HE Update: Regulatory Developments
October 2013

Introduction

This paper is intended to inform Audit Committee members and other stakeholders on a number of regulatory developments that have occurred over the summer including the publication of the Operating Framework for Higher Education in England, potential changes to the Financial Memorandum and Audit Code of Practice and changes to the student number controls policy.

Operating Framework for Higher Education in England

The Regulatory Partnership Group has published a first draft Operating Framework for Higher Education in England. The document aims to demonstrate to stakeholders (including students, staff and the public) how higher education providers can enter the sector, are subsequently regulated, and potential actions if accountability requirements are not being met. The framework is applicable to higher education institutions (universities and university colleges), further education colleges who provide higher education (either directly funded by HEFCE or in partnership with a HEI), alternative providers who have degree awarding powers or alternative providers with courses designated for student support purposes.

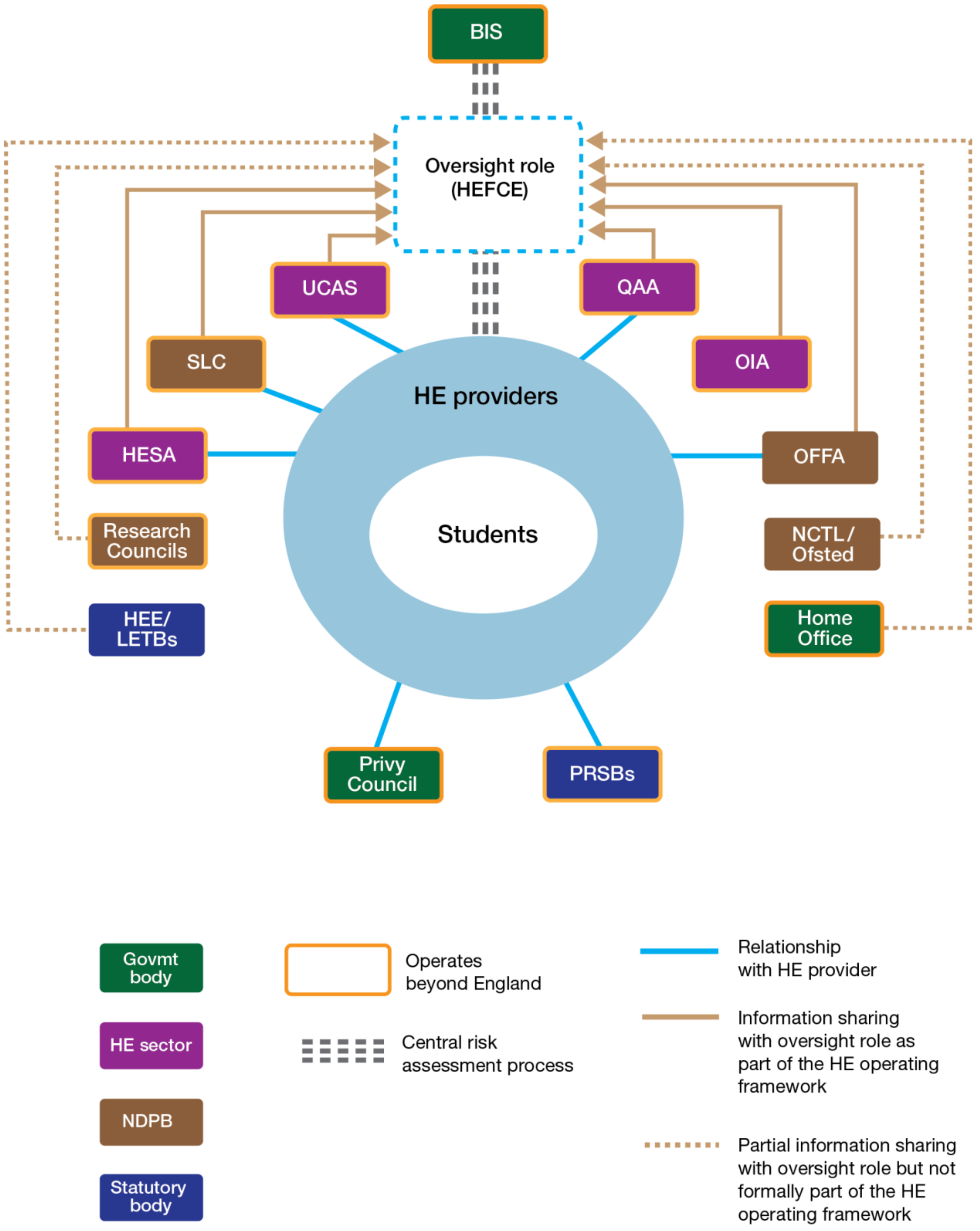
Whilst a lengthy and detailed document (74 pages long) it provides a good overview of the sector and some of the regulatory complexities involved. There remains a strong emphasis on the principle of institutional autonomy and reliance on good corporate governance.

