

BIS Technical Consultation – a new, fit-for-purpose regulatory framework for the Higher Education Sector

**University Alliance Response
October 2011**

1. University Alliance is a group of 23 major, business-engaged universities committed to delivering world-class research and a high quality student experience. Our aim is to deliver evidence-based policy and research and foster close links with Government and business in order to improve higher education policy for the benefit of the economy and society.
2. We welcome the opportunity to respond to this consultation. At this critical juncture for the higher education sector, it is imperative that an appropriate regulatory framework follows the change in funding environment.
3. Throughout our response to this consultation, as well as our response to the White Paper, we attempt to comment constructively on proposals. However we are eager to ensure that as a new regulatory framework is developed, the Government keep in mind the features of higher education that make our sector world-leading. This period of change will cause inevitable disruption which we believe can be minimised through ongoing consultation with the sector.
4. Universities deliver many shared priorities with government. As one of the UK's major export industries, universities have the capacity to leverage investment. Through playing an active leadership role in the regional economy they bring together key players in the partnerships that will help rebalance the economy. As part of a global knowledge network, universities generate, translate and disseminate research-led innovation. By exchanging knowledge with business and enterprise, universities also support its adoption and exploitation. Through widening participation and delivering access to the professions, they support social mobility. By engaging individuals in the pursuit of knowledge and understanding, they support civic engagement and a more tolerant and cohesive future society.¹
5. Recognition of this wider economic and social role is critical if we are to plan and provide for the higher education system we need. In this way we can successfully position the UK within a competitive, challenging and knowledge-based global economy.

¹ See University Alliance, *Growing the future: Universities, leading, shaping and creating the regional economy*, September 2011, University Alliance, *21st Century universities: engines of an innovation-driven economy*, June 2010 and New Economic Foundation, *Degrees of Value*, June 2011

Chapter 1: The introduction of an independent lead regulator

Question 2: *We have set out our proposals on what responsibilities HEFCE should have in its role as the lead regulator. In implementing these functions, are there any processes that could be improved, reduced or removed while still protecting the student interest and public funds?*

6. We welcome the Government's commitment to building on the existing work and expertise of HEFCE. We feel that the best way to protect the student interest and public funds is to ensure absolute clarity to students and universities about the role of all regulators in HE: their workings, responsibilities, powers and the relationship between each body.
7. We are also very conscious of the fact that HEFCE is receiving new powers and duties through these proposals and we very much hope that despite the tough economic climate, they are given the appropriate resources in order to excel in their newly enhanced role. This is particularly important during a time of transition and the implementation of a new framework that will doubtlessly highlight a number of unintended consequences requiring significant work and attention.

Question 3: *Do we need to consider anything additional to the proposals set out to enable HEFCE's role as a student champion in terms of protecting the collective student interest?*

8. We note that HEFCE has not previously been a 'student facing' body and few students will be aware of the Council's presence. We feel that it is important to clarify the precise role of HEFCE and its future interaction with students for two important reasons:
 - 1) We must ensure that the sector bodies that interact with students complement each other's work and that duplication is avoided.
 - 2) There must be explicit and clear signposts to ensure that both students and institutions can navigate these sector bodies clearly and effectively.
9. We also believe in the primacy of the independent ombudsman. As such it is critical that the OIA should handle the entirety of the student complaints workload (see Question 4).
10. We would welcome a marked period of transition for HEFCE and all related sector bodies to develop detailed plans for operation alongside the Government's stated vision. This would enable HEFCE and others to draw clear lines of accountability and responsibility and then communicate them to institutions and students. We believe this is necessary in order to build a fit for purpose regulatory framework that remains sustainable.

Question 4: *With regard to HEFCE’s role as a student champion, which of the two options is preferred around awarding compensation for collective interest cases – Option 1 where HEFCE would have this ability, or Option 2 where HEFCE would have to refer such cases to the OIA for its decision?*

11. We believe that the OIA, as the independent ombudsman for higher education should handle all student complaints. We feel that it is crucially important to have a clear separation between this regulatory function and the funding of higher education so as to ensure that decisions about student complaints remain independent.
12. The establishment of the OIA was an important step for the HE sector, and there is widespread consensus that the presence of an independent body such as this has greatly enhanced both governance and accountability. It has also provided students with an important route to pursue complaints through an independent body.
13. Merging any complaints function into HEFCE away from the OIA will necessarily reduce the independence of the route students can take, and could therefore harm the sector’s credibility with both students and the wider public. We therefore prefer option 2.
14. We also believe that there is scope for OIA and HEFCE to collaborate. For example, OIA should be able to draw attention to HEFCE about areas of concern where patterns of complaints emerge. This will provide important information for HEFCE who will need to manage all matters of risk across the sector, which will largely depend on having complete and accurate information.

