'accountable officer' to replace 'designated officer', so we have used that term here for consistency. Decisions following this charity regulation consultation are likely to impact on parts of the Financial Memorandum. We will highlight these in our analyses of the responses to both consultations.

Key points

4. Almost all UK HEIs are charities and benefit from the same tax concessions and other advantages as the rest of the charity sector. Many HEIs are also among the largest charities in the country. Yet neither fact is widely known or understood by the general public. This is partly because most HEIs in England and Wales are ‘exempt’ charities, which means they may not register with the Charity Commission (the Commission) and have been outside the scope of its powers as regulator of charities generally.

5. While they will continue to be exempt charities, from early 2010 HEIs will be subject to many of the Commission’s regulatory powers. At the same time, HEFCE will become the ‘principal regulator’ of HEIs that are exempt charities. As a principal regulator HEFCE will have one new duty: ‘to promote compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity’.

6. One way we will do this is to extend our monitoring of the HEIs that are exempt charities. This will require us to ask for and review information not previously collected, or that we have previously collected for purposes other than charity regulation. This consultation presents our proposals about the additional information we will need as principal regulator.

7. As a major funder of higher education (HE) in England we monitor HEIs to ensure their accountability for public money. For this purpose we already receive a lot of information from HEIs. We have analysed the information that the Commission currently collects to enable it to regulate registered charities. The analysis has led us to conclude that, given our specialist knowledge of the HE sector, our additional information requirements as principal regulator are relatively small and can be incorporated into our normal annual accountability review process.

8. We believe the proposals outlined in this consultation:

- represent the minimum new reporting requirements that are necessary to enable us to carry out our new responsibilities effectively
- will enable HEIs’ trustees to demonstrate that they are meeting their obligations both under charity law and to the public generally

- take advantage of electronic communications to minimise the need for and handling/storage of paper.

9. The Commission ensures that core information about the constitution, charitable purposes, and financial performance of registered charities is available to the public on its own web-site. We consider that equivalent information about HEIs should also be readily available to the public, but propose that it should be located and easily found on HEIs’ web-sites rather than our own.

10. Registered charities are required by law to describe in their trustees’ annual report how they have delivered their charitable purposes for the public benefit. We propose that, even though they are exempt charities, HEIs should include a similar description in the narrative section of their annual financial statements.

11. In addition to the information on its web-site, the Commission collects and holds information about registered charities that it does not publish. In particular, it requires reports on all serious incidents that might have put a charity’s assets, beneficiaries or reputation at risk, or resulted in actual loss or harm.

12. Our proposals on serious incident reporting by HEIs – which are very different from the Charity Commission’s expectations of registered charities – reflect the fact that we receive their audit committee annual reports as part of our existing accountability processes. We expect our proposals on serious incident reporting to generate the most comments in this consultation. If our proposals are not acceptable to the sector we are particularly interested in suggestions for an alternative approach.

13. Finally, we propose to ask accountable officers for specific assurances, on behalf of all of the trustees, about their institution’s compliance with charity law principles.

Action required

14. Comments are invited on the proposals, using the online form, which can be found at www.hefce.ac.uk alongside this document under Publications, by **midday on Friday 12 March 2010** (see Annex A).

Background

15. Most higher education institutions (HEIs) in England are exempt charities. ‘Exempt’ in this context means that the charities are not on the Register of Charities and have been outside the scope of the regulatory powers of the Charity Commission (the Commission). The Charities Act 2006 (the Act) contains provisions that, when implemented, will extend most of the Commission’s powers to exempt charities. However, the Commission will be required to consult ‘principal regulators’ before using those powers. HEFCE has agreed to be the principal regulator for exempt charity HEIs in England. We expect both the extension of the Commission’s powers and our own appointment as principal regulator to take effect in early 2010.

16. We are developing a memorandum of understanding with the Commission to describe how we expect to work together. Once it has been adopted by both organisations it will be published on our web-site.

17. The Act also paves the way for the 18 HEIs that are currently registered charities to be designated as exempt charities if they wish. The Office of the Third Sector is responsible for consulting those HEIs and arranging for the necessary ministerial order. This may happen during 2010. If they become exempt charities those 18 HEIs will be regulated alongside the rest of the English HEIs. So they also have an interest in contributing to this consultation.

18. HEIs are constituted in a number of ways. Most are incorporated – by Royal Charter, or as Higher Education Corporations, or as companies limited by guarantee. A small number remain unincorporated and operate under a trust deed. However, of itself, the type of constitution does not necessarily determine an HEI’s status as an exempt or registered charity.