The current draft can be found at http://www.hefce.ac.uk/about/intro/wip/rpg/of/. A revised draft of the operating framework will be published in summer 2014.

This paper summarises our view of the key highlights:

Lead Regulator

HEFCE will take the mantle as lead regulator and will work in partnership with other regulatory bodies, in particular the Student Loans Company (SLC), Quality Assurance Agency (QAA) and Office for Fair Access (OFFA) to ensure the framework operates effectively. This is set out in the diagram below.



Source: Operating Framework for Higher Education in England, Regulatory Partnership Group

Risk Assessment

HEFCE will continue to maintain a system of risk assessment of HE providers. The category of risk a provider falls into will determine any additional support or action that may be taken by HEFCE. The risk assessment will be based on accountability information HEFCE receives directly, but also information other HE agencies such as the QAA and SLC are able to share. The Framework outlines five key areas that will inform the risk assessment. These are outlined in the table below along with the sources of information that will feed into the risk assessment.

Criteria	Elements of regulation
Academic standards, student experience and quality enhancement	• QAA reviews • External examiners • HEFCE institutional data and assurance • OIA findings • National Student Survey • Destination of Leavers from Higher Education (DLHE) survey • Professional, statutory and regulatory bodies • National performance indicators
Access and widening participation	• HEFCE widening participation strategic statements • OFFA annual monitoring returns and access agreements • National performance indicators
Financial sustainability and governance	• HEFCE institutional data and assurance • Governing body 'going concern' assurances • External auditors • HEFCE risk assessments
Information provision	• HEFCE institutional data and assurance • SLC data • HESA data • Unistats/KIS data (in addition to the National Student Survey and DLHE) • QAA reviews
Student numbers	• Student number controls

Source: Operating Framework for Higher Education in England, Regulatory Partnership Group

Based on the risk assessment HEFCE may determine that specific support and/or action is required to protect the student and public interest. Risk categories will be assigned to each provider. However whilst at the moment each institutions risk category is confidential, in exceptional circumstances where it is deemed to be in the public interest the risk status of an institution will be published. The scenario where this is most likely to occur is in the event of a likely corporate failure of a provider.

Risk Ratings and Potential Action:

Risk status	Description	Possible responses	Possible responses that may require further mandate
Red	Potential public disclosure: critical risk identified and no remedy can be sought	• Publication of risk status	• Recommendation for reconsideration of designation
Red	Significant risks identified and/or provider continues to not comply with recommendations	• Withholding of grant (for HEFCE funded providers) • Engagement with governing body • Recovery plan	• Consideration of suspension or removal of designation • Fines/withholding of grant • Direction to governing body
Amber	Some risks identified	• Support strategy • Notice to improve • Written request for action • Action by partner bodies • Dialogue	Not applicable
Green	University/college satisfactorily meets the conditions of designation	• Consistent low risk status results in less frequent external regulation	Not applicable

Source: Operating Framework for Higher Education in England, Regulatory Partnership Group

Removal of Designation to Access Student Support

Currently HEFCE's ultimate sanction for HEIs not complying with the accountability arrangements set out in the Financial Memorandum is to withdraw funding. Given the HEFCE teaching grant is significantly declining, this sanction is no longer deemed appropriate. In July 2013 the Minister for Universities and Science provided HEFCE, through an amendment to the Student Support Regulations, the power to withdraw designation to access student support (i.e. the ability of students studying at the institution to access student loans to pay tuition fees). HEFCE funded institutions are automatically designated for student support. The terms and conditions attached to the designation will be outlined in a separate document. There will therefore be a dual process in that HEFCE will monitor both compliance with the Financial Memorandum and compliance with the terms and conditions assigned to designation.

Register of Higher Education Providers

By August 2014 a register of higher education providers which come under the regulatory framework, will be published by HEFCE along with a database of publicly available information. At this stage it is envisaged that the register will include information on each provider's corporate and legal status, the higher education status of the organisation (university title, designation etc.), set out the accountability responsibilities of each provider, provide links on how these accountability requirements are monitored and provide the latest publicly available information shows about the provider. It is within this register, in exceptional circumstances, where HEFCE will publicise institutions who are not meeting accountability requirements, and who are assessed at critical risk.

Update to the Financial Memorandum

In place since 1992, the Financial Memorandum (FM) sets out the terms and conditions higher education institutions have to comply with to receive HEFCE funding. The FM does not apply to alternative providers. Given the changes to the funding regime, the FM is being updated. When the review was first mooted by HEFCE it was intended to be a complete re-write to reflect HEFCE's shift from funder to regulator, and therefore a shift within the FM from a financial focus to a focus on the student interest. However without new legislation, the new tuition fee system limits the power of HEFCE and therefore the proposed changes to the FM are fairly limited.