Chapter 2: A single regulatory framework for provider designation for student support and HEFCE teaching grant

Question 6: *This document sets out the regulatory framework for designation for student support and HEFCE teaching grant – are there any processes within this framework that could be improved or reduced to make it more risk-based and ensure proportionate requirements and a level playing field while still protecting the student interest and public funds?*

15. We welcome the addition to HEFCE’s remit that will place responsibility with the Council to maintain the register of providers under the proposed categories. However, this framework whilst broad in scope, does not detail how the process for risk-based regulation will function.
16. The principle of proportionality is critical to any future risk based system and one we fully support. As the framework develops, we will have views about how this should be applied.
17. We feel that it is important to recognise the increase of risk to students and Government that will come with the addition of new providers in the system. New providers, without

a long track-record of successful HE provision or awarding of degrees carry an inherently greater risk than more established sections of the HE sector. Therefore, the regulatory regime that governs their development should be proportionally tighter in comparison to well-established providers.

18. Following the principle of proportionality, a new quality regime that fits this purpose will need to be developed. The scope of the external quality assurance framework will necessarily need to alter depending on the risk posed by the institution. In order that future students can be confident that their chosen means of HE provision is monitored in a robust and appropriate manner, it is essential that a new quality framework is developed as soon as possible.

Question 7: While it is not Government's role to underwrite independent providers that have become unviable, how can we best protect the interests of students in the event a provider fails in some way or becomes insolvent?

19. We welcome HEFCE's role in assuring the financial sustainability of designated providers. The interests of students are paramount and if there is no possibility of underwriting an institution, HEFCE must have an established process in place to ensure continuity and sustainability of the student experience.
20. It is important to recognise that such a responsibility will require the investment of additional resources to ensure HEFCE remains fit for purpose under the new regulatory framework.
21. Resources should therefore be considered for an expanded 'response team' within HEFCE that will be flexible enough to respond to developing situations and provide strategic oversight of any emergency measures put in place.
22. Without a Government safety net to underwrite providers, it will be even more essential that HEFCE is able to direct resources as appropriate to ensure that crisis is averted. In many cases, this will very likely involve the close cooperation of third party providers who may be asked to take on areas of provision to ensure a level of continuity for students.
23. Developing a clear and robust process will be critical in order to ensure the broader integrity of the higher education sector - institutional failure, without any effective arrangements made by HEFCE, could damage domestic public confidence in the sector, as well as our international reputation for excellence.
24. Students and employers may also perceive qualifications awarded by defunct bodies to be of less value. It is therefore essential that systems are developed to ensure that a 'worst case scenario' would see institutions or areas of provision lost, but student's experience and qualifications *guaranteed* by HEFCE.

Question 8: *We welcome views on how flexible provision such as two year courses could be encouraged.*

25. As Government will be aware, a number of higher education institutions have explored different approaches to flexible provision over recent years. The 2011 HEFCE report² on two year accelerated honours degree offers some helpful findings in this area.
26. Consistent with the Government's intention to place student choice at the centre of the HE sector, we believe that flexible provision should follow demonstrable student demand.
27. University Alliance institutions already offer many integrated masters courses, and courses that include a placement year in the relevant field. These are usually developed in partnership with employers and provide valuable alternative forms of flexible provision. Several Alliance institutions also have long-standing and deeply embedded partnerships with Further Education Colleges, creating other forms of provision that meets the needs of students. HEFCE has acknowledged these activities in its recent study of flexible provision commissioned by BIS³.
28. Flexibility is an important principle that should be applied beyond the length of courses. It is important to design any future system around student needs and so we would also welcome a renewed analysis of transferability within the sector with the intention of making it easier for students to change courses and institutions if required.

Chapter 3: The adoption of a single gateway for entry to the higher education sector

Question 9: *Do you agree that it is important to retain the Privy Council as an independent element in the process for awarding, renewing and removing degree awarding powers and university title?*

29. The day-to-day reality of the current arrangements mean that the Privy Council rarely exerts an independent view over the Secretary of State, acting in the capacity of the relevant Privy Councillor. We therefore believe that the most important part of these processes that should be retained is the advice and scrutiny of QAA and HEFCE.
30. However, there needs to be a clear and unambiguous process for awarding, renewing and removing degree awarding powers and university title. With its enhanced role as principal regulator, the proposal therefore to grant HEFCE these powers seem appropriate, and their continued 'arms length' status should provide sufficient independence in these matters.

² *Diverse provision in higher education: options and challenges* http://www.hefce.ac.uk/learning/flexible/Diverse_provision.pdf

³ *Ibid.*

31. As with all matters under consideration by the Government, any new process developed must be communicated clearly and urgently to students, institutions and other relevant stakeholders.

Question 10: *We have set out the action that we are going to take to establish HEFCE as the single gateway for entry to the HE sector and to clarify and streamline processes for designating HE providers for student support purposes and for HEFCE funding, for administering the application processes for both degree awarding powers and university title and for compiling, maintaining and publishing the Recognised and Listed Bodies and Recognised Awards Lists. Are there any other processes we should consider in this context?*

32. No, we feel that this list of processes is appropriate for HEFCE's establishment as single gateway to the HE sector.

Chapter 4: Reforms to Degree Awarding Powers (DAPs) and University Title (UT) criteria

Question 11: *Are there any requirements as set out within the TDAPs current criteria (see Annex), including evidence requirements, which would preclude non-teaching bodies from being eligible to apply for taught degree awarding powers?*

33. No

Question 12: *Would it be helpful to specify in the criteria that non-teaching bodies must demonstrate that their delivery partners were competent in the required areas?*

34. Yes, we believe this would be important to ensure the integrity of the provision.

Question 13: *What evidence requirements should the non-teaching bodies themselves be expected to meet over and above what their delivery partners are able to demonstrate?*

35. Where it is impossible to demonstrate a clear 'track record' of delivery, non-teaching bodies should be required to demonstrate their financial sustainability and that robust quality assurance processes are in place so that arrangements with delivery partners can be guaranteed.

Question 14: *We would welcome your views on our proposal to link track record to the length of the degree programmes on offer and whether you see any risks with this approach.*

36. We believe that it is essential that international public confidence in UK higher education is maintained. We also understand the need to be more flexible. However,

we do not believe that this is the most appropriate mechanism for establishing further flexibility.

37. The current criteria requiring four years' experience immediately preceding the year of application of delivering higher education programmes is an important safeguard of standards.
38. The four year requirement is also an important mechanism for offsetting risk to Government and students. Removing this requirement, despite good intentions, could result in DAPs being awarded prematurely to institutions which do not operate in a comparable way to the whole sector. Protecting the integrity of UK higher education is critical, and the responsibility of awarding a UK higher education degree is important enough to warrant more stringent guidelines.

Question 15: *We would welcome views on how else the track record criterion might be applied more flexibly. For example are there different types of track record or experience you think could be taken into consideration?*

39. As per Question 14, we are minded to ensure that the integrity of UK higher education is not compromised by the need to be flexible. Prospective institutions should be able to make a case that demonstrates the **public benefit** of their proposed provision in support of their application.
40. As well as demonstrating that the proposed provision is in the public good, prospective providers could also demonstrate a track record in other modes of education. For example, a provider that might have a history of successful provision at Level 5 and could clearly demonstrate how this experience will form the underpinning of their future plans for higher education. In all cases however, the track record should apply to operation in the UK only, as other regulatory jurisdictions are in every case, different enough to make a direct comparison impossible.

Question 16: *Do you consider that alternative models for entry e.g. single subject taught degree awarding powers would give more scope for new providers to enter the system? Would you be interested in the development of a single-subject model?*

41. Further consideration of the single-subject model is warranted as in some cases, this could enable niche provision to flourish. However, the risk of such provision increases if the teaching body is not subject to the additional regulatory requirements that come with DAP.
42. Therefore, very clear justification would need to be able to be produced for a single-subject model – for example the benefit to local industry, in conjunction with the publication of a clear strategy for managing quality and standards.
43. We strongly believe that it is important not to conflate the idea of what a university is, with degree awarding powers. Whilst there might be some cases where a single-subject

model could be appropriate, it is important to recognise that higher education in England depends on and is driven by higher education institutions whose contribution to society and the economy goes much further than merely the awarding of qualifications.

44. Whilst recognising the Government's ambition of creating more flexibility in the sector, we think it is important to revisit the features of higher education that make its role distinctive as well as broad.
45. Degree awarding powers are an important duty of universities that exist alongside a range of other mutually supportive and reinforcing activities. For example, many UK universities undertake research that is world-leading in its field. Excellent teaching of students is often underpinned by the same research on courses that are also designed and delivered in conjunction with business and industry. Beyond that the wider academic environment and broad learning opportunities on offer in universities are central to the added-value they are able to provide.⁴ All of these features of universities combine to make the qualifications they award of such high value to students and employers.
46. Degrees awarded by universities in England are recognised internationally for this distinctive approach that marries a number of activities together in the pursuit of driving forward knowledge and innovation. The sector's reputation for excellence is borne out by its success in recruiting students from around the world, which also makes HE a critical export industry for the economy.
47. The Government must therefore ensure that through driving forward more flexibility in the system, these broad features of higher education are recognised, celebrated and enhanced. Any perceived dilution of this reputation could be damaging for the sector and the wider economy that depends on it.

Question 17: *Do you consider a six year period for renewals of degree awarding powers in the first instance is appropriate? If not, what period would you like to see and why?*

48. Given the financial risk to the Government, students as well as the integrity of the sector, we feel that it is imperative that degree awarding powers are monitored more closely for new entrants to the sector.
49. We believe that 4 years are a more appropriate number, as this will enable providers to achieve a full life-cycle of students and learn lessons for improvement from this experience. We feel that this would be consistent with the notion of 'risk based' regulation as awarding DAPs to new entrants carries very significant risk, which therefore in turn warrants closer monitoring.

⁴ See Our vision: more than just a degree, a statement that outlines the offer for students in Alliance universities <http://www.university-alliance.ac.uk/campaigns/studentstories/our-vision-more-than-just-a-degree/>

Question 18: *Would you like to see a longer period between subsequent renewals?*

50. No

Question 19: *What do you consider a reasonable number of renewals before being eligible for consideration for degree awarding powers indefinitely, subject to continuing satisfactory outcomes of periodic quality assurance reviews?*

51. We believe that 3 complete cycles of 4 years – i.e. 12 full academic years should be completed before DAPs can be awarded in perpetuity.

52. As outlined above, degree awarding powers are a commodity that must not be compromised. Therefore, we feel that 3 cycles of renewal would be appropriate in order for the provider to develop, learn lessons and provide a long-term, sustainable pathway for students.

53. Such a system would safeguard against the introduction of providers that do not have a long-term strategy for providing high quality higher education. It would also minimise the possibility arising where a new provider is not able to continue, and past graduates who have been awarded qualifications perceive their qualifications as defunct along with the provider.

Question 20: *Do you agree with our proposal to reduce the numbers criterion for university title to 1,000 full-time equivalent higher education students of which at least 750 are studying for a degree alongside a requirement that more than 50% FTE of an organisation's overall student body is studying HE? If you do not agree with this proposal could you please explain your reasons and also suggest an alternative proposal and why you think this would be better.*

54. The introduction of this new framework is an important opportunity for the Government and HEFCE to re-establish its vision for what makes universities different to other parts of the education system – much of which is driven by a character and identity that stems from the establishment of a diverse learning community, as well as the many broader activities outlined in previous answers.

55. However, we accept this proposal as an appropriate threshold at which university title can be granted.

56. We note that there have been exceptions to this rule in the past when the number of required FTE was set at 4,000. We believe that the principle of consistency is paramount to ensuring a level playing field for providers. Therefore, the proposed new threshold should be adhered to without flexibility.

Chapter 5: Simplifying the process for changing corporate status

Question 21: Would you welcome legislative change to make the process of changing legal status easier?

57. Yes

Question 22: If so, why? It would be helpful to understand how and why this has been problematic in the past and what the benefits would be of making this process easier.

58. We support the Government's initiative to make this process easier for institutions. The global higher education marketplace is becoming increasingly competitive and allowing institutions more flexibility with their corporate status could enhance their ability to compete internationally.

59. Flexibility in corporate status could also help give institutions additional means to raise much-needed funds. The changed financial settlement that the higher education sector has received has necessitated a renewed look at different means of generating income to sustain and support their activities. Altering corporate status could provide new routes for institutions to take in this pursuit.