19. Every charity has at least one trustee. The trustees are responsible for ensuring that the charity delivers its charitable purposes for the public benefit. In the higher education (HE) sector the

trustees are usually called ‘governors’ There is extensive guidance (available from the Commission and other sources) about trustees’ duties and liabilities; this applies fully to HEI governors. Where an HEI is constituted as a company, the trustees (governors) are also usually the company directors and need to fulfil the duties set out in the Companies Act 2006. In all material respects, the duties of company directors are the same as those of charity trustees.

The reason for this consultation

20. The Act gives principal regulators the duty ‘to promote compliance by the charity trustees with their obligations in exercising control and management of the administration of the charity’. The draft statutory instrument¹ that will appoint the first principal regulators extends HEFCE’s powers, to enable us to collect information from HEIs that we consider necessary to discharge our new duty. This consultation seeks views on our proposals about what information will be necessary for this purpose and how it might be made available to us and to the public. Nothing in this consultation relates to our powers to require information as a funding council that are set out in the Further and Higher Education Act 1992.

21. The explanatory memorandum to the draft statutory instrument² makes it clear that the new arrangements are ‘forward-looking’. This means HEFCE will only be required to promote compliance by HEIs’ trustees with charity law obligations arising on or after, or ongoing on, the date of our appointment. We will not be required to take action in respect of matters which occur before the date of our appointment and in connection with which there is no charity law obligation continuing at that date. In effect, this means that our new information requirements will apply to HEIs’ 2009-10 academic and financial year and each year thereafter.

22. The principal regulator concept was developed to avoid the duplication of regulation that may have resulted from the new extension to the

¹ See www.opsi.gov.uk/si/si2009/draft/ukdsi_9780111487617_en_1

² See www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111487617_en.pdf

Commission's powers. Many exempt charities receive significant funding either directly from Government or through agencies such as HEFCE. In return, those exempt charities are subject to a range of accountability processes similar to the Commission's expectations of registered charities. Our starting point in assessing what HEFCE may need as principal regulator was to compare the information collected by the Commission from large registered charities with what we already receive from HEIs; this comparison is set out at Annex B. In this respect, HEIs should be aware that some of the information they already send us as part of their accountability obligations will also be used for our new role.

23. The consultation relates to information that is required in normal circumstances. If, as principal regulator, we need to consider special circumstances affecting an HEI, we may need to ask for additional information and therefore reserve the right to do so.

24. The Commission publishes on its web-site much of the information that it collects from registered charities – including the 18 HEIs referred to in paragraph 17. It does this because there is legitimate public interest in the affairs of organisations that receive significant advantage in the form of tax concessions, many of which solicit donations from members of the public and/or provide grants or services to other charities. We consider a similar principle applies to HEIs and for the same reasons, particularly as many HEIs are among the largest charities in the country. HEIs already publish information about their activities, finances and governance, but until now there has been no statutory or mandatory requirement for the publication of information specific to their status as exempt charities.

25. The consultation includes proposals for HEIs to publish certain information about themselves as charities, including how they deliver their charitable purposes for the public benefit. There are also proposals about the accountable officer's responsibility for providing information on behalf of all of an HEI's trustees.

26. We are consulting on proposals that:

- build on, and use the same reporting date as, our existing annual accountability process
- represent the minimum that is necessary to enable us to carry out our new responsibilities effectively
- will enable HEIs' trustees to demonstrate that they are meeting their obligations both under charity law and to the public generally
- take advantage of electronic communications to minimise the need for and handling/storage of paper.

Information the Charity Commission collects, and what it publishes

27. As regulator of registered charities, the Commission has developed its information requirements over many years. So it is appropriate that HEFCE, in developing our own requirements, takes note of what the Commission now does. For all registered charities the Commission requires an Annual Return or Annual Update. The information requested is proportionate to the charity's size. For example all charities are required to complete Part A, keeping basic information about their income, spending, contact details and trustees up to date. Charities with income exceeding £25,000 are required to confirm they have reported any serious incidents to the Commission; and charities with income exceeding £500,000 also complete Part B with detailed financial information. For charities with income of more than £1 million the Annual Return also includes a Part C – the largely narrative Summary Information Return. A line-by-line analysis of the Commission's Annual Return and Serious Incident Reporting requirement is at Annex B. The following paragraphs offer a commentary on key issues arising from that analysis.

28. The first two parts of the Commission's Annual Return confirm or update a lot of information about each registered charity, most of which is used to update the charity's entry on the public Register of Charities available on the Commission's web-site.

The published information is as follows:

- the official name and registered number of the charity, and any working name(s) by which the charity may be known
- details of the charity's objects and beneficiaries, where it operates, and its main activities
- charity contact information: postal address of an individual or organisation contact, the charity's phone number, and its e-mail and web-site addresses
- the names of the charity's trustees and a list of any other charity trusteeships held by each trustee
- a summary of the most recent financial statements for charities with an income exceeding £500,000, including graphic display of the main categories of income and expenditure, and other financial information
- the full consolidated financial statements for the most recent year and the previous four years
- the charity's record of making its required returns to the Commission on time (within 10 months of the charity's year-end), with a flag to highlight late or outstanding returns.

29. In addition, the Commission's Register of Charities provides a summary of and the full text of each charity's current constitutional documents, including a history of changes over time. This is updated as changes occur.

30. Each year the Commission collects in the Annual Return other information from all registered charities, which it deems necessary for its work as charity regulator, but which it does not publish.

Information in this category includes:

- date of birth and address of each charity trustee
- confirmation of the accuracy of a list of linked (that is, subsidiary or constituent) charities included in the trustees' annual report/financial statements
- the charity's main bank account details.

31. All registered charities with income over

£25,000 must confirm that any serious incidents were reported as they arose during the year. If not, the Annual Return provides an opportunity to do so retrospectively. Serious incidents are those that might have, or have actually, put a charity's assets, beneficiaries or reputation at risk. The Commission considers that safeguarding the charity's assets and beneficiaries are key responsibilities of trustees. The Commission does not publish information about serious incidents, unless that information leads it to conduct a formal inquiry, after which the inquiry report will (in most cases) be published.

32. The Commission's most recent (May 2009) guidance to trustees on serious incident reporting³ lists the following 'zero tolerance' issues that of themselves are so serious the Commission will always give them immediate attention:

- connections with proscribed (banned) organisations
- charity links to or support for terrorism, financial or otherwise
- misuse of charity to foster criminal extremism
- fraud and money laundering
- loss due to other causes where the amount involved is the lower of £25,000 or 20 per cent of the charity's income
- abuse of vulnerable beneficiaries
- not having adequate measures in place to protect vulnerable beneficiaries
- sham charities, set up for illegal or improper purposes.

33. The Commission also expects charities to report an incident if:

- it is/was reported to the police or other statutory agencies
- the charity has decided the incident presents/presented a serious or significant risk to the charity, its beneficiaries, assets or reputation
- the internal risk assessment of an incident concludes that the charity needs to act to prevent or avoid serious or significant risk.

³ 'Reporting Serious Incidents – guidance for trustees' is at www.charitycommission.gov.uk/investigations/rsinotes.asp
A frequently asked questions section is available at www.charitycommission.gov.uk/investigations/rsifaq.asp

34. When serious incidents are reported, the Commission asks charities to provide as much information as possible either at the time of the report or in response to questions. This will include: a description of the incident (or allegation or suspicion); who was involved; their relationship to the charity; what the charity has done in response; whether there has been media attention; whether the police or other regulator have been involved; whether procedures were in place and followed; the conclusions of any internal investigation; and actions taken to prevent a recurrence, including any strengthening of internal controls. The Commission assesses the report and initiates further enquiries if it is not satisfied by the charity's handling of the situation.

35. The Summary Information Return (only required from charities with total income of more than £1 million) provides the Commission with information under a set of standardised headings about: the charity's aims and beneficiaries; its current medium- to long-term strategy; the ways it measures the success of that strategy; its recent main activities and key achievements, including its expenditure on the main activities; and its planned main activities. The Summary Information Return also asks for an opinion by the charity on its financial health and prospects, and about arrangements for effective governance. All Summary Information Returns are published in full as part of the charity's entry on the public Register of Charities.

36. Each part of the Annual Return requires a trustee (on behalf of all trustees) to sign a declaration or certificate to the effect that the information is complete and accurate.

Information about HEIs as charities

Information in the public domain

37. Paragraphs 28 and 29 summarise the information about registered charities that the Commission considers should be in the public domain. As principal regulator, HEFCE considers that the public should be able to have ready access to comparable information about HEIs as exempt charities. We seek confirmation from the sector and other respondents that this is appropriate.

Consultation question 1

Do you agree that the public should have ready access to information about HEIs as exempt charities, equivalent to the information they can access about registered charities?

38. If HEIs' information as exempt charities is to be made readily available, we consider that the simplest and best way of achieving this would be for HEIs to make the information readily available on their own externally facing web-sites. While some of the information is already accessible on HEIs' web-sites, in many cases details are absent or hard to find. We do not consider that summary financial information needs to be provided because:

- HEIs' financial statements are prepared under a different statement of recommended [accounting] practice (SORP) from that used by most charities and are therefore not comparable with those of charities that are not in the HE sector
- comparative financial information about HEIs is already available from the Higher Education Statistics Agency.

However, if HEIs choose to provide summary financial information voluntarily, we would expect the summary to follow the SORP 'Accounting for further and higher education'.

39. In summary, we propose that all HEIs have a page on their web-sites devoted to information about their charitable status that can be easily located by members of the public. We would expect the web-page to provide links to the relevant information which should be updated at least annually. We propose to provide a link to each HEI's charitable status web-page via the HEFCE web-site; the Commission may also wish to link to them. We would intend such an arrangement to be in place by 1 December 2010 providing public access to the information listed in paragraphs 28 and 29 (apart from summary financial information), including the 2009-10 financial statements and associated narrative report.

Consultation question 2

Do you agree that public information about HEIs as charities should be made readily available on HEIs' own web-sites, linked to from the HEFCE web-site?

Consultation question 3

- a. Is the timing reasonable for such a web presence to be developed and live by 1 December 2010?
- b. If not, what is the earliest achievable date?

40. In paragraph 54 we make proposals about annual certification or assurance that the information is complete and correct as at 1 December each year.

Other information needed by HEFCE as principal regulator

41. HEFCE will also need other information in its role as principal regulator. The proposals in this section derive from information the Charity Commission collects (see paragraphs 27 to 36) and are in three parts:

- non-published core information (paragraphs 30 and 42)
- serious incident reporting (paragraphs 31 to 34 and 43 to 47)
- summary information return (paragraphs 35 and 48).

Non-published core information

42. Our proposals in respect of the three categories of non-published core information collected or updated by the Charity Commission each year, but not published, are as follows:

- a. **Date of birth and address of charity trustees** – The Commission uses this information when it needs to engage directly with the trustees of a charity to deal with issues under investigation. The date of birth and address assist in

identifying the right person. We consider that there is little risk of mistaken identity in the HE sector, so we do not propose to collect or hold this information. We would however expect HEIs to hold this information for their own purposes and to make it available to HEFCE or the Commission if required.

- b. **Confirmation of the accuracy of a list of linked charities included in the trustees' annual report/financial statements** – The Commission regulates linked charities (which it describes as 'subsidiary or constituent' charities) through its engagement with the main, registered charity. Similarly, as principal regulator of the linked charities of exempt charity HEIs, HEFCE will do this through the HEI. Such linked charities are themselves likely to be exempt under the terms of the Charities Act 2003, Schedule 2, paragraph w⁴. However, the very fact that there is no register of exempt charities means we do not know how many linked or 'paragraph w' charities there are. Information about linked charities is sometimes disclosed in the notes to HEIs' financial statements, but we believe this may not always be the case – particularly if such charities are not considered to be material and have not previously been consolidated. (We are also aware of a number of registered charities associated with HEIs where there is genuine autonomy, which are not consolidated, and which are regulated by the Commission already. We will not be principal regulator of those charities.) In respect of linked, exempt charities we propose:
 - i. A one-off exercise, to be completed by 31 July 2010, in which we will ask all HEIs to prepare and send to HEFCE a list of all charities linked to the HEI.
 - ii. Using the baseline data collected in the one-off exercise, we will ask all HEIs to notify us of changes each year (as part of the normal annual accountability process).

⁴ Charities Act 2003, Schedule 2, paragraph (w): 'any institution which is administered by or on behalf of an institution included above and is established for the general purposes of, or for any special purpose of or in connection with, the last-mentioned institution'.

Consultation question 4

- a. Is it reasonable for HEIs to assemble and report to HEFCE baseline information about their linked charities during 2009-10, and to report changes in subsequent years?
- b. If not, what alternative arrangement do you propose to enable HEFCE to regulate HEIs' linked, exempt charities?

- c. **The charity's main bank account details** – We understand that the Commission collects this information in case a situation arises in which it might wish to use its powers to freeze a charity's assets. Such action is extremely rare. Because of our funding role, we already hold details of one of the bank accounts of every HEI. The HE sector should note that, if exceptional circumstances arise causing the Commission to act to protect an HEI's charitable assets, we would make available to it the bank account details we hold for payment of grants.

Serious incident reporting

43. The Commission's guidance on reporting serious incidents identifies areas of risk – notably about terrorism and protection of vulnerable people – that relate to statutory obligations of all organisations, whether charitable or not. HEIs should therefore already have risk management arrangements in place for dealing with these issues, and the relevant processes and internal controls should be considered in internal audit planning and overseen by audit committees.

44. The size and diversity of the registered charity sector mean that the Commission cannot be certain that individual charities have sufficiently well-developed risk management processes both to minimise the risk of serious incidents occurring and to inform responses should an incident occur. It has devised its serious incident reporting process accordingly. We have discussed with the Commission whether it is necessary for HEIs, like registered charities, to report all incidents as they arise, or whether some form of annual reporting

would be sufficient in a sector which has well-embedded risk management arrangements. We consider that the former would be unduly burdensome, but that there is a case for asking HEIs to report annually to us on serious incidents that may have arisen and what actions were taken, including confirmation that internal controls have been strengthened if necessary.

45. HEIs may have concerns about either the concept of reporting serious incidents to HEFCE or the proposed method of doing so. HEFCE and the Commission are willing to consider alternative proposals in this area, but we note that this might lead to complaints from other charities that this differential treatment of the HE sector is inappropriate. We would ask HEIs to bear this in mind when responding to consultation questions 5 to 7.

Consultation question 5

Do you agree that it is appropriate for HEIs to report annually on serious incidents that have arisen and the actions taken, including any strengthening of internal controls?

46. If annual reporting of serious incidents is adopted, we need to determine how best to achieve this within the existing accountability framework. We propose the following two-stage approach:

- a. To require audit committees to include serious incidents in their annual report to governing bodies.
- b. To include an additional question in the annual assurance return from accountable officers (see paragraphs 53 and 54).

47. The first of these stages reflects the Commission's view that the trustees (members of governing bodies in the HE sector) are responsible for their charity's reputation and therefore need to be aware of these particular risks and their management, and of the responses to incidents that arise. It would be for individual audit committees to determine how they receive information and assurance to enable them to report on serious

incidents. Levels of risk and sources of assurance vary widely across the sector. Possible sources of assurance include: an annual report from the senior manager responsible for managing the risks, or from the risk or compliance committee; coverage in the internal audit programme; or reports on incidents that have occurred.

Consultation question 6

Is it reasonable for HEIs' audit committees to include in their annual report to the governing body discussion of serious incidents that have arisen and the actions taken, including any strengthening of internal controls?

Consultation question 7

If you consider the serious incident reporting system proposed in paragraph 46 to be unreasonable, what alternative arrangements might provide assurance that HEIs have adequate measures in place to identify and prevent serious incidents, and, if such an incident arises, that they have responded appropriately?

Summary Information Return

48. We consider it unnecessary to require a return from HEIs equivalent to the Summary Information Return for larger registered charities. HEFCE's responsibilities as the main funder of HEIs mean that we already have in place sophisticated arrangements to ensure accountability for public funds. Central to these arrangements are the Financial Memorandum, the annual accountability process and the five-yearly HEFCE assurance review. Every year we receive and review the previous year's audited financial statements, current year's budget, and financial forecasts for the following three years. This core financial information is supported by a detailed commentary that includes longer-term strategies and shorter-term plans and targets. We also receive full annual

reports of both internal and external auditors and of audit committees. Furthermore, the HEI's accountable officer provides direct assurance on a number of core accountability questions. We are confident that these existing requirements will enable us to meet our principal regulator requirements without needing HEIs to send us additional information.

Public benefit reporting

49. All charities are required to deliver their charitable purposes for the public benefit. The Charities Act 2006 introduced a new requirement for the trustees of registered charities to describe in their trustees' annual report how they have delivered their charitable purposes for the public benefit. They must also state that they have had regard to the guidance on public benefit published by the Commission⁵. These reporting requirements first applied to the 2008-09 financial year, and the reports will be in the public domain. However, there is no statutory requirement for the trustees of exempt charities to prepare an annual report. This creates the anomaly that the 18 registered charity HEIs must report on public benefit but the 110 exempt charity HEIs do not need to do so. Also, from a UK perspective, HEIs in Wales (which are expected to become registered charities during 2010) will report on public benefit, and in Scotland they already do.

50. As principal regulator we will need to be satisfied that HEIs have delivered their charitable purposes for the public benefit. We have informally consulted a number of sector representatives who agree that it would be good practice for the exempt charity HEIs to report on public benefit in the narrative report that is included with every HEI's annual financial statements. That narrative is conceptually similar to a trustees' annual report and, under the terms of the SORP: Accounting for Further and Higher Education 2007, is expected to contain an Operating and Financial Review (OFR). We consider that it will be straightforward for all HEIs to include in, or with, their OFR additional text describing how they have delivered their

⁵ See www.charitycommission.gov.uk/publicbenefit/publicbenefit.asp

charitable purposes for the public benefit. Although such an extended OFR would need to contain enough material to satisfy the public benefit reporting requirement, it would be reasonable for HEIs to cross-refer to other publications or reports that provide more detail.

51. If HEIs consider that reporting on public benefit in an extended OFR is undesirable, the alternative will mean HEFCE requiring a separate report on public benefit from each HEI as part of our annual accountability process. We will then need to find a way to publish those reports. This seems unnecessarily burdensome both for HEIs and HEFCE, and we would hope that HEIs agree to the proposal in the previous paragraph.

Consultation question 8

Is it reasonable for all exempt charity HEIs to include in the narrative section of their annual financial statements a description of how they have delivered their charitable purposes for the public benefit, including a statement that they have had regard to the Charity Commission's guidance?

52. If a majority of HEI respondents to question 8 reject the proposal we will assume that they accept both the requirement to send us a separate report each year and that we will make the report available to the public. Whichever outcome, we will make it a mandatory requirement in either the Financial Memorandum or the annual Accounts Direction.

Declarations and signatories

53. Each part of the Annual Return to the Commission by registered charities includes a declaration of completeness and accuracy signed by one trustee on behalf of all trustees (see paragraph 36). As part of HEFCE's current annual accountability process the accountable officer of every HEI signs an annual assurance return to confirm that the institution has met its obligations to HEFCE. The current version of the annual assurance return also includes the question: 'Has

there been any confirmed instance of serious weakness, such as fraud, that should have been notified under the HEFCE Code of Practice? If so, please provide details.'

54. However, the assurances to HEFCE do not refer to the HEI's status, or its accountability, as a charity. Nor does the 'serious weakness' question clearly cover the spectrum of serious incidents discussed in paragraphs 31 to 34 and 43 to 47. Thirdly, the assurance return does not identify the accountable officer as being one of the HEI's trustees. We propose to address these points as follows:

- a. We will add to the annual assurance return the question: 'Can you confirm that, in all material respects, the institution has conducted its affairs during the year in accordance with its status as a charity, and that the required information about its charitable status has been published on the institution's web-site and is correct as at the date of this return?'
- b. We will change the serious weakness question so that it more clearly covers the spectrum of serious incidents that are of concern to HEFCE as both funding body and principal regulator. The wording will depend on the responses to consultation questions 5 and 6.
- c. We will include in the signature section of the annual assurance return the phrase: 'signed as accountable officer, and as a trustee on behalf of all of the trustees'.

Consultation question 9

Are the proposed changes to the annual assurance return, as outlined in paragraph 54, appropriate and reasonable?

Sector impact assessment

55. In advance of this consultation, we have considered how our new role as principal regulator will impact on the sector. This is a new element in the regulation of HEIs but there has been little change to the underlying charity law framework within which HEIs have been operating for many

years. Our preliminary analysis, published on the HEFCE web-site under About us/Sector impact assessments, concludes:

‘Our analysis of the impact of the new regulatory regime on the sector is that there are broadly positive, but not material, impacts on equality and diversity, and on sustainable development. The initiative is expressly about increased regulation of an aspect of HEIs’ activity, so there will be benefit to HEFCE’s strategic interest in improved governance processes in HEIs. Similarly, because of the higher profile of their status as charities, HEIs will receive some modest benefit (from enhanced public confidence) to offset, in part, the additional burden.’

56. We will review our preliminary analysis after this consultation and, if necessary, amend the sector impact assessment.

Annex A

Consultation questions and how to respond

1. Responses to the consultation should be made by **midday on Friday 12 March 2010**, using the online form that can be found on the HEFCE web-site with this document at www.hefce.ac.uk under Publications.

2. We will publish an analysis of responses to the consultation. Additionally, all responses may be disclosed on request, under the terms of the Freedom of Information Act. The Act gives a public right of access to any information held by a public authority, in this case HEFCE. This includes information provided in response to a consultation. We have a

responsibility to decide whether any responses, including information about your identity, should be made public or treated as confidential. We can refuse to disclose information only in exceptional circumstances. This means responses to this consultation are unlikely to be treated as confidential except in very particular circumstances. Further information about the Act is available at www.informationcommissioner.gov.uk.

3. The consultation questions are listed below.

Consultation question 1: Do you agree that the public should have ready access to information about HEIs as exempt charities, equivalent to the information they can access about registered charities? **Yes/No**

Comment

Consultation question 2: Do you agree that public information about HEIs as charities should be made readily available on HEIs' own web-sites, linked to from the HEFCE web-site? **Yes/No**

Comment

Consultation question 3a: Is the timing reasonable for such a web presence to be developed and live by 1 December 2010? **Yes/No**

Comment

Consultation question 3b: If not, what is the earliest achievable date?

Comment

Consultation question 4a: Is it reasonable for HEIs to assemble and report to HEFCE baseline information about their linked charities during 2009-10, and to report changes in subsequent years? **Yes/No**

Comment

Consultation question 4b: If not, what alternative arrangement do you propose to enable HEFCE to regulate HEIs' linked, exempt charities?

Comment

Consultation question 5: Do you agree that it is appropriate for HEIs to report annually on serious incidents that have arisen and the actions taken, including any strengthening of internal controls? **Yes/No**

Comment

Consultation question 6: Is it reasonable for HEIs' audit committees to include in their annual report to the governing body discussion of serious incidents that have arisen and the actions taken, including any strengthening of internal controls? **Yes/No**

Comment

Consultation question 7: If you consider the serious incident reporting system proposed in paragraph 46 to be unreasonable, what alternative arrangements might provide assurance that HEIs have adequate measures in place to identify and prevent serious incidents, and, if such an incident arises, that they have responded appropriately?

Comment

Consultation question 8: Is it reasonable for all exempt charity HEIs to include in the narrative section of their annual financial statements a description of how they have delivered their charitable purposes for the public benefit, including a statement that they have had regard to the Charity Commission's guidance? **Yes/No**

Comment

Consultation question 9: Are the proposed changes to the annual assurance return, as outlined in paragraph 54, appropriate and reasonable? **Yes/No**

Comment

Consultation question 10: Do you have any other comments?

Annex B

Review of the Charity Commission's 'Annual Return/Update 2009' and 'Summary Information Return 2009'

1. Table 1 considers each element of the 2009 version of the Charity Commission's 'Annual Return/Update 2009' and 'Summary Information Return 2009' to identify whether, as principal regulator, HEFCE:

- already collects the information
- needs to collect the information as principal regulator, and why
- does not need to collect the information, and why.

For this exercise the term 'collect' includes 'has access to'.

2. Table 1 also indicates which and how information is already published, and whether and how any other information may need to be published either by HEFCE or by HEIs. Although it forms the basis of the consultation with the sector, we do not ask respondents to comment on it.

Table 1 **Review of the Charity Commission's 'Annual Return/Update 2009', to identify whether information is needed by HEFCE as principal regulator**

Charity Commission information requirement		Needed as new HEFCE requirement?	Comment
Annual Return section	Description		
A1	Financial year	No.	Whole sector has same year-end.
A2	Income and expenditure totals for year	No.	All HEIs are above the large charity threshold.
A3	Charity contact	May need a specific contact for charity regulation.	This would be additional information collected and held on our internal database, and updated through routine updating processes.
A4	E-mail contact for charity regulation only	As A3.	As A3.
A5	E-mail contact for Commission web-site	No.	HEFCE web-site already links to every HEI's web-site, which all have contact details.
A6	Web-site linked to from Commission web-site	No.	As A5. Could link from HEFCE site to a section of each HEI's web-site where material equivalent to the Register of Charities could be accessed. Need annual assurance that HEI's web-site is current.
A7	Corporate trustee details (name, address, phone, e-mail)	Yes.	Currently rare in HE sector. Should be in the public domain on HEI's own web-site. Should then link to HEFCE web-site (as A6).
A8 & A9	Individual trustees' details (name, date of birth, address, phone, e-mail)	Yes, except date of birth.	Names, but not other details, should be in the public domain, except where there is dispensation to protect the safety of particular individuals.
A10	Linked charities (subsidiary or component charities whose finances are consolidated in financial statements)	Yes.	Could be in the public domain on the HEI's web-site. (For registered charities, the Register of Charities shows the cross-references.) Improved information in financial statements would suffice.

Charity Commission information requirement		Needed as new HEFCE requirement?	Comment
Annual return section	Description		
A11	Area of operation in England (and Wales)	No.	HEIs all operate throughout UK.
A12	Area of operation outside England (and Wales)	Yes.	Limited to overseas campuses or other material operation. 'Operate' to cover only: occupy premises and employ staff.
A12b	Expenditure overseas	Yes.	Material expenditure should be disclosed under segmental reporting requirement of the further/higher education SORP and therefore should be in public domain on the HEI's web-site, because of different risk profile.
A13a	Charity classification: Purpose	No.	All HEIs have the charity purpose: advancement of education. If HEIs have other purposes, they should be known and publicly available.
A13b	Charity classification: Beneficiaries	No.	All HEIs provide services to students and to 'general public/mankind'.
A13c	Charity classification: Operating methods	No.	All HEIs teach, provide related services and undertake research.
A14	Charity activities (400 character limit)	No.	No added value. Already prominent on HEIs' web-sites. Normal institutional team engagement with HEIs and annual accountability process cover this.
A15	UK volunteers (optional)	No.	Burdensome; difficult to verify.
A16	Charity's main bank account (bank name, address, sort code, account number)	Already held.	Will need to explain that we may pass details to the Charity Commission, to help in the exercise of its powers.

Charity Commission information requirement		Needed as new HEFCE requirement?	Comment
Annual return section	Description		
–	Reporting serious incidents – reminder to report	No.	Charity Commission guidance talks of 'zero tolerance'.
B1	Summary analysis of income and expenditure	No.	Existing returns are sufficient. SORP analysis headings are appropriate for the sector; a different analysis would be unduly burdensome. HEFCE has the advantage of four years' forecast financial information (income and expenditure, balance sheet, and cash flow).
B2	Other recognised gains and losses	No.	As B1.
B3	Assets and liabilities	No.	As B1.
B4	Additional financial information	No.	As B1.
–	Declaration by one trustee on behalf of all	Yes.	Additional assurance statements on charity law compliance and serious incidents. Is vice-chancellor the appropriate person, or should it be an independent trustee?
C1	What are the charity's aims?	No.	Covered by normal institutional team engagement with HEIs.
C2a	Who benefits from the charity's work?	No.	As C1.
C2b	How do you respond to their needs and how do they influence the charity's development?	No.	As C1.
C3a	What are the key elements of the charity's medium-term strategy?	No.	As C1. Also covered in annual accountability returns.
C3b	How does the charity measure the success of the strategy?	No.	As C1.

Charity Commission information requirement		Needed as new HEFCE requirement?	Comment
Annual return section	Description		
C4	What has the charity achieved in respect of the key elements of the strategy?	No.	As C1. Also included in Operating and Financial Review in financial statements.
C5a	What were the charity's three main fundraising activities in the year, their cost and income generation?	No.	This is not a material feature of the sector: virtually all income is from grants or primary purpose trading.
C5b	Comments on C5a	N/a.	
C5c	What were the charity's most significant activities in the year and how much did it spend on them?	No.	As C1. Further/higher education SORP defines sector-specific income and expenditure analysis, supplemented by detail already provided in the HESA Financial Statistics Return.
C5d	Comments on C5c	N/a.	
C6	How would you describe the charity's financial health at the year-end?	No.	Effectively covered in annual accountability process, but this is an interesting, direct question that could be incorporated in that process in future.
C7a	How will last year's performance affect the charity's medium- to long-term strategy?	No.	Annual accountability returns.
C7b	What are the charity's main annual objectives for next year?	No.	As C1. Also covered in annual accountability returns.
C8	How does the charity ensure that its governance arrangements are appropriate and effective?	No.	Financial Memorandum requirements. HEFCE Assurance Reviews (five-year cycle).
-	Certification of the Summary Information Return by one trustee on behalf of all.	No.	Covered by extended assurance statement from accountable officer.

**Higher Education Funding Council for England
Northavon House
Coldharbour Lane
BRISTOL
BS16 1QD**

**tel 0117 931 7317
fax 0117 931 7203
www.hefce.ac.uk**