The main change is to the need, under certain circumstances, for HEIs to obtain consent from HEFCE before committing to additional short term and long term borrowing. Currently institutions are required to obtain written consent for long term borrowing if the annualised service cost of total borrowings would increase above 4% of total income. Consent is also required for short term borrowing where negative net cash exceeds 5% of total income for more than 35 consecutive days. Given lenders are lending on shorter timescales, and there is an increase in the use of revolving credit facilities, HEFCE are of the opinion the difference between short and long term borrowing is blurred. The options being considered are i) an alternative threshold potentially based on earnings before interest, taxes, depreciation and amortisation (EBITDA), ii) increased information on plans to increase financial commitments reported in the accountability returns submitted to HEFCE (or potentially both).

Other proposed changes to note include:

- A requirement for institutions to confirm in the annual accountability return to HEFCE compliance with the concordat on research integrity.
- The provision of the key information set (KIS) will become a mandatory requirement included within the FM.
- A reflection of the revised risk assessment process as outlined in the operating framework.
- A requirement for HEIs to subscribe to Jisc for three years from August 2014-July 2017.
- An amendment to exchequer interest requirements. When HEFCE provides capital funding to institutions, this creates what is known as an exchequer interest and the FM outlines certain scenarios which may trigger the need to repay the funds provided. One of the scenarios is a significant reduction in HEFCE funding, given all institutions face this with the move from grant to tuition fees this will be amended to include combined HEFCE and SLC income.
- Changes reflecting HEFCE's role as principal regulator for those HEIs who are exempt charities and changes to reflect the requirements of the Equality Act 2010.

The proposed changes are currently out for consultation with the revised FM due to come into force on 1st August 2014.

Update to the Audit Code of Practice

The Financial Memorandum includes the Audit Code of Practice, setting out the requirements and responsibilities of Audit Committees, internal audit and external audit. There are no significant changes to the document although it has been slimmed down. This has been achieved through referring to other reference material available, rather than having the detail within the document itself.

Whilst we understand the need for brevity to ensure the content is digestible for users, we do have some concerns that reducing the detail in the ACOP may not assist Audit Committees to fully understand the requirements and expectations of internal audit, as set out in the International Standards for the Professional Practice of Internal Auditing. Raising the profile of the standards is a priority for the professional body, the Chartered Institute of Internal Auditors, and whilst we have informally provided feedback to HEFCE on this, we will be raising this point in our formal response to the consultation.

One change specific to the Audit Committee, is the opinion on the management and quality of data included within the Audit Committee's Annual Report, this has been amended slightly to explicitly include the Student Loans Company:

The report must include the committee's opinion on the adequacy and effectiveness of the HEI's arrangements for ……management and quality assurance of data submitted to HESA, SLC, HEFCE and other bodies.

Student Number Controls Policy

Currently each HEI is subject to a student number control (SNC). The SNC puts a limit on the number of home undergraduate students that can be recruited. Students who have achieved ABB or higher at A-Level (or equivalent) are the exception - no limit is put on the number of these students that an institution can recruit. The purpose of the SNC is to limit the government's spending and financial exposure in relation to student support and tuition fee loans. However the government is also using student number controls as a way of achieving their policy on increasing choice, and enabling those institutions that want and are able to grow to do so.

From 2014/15, HEFCE will put SNC "flexibility ranges" in place. The flexibility range will allow providers to recruit to a percentage above their SNC without penalty e.g. SNC +3%. Where institutions recruit above their SNC but within the flexible range they will potentially receive additional SNC places in future years. A flexible range under the SNC will also be set e.g. SNC -2%, and institutions who recruit less than the flexible range will have their SNC reduced in future years, although they will be given the opportunity to "recover" student numbers in the following year. The result of the change will be a reallocation of student places from institutions viewed as under-recruiters to those that are viewed as strong recruiters.

A change to the high grades policy has also been introduced allowing combinations of certain qualifications equivalent to ABB+ to be exempt from the SNC. At the consultation events, HEFCE estimated this would result in an extra 4,000 students being exempt from the SNCs. For 2014/15, the high grades policy will remain at ABB+.

Higher Education Students Early Statistics Survey (HESES) 2013 will be used to derive SNCs for 2014/15. Institutions will be informed of their provisional 2014/15 SNC in January 2014. HEFCE will set out the exact parameters i.e. flexibility ranges in early 2014.

If you would like to any additional information, or to discuss the themes in this paper in further detail, please contact:

Chris Monk

t: 0161 247 2851

e: cmonk@uniac.co.